Qwest Corporation ("Qwest") hereby responds to and opposes the motion to compel filed by Arizona Corporation Commission Staff ("Staff") in the above-captioned matter. Additionally, Qwest moves the Administrative Law Judge ("ALJ") for an order imposing discovery limitations upon Staff in this docket on a going-forward basis in the manner described herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual Background

On July 1, 2003, in accordance with the terms of the Price Cap Plan, Qwest timely filed an application requesting the revision of the Price Cap Plan. See Opinion and Order, In the Matter of Qwest Corporation's Filing of Renewed Price Regulation Plan, Docket No. T-01051B-03-0454, Decision No. 66772 (February 10, 2004) at 1 ("Decision No. 66772"). As part of this filing, Qwest advised the Commission and presented
evidence that revisions to the Price Cap Plan were necessary because: (i) conditions in the marketplace had changed dramatically since the Plan’s adoption; and (ii) Qwest had suffered significant financial reversals, as well as the loss of subscribers, and could no longer continue under the Plan, due to the intensely competitive local telecommunications market. *Id.* at 1-2. Qwest provided its proposed revisions to the Price Cap Plan with its filing, which included:

i. Elimination of the productivity/inflation adjustment mechanism;

ii. Replacement of an indexed cap on Basket 1 services with a newly determined revenue cap;

iii. Introduction of a “competitive zone” test for moving services out of Basket 1 on a geographic basis;

iv. Ability to move wholesale services to a competitive sub-basket within Basket 2;

v. Elimination of the revenue cap on Basket 3 services; and

vi. Greater flexibility for Basket 3 services.

*Id.* at 1. In addition, Qwest submitted the information required under ¶ 4 of the Settlement Agreement in filing its proposal for the revision of the Price Cap Plan nine months prior to its expiration. In December 2003 and January 2004, Qwest provided Staff with updated information reflecting Qwest’s current financial status. See, *e.g.*, Qwest Corporation’s Notice of Filing Revised Updated Exhibits B and D to the Renewed Price Regulation Plan, dated January 16, 2004, *In the Matter of Qwest Corporation’s Filing Amended Renewed Price Regulation Plan*, Docket No. T-01051B-03-0454.

On February 10, 2004, the Arizona Corporation Commission (“Commission”) issued Decision No. 66772 ordering, in relevant part, Qwest to comply with the filing requirements of A.A.C. R14-2-103 and directing the Hearing Division to set an appropriate procedural schedule. Decision No. 66772 at 9. The Hearing Division
subsequently conducted two procedural conferences on February 23, 2004 and March 8, 2004 respectively, to address different scheduling proposals made by Staff and Qwest. Procedural Order at 1-2 (March 15, 2004). Qwest, joined by AT&T, Worldcom and the Department of Defense ("DOD"), proposed a schedule designed to achieve a hearing of the matter in the fall of 2004 and a final decision from the Commission in late 2004 or early 2005. Id. at 2-3. By contrast Staff, joined by RU CO, proposed a schedule that essentially doubled Qwest's suggested deadlines for testimony and hearing. Id. Staff made clear in urging its proposed schedule that it viewed this docket as "comparable to a rate case, and thus, [Staff] require[s] a comparable time to make recommendations." Id. at 3.

The Hearing Division resolved the matter by concluding "it is important to the public interest, and not unreasonable, to attempt to conduct a hearing on Qwest's renewed Price Cap Plan more quickly than Staff proposes." Id. The Hearing Division reasoned that:

...in adopting price cap regulation in 2001, one of the things the Commission intended was to establish procedures to act on modifications in the regulation plan more quickly and with greater flexibility than under traditional rate regulation. Our ability to be flexible is somewhat constrained by the holding of US West v. Ariz. Corp. Comm'n, 201 Ariz. 242, 34 P.2d 351 (2001), which requires a finding of fair value when we approve rates, but we do not believe that holding necessarily requires a full rate case each time we modify the Price Cap Plan.

As a result, the Hearing Division ordered a procedural schedule that essentially split the difference between the parties' competing deadlines. Id. at 4. Consistent with this schedule, the Hearing Division encouraged the parties to begin discovery in advance of Qwest's future R14-2-103 filing. Id.

On May 20, 2004, Qwest made the requisite A.A.C. R14-2-103 filing, accompanied by the direct testimony of its witnesses. Procedural Order at 1-2 (July 1,
2004). Staff had conducted no discovery in advance of this filing despite the March 15th Procedural Order’s recommendation. On June 21, 2004, Staff filed a letter of sufficiency accepting Qwest’s filing as sufficient pending Qwest updating certain information. Id. at 2. Qwest, in fact, filed revised schedules that same day to comply with Staff's request. Id.

Staff first began propounding data requests upon Qwest in early June 2004. It is important to note that in conducting such discovery, Staff and its testifying experts, William Dunkel & Associates (“Dunkel” or “WDA”) and Utilitech, Inc. (“Utilitech” or “UTI”), independently served Qwest with their own separate sets of data requests. Staff’s written discovery currently totals 66 sets containing 740 individually numbered data requests. See Exhibit A. Even this number is misleading, as 37% of Staff’s data requests include multiple questions designated as subparts. The actual number of written questions asked by Staff to date, including subparts, is 1631. Id. Thus, Staff has served Qwest with an average 21 data requests per working day (nearly three per hour). In return, Qwest has answered not only approximately 604 of Staff’s data requests (including subparts), but provided Staff with well over half a million pages of documents and other information requested by Staff. These figures do not include the other simultaneous discovery served upon Qwest by other parties in this docket as set forth in Exhibit B.

Staff began mischaracterizing Qwest’s responsiveness to ongoing discovery as

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1 Throughout this response and cross-motion, Qwest’s use of the term “Staff” shall mean not only Staff, but also their testifying experts, Dunkel and Utilitech, unless otherwise specified.
2 For example, in Dunkel’s 12th set of data requests, No. 12-001 has subarts (a) through (x) and No. 12-009 has subarts (a) through (t). In actuality, Dunkel’s 12th set, which appears to only contain ten data requests, requires responses to 60 separate questions.
3 Staff has also conducted 2 separate site visits in Denver and Phoenix on September 2, 2004 and September 9, 2004, respectively. Staff has requested a third site visit to be scheduled sometime in October. Additional information, vis-à-vis Staff interviews of Qwest employees and Staff’s review of Qwest facilities and records, are provided during such site visits.
"untimely" as early as July 14, 2004 (only one month after Staff commenced discovery), prematurely suggesting that its ability to prepare its initial testimony within the 120-day time frame established in the March 15th and July 1st Procedural Orders would be "impeded." See Exhibit C (Letter of Timothy Sabo to Timothy Berg dated July 14, 2004). Qwest immediately responded to Staff, refuting any such claims. See Exhibit D (July 19, 2004 letter of Timothy Berg to Timothy Sabo). Qwest raised a number of concerns with the manner and method in which Staff was conducting discovery, including but not limited to: (a) the unlimited number of requests; (b) the scope of such requests; (c) service of requests from multiple Staff sources without coordination; (d) special requests relative to particular formats, copies, confidential information, etc.; and (e) the timing of service of Staff discovery to effectively reduce Qwest’s time for response. Nonetheless, Qwest agreed to certain, enumerated parameters to govern the production of responses and documents to Staff’s data requests and special requests, in a good faith effort to expedite discovery and to avoid further dispute. Id. Staff did not respond to Qwest’s concerns and continued discovery in the same manner as previously conducted.

