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Sent: Friday, July 28, 2006 4:02 PM
To: Filings@psc.state.fl.us
Subject: 060455 Embarq's Response in Opposition to AT&T's Motion to Hold Discovery in Abeyance
Attachments: Embarq's Response in Opposition to AT&T Motion to Hold Discovery in Abeyance.pdf

Filed on behalf of:

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Docket No. 060455-TP

Title of filing: Embarq's Response in Opposition to AT&T's Motion to Hold Discovery in Abeyance

Filed on behalf of Embarq

25 pages

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July 28, 2006

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 060455-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Embarq Florida, Inc. is Embarq's Response in Opposition to AT&T Communication's Motion to Hold Discovery in Abeyance.

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

If you have any questions regarding this electronic filing, please do not hesitate to call me at 850-599-1560.

Sincerely,

Susan S. Masterton

Enclosure

Susan S. Masterton
COUNSEL
LAW AND EXTERNAL AFFAIRS- REGULATORY
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**CERTIFICATE OF SERVICE
DOCKET NO. 060455-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic and U.S. Mail this 28th day of July, 2006 to the following:

Florida Public Service Commission
Adam Teitzman/ Kira Scott
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Tallahassee, FL 32399-0850

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AT&T
Tracy Hatch/ Brian Musselwhite
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D. Bruce May, Jr.
315 South Calhoun Street
Suite 600
Tallahassee, FL 32301



Susan S. Masterton
Susan S. Masterton

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Embarq Florida, Inc. f/k/a)	
Sprint-Florida, Incorporated against)	Docket No. 060455-TP
AT&T Communications of the)	
Southern States, LLC d/b/a AT&T d/b/a)	
Lucky Dog Phone Co. d/b/a ACC Business)	
d/b/a SmarTalk d/b/a Unispeaks Service)	
d/b/a www.prepayserviceguide.com)	
d/b/a CONQUEST for failure to pay)	
intrastate Access charges pursuant to)	
Embarq's tariffs)	Filed: July 28, 2006

EMBARQ FLORIDA, INC'S RESPONSE IN OPPOSITION TO AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC'S RENEWED MOTION TO HOLD DISCOVERY IN ABEYANCE

On July 27, 2006, AT&T Communications of the Southern States, LLC, ("AT&T") filed a motion styled as AT&T Communications of the Southern States, LLC's Renewed Motion to Hold Discovery in Abeyance ("Discovery Motion").¹ Embarq Florida, Inc. ("Embarq"), responds as follows and respectfully asks that the Commission deny the relief sought by AT&T in the Motion:

1. In its Discovery Motion, AT&T implies that Embarq somehow did something improper by serving its discovery requests before AT&T filed its answer to Embarq's Complaint. To the contrary, the timing of Embarq's discovery is contemplated and permitted by the applicable Florida Rules of Civil Procedure, which allow interrogatories and document requests to be served upon the commencement of an action. (See, Rules 1.340 and 1.350) These rules do not provide for an automatic tolling of a party's obligation to respond to discovery when a motion to dismiss or stay is pending.

¹ While AT&T indicates that it had previously requested the relief sought by this Motion in its earlier filed Motion to Dismiss Embarq's Complaint or, in the Alternative, Stay the Proceeding ("Motion to Dismiss or Stay") that pleading did not mention Embarq's pending discovery request or ask that AT&T's response to these requests be postponed pending the Commission's action on the Motion.

DOCUMENT NUMBER-DATE

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2. Embarq submitted its discovery requests as soon as practicable after filing its Complaint because, as Embarq noted in its Complaint, AT&T possesses and controls information concerning its “enhanced” prepaid calling card calls that Embarq needs to assist in properly jurisdictionalizing the traffic and determining the amount AT&T underpaid in intrastate access charges. (See, ¶20 of Embarq’s Complaint.) Embarq has been trying to obtain this information from AT&T for a considerable amount of time to enable the parties to resolve this issue, but AT&T has refused to provide the information to Embarq. (See, ¶26 of Embarq’s Complaint.) AT&T’s refusal to cooperate with Embarq to resolve this issue outside the litigation process is a reason Embarq has been forced to resort to litigation and its attendant discovery processes to obtain the information, as Embarq is fully entitled to do under the law.

