

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Determination of the)
Cost of the Unbundled Loop of QWEST)
CORPORATION)

DOCKET NO. 01-049-85
ORDER COMPELLING DISCOVERY

ISSUED: November 4, 2002

By The Commission:

On September 17, 2002, the Commission issued a subpoena to AT&T Broadband Phone of Utah LLC ("AT&T Broadband") that ordered it to provide information requested by Qwest Corporation ("Qwest") relating to the upgrade and build out of its outside plant facilities that focused on placement methods and structure sharing. On September 30, 2002, AT&T Broadband filed its objection to the discovery ordered by the subpoena and moved to quash the subpoena. On October 9, 2002, Qwest responded to AT&T Broadband's objections and motion to quash and filed a motion to compel AT&T Broadband to respond to the discovery. On October 11, 2002, the Commission ordered that these motions be heard on October 22, 2002.

On September 18, 2002, Qwest served a set of data requests on AT&T Communications of the Mountain States, Inc. ("AT&T Communications") that were substantially the same as the data requests in the AT&T Broadband subpoena. On October 14, 2002, AT&T Communications served Qwest with its objections to the data requests. On October 15, 2002, Qwest filed a motion to compel AT&T Communications to respond to the data requests. On October 15, 2002, the Commission likewise ordered that this motion be heard on October 22, 2002.

A hearing on the motions was held on October 22, 2002. Ted D. Smith of Stoel Rives LLP appeared for Qwest. Letty S.D. Friesen appeared for AT&T Broadband and AT&T Communications. Michael Ginsberg, Assistant Attorney General, appeared for the Division of Public Utilities.

During the course of argument, Ms. Friesen represented that all of the information that would be responsive to the subpoena and data requests is now in the possession of AT&T Broadband and that none of it is in the possession of AT&T Communications. Based on that representation, Qwest withdrew its motion to compel responses from AT&T Communications. Therefore, the argument presented by the parties related to AT&T Broadband's motion to quash the subpoena and Qwest's motion to compel responses to the subpoena.

Extensive argument was presented by counsel for Qwest and for AT&T Broadband in support of their motions. The Division stated that it generally supported the request of Qwest. During the course of the argument, AT&T Broadband presented illustrative exhibits in support of its argument that its network was sufficiently different from Qwest's network that the information sought by Qwest should not be discoverable. The parties focused on the portions of an exhibit (Exhibit AT&T Motion to Compel 2) provided by AT&T Broadband. Qwest agreed that the subpoena could be limited to the placement of wire-type facilities in Zone 2. On the basis of the arguments, we issued a bench order that AT&T Broadband provide information relating to its placement methods and structure sharing relating to its placement of wire facilities in the area described by Zone 2 (Distribution Architecture) on Exhibit AT&T Motion to Compel 2. In our bench order, we ordered AT&T Broadband to provide responses either through the production of documents or response to the subpoena questions.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. AT&T Broadband is ordered to either:

A. Provide responses to questions 1 and 2 of Exhibit A of the subpoena as it relates to its placement of wire-type facilities in Zone 2 (Distribution Architecture) on Exhibit AT&T Motion to Compel 2. Such responses shall be provided to Qwest on or before November 5, 2002.

B. Allow appropriate Qwest representatives access to the documents in the possession of AT&T Broadband that contain the information that will allow Qwest to determine the answers to questions 1 and 2 of Exhibit A of the subpoena as it relates to its placement of wire-type facilities in Zone 2 (Distribution Architecture) on Exhibit AT&T Motion to Compel 2. Commencing on or before November 5, 2002, AT&T Broadband shall provide appropriate Qwest representatives access to examine such documents and allow them to designate those documents they wish to have copied. To the extent Qwest requests copying of documents after they are examined, Qwest shall pay the reasonable costs of copying them.

DATED at Salt Lake City, Utah, this 4th day of November, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard,
Commission Secretary

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