It was not until September 8, 2004, before Staff responded to Qwest’s July 21st correspondence, again complaining of the average length of Qwest’s response time to certain Utilitech data requests. See Exhibit E (Letter of Maureen A. Scott to Timothy Berg dated September 8, 2004). In its letter, Staff described its discovery as "substantially constrained by the limited time available" and again intimating that its ability to meet the deadline for filing its testimony had been “adversely affected.” Id. Qwest responded on September 17, 2004, disputing Staff’s claims and providing more detail regarding the concerns outlined in its prior July 19th correspondence. See Exhibit F (September 17, 2004 letter of Timothy Berg to Maureen A. Scott). Nevertheless, Qwest reiterated its willingness to work with Staff on these issues and to improve the response.
Contrary to Staff’s motion, there remain only 35 Utilitech responses and 4 Dunkel responses owed by Qwest to Staff that can be correctly characterized as “overdue.” Responses to a number of the data requests identified in Staff’s motion were, in fact, served on Staff prior to Staff’s filing of that motion. Since the filing of Staff’s motion, Qwest has served an additional 58 of the Utilitech and Dunkel data requests listed by Staff. *Id.* Every single entry on Exhibit B to Staff’s motion reflects an incorrect due date for Qwest’s service of its responses to Dunkel’s data requests; most of due dates shown by Staff for the Utilitech data requests listed on pages 4-5 of Staff’s motion are similarly wrong.4 More importantly, Qwest has advised Staff that most of the remaining responses will be provided to Staff by no later than, Friday, October 1, 2004. Under these circumstances, the filing of a motion to compel by Staff is wholly unnecessary, particularly given the ongoing efforts of Qwest to provide Staff with the information it has requested.

**II. Argument**

It now appears that of the list of outstanding data requests listed by Staff on pages 4-5 of its motion is not accurate. Only 46 of these data requests have yet to be answered, some of the responses are not untimely, and most of these will be completed by October 1, 2004. It is important, however, to critically examine the Utilitech and Dunkel data requests cited by Staff. Most of the requests relate to information to be used in presenting a full rate case for Qwest, and not for addressing the issues actually presented

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4 Generally these errors lengthen the time in which Qwest allegedly responded to achieve an inaccurate impression of tardiness. Some of the “mistakes” reflected on Staff’s Exhibit B are, on their face, plainly wrong. For example, Staff’s Exhibit B states that Qwest’s responses to WDA’s 11th set of data requests as due on the same day Qwest received them (*i.e.*, September 3, 2004), rather than allowing for the requisite 10-day response time. Qwest provides a corrected version of Staff’s Exhibit B and its Utilitech list with this response and cross-motion. See Exhibit G.
by the Commission's consideration of the amendment and/or renewal of the Price Cap Plan. It is true that Qwest has not previously objected to such requests, but has continued to respond and work with Staff in the spirit of full disclosure and good faith. However, Staff's direct attempts to have this proceeding litigated as a full rate case have been repeatedly challenged by Qwest. Many of Staff's data requests would go beyond the bounds of reasonableness even in a full rate case. In a proceeding that is designed to evaluate the amendment, renewal or termination of the Price Cap Plan, they are totally inappropriate and unduly burdensome.

Staff can no longer be permitted to continue to conduct discovery on matters beyond the scope of this proceeding. Such conduct creates skyrocketing rate case expenses and precludes the Commission from effectively resolving such dockets for several years. This does not serve the best interests of ratepayers, utilities or the Commission, and particularly in this case for the following reasons.

Staff will undoubtedly argue that it requires answers to all of its data requests so that it can conduct a full evaluation of Qwest's A.A.C. R14-2-103 filing, as it would in a rate case. As discussed infra, much of the discovery undertaken by Staff is unnecessary even applying this standard. Further, the full rate case process sought by Staff is a vestige of monopoly regulation for traditional utility services that is inconsistent with a competitive marketplace. There is nothing in the Arizona Constitution that mandates the Commission use a traditional rate case when dealing with the provision of competitive telecommunications services. *US WEST Communications, Inc. v. Arizona Corporation Comm'n*, 201 Ariz. 242, 34 P.3d 1 (2001). Further, the rationale behind the Commission's adoption of the Price Cap Plan in 2001 was to replace the cumbersome and costly rate of return "regulation mode" with a new regime that would promote competition, efficiency and consumer choice. *See In the Matter of the Application of US West Communications, Inc.*, Transcript of Open Meeting, Vol. I at 13 (Mar. 7, 2001)
(comments of Commissioner Spitzer). See also, id. at 18 (comments of Chairman Mundell).

As the Supreme Court made clear in *US WEST*, although the Commission must determine and consider fair value, it is not limited to the mechanical exercise of cranking fair value through an equation to produce a single revenue requirement that serves as the basis of all rates set for a public service corporation in a competitive market. The purpose of the adoption of the Price Cap Plan was to move to new rate setting methods that are appropriate in a competitive environment. The Price Cap Plan was intended to move away from traditional regulation. The Settlement Agreement and Price Cap Plan approved and adopted by the Commission provided an expedited method for the consideration of any renewal or revision of that Plan.

Contrary to Staff's view, these procedures are not limited to only a renewal or revision of the Plan that does not result in any rate changes or increases. Given that the Plan was an experiment and might require revision in a number of ways, the parties devised a streamlined method to consider both renewal and revision. It was not the parties' intent, after the term of the Plan expired, for the Commission to revert back automatically to rate-of-return regulation (i.e., a full revenue requirement). If this had been the parties' intent, it would have been simple to require Qwest to file a full rate case either one year or nine months before the expiration of the Plan.

Qwest submitted an A.A.C. R14-2-103 filing that demonstrated a revenue requirement of $322 million on an original cost rate base and $459 million on a fair value rate base. However, Qwest did not request rate increases calculated to produce this revenue. Rather, Qwest recommended: (1) revisions to the existing Price Cap Plan to make it work more effectively; (2) minor rate rebalancing that produced approximately $2.3 million (net of a decrease in access charges) and (3) implementation of competitively-neutral universal service support for telephone subscribers located in high
cost areas.