3. AT&T requests that the Commission “hold in abeyance” AT&T’s obligation to respond to Embarq’s discovery until the Commission rules on AT&T’s Motion to Dismiss or Stay because, AT&T asserts, this action would “best serve the interests of judicial economy and conserve the parties’ resources.” (Discovery Motion at page 2) Embarq respectfully submits that, though AT&T denies it, the intent of this Motion is simply to delay the prosecution of Embarq’s Complaint. AT&T’s intent is evident through its similar motions in North Carolina and in the federal case. In response to a motion filed by AT&T to delay its obligation to respond to similar discovery Embarq served in North Carolina related to the intrastate access charges due in that state, the North Carolina Utilities Commission recently rejected AT&T’s request for a lengthy extension of time and set August 21, 2006 as the date when AT&T must file its response. (The North Carolina Order is attached as Exhibit A.) Embarq requests that this

Commission similarly deny AT&T's Motion in Florida and reject AT&T's procedural ploys to avoid providing Embarq with information that is necessary for Embarq to resolve its dispute with AT&T.

4. AT&T implies that Embarq's decision to file a complaint in Florida to determine the intrastate access charges due for Florida traffic, a complaint in North Carolina to determine the intrastate access charges due for North Carolina traffic and a federal complaint including Embarq affiliates in additional states and additional claims for relief could be construed as "gamesmanship." (AT&T Discovery Motion at page 3) Contrary to AT&T's characterization, there is nothing unusual about Embarq's actions. Indeed, AT&T analyses submitted in earlier FCC proceedings show that AT&T explicitly anticipated that state commissions may choose to hear issues "in parallel with federal activity." (See Exhibit B). AT&T's ill-fated pursuit of a declaratory ruling at the FCC was an "attempt" to avoid state PUC proceedings. *Id.* And it recognized that it might incur millions of dollars in legal costs for audits and litigation arising from its enhanced prepaid card program. *Id.* AT&T has demonstrated a willingness to deal in protracted litigation and discovery in other litigation filed by other parties related to AT&T's "enhanced" prepaid calling cards. Embarq is fully entitled to seek relief in such forums as may best address the issues. While the issues involved affect many companies affiliated with Embarq in a number of states, North Carolina and Florida are particularly important to Embarq because of the large numbers of calls and damages involved in these states. Also, while Embarq has great respect for the District Court, as Embarq stated in its Response to AT&T's Motion to Dismiss or Stay, the Florida Commission has the requisite expertise and guiding precedent to deal with matters involving regulatory

considerations such as the issues raised in Embarq's Complaint. The Commission also has the exclusive jurisdiction to rule on Embarq's claims that AT&T violated Florida Statute Sections 364.02, 364.08, 364.09, 364.10, 364.336 and 350.113. It is, therefore, entirely reasonable, and entirely within the law, to file both in federal court and with the state commissions.

5. To the extent that the Commission determines that it is reasonable to grant AT&T's request to suspend discovery until the Commission rules on AT&T's Motion to Dismiss or Stay, Embarq urges the Commission to rule on that motion expeditiously so that, if the Commission denies the Motion to Dismiss or Stay and allows Embarq to proceed with its Complaint (which Embarq believes is the appropriate action for the reasons set forth in its July 17th Response), the proceeding will not be unduly delayed.

6. In addition, Embarq requests that the Commission set a date for AT&T to provide its responses to Embarq's discovery, in the event the Commission denies AT&T's Motion to Dismiss or Stay. Embarq believes that two weeks from the date of the Agenda Conference ruling on the Motion to Dismiss or Stay would be a reasonable time frame for AT&T to respond should the Commission deny this motion.

