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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

AT&T CORP., a New York Corporation;
AT&T COMMUNICATIONS OF THE
MOUNTAIN STATES, INC., a Colorado
Corporation,

Claimant,

vs.

QWEST CORPORATION, a Colorado
Corporation,

Respondent.

Docket No. 04-087-73

AFFIDAVIT OF TED D. SMITH

STATE OF UTAH)
):ss
COUNTY OF SALT LAKE)

I, Ted D. Smith, being first duly sworn, depose and state as follows:

1. I am a Partner in the law firm of Stoel Rives LLP. My business address is 201 South Main St., Suite 1100, Salt Lake City, Utah, 84111.

2. On behalf of Stoel Rives, I represent Qwest Corporation in this matter. I have practiced before the Utah Public Service Commission for over 25 years.

3. The statements made herein are based on my personal knowledge.

4. On behalf of Qwest, I participated in the prehearing scheduling conference in this matter that was held on September 8, 2004. The allegation made on page 2 of AT&T's Discovery Response (attached to Qwest's Motions as Exhibit B) that "the parties agreed to serve no more than 25 written interrogatories" is inconsistent with my recollection of the discussion at that conference.

5. Based on my recollection, the parties to the prehearing conference did not agree, either expressly or impliedly, to limit discovery to 25 written interrogatories. In fact, counsel for the Division of Public Utilities, Ms. Patricia Schmid, made it clear that the Division was not in a position to limit itself in any way. On behalf of Qwest, I stated that Qwest was primarily interested in discovery related to the AT&T entities, but I did not commit to any specific number of requests, since they had not then been drafted.

6. On September 22, 2004, both the AT&T Claimants and Qwest propounded discovery requests to each other. The AT&T Claimants' requests consist of Requests for Admissions, Request for Data, and Request for Production. The Qwest requests were denoted as "Data Requests" and were submitted in accordance with R746-100-8(A) in the style and format in which informal data requests are typically submitted in cases before the Utah Commission (*i.e.*, where "interrogatories" and "requests for production of documents" are typically made part of the same set of requests). The 27 data requests, with subparts, can be viewed as exceeding 60 separate questions.

7. On September 28, 2004, Jerry Oldroyd, local counsel for the AT&T Claimants, and Scott Thompson, Washington, D.C. counsel for Claimants, contacted me by telephone. Mr. Thompson stated that Qwest's responses exceeded the limit of 25 in URCP 33(a). He asked me whether Qwest would agree to limit its questions to no more than 25. I noted that AT&T had recently propounded several hundred data requests to Qwest in the recent Triennial Review Docket (Docket No. 03-999-04), but nevertheless I agreed to contact my client. I contacted my client the same date and passed on the substance of the conversation with Messrs. Oldroyd and Thompson.

8. Thereafter, I consulted with other attorneys who regularly practice before the Commission and asked them whether they were aware of the Commission ever having placed an arbitrary limitation of only 25 data requests that could be propounded in Commission dockets. None of them could recall such a limitation ever having been imposed by the Commission. In my own personal experience, I am unaware of the Commission ever placing a limit on the number of data requests a party may propound on the basis of the 25 question limit of URCP 33(a).

9. On or about October 6, 2004, after consulting with my client, I telephoned Mr. Oldroyd and informed him that Qwest believed both the number and content of the data requests were reasonable and that they were consistent with the Commission's rules and with the means by which discovery is conducted before the Commission. Thus, I informed him that Qwest would not eliminate any of them. I asked Mr. Oldroyd if it was still AT&T's position that it would refuse to answer more than 25 separate subparts because, if so, I had been instructed to immediately seek a discovery conference with Judge Goodwill so that the matter could be

resolved before discovery responses were due. Mr. Oldroyd then informed me at that time that, based on his most recent conversations with his client, it was his understanding that the AT&T Claimants intended to answer all of the questions, although he noted that they might object to some of the data requests on other grounds. I stated that, if that were the case, Qwest would not seek an immediate discovery conference with Judge Goodwill. I also asked Mr. Oldroyd to immediately inform me if AT&T changed its position on that issue. He agreed to do so.

10. On the basis of Mr. Oldroyd's statement, Qwest instructed me not seek a discovery conference at that time.

11. At no time between the October 6, 2004 conversation between myself and Mr. Oldroyd and the emailing of the discovery responses to Qwest by the AT&T Claimants at 5:34 P.M. on October 13, 2004, did Mr. Oldroyd or anyone else on behalf of AT&T contact me to inform me that the AT&T Claimants intended to limit their responses to the first 25 subparts of Qwest's data requests. In fact, however, the AT&T Discovery Responses (Exhibit B to Qwest's Motions) answer most of the first 25 subparts, but thereafter refuse to answer further questions on the ground that they exceed the permissible limit.

12. On October 14, 2004, I discussed this matter with Mr. Oldroyd, expressing Qwest's displeasure with the AT&T Claimants' failure to respond to the questions as I had been informed they would, and noting that Qwest had instructed me, in light of these events, to seek relief from the Commission. Mr. Oldroyd made no statement to me to indicate that the AT&T Claimants were willing to change their position on this issue, although he did indicate that perhaps a discovery conference would be appropriate.

DATED this 15th day of October, 2004

Ted D. Smith

Subscribed and sworn to before me this 15th day of October, 2004.

NOTARY PUBLIC

Residing at _____

My Commission expires:_____

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **AFFIDAVIT OF TED D. SMITH** was served upon the following by electronic mail and by United States mail, first class postage prepaid, on October 15, 2004:

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