Staff’s discovery completely misses this point. Virtually all the discovery served by Utilitech and most of the discovery served by Dunkel relates to Qwest’s calculation of its $322 million revenue requirement. In what amounts to an extensive and wide reaching audit, Staff has demanded that Qwest provide massive amounts of low level detail concerning expenditures not only during the test year but also several years before\(^5\) and all months after it.

For example, Qwest did not file an application under A.A.C. R14-2-102 for a change in its depreciation lives. Instead, it proposed an adjustment that reduces the revenue requirement of $100 million to reflect changes in depreciable asset gross investment and reserve level balances since Qwest’s last rate case. Nevertheless, in discovery, Staff demanded that Qwest provide a depreciable asset observed life study.\(^6\) The only reason for such a study is so that Staff can support a proposal to change the lives the Commission prescribed for Qwest’s depreciable assets in Docket No. 62507.\(^7\)

When it last set depreciation rates, the Commission concluded that any depreciation lives adopted for Qwest should be within the range of lives used by Qwest’s competitors. Decision No. 62507, *In the Matter of the Application of U S WEST Communications, Inc. for Changes in its Depreciation Rates*, Docket No. T-1051-97-0689 at 14 (May 4, 2000). Observed life studies tell Staff nothing about the asset lives used by Qwest’s competitors. Yet Staff has conducted absolutely no discovery concerning the asset lives used by Qwest’s Arizona competitors, including whether Qwest’s competitors rely on observed life studies to establish their depreciable asset lives.

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\(^5\) In WDA 1-005 and WDA 1-006, Staff requested data for all years from 1983 to 2003.

\(^6\) See WDA 2-006.

\(^7\) For purposes of establishing its own depreciation lives, Qwest does not prepare observed life studies because they are not useful to establish asset lives outside a permanent monopoly environment where the monopoly controls the pace at which new technology is deployed.
lives. Instead, Staff insisted on Qwest expending considerable resources to conduct an observed life study.

It is clear that Staff is preoccupied with Qwest's revenue requirement. Staff's discovery evidences its unwavering intent to treat this proceeding as a traditional monopoly-utility cost-of-service rate case with exhaustive discovery and auditing of test year expenses and revenues. The course Staff has set imposes huge demands on Qwest for resources as the Company struggles to muster the personnel necessary to answer a myriad of questions on a wide array of issues. This very burdensome, resource-intensive process is exactly what the Price Cap Plan and the Settlement Agreement were designed to avoid.

A monopoly-utility cost-of-service case is hardly the best way to determine if the original Price Cap Plan worked in the manner the parties intended. The impact of the Price Cap Plan is clear. Hardcapped rates in Basket 1, including basic residential and business rates, did not increase over the life of the Plan. Other rates for Basket 1 services decreased by $61.8 million in the aggregate between the adoption of the Price Cap Plan and April 1, 2004. Qwest's charges for intrastate access were reduced $15 million over the initial term of the Price Cap Plan. Additionally, the Commission reduced Qwest's rates for wholesale services in proceedings specifically designed to address such issues. It does not require a full rate case to determine whether the Plan was a success from the point of view of Qwest's customers, and Qwest has already provided sufficient financial information for the Commission to determine the impact of the Plan on Qwest.

Moreover, the inflation/productivity adjustment contained in the original Price Cap Plan was not based on Qwest's revenue requirement, but rather was a negotiated figure determined from Qwest's historic and unadjusted financial results. Qwest provided the Commission with the current unadjusted financial data necessary to compute a current productivity factor in this docket during July 2003. Qwest has filed
extensive financial information in this docket and from this information the Commission can determine Qwest's financial condition. A monopoly utility cost-of-service rate case and revenue requirement analysis would be appropriate if Qwest were seeking to recover the revenue requirement set forth in its A.A.C. R14-2-103 filing and explained in the testimony of Mr. Grate. However, Qwest has not asked for such rates; it has proposed revisions to the price cap plan that can be evaluated readily without reference to a revenue requirement.

Of the two data requests to which Qwest has objected, Qwest and Staff have conferred and reached agreement on UTI 11-17. Qwest will provide Staff with the amount of legal expense allocated to Arizona for the firms listed, as well as a summary description of the type of work performed. With respect to UTI 11-14, Qwest's objection stands. In Arizona, the amount of cash taxes paid by a parent company on its consolidated income tax return has never been treated as reasonably related to the development of an intrastate regulated revenue requirement for a separate public service corporation. Staff claims that such information is necessary so it can now make an "equitable adjustment" because Qwest's tax provision provides positive cash flow to the parent. Staff's interest in an "equitable adjustment" underscores Staff's preoccupation with adjusting Qwest's revenue requirement, even at the cost of departing from long-established ratemaking practice in Arizona. Notwithstanding its objection, Qwest does not have possession or control of the data sought by Staff.

Qwest disagrees with any characterization of its responsiveness to Staff's discovery in this matter as untimely. As discussed above, Qwest receives numerous data requests from multiple parties, and not just Staff (e.g., RUCO, DOD, AT&T, etc.). Both Staff and its testifying experts independently serve Qwest with one or more of their own sets of data requests. It is not unusual for Qwest to receive sets of data requests from Staff, Dunkel and Utilitech all on the same day and/or consecutively so that the stream of
new discovery is not only constant, but almost daily. Many of the data requests served contain multiple subparts, sometimes doubling the actual number of questions to be answered. Service of such requests continues to occur at the close of the business day and almost every Friday, effectively reducing what is already a short response time (i.e., four of the ten days permitted for response fall on a weekend). In short, Staff and its consultants have jointly served Qwest with on average 21 data requests per working day (nearly 3 per hour) since the commencement of discovery in this docket. In fact, on August 12, 2004, Qwest’s computerized Arizona database, which tracks and retains such requests and responses, failed completely due to its having exceeded storage capacity.8

Frankly, at this time, Staff’s discovery does not appear to be nearing any sort of conclusion as one might reasonably expect given the procedural schedule currently set in this matter.

A comparison with Staff’s discovery in Qwest’s 1999 rate case is telling. That rate case continued for approximately two years; during the mid-way point, Qwest was required to “update” its filings through the use of a new test year. At that juncture, discovery recommenced and revised testimony was filed, as if a new rate case had begun. Qwest had hoped that Staff would understand the volume of discovery in this docket should not approximate what occurred in 1999. Staff has already received as many responses to its data requests from Qwest, including subparts, as it did in the 1999 rate case. Even if one accepts Staff’s calculations for purposes of comparing the number of data requests served in 1999 with this docket, Staff has reached the half-way mark of what, in the 1999 docket, essentially amounted to two rates cases rolled up into one.

When able to do so, Qwest has responded timely, if not early, to Staff’s data requests. However, the manner and method in which Staff has conducted discovery as

8 Such a system overload is unprecedent in Qwest’s experience and has never previously occurred in any other rate cases conducted throughout Qwest’s 14-state region.
discussed would significantly impede any party's ability to answer in ten calendar days.