7. Although AT&T asserts that responding to Embarq's discovery will be a burdensome and time consuming task, this position is belied by the fact that AT&T has been requested to provide similar information for other companies in several proceedings brought in other forums to recover intrastate access charges on AT&T's "enhanced" prepaid calling cards. Therefore, AT&T should already have in place the necessary data collection systems to provide this information as it relates to Embarq within a reasonably quick time frame. In fact, AT&T already has been ordered to calculate the impacts of its

enhanced prepaid card program on each carrier separately. In *Qwest Corporation v. AT&T Corp., et al.*, Case No. 05-WM-375 (BNB), in the United States District Court for the District of Colorado, the court compelled AT&T to answer an interrogatory asking the company to "state, by local exchange carrier and by quarter, the access charge savings that AT&T obtained by paying interstate access charges (instead of intrastate access charges) for pre-paid calling card calls between callers and called parties located within the same state." See Order dated December 13, 2005, compelling AT&T to answer Qwest Interrogatory No. 5 (The Order and Interrogatories are attached as Exhibit C).

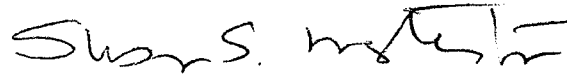
8. AT&T also argues that Embarq is imposing an undue discovery burden by pursuing its claims for North Carolina access charges in North Carolina, its claims for Florida access charges in Florida and its claims for the access charges due in all of its local territories in federal court. To alleviate AT&T's concerns about duplicative requests, Embarq has offered in North Carolina to enter into a discovery agreement containing suitable provisions providing that, should AT&T respond to a discovery request in the Missouri or Florida proceedings containing the same information that would have been provided in response to a request in this matter in North Carolina, AT&T could respond by providing reference to the information provided elsewhere (for example, by reference to the Bates Numbers of previously provided documents) such that Embarq could readily obtain and use the information without the need for AT&T to provide it a second time. Embarq makes a similar offer for Florida. And, since the North Carolina Commission has set August 21, 2006 as the date for AT&T's response to the discovery requests in that proceeding, to the extent Embarq's Florida discovery seeks

information that has already been provided in North Carolina, AT&T will have already fulfilled those requests through its responses in North Carolina.

9. Contrary to AT&T's argument that a delay in the discovery process will not prejudice either party, Embarq will be prejudiced by a delay in obtaining the information it has requested. As discussed above, the information in AT&T's possession that Embarq has requested is critical to Embarq preparing its case against AT&T. If the Commission denies AT&T's Motion to Dismiss or Stay and allows Embarq to go forward with its Complaint (as Embarq believes the Commission should) Embarq must have the requested information prior to filing any testimony in this proceeding. So that testimony filing dates need not be unnecessarily delayed, Embarq asks the Commission to require AT&T to respond to Embarq's discovery no later than two weeks after the Commission's ruling.

WHEREFORE, Embarq requests that the Commission deny AT&T's Discovery Motion and require AT&T to respond to Embarq's discovery in accordance with the time frames set forth in the applicable discovery rules. If the Commission determines that it is appropriate to grant AT&T's request for abeyance, Embarq requests that the Commission rule on AT&T's Motion to Dismiss or Stay expeditiously and, if AT&T's Motion is denied as Embarq has requested, require AT&T to provide its responses to Embarq's discovery within two weeks of the Commission's ruling.

Respectfully submitted this 28th day of July 2006.



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**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-140 SUB 91

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Carolina Telephone and Telegraph)	
Company and Central Telephone)	
Company)	
)	
v.)	ORDER RULING ON
)	DISCOVERY MOTIONS
)	
AT&T Communications of the)	
Southern States, LLC)	

BY THE CHAIR: On July 14, 2006, AT&T Communications of the Southern State, LLC (AT&T) filed a Motion to Hold Discovery in Abeyance or For an Extension of Time to Respond to Discovery Request.¹ More specifically, AT&T requested that the Commission issue an order holding discovery in abeyance until AT&T can file its requests to limit the scope of the proceeding and until after the Commission rules thereon. Alternatively, AT&T requested that the Commission grant it an extension of time to respond to Embarq's first set of interrogatories and request for production of documents until September 11, 2006. and grant it the further opportunity to re-address the appropriate date for discovery responses in light of any discovery schedule set in the federal court action.

