

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of AT&T CORP
vs. QWEST CORPORATION

)
)
)
)

DOCKET NO. 04-087-73

ORDER GRANTING QWEST'S MOTION TO COMPEL
AND SETTING REVISED SCHEDULE

ISSUED: November 18, 2004

By the Commission:

On November 17, 2004, Oral Argument on Qwest's Motion to Compel Responses to Data Requests or, in the Alternative, Motion to Expand Data Requests was held before the Administrative Law Judge. Ted Smith, Robert Brown, and Michael Adams (via telephone) appeared on behalf of Qwest. AT&T was represented by J. Davidson Thomas, Genevieve Sapir, and Jerold Oldroyd. Michael Ginsberg appeared on behalf of the Division of Public Utilities (Division).

This Motion arises from a Request for Agency Action filed by AT&T Corp. and AT&T Communications of the Mountain States, Inc., (referred to collectively herein as "AT&T") alleging that the conduit rental rates charged to AT&T by Qwest are discriminatory within the meaning of Utah Code Annotated 54-4-13. AT&T's objection to numerous data requests propounded by Qwest led Qwest to file its Motion to Compel and Motion to Vacate Procedural Schedule on October 15, 2004. Pending resolution of the Motion to Compel, the Commission granted the Motion to Vacate Procedural Schedule on October 21, 2004.

While Qwest's Motion to Compel originally sought Commission action regarding Qwest data requests 7g through 27, by the time of hearing, compromise and supplemental responses had reduced the data requests at issue to 7g-11, 13-17, 19-21, and 25-26. Following oral argument and further negotiation among the parties, agreement was reached concerning disposition of all disputed Qwest data requests, except for 13, 13a, 13b, 14, 14a, 14b, and 17 (denominated by AT&T as Interrogatories 34, 35, 36, 40, 41, 42, and 48, respectively). At hearing on the Motion, the parties generally agreed that the Utah Rules of Civil Procedure and past practice of the Commission encourage a very permissive standard of discovery and that discovery is appropriate concerning not only the claims made by AT&T but also any defenses to those claims that might reasonably be available to Qwest. However, they were unable to reach agreement regarding the relevance of these specific data requests to any such claims or defenses.

The information sought by data requests 13 through 14b generally concern whether AT&T Corp. or American Telephone and Telegraph currently provides, or has previously provided, telecommunications services in the State of Utah and, if so, the identity of such services. Qwest, in response to concerns voiced by AT&T and at the suggestion of the Division, revised these requests to specifically refer to "public telecommunications services" as defined by Utah statute. Qwest argued that the requested information is relevant to a determination of

the identity and legal status of the various AT&T entities referenced in AT&T's Request for Agency Action and, therefore, to a determination of their rights with respect to pricing of the conduit in question. AT&T, on the other hand, argued that whether AT&T Corp. or American Telephone and Telegraph provide telecommunications services in the State of Utah is irrelevant to its claim of discriminatory conduit pricing against Qwest.

Data request 17 seeks information regarding the identity of the AT&T corporate entities that currently occupy Qwest conduit in Utah and whether they occupy such conduit for their own use or for the use of another AT&T entity. Qwest stated that the identity of the owner of facilities in the conduit, as well as who is actually using such facilities, and for what purposes, is relevant to potential Qwest defenses to AT&T's claim of entitlement to SGAT pricing for conduit rental. AT&T admitted that AT&T Communications of the Mountain States, Inc., owns all AT&T facilities in the Qwest conduit at issue in this docket and that AT&T Communications of the Mountain States, Inc., provides local and long distance telecommunications services via these facilities, but refused to disclose whether any other AT&T entities make use of these facilities and argued that such information is irrelevant to its claim of discriminatory pricing by Qwest.

Following this oral argument, the Administrative Law Judge determined that the requested information is relevant to defenses which may be reasonably available to Qwest in this docket and therefore granted Qwest's Motion to Compel with respect to these data requests.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters this ORDER granting Qwest's Motion to Compel.

The parties and the Division then agreed to a proposed schedule as indicated below. Unless later modified by the Commission, the following dates shall constitute the schedule in this docket:

- | | |
|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| December 3, 2004 – | Deadline for AT&T Response to Data Requests |
| February 11, 2005 – | Deadline for submission of Cross Motions for Summary Judgment and any mutually-agreed stipulations |
| March 11, 2005 – | Deadline for Division of Public Utilities response to Cross Motions for Summary Judgment |
| April 1, 2005 – | Deadline for parties' response to Cross Motions for Summary Judgment |
| April 15, 2005 – | Oral Argument on Cross Motions for Summary Judgment, before the Administrative Law Judge at 9:00 a.m. in the ALJ's hearing room, Room 451, Heber M. Wells Building, Salt Lake City, Utah. |

Electronic filing and service will be conducted by email with the requisite paper copies provided to the Commission.

DATED at Salt Lake City, Utah, this 18th day of November, 2004.

/s/ Steven F. Goodwill
Administrative Law Judge

Attest:

/s/ Julie Orchard
Commission Secretary

G#41442