The following examples are for illustrative purposes to demonstrate such continuing and pervasive problems:

- It is common for Staff to issue multiple data requests for the same information or to ask for information previously in testimony or otherwise. See, e.g., STF 27-001, UTI 6-007, UTI 6-017, UTI 11-009, UTI 12-018, UTI 13-011, WDA 10-008 (e) and (k), WDA 10-012(e), WDA 10-16 (g) and (h), WDA 11-012.

- Qwest now finds itself frequently responding to data requests by pointing out that the information requested has been previously provided and identifying the prior request/response. See, e.g., UTI 08-019, UTI 11-005, UTI 11-006; UTI 11-018; UTI 12-001; STF 17-007; WDA 8-019.

- Staff often requests information that is outside of the test year or that relates to Qwest services outside of Arizona. See, e.g., STF 3-006, UTI 8-002, UTI 4-032, UTI 7-013, UTI 13-002, UTI 15-002, UTI 15-003, UTI 15-010, UTI 15-016, UTI 16-014, WDA 10-006.

- On occasions, Qwest will ask Staff to review a request to determine whether the scope of the request can be narrowed or terms therein clarified, so as to focus on relevant information or data. Staff will later complain that it has not received a response to the data request, despite the fact that Staff has not responded to Qwest's request for a clarification or reconsideration of the scope of the information sought of by Staff. See, e.g., WDA 7-001, WDA 7-002, WDA 7-003, WDA 7-004, WDA 7-006, WDA 7-007, UTI 6-013.

- Staff will often serve data requests upon Qwest that do not seek information, but rather require Qwest to conduct what should in fairness be Staff's analysis of data previously provided by Qwest. See, e.g., STF 7-005, STF 30-001.

- Many of Staff's data requests are needlessly complex and interdependent. The inclusion of multiple subparts in a single request creates numerous problems (aside from the misimpression of the amount of discovery actually propounded). Qwest may, in fact, answer many subparts to a request; however, Staff will treat the request as "tardy" while Qwest continues to research answers to other subparts. See, e.g., UTI 14-003,
WDA 10-08 (a) through (m), WDA 10-012 (a) through (g), WDA 10-015 (a) through (h), WDA 10(C)-018 (a) through (k), WDA 11-002 (a) through (g) multiplied by 10. In many instances, Qwest cannot begin to research and answer later portions of a request until earlier subparts have been answered.

- Serving multiple sets of numerous data requests late in the day or on Fridays effectively shortens the time in which a party has to prepare meaningful responses. See, e.g., UTI’S 13th Set (received after 5:00 p.m.) and UTI’s 17th Set (served on a Friday). STF Sets 19 through 22, UTI Set 11, and Dunkel Sets 6 through 8—a total of 8 sets of discovery—were due on the same day.

- On multiple occasions, Staff and its consultants have requested highly confidential, CLEC-specific information, which requires the CLEC’s authorization prior to release. Although Qwest has asked for such releases, it cannot be viewed as being non-responsive or tardy when authorizations are untimely or not received at all. See, e.g., STF 19-001 and STF 26-001.

- Staff will also request that certain information be provided in a particular format, only to subsequently request that Qwest produce the same information in a different format, not due to any deficiency in the first response, but simply because Staff has changed its mind concerning its preference. See, e.g., STF 18-001, STF 19-001, STF 19-002, STF 25-001, STF 29-001.

The Commission and the Hearing Division should begin to recognize that discovery demands in rate cases, such as this one, now exceed the course of discovery conducted in even the most complex of Arizona civil litigation. For example, a party typically is not permitted to serve discovery from multiple sources (i.e., its legal counsel, its retained testifying experts, etc.), and to serve an apparently unlimited number of data requests (with subparts) as issued by Staff and its consultants. Limits on the scope and amount of discovery to be propounded, and reasonable time frames for responding to extensive discovery from multiple parties are also customary in complex litigation. Such litigation reforms, as originally advanced by Justice Zlaket and currently under
consideration in the Committee for Complex Litigation, do not inhibit a party from obtaining the information necessary to present his or her case in a timely manner.\(^9\)

Responses to interrogatories that are provided even within the “19.4 day average” of which Staff complains would be considered accelerated and expeditious in any state or federal court. See Exhibit E. In short, the manner and method in which Staff has conducted discovery in this docket would fail to comply with either the Federal or Arizona Rules of Civil Procedure.

Since June 2004, Qwest has responded to all requests for information, irrespective of whether such requests came from Staff or its experts. Qwest has acquiesced in special requests (e.g., multiple copies, particular formats, etc.) at no charge to Staff, the requesting party. Qwest has not previously sought any limitation on the amount or timing of discovery requests it receives from multiple parties. To date, Qwest has answered approximately 85% of all data requested issued directly by Staff itself within the prescribed time. There are no outstanding data request responses due directly to Staff and only 11 remaining for Dunkel. Isolating Utilitech’s data requests does not fairly depict the responsiveness of Qwest to all Staff discovery in this docket.

\(^9\) See Daniel J. McAuliffe, *Arizona Civil Rules Handbook* (2004 ed) at 368 (discussing Rule 33.1’s presumptive limits and noting that interrogatories are “generally considered to be one of the most overused and abused forms of civil discovery.”). See also, *In the Matter of: Authorizing A Complex Civil Litigation Pilot Program Applicable In Maricopa County, Arizona Supreme Court Administrative Order No. 2002-107* (Nov. 22, 2002) (considering, in part, the adoption of a new Ariz. R. Civ. P. 16.3 to address the management of complex civil litigation, including the setting of limits on discovery). “Rule 16.3 is intended to supplement the Arizona Rules of Civil Procedure in a manner that will provide judges and litigants with appropriate procedural mechanisms for the fair, efficient and expeditious management of discovery...and other aspects of complex civil litigation. Other than as specifically set forth, cases assigned to the complex litigation program are not exempt from any normally applicable rule of procedure, except to the extent the trial judge may order otherwise.” Id. at Appendix A6-7. “In those counties in which a complex civil litigation program has been established, a ‘complex case’ is a civil action that requires continuous judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote an effective decision making process by the court, the parties, and counsel.” Id. at Appendix A1.
Qwest has attempted to address Staff’s "concerns" regarding the timeliness of its responses to Staff’s data requests and to improve its response time. However, under the circumstances of this case, Qwest believes that the manner in which discovery responses have been provided to date has in no way "adversely affect[ed] the Staff’s ability" to present its case in a timely manner to the Commission. As Qwest has consistently stated on the record, the intent and actual provisions of the Price Cap Plan reflect what should have been a streamlined process in arriving at the Plan’s renewal or modification, and not a full rate case. In resolving differences among the parties on this issue, the Commission made clear that this docket should be able to reach final determination in a significantly shorter period than the traditional rate case and that Staff should make critical determinations concerning the amount of information to be required of Qwest, particularly in light of the Price Cap Plan’s express limitations on the amount of information to be filed in connection with any proposed modification or renewal of the Plan. *This does not translate to trying to conduct all of the discovery typically propounded in a two-year rate case into six months.*