This docket concerns a complaint filed by Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, Embarq) regarding the proper jurisdiction and payment of access charges related to AT&T "enhanced prepaid calling card."

In support of its Motion to Hold Discovery in Abeyance, AT&T noted that Embarq had filed substantially identical complaints in the U.S. District Court for the Western District of Missouri (U.S. District Court) and before the Florida Public Service Commission (FPSC) and, in the case of the FPSC, had filed nearly identical discovery requests to those served in North Carolina by Embarq on July 3, 2006. AT&T stated that, like the North Carolina complaint, Embarq's federal complaint claims that AT&T violated its North Carolina tariff. AT&T maintained that the U.S. District's Court's

¹ Embarq began this docket by filing a complaint on June 14, 2006, seeking damages in excess of \$2.8 million. The Commission on June 30, 2006, granted AT&T an extension to file its Answer until August 9, 2006. On July 3, 2006, Embarq served its first set of interrogatories and requests for production of documents which, under the North Carolina Rules of Civil Procedure, would be due on August 7, 2006.

disposition of the issues in the federal complaint will be dispositive of all legal and factual issues that arise in this case. Embarq's filings are thus duplicative, and even were the Commission or the FPSC to decline to dismiss or stay the state proceeding, there is no reason why AT&T should be subjected to duplicative discovery requests in three separate proceedings. AT&T added that it has filed or is in the process of filing requests to dismiss or stay the state PSC actions on the theory that Embarq is not entitled to sue AT&T on the same claims for relief at the same time in three separate jurisdictions. AT&T also stated it will raise various defenses, including those that will substantially limit any relief to which Embarq is entitled.

AT&T warned that responding to Embarq's discovery requests would be a lengthy and difficult proposition. It conservatively estimates that "it will produce hundreds of thousands of pages of documents, if not millions of pages." This justifies a longer discovery period.

Embarq Response

On July 21, 2006, Embarq filed its Response to Motion to Hold Discovery in Abeyance or For an Extension of Time to Respond to Discovery Request, opposing AT&T's Motion but saying that it would be willing to enter into a suitable discovery agreement containing conditions providing that the parties would not be required to provide duplicative responses in this matter so long as suitable reference is made to the provision of the requested information in either Missouri or Florida proceeding referred to by AT&T.

Embarq asserted that AT&T's strategy was one of delay, and it noted that AT&T had been involved for some time—at least since February 2005—in similar litigation with other parties over the same or similar issues in cases filed by Qwest Corporation, BellSouth Telecommunications, Inc., ITC DeltaCom Communications, and Sage Telecom, Inc. In fact, in *Qwest Corporation v. AT&T Corp. et al*, Case No. 05-WM-375 (BNB) (*Qwest*), in the United States District Court for the District of Colorado, AT&T was ordered to respond to discovery requests very similar to those propounded by Embarq in this matter, such as in *Qwest* above. Indeed, AT&T has already compiled information responsive to many, if not most, of Embarq's interrogatories and document requests in other litigation. With respect to AT&T's request that it be granted "further opportunity to re-address the appropriate date for discovery responses in light of any discovery schedules set in the federal court action" in Missouri, Embarq replied that under the federal rules, other things being equal, it is likely that September 8, 2006 will be the first date discovery can be served in the Missouri case, with responses 30 days thereafter, absent further extensions.

Embarq maintained that it had earlier attempted to resolve this matter without litigation, to no avail, but Embarq expressed a willingness to work with AT&T to minimize administrative and other difficulties which might arise in litigation. When AT&T sought a 30-day extension, for example, Embarq was willing to agree to a 10-day extension. With respect to the North Carolina rules on discovery, Embarq has fully

complied with them. Embarq filed complaints in Florida and North Carolina in addition to the suit in Missouri in federal court because North Carolina and Florida are important states, generating large numbers of calls and damages. While Embarq greatly respects the Missouri federal district court, it believes that this Commission has special expertise in dealing with utility regulatory questions at issue and may be able to resolve them more quickly.

