BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE REVIEW AND POSSIBLE REVISION OF ARIZONA UNIVERSAL SERVICE FUND RULES, ARTICLE 12 OF THE ARIZONA ADMINISTRATIVE CODE.

IN THE MATTER OF THE INVESTIGATION OF THE COST OF TELECOMMUNICATIONS ACCESS.

Docket No. RT-00000H-97-0137

Docket No. T-00000D-00-0672

AT&T'S MOTION TO QUASH SUBPOENA DUCES TECUM AND ITS WRITTEN OBJECTION TO THE SUBPOENA ISSUED AT QWEST'S REQUEST

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") request that the Administrative Law Judge quash the Subpoena Duces Tecum issued at the request of Qwest and dated November 10, 2009 (the "Subpoena"). Alternatively, pursuant to Rule 45(c)(2)(B), AT&T submits this written objection to the Subpoena. That rule provides that this objection relieves AT&T of any obligation to comply with the Subpoena until Qwest secures an order compelling it to do so.

1 The Joint Application was submitted by Qwest Corporation and Qwest Communications Company, LLC. Qwest Communications Company, LLC is not a party to these consolidated dockets and, therefore, has no standing to request a subpoena under the rules.
2 In regard to the objection, AT&T also objects on behalf of AT&T Corp., AT&T Inc. and any affiliate, subsidiary or predecessor-in-interest of those entities.
3 AT&T makes its objection pursuant to Rule 45 without waiver of its position that Qwest may not use a subpoena to compel production of documents by a party.
The Subpoena is improper, unreasonable and oppressive under the Commission's Rules of Practice and Procedure and the Arizona Rules of Civil Procedure. It is contrary to and inconsistent with standard Commission discovery practice. Finally, the Subpoena seeks information and documents which are beyond and inconsistent with the scope of this proceeding as defined in the Administrative Law Judge's September 29, 2009 Procedural Order.

The Subpoena should be quashed because it is an improper use of ARCP Rule 45 where, as here, a party to the proceeding such as AT&T is involved. "Rule 34 establishes the exclusive procedure for securing production of documents from a party; its procedures may not be circumvented by service of a subpoena duces tecum upon a party." The correct procedure to request documents production from a party is pursuant to Rule 34. Rule 45 is reserved for the "issuance of subpoenas to witnesses, generally." McDonald v. Hyder, 12 Ariz. App. 411, 413, 471 P.2d 296, 298 (1970).

Qwest's Application for Subpoena demonstrates that it is fully aware that data requests under Rule 34, not subpoenas under Rule 45, are, in fact, the correct procedure to be followed. Exhibit 1 to the Application is a data request which sought, among other things, production of documents from many parties to this proceeding, including AT&T. To the extent Qwest was dissatisfied with any party's response, its correct course of conduct was first to seek a meet and confer and then, if necessary, dispute resolution by the Administrative Law Judge, not to ignore the rules and cause unnecessary time and expense for the parties and Commission by seeking the Subpoena.

Similarly, the Subpoena should be quashed because it is contrary to the Commission's standard discovery practices, party dispute resolution procedures and R14-3-109.O. That latter

4 ARCP generally governs procedure before the Commission. R14-3-101.A.
subpoena provision allows a party to compel the attendance, testimony or production by a non-
party witness by subpoena. It does not allow use of a subpoena to bypass discovery dispute
resolution procedures between parties, nor to allow parties to circumvent standard Commission
practice.

Qwest seems aware that its Application for the Subpoena was improper and it should,
instead, be following standard data request practice. Attached as Exhibit A is an e-mail AT&T’s
counsel received late the afternoon of November 10. It belatedly asks for a meet-and-confer
conference to discuss AT&T’s responses to its access contract data requests. That request,
however, arrived more than two weeks after AT&T responded to the data requests. Given this
delay in following the correct procedures, to the extent Qwest thinks it will now be hampered in
preparing its testimony “in a timely manner,” it has only itself to blame.6

Finally, the Subpoena should be quashed because it seeks documents and information
which the Administrative Law Judge has already determined are not relevant or material to the
issues involved in these policy dockets. As background, on July 27, 2009, Qwest filed a request
to broaden these dockets to include an investigation of intrastate access contracts. As
particularly relevant to this issue, it specifically asked that the “Commission order all LECs to
provide...copies of contracts that they have entered into with any other carrier” and other
information concerning those agreements—an identical request to the information sought in this
Subpoena and the earlier data requests.7

After many parties objected to broadening the policy dockets, Qwest retreated at the
procedural conference, clarifying that its request to address CLEC contracts with the IXCs was
not intended “to examine or seek restitution for past behavior but to examine whether such

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6 Joint Application, p. 2.
7 Qwest Communications Company, LLC’s Request to Examine Contracts, pp. 1 and 3.
contracts should be allowed in the future. Accordingly, the September 29 Procedural Order did not grant Qwest's requests to expand these dockets, nor did it order the parties to provide the contracts. The Procedural Order did, however, note that AT&T, Staff and RU_CO agreed that the policy question of contractual access rates was appropriate and added that issue as item 4 at page 5, ll. 1-2.

Qwest's sweeping Subpoena demand for "copies of each and every contract...since 2002" violates the letter and spirit of the Procedural Order, violates Commission rules and is clearly burdensome, unreasonable and oppressive. (Emphasis supplied.) AT&T objects to and, if necessary, requests that the Administrative Law Judge quash the Subpoena.

RESPECTFULLY SUBMITTED this 12th day of November, 2009.

GALLAGHER & KENNEDY, P.A.

By Michael M. Grant
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Attorneys for AT&T Communications of the Mountain States, Inc. and TCG Phoenix

Original and 15 copies filed this 12th day of November, 2009, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

8 Procedural Order, p. 4, ll. 5-6.
9 Subpoena, p. 2, ll. 3-4.
Copies of the foregoing delivered or e-mailed this 12th day of November, 2009, to:

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Copies of the foregoing mailed and/or e-mailed this 12th day of November, 2009, to:

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EXHIBIT A
Grant, Michael M.

From: Curtright, Norm [Norm.Curtright@qwest.com]
Sent: Tuesday, November 10, 2009 4:55 PM
To: Grant, Michael M.
Cc: Hensley Eckert, Lisa; Peterson, Reed; Ziegler, David
Subject: Meet and Confer Request

Mike,

Qwest asks that we hold a meet and confer conference call as soon as possible to discuss the responses AT&T / TCG have given to the Data Request regarding contracts for switched access services that your clients provide to IXCs. Please let me know when that might be possible to have.

Thank you.

Norman Curtright
Qwest Corporate Counsel
602-630-2187

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