III. Conclusion

Based on the foregoing, Qwest respectfully requests that Staff’s motion to compel be denied. Additionally, Qwest requests that an order be entered setting reasonable discovery limits on Staff’s written discovery on a going-forward basis in this docket. Specifically, Staff and its consultants, as a group, should be limited to issuing a certain number of data requests, including subparts. Given the amount of Staff’s written discovery to date and the fact that Staff will be filing its direct testimony on October 19, 2004, Qwest recommends this limit be set at 40 data requests (including subparts) between now and October 19, 2004, and 40 data requests (including subparts) during the
rebuttal/surrebuttal phase thereafter until the time of hearing. Upon reaching such limit, if Staff believes good cause exists for the service of more than the established limit, Staff should consult with Qwest and attempt to secure a written stipulation as to the number of additional data requests that may be served (see Ariz. R. Civ. P. 33.1(b)); assuming a stipulation cannot be reached, Staff may then seek leave of the Hearing Division for an order permitting additional discovery. See Ariz. R. Civ. P. 33.1(c). This will preclude any prejudice to Staff. Qwest believes that no other party has abused the written discovery process in a manner necessitating the imposition of limits on all parties. However, Qwest would be happy to consider the application of a fair and reasonable limit to be applied to all parties, including Qwest, as this case moves forward. A discovery cut-off deadline should likewise be explored between the parties.

At least one Commissioner has publicly expressed concern over the costs of rate proceedings to utilities and their ratepayers. A significant cause of these increasing costs is plainly evidenced by the unlimited and overly broad discovery that Staff has pursued in this case. This unfortunately appears to have become the norm in most rate cases, and the Commission should be sensitive to the direction of these administrative proceedings (which by their very nature should be designed to reach resolution through more flexible, more efficient and speedy means than civil litigation) down a path opposite to most litigation reforms. Qwest is mindful that dockets, such this one, are complex and therefore require the opportunity for all parties to conduct adequate discovery. However, overbroad, unduly burdensome and unlimited discovery is not required, and only serves to increase the costs and burden of regulation. Similarly, motions to compel serve no useful purpose when they seek to compel information that a party is willing to provide and is in the process of assembling. Such motions are particularly without merit when the party against whom discovery sanctions are sought has made a continuous good faith

10 These limits are double the limits prescribed in Ariz. R. Civ. P. 33.1.
effort to respond to vast amounts of written discovery and to keep the docket moving in a
timely manner, as Qwest has done here.

RESPECTFULLY SUBMITTED this 24th day of September, 2004.

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Phoenix, Arizona 85027
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Michael T. Hallam
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Phoenix, Arizona 85004
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Denver, Colorado 80202
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901 N. Stuart Street, Suite 713
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Snavely King Majoros O’Connor & Lee
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AT&T Arizona State Director
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Phoenix, AZ  85022

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Sprint Legal Division
100 Spear Street, Suite 930
San Francisco, CA  94105

Walter W. Meek
President
Arizona Utility Investors Association
2100 N. Central Avenue, Suite 210
Phoenix, AZ  85004

Accipiter Communications, Inc.
2238 W. Lone Cactus Dr., Ste.100
Phoenix, AZ  85027

Alliance Group Services, Inc.
1221 Post Road East
Westport, CT  06880

Archtel, Inc.
1800 West Park Drive, Ste. 250
Westborough, MA  01581

Brooks Fiber Communications of Tucson, Inc.
201 Spear Street, 9th Floor
San Francisco, CA  94105

Centruytel
PO Box 4065
Monroe, LA  71211-4065

Citizens Utilities Rural Co. Inc.
Citizens Communications Co. of Arizona
4 Trial Center, Suite 200
Salt Lake City, UT  84180

Citizens Telecommunications Co. of the White Mountains, Inc.
4 Triad Center, Ste. 200
1. Salt Lake City, UT 84180

2. Comm South Companies, Inc.
   2909 N. Buckner Blvd., Ste. 200
   Dallas, TX 75228

3. Copper Valley Telephone, Inc.
   PO Box 970
   Willcox, AZ 85644

4. Electric Lightwave, Inc.
   4 Triad Center, Ste. 200
   Salt Lake City, UT 84180

5. Eschelon Telecom of Arizona, Inc.
   730 Second Avenue South, Ste. 1200
   Minneapolis, MN 55402

6. Ernest Communications, Inc.
   5275 Triangle Pkwy, Ste. 150
   Norcross, GA 30092-6511

7. Intermedia Communications, Inc.
   3608 Queen Palm Drive
   Tampa, FL 33619-1311

8. Level 3 Communications, LLC
   1025 Eldorado Blvd.
   Broomfield, CO 80021

9. Max-Tel Communications, Inc.
   105 N. Wickham
   PO Box 280
   Alvord, TX 76225

10. MCI WorldCom Communications
    201 Spear Street, 9th Floor
    San Francisco, CA 94105

11. MCIMetro
    201 Spear Street, 9th Floor
    San Francisco, CA 94105

    201 Spear Street, 9th Floor
    San Francisco, CA 94105

13. Midvale Telephone Exchange
    PO Box 7
Midvale, ID 83645

Navajo Communications Co., Inc.
4 Triad Center, Suite 200
Salt Lake City, UT 84180

Nextlink Long Distance Svcs.
3930 E. Watkins, Ste. 200
Phoenix, AZ 85034

North County Communications Corporation
3802 Rosencrans, Ste. 485
San Diego, CA 92110

One Point Communications
Two Conway Park
150 Field Drive, Ste. 300
Lake Forest, IL 60045

Opex Communications, Inc.
500 E. Higgins Rd., Ste. 200
Elk Grove Village, IL 60007

Pac-West Telecomm, Inc.
1776 W. March Lane, #250
Stockton, CA 95207

The Phone Company/Network Services of New Hope
6805 Route 202
New Hope, PA 18938

Rio Virgin Telephone Co.
Rio Virgin Telephone and Cablevision
PO Box 189
Estacada, OR 97023-000

South Central Utah Telephone Association, Inc.
PO Box 226
Escalante, UT 84726-000

Southwestern Telephone Co., Inc.
PO Box 5158
Madison, WI 53705-0158

Special Accounts Billing Group
1523 Withorn Lane
Inverness, IL 60067

Sprint Communications Company, L.P.
1 6860 W. 115th MS:KSOPKD0105
Overland Park, KS 66211