WHEREUPON, the Presiding Commissioner reached the following

CONCLUSIONS

After careful consideration, the Presiding Commissioner concludes that good cause exists to (1) grant AT&T a two-week extension of time in which to file its responses to Embarq's interrogatories and document requests from August 7, 2006, until August 21, 2006 and deny AT&T's request to re-address the appropriate date for discovery responses in light of what the federal court in Missouri decides; (2) require the parties to confer and to enter into a suitable discovery agreement including (a) a schedule for discovery, (b) time intervals for the provision of, or objections to, discovery, (c) confidentiality agreements, (d) provisions that would not require providing duplicative responses in this matter so long as suitable reference is made to the providing of the requested information in either Missouri or Florida; and (3) request the Public Staff to participate in this docket.

The subject-matter of this Order is concerned with the discovery process. The Presiding Commissioner believes that AT&T has made a sufficient argument that it deserves an extension of time to reply to Embarq's first discovery requests but that Embarq has made a persuasive argument that AT&T is not a stranger to compiling answers concerning the matters inquired of in this docket. The Presiding Commissioner therefore believes that a lesser extension is indicated in this case.

The Presiding Commissioner also believes that parties should not be expected to "reinvent the wheel" in this docket and that it makes a great deal of sense for the parties to move forward expeditiously to enter into a discovery agreement that will cover all the pertinent procedural points, with particular emphasis on a provision that would not require duplicative responses if they are being provided elsewhere in Missouri or Florida. The parties are therefore required to present such agreement to the Commission by no later than August 15, 2006. If the parties cannot agree, they may present proposed alternative agreements, out of which the Presiding Commissioner will select one or the other.

Lastly, the Presiding Commissioner believes that the Commission will benefit from the Public Staff's perspective and expertise in the issues surrounding this docket and requests the Public Staff to participate in this docket.

Accordingly, AT&T's Motion to hold discovery in abeyance is denied and its motion for an extension of time is granted to the extent set out above.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of July, 2006.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

DI062506.03

Enhanced PPC Phase I -- Key Takeaways

- November Outlook value is \$48M versus ML3 jurisdiction mix (adjusted for Alamo).
 - Provided factors to over 1200 companies. Impact to AT&T terminating switched factor improved by 4 points.
 - Managed successful implementation with all RBOCs.

- Century Telephone continues to dispute new factors. Only implemented in 10% of its companies. Century to provide their switched call detail by next week. AT&T has filed dispute. Potential 2002 impact: \$0.5M to \$1M.

- No further inquiries from Sprint regarding CPN on platform calls. New factors in place.

- 4QTR factors for annual ICOs communicated mid October. Validation in progress; 138 of 1200 ICO companies reviewed. Over 60% of companies reviewed have implemented new factor. Potential 2002 impact: \$1M.

- 2003 Baseline priced at 97/3 jurisdictional mix. Program risks include:
 - Regulatory challenge at state and/or federal level
 - Platform traffic call pattern changes
 - Annual ICO factor implementation success

- If challenged, AT&T will pursue a declaratory ruling proceeding at the FCC to attempt to avoid state by state arbitration and PUC proceedings.
 - Concurrently, AT&T will follow dispute resolution processes mandated by Operating Agreements and/or tariffs.
 - Arbitration is a mandatory process under Operating Agreements and/or tariffs. A rapid regulatory ruling may limit the scope of arbitrations.
 - State PSCs may also choose to hear issue in parallel with federal activity; ICOs are likely to seek state regulatory relief.

- Estimated operational/legal costs for audits and litigation are \$4M to \$5M.



Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 05-cv-00375-REB-BNB

QWEST CORPORATION,

Plaintiff,

v.

AT&T CORP.
AT&T COMMUNICATIONS, INC.,
AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.,
AT&T COMMUNICATIONS OF THE MIDWEST, INC.,
AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC., and
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.,

Defendants.

ORDER

This matter is before me on the **Plaintiff's Motion to Compel** (the "Motion"), filed November 11, 2005. I held a hearing on the Motion on December 9, 2005, and made rulings on the record, which are incorporated here. In summary and for the reasons stated on the record:

IT IS ORDERED that the Motion is GRANTED IN PART and DENIED IN PART, as follows:

GRANTED with respect to Interrogatories No. 5, 6, and 7;

DENIED AS MOOT with respect to Interrogatory No. 1; and

DENIED in all other respects.

IT IS FURTHER ORDERED that the defendants shall provide supplemental discovery responses consistent with this order on or before **January 9, 2006**.

Dated December 13, 2005.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

calling
card

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 05-RB-375 (BNB)

QWEST CORPORATION,

Plaintiff,

v.

AT&T CORP.;
AT&T COMMUNICATIONS, INC.;
AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.;
AT&T COMMUNICATIONS OF THE MIDWEST, INC.;
AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.; and
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.;

Defendants.

PLAINTIFF'S FIRST SET OF DISCOVERY TO AT&T CORP., ET AL.

Pursuant to Federal Rules of Civil Procedure 33 and 34, Plaintiff Qwest Corporation ("Qwest"), serves its First Set of Discovery to Defendants AT&T Corp., AT&T Communications, Inc., AT&T Communications of the Pacific Northwest, Inc., AT&T Communications of the Midwest, Inc., AT&T Communications of the Mountain States, Inc., and AT&T Communications of the Southwest, Inc. (collectively "AT&T").

DEFINITIONS

Except as defined below, the terms used in these discovery requests shall be construed and defined in accordance with the Federal Rules of Civil Procedure, wherever applicable. Any terms not defined herein have their plain and ordinary meaning.

1. The terms "you," "your," "Defendants," and "AT&T" collectively mean AT&T Corp., AT&T Communications, Inc., AT&T Communications of the Pacific Northwest, Inc.,

AT&T Communications of the Midwest, Inc., AT&T Communications of the Mountain States, Inc., and AT&T Communications of the Southwest, Inc., and all of their present and former officers, directors, agents, servants, or employees.

2. The terms "Plaintiff" and "Qwest" mean Qwest Corporation and all of its present and former officers, directors, agents, servants, or employees.

3. The term "access charges" means the charges owed to Qwest by an interexchange carrier when Qwest provides access services to an interexchange carrier.

4. The term "communication" shall be construed in its broadest sense to mean any transmission or exchange of information, ideas, facts, data, proposals, or any other matter, whether between individuals or among the members of a group, whether face-to-face, by telephone, by electronic mail, in writing, or by any other medium.

5. The term "document" has the meaning as described in Fed. R. Civ. P. 34(a) and includes all originals and copies containing any notes, handwriting, underscoring, highlighting, deletions, or other modifications that cause the copies to differ from the originals. Such documents include but are not limited to drafts, whether or not such drafts resulted in final documents. Please note that electronic mail (e-mail) and other electronically maintained materials are considered to be documents, in whatever form they are maintained and/or stored.

6. The term "identify," when used with respect to a person, means to state each person's name; current or last known address; current or last known telephone number; occupation or employer; and identification of any subdivision or group of an employer in which the person is employed.

7. The term "interexchange call" means all telecommunications between local telephone exchanges.

8. The terms "interexchange carrier" or "long distance carrier" mean a telecommunications carrier that transmits telecommunications between local telephone exchanges, either within one state or between states.

9. The term "interexchange service" means long-distance service or calls carried between local telephone exchanges, either within one state or between states.

10. The terms "interstate telephone call" or "interstate call" mean a telephone call that originates in one state and terminates in a different state, i.e., where the endpoints of the telephone call are in different states, regardless of the location of any calling card platform.

11. The terms "intrastate telephone call" or "intrastate call" mean a telephone call that originates and terminates within the same state, i.e., where the endpoints of the telephone call are in the same state, regardless of the location of any calling card platform.

12. The terms "local exchange carrier" or "LEC" have that definition as described in the Communications Act of 1934, 47 U.S.C. § 153(26). The term "CLEC" means a "competitive local exchange carrier."

13. The term "person" means any natural person, partnership, corporation, joint venture, business entity, association, company, union, or governmental entity.

14. The term "telecommunications" has that definition as described in the Communications Act of 1934, 47 U.S.C. § 153(43).

15. The term "telecommunications service" has that