2

3 Touch America
130 N. Main Street
Butte, MT 59701

4 Table Top Telephone Co, Inc.
600 N. Second Avenue
Ajo, AZ 85321-0000

5 TCG Phoenix
1875 Lawrence Street, Room 1575
Denver, CO 80202

6 Valley Telephone Cooperative, Inc.
752 E. Malley Street
PO Box 970
Willcox, AZ 85644

7 Verizon Select Services Inc.
6665 MacArthur Blvd, HQK02D84
Irving, TX 75039

8 VYVX, LLC
One Williams Center, MD 29-1
Tulsa, OK 74172

9 Western CLEC Corporation
3650 131st Avenue SE, Ste. 400
Bellevue, WA 98006

10 Williams Local Network, Inc.
One Williams Center, MD 29-1
Tulsa, OK 74172

11 XO Arizona Inc.
3930 Watkins, Ste. 200
Phoenix, AZ 85034

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PHX/1587868

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EXHIBIT
C
July 14, 2004

Timothy Berg, Esq.
Fernmore Craig
3003 North Central Ave., Suite 2600
Phoenix, AZ 85012-2913

Re: Qwest Corporation's Renewed Price Regulation Plan
Docket No. T-01051B-03-0454

Dear Tim:

This letter will attempt to memorialize several general agreements reached between Staff and Qwest with respect to discovery. I am not going to attempt in this letter to go through each and every data request and response which have been discussed in the last few weeks and the agreements reached with respect to them. I am assuming that you will be rectifying any problems which we discussed with regard to individual requests in accordance with the substance of our discussions. This letter is intended only to address several recurring problems that we continue to see and which we anticipate will be quickly remedied.

First, Qwest has agreed to provide responses to Staff's (and Staff's consultants) data requests in both electronic and hard copy format. Copies of all responses are to be sent to Connie Fitzsimmons (Legal Division) and the Staff member or Staff consultant who requested the information who will generally be listed on the transmittal letter accompanying the data requests.

Second, Qwest is to use its best efforts to provide hard copies of all confidential and highly confidential information on appropriately marked and colored paper.

Third, if a response is voluminous, Qwest will indicate this in its response to the data request and that as a result it is attaching its response in electronic form only.

Fourth, it was agreed that Qwest would use its best efforts to get its responses to Staff in less than the required 10 day timeframe. As of July 12, 2004, with respect to UTI's discovery requests, out of a total 140 questions submitted, UTI had received responses to 107. The average response time was 15.4 days. As of the same date, 33 data requests remained outstanding. The average time outstanding for these requests was 22.8 days. I just want to remind you that Staff, RUCC and the intervenors have only 120 days in which to prepare their case and file their initial testimony. Obviously, this is dependent upon our ability to receive responsive answers to our data requests in a timely fashion.
Mr. Timothy Berg  
Page 2  
July 14, 2004  

I hope this letter accurately captures our agreements with respect to several important process issues concerning discovery in this case. If I have left anything out, or your understanding of any particular agreement differs from mine, please let me know as soon as possible. Thank you for your continuing cooperation with these matters.

Sincerely,

Maureen A. Scott  
Attorney, Legal Division
EXHIBIT D
July 19, 2004

VIA FACSIMILE AND MAIL.
Timothy Sabo, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Re: Qwest/Renewed Price Regulation Plan; Docket No.: T-01051B-03-0454

Dear Tim:

I have received your correspondence dated July 14, 2004 and provide this response. I have set forth below Qwest's understanding of the agreements it has reached with Staff concerning discovery. Further, Staff’s perception that “recurring problems” exist relative to Qwest's responses to Staff’s data requests is both troublesome and inaccurate for the reasons described herein.

(1) First, Qwest will provide the actual responses to Staff’s data requests, excluding any attachments referenced in Qwest’s responses, in hard copy only. Where any attachment referenced in Qwest’s data request response is not voluminous, Qwest will provide that attachment in both hard copy and CD format. Please note that in such instances, the CDs will accompany the data request responses; the hard copy of the non-voluminous attachment will follow in the mail via overnight delivery as soon thereafter as possible. When any attachment referenced in Qwest’s data request response is voluminous (i.e., in excess of 100 pages) Qwest will only provide the CD format. With regard to the number of copies to be provided, Qwest will provide only two sets to Staff: (1) one copy for Connie Fitzsimmons (Legal Division), and (2) one copy for the individual consultant or Staff member designated in writing by Staff on the cover letter accompanying the particular set of data requests at issue.

(2) Second, subject to Paragraph (1) above, Qwest has been and will continue to use its best efforts to provide hard copies of all confidential and highly confidential information on colored paper and marked in the manner set forth in the relevant Protective Agreement. This means that if a document is not voluminous (i.e., under 100 pages) and is confidential or highly confidential, Qwest will provide that document in hard copy on yellow or pink paper. If a
document is voluminous (i.e., in excess of 100 pages) and is confidential or highly confidential, the document will still be provided in CD format only; however, the CD cover and/or label will be designated “Confidential” or “Highly Confidential” and be referenced accordingly in the actual data request response. Where technically possible, Qwest will also mark the material on the CD in such a manner that a confidential or highly confidential designation will appear on the printed page.

(3) Third, if any attachment referenced in Qwest’s data request response is voluminous (i.e., in excess of 100 pages), Qwest will indicate that the attachment is “voluminous” in its actual data request response and will provide the attachment as indicated in (1) and (2) above.

(4) Fourth, Qwest disagrees with your characterization of Qwest’s responsiveness to Staff’s data requests as untimely. You should note that in this docket Qwest receives numerous data requests from multiple parties, and not just Staff (e.g., RU CO, DOD, etc.). Both Staff and its testifying experts (i.e., William Dunkel & Associates and Utilitech, Inc.) have independently served Qwest with their own sets of data requests. These total 23 sets containing 320 individually numbered data requests, not including subparts.¹ For example, Dunkel’s 4th set of data requests contained 33 requests, but the subparts to these request, which required separate responses, totaled 125. When able to do so, Qwest has served responses to Staff’s data requests early. In many instances, Staff has made special requests concerning the manner in which it prefers responses be provided, which adds to the time it requires to prepare such responses. It is interesting to note that many of Staff’s and its consultants’ data requests are served on a Thursday or a Friday, which, as a practical matter, reduces the time permitted for Qwest’s response (i.e., four of the ten days permitted for response fall on a weekend), and certainly affects Qwest’s ability to respond early. In fact Qwest received three additional sets of discovery from Staff on Friday, July 16th, as it was preparing this letter.

In attempting to resolve Staff’s discovery issues in good faith and after personal consultation, Qwest is disappointed with your correspondence as it reflects Staff’s view. Qwest has attempted to cooperate with Staff’s discovery demands in a manner that goes above and beyond the normal course of discovery conducted in even the most complex of Arizona litigation. For example, a party typically is not permitted to serve discovery from multiple sources (i.e., its legal counsel, its retained testifying experts, etc.) and to serve an apparently unlimited number of data requests (with subparts) as issued by Staff and its consultants. Limits

¹ 249 of these data requests were due prior to July 19, 2004. The comparison to the discovery conducted by Staff and its consultants in Qwest’s 1999 rate case is illuminating. In the past two months, Staff has already issued as many sets of data requests (and received responses to same) as it did during first five months of Qwest’s 1999 rate case.
on the scope and amount of discovery to be propounded, and reasonable time frames for responding to extensive discovery from multiple parties are also customary in complex litigation.

As indicated above, Qwest has responded to all requests for information, irrespective of whether such requests came from Staff or its experts. Qwest has in some instances provided its responses early and complied with special requests (e.g., multiple copies, particular formats, etc.) at no charge to the requesting party. Qwest has not sought any limitation on the amount or timing of discovery requests it receives from multiple parties. To date, Qwest has answered approximately 73% of all data requests served by Staff and its consultants within the prescribed time. Only 41 individual data requests remain outstanding because the information requested was not readily available and requires additional time to produce. There are also 73 data requests not yet due to Staff and its consultants.

Under these circumstances, Qwest believes that discovery parameters outlined this letter are reasonable and in no way should impede Staff’s ability to prepare its initial testimony within the 120-day time frame established by procedural order.

If you have any further questions or comments, please feel free to contact me.

Sincerely,

FENNEMORE CRAIG

[Signature]

Timothy Berg
EXHIBIT E
September 8, 2004

Norm Curbight, Esq.
QWEST CORPORATION
4041 North Central Avenue, 11th Floor
Phoenix, Arizona 85012

Timothy Berg, Esq.
Fennemore Craig
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Re: Qwest Corporation’s Renewed Price Cap Plan
Docket No. T-01051B-03-0454

Dear Tim and Norm:

This is a follow-up to our conversation of last week regarding outstanding discovery responses. I have attached a copy of the discovery log prepared by one of our consultants, Utilitech, which shows all outstanding responses to their data requests as of September 1, 2004, which I also provided to you last week. I want to initially note that we very much appreciate yours and Qwest’s willingness to work with us on these issues and to reach resolution of discovery disputes without the need for escalation to the Hearing Division in many cases.

We are concerned, however, because the average lag for responses to Utilitech data requests has increased to 19.4 days, which represents an increase of approximately 4 days per response since my last communication with you a little over a month ago. While I realize that Utilitech is not the only member of Staff’s team that is sending you discovery, and that Qwest’s response times may vary among the otherrespondents, I want to remind you that Judge Rodda specifically ordered that “responses to discovery requests shall be made within 10 calendar days of receipt.” July 1, 2004 Procedural Order at p. 3. This is the traditional timeframe, even though this case is on a non-traditional, accelerated schedule. Given the limited time available to Staff, it is imperative that we receive timely responses to data requests.

Receipt of responses in 20 days rather than 10 as required, not only adversely affects the Staff’s ability to assemble its case in a timely manner, but also adversely affects the Staff’s ability to do follow-up discovery.
In your July 19, 2004, letter to Tim Sabo, you imply that Staff is conducting excessive discovery. To the contrary, Staff’s discovery has been substantially constrained by the limited time available. Further, I do not find your comparison to the 1999 rate case to be valid. Comparing a period in this case to one in the 1999 case is inappropriate because this case is not following the more extended schedule of a traditional case. Further, Staff and its consultants issued more than 1495 data requests in the 1999 case. Staff and its consultants are not on track to come even close to that figure in this case, having issued only 661 data requests to-date. In addition, some of the 661 data requests issued in this case were directed to CLECs, not Qwest.

I would appreciate it if you could contact me at your earliest convenience to discuss the timeframe for responses to the outstanding discovery contained on the attached schedule. Thank you in advance for your corporation with this matter.

Very truly yours,

Maureen A. Scott
Attorney, Legal Division

MAS:daa
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16 Grant pg. 100 UTI-11-12 FCC Dereg: Provide a listing of each FCC Dereg service offered in AZ

18 Grant pg. 121 FCC Dereg: Has the service had a decrease of greater than 10% in the

18 Grant pg. 121 FCC Dereg: Was the service continued at a level greater than 10% in

18 Grant pg. 121 FCC Dereg: Was he area in which the service was provided a level greater

10 UTI-1-5 FCC Dereg: What is the current status of the service in the area?

10 UTI-1-5 FCC Dereg: What is the present status of the service in the area?

10 UTI-1-5 FCC Dereg: What is the future status of the service in the area?

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EXHIBIT F
September 17, 2004

VIA FACSIMILE AND MAIL

Maureen A. Scott, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Re: Qwest/Renewed Price Regulation Plan; Docket No.: T-01051B-03-0454

Dear Maureen:

I have received your letter dated September 8, 2004 and provide this response. Qwest appreciates Staff’s acknowledgment of Qwest’s willingness to work with Staff on issues in order to resolve discovery disputes. Unfortunately, the perception that “Staff’s discovery has been substantially constrained by the limited time available” is view with which Qwest strongly takes issue and believes to be inaccurate for the reasons described herein.

Qwest disagrees with any characterization of its responsiveness to Staff’s discovery in this matter as untimely. As you are well aware, Qwest receives numerous data requests from multiple parties, and not just Staff (e.g., RUCO, DOD, AT&T, etc.). Both Staff and its testifying experts (i.e., William Dunkel & Associates and Utilitech, Inc.) independently serve Qwest with one or more of their own sets of data requests. For example, it is not unusual for Qwest to receive sets of data requests from Staff, Dunkel and Utilitech all on the same day and/or consecutively so that the stream of new discovery is not only constant, but almost daily. Service of such requests continues to occur at the close of the business day and almost every Friday, effectively reducing what is already a short response time. To date Qwest has provided approximately 1,444 responses to Staff’s various requests and their sub-parts; Staff and its consultants have jointly served Qwest with on average 22 data requests per working day (three per hour) since mid-June when discovery commenced in this docket.¹

Frankly, at this time,

¹ Qwest also disagrees with the view that a comparison to the discovery conducted by Staff and its consultants in Qwest’s 1999 rate case is not “valid.” That rate case continued for approximately two years; during the mid-way point, Qwest was required to “update” its filings through the use of a new test year. At that juncture, discovery recommenced and revised testimony was filed, as if a new rate case had
Staff's discovery does not appear to be nearing any sort of conclusion as one might reasonably expect given the procedural schedule currently set in this matter.

When able to do so, Qwest will continue to respond to Staff's data requests early. Please understand that special requests concerning the manner in which Staff prefers responses be provided adds to this response time. In addition, it is not uncommon for Staff to issue multiple data requests for the same information or to ask for information previously in testimony or otherwise (e.g., STF 17-007, STF 27-01, UTI 11-009). Qwest now finds itself frequently responding to data requests by pointing out that the information requested has been previously provided and identifying the prior request/response. Additionally, each data request often contains numerous subparts, which would reasonably be considered "separate requests" under the Arizona Rule of Civil Procedure. For example, in Dunkel's 12th set of data request, No. 12-001 has subparts (a) through (x) and No. 12-009 has subparts (a) through (t); in other words, what facially appears to be ten requests in this set actually contains 60 separate questions. Further, Staff often requests information that is outside of the test year or that relates to Qwest services outside of Arizona. On some occasions, Qwest will ask Staff to review a request to determine whether the scope of the request can be narrowed or terms therein clarified, so as to focus on relevant information or data. Staff will later complain that it has not received a response to the data request, despite the fact that Staff has not responded to Qwest's request for a clarification or reconsideration of the scope of the information sought of by Staff.

As discussed in my prior correspondence of July 19, 2004, discovery demands in rate cases such as this one exceed the course of discovery conducted in even the most complex of Arizona civil litigation. For example, a party typically is not permitted to serve discovery from multiple sources (i.e., its legal counsel, its retained testifying experts, etc.) and to serve an apparently unlimited number of data requests (with subparts) as issued by Staff and its consultants. Limits on the scope and amount of discovery to be propounded, and reasonable time frames for responding to extensive discovery from multiple parties are also customary in complex litigation. Such litigation reforms, as originally advanced by Justice Zlacket and currently in the Committee for Complex Litigation, do not inhibit a party from obtaining the

begun. Qwest hopes that Staff would understand the volume of discovery in this docket should not be to approximate what occurred in 1999. Staff has already received as many responses to its data requests, if one includes subparts. Even if one accepts Staff's calculations in comparing the number of data requests served in 1999 (1,495) and this docket (661), Staff is rapidly approaching the half-way mark of what, in 1999 docket, essentially amounted to two rates cases rolled up into one.

For example, on multiple occasions, Staff and its consultants have requested highly confidential, CLEC-specific information, which requires the CLEC's authorization prior to release. Although Qwest has asked for such releases, it cannot be viewed as being non-responsive or tardy when authorizations are untimely or not received at all. Staff will also request that certain information be provided in a particular format, only to subsequently request that Qwest produce the same information in a different format, not due to any deficiency in the first response, but simply because Staff has changed its mind concerning its preference (e.g. STF 25-001).
information necessary to present his or her case in a timely manner.\(^3\) Responses to interrogatories that are provided even within the 19-day “average” of which Utilitech complains would be considered accelerated and expeditious in any state or federal court.

As indicated previously, Qwest will continue to respond to all requests for information, irrespective of whether such requests came from Staff or its experts. Qwest also will continue to acquiesce in special requests (e.g., multiple copies, particular formats, etc.) at no charge to the requesting party. Qwest has not sought any limitation on the amount or timing of discovery requests it receives from multiple parties. To date, Qwest has answered approximately 87% of all data requested issued directly by Staff and 70% of those issued by Dunkel within the prescribed time. There are only two outstanding data request responses due directly to Staff and 47 to Dunkel. Isolating Utilitech’s data requests does not fairly depict the responsiveness of Qwest to all Staff discovery in this docket.

Qwest will, of course, attempt to address Staff’s “concerns” regarding the timeliness of its responses to Utilitech’s data requests to improve its response time. However, under these circumstances, Qwest believes that the manner in which discovery responses have been provided to date should in no way “adversely affect[ ] the Staff’s ability” to present its case in a timely manner to the Commission. As Qwest has consistently stated on the record, the intent and actual provisions of the Price Cap Plan reflect what should have been a streamlined process in arriving at the Plan’s renewal or modification, and not a full rate case. In resolving differences among the parties on this issue, the Commission made clear that this docket should be able to reach final determination in a significantly shorter period than the traditional rate case and that Staff should make critical determinations concerning the amount of information to be required of Qwest, particularly in light of the Price Cap Plan’s express limitations on the amount of information to be filed in connection with any proposed modification or renewal of the Plan. This does not translate to trying to conduct all of the discovery typically propounded in a two-year rate case into six months.

\(^3\) See Daniel J. McAuliffe, *Arizona Civil Rules Handbook* (2004 ed) at 368 (discussing Rule 33.1’s presumptive limits and noting that interrogatories are “generally considered to be one of the most overused and abused forms of civil discovery.”). See also, *In the Matter of: Authorizing A Complex Civil Litigation Pilot Program Applicable In Maricopa County*, Administrative Order No. 2002-107 (Ariz. Sup. Ct. Nov. 22, 2002) (considering, in part, the adoption of a new Ariz. R. Civ. P. 16.3 to address the management of complex civil litigation, including the setting of limits on discovery). “Rule 16.3 is intended to supplement the Arizona Rules of Civil Procedure in a manner that will provide judges and litigants with appropriate procedural mechanisms for the fair, efficient and expeditious management of discovery... and other aspects of complex civil litigation. Other than as specifically set forth, cases assigned to the complex litigation program are not exempt from any normally applicable rule of procedure, except to the extent the trial judge may order otherwise.” *Id.* at Appendix A6-7. “In those counties in which a complex civil litigation program has been established, a “complex case” is a civil action that requires continuous judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote an effective decision making process by the court, the parties, and counsel.” *Id.* at Appendix A1.
Although Qwest has repeatedly made clear to Staff its concerns about the volume and scope of discovery in this matter, Qwest has continued to use its best efforts to respond to the discovery of Staff and all other parties. At least one Commissioner has publicly expressed concerns over the costs of rate proceedings to utilities and their ratepayers. A significant cause of these increasing costs is the need to respond to the unlimited and overly broad discovery undertaken in a docket such as this.

If you have any further questions or comments, please feel free to contact me.

Sincerely,

FENNEMORE CRAIG

Timothy Berg
EXHIBIT

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<table>
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<tr>
<th>Duskel Requests</th>
<th>Due Date Per Staff’s Exhibit B</th>
<th>Actual Date Received</th>
<th>Actual Due Date Per Procedural Order*</th>
<th>Staff Exhibit B</th>
<th>Days Late Per Staff Exhibit B</th>
<th>Actual Days Late Through 9-15-04</th>
<th>Status</th>
<th>Notes</th>
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* For Duskel Sets 7 through 10, Staff shows the due date as 7 calendar days following the date served, instead of the 10 calendar days provided for under the procedural order. For Duskel Set 11, Staff's exhibit indicates that the responses were due on the same day we received them, rather than allowing for a 10 day turnaround.

**Requests served on a Wednesday or Thursday would be due on a Saturday or Sunday, under the 10 day timeframe allowed under the procedural order. The compliant due date shown for these requests is the first business day following the 10 day calculated due date.
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<tr>
<th>Utilitech Discovery</th>
<th>Due Date Per Staff Motion</th>
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<th>Actual Due Date Per Procedural Order</th>
<th># of Days Staff's Due Date Is Under or (Over) Stated</th>
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<td>UTI Set 11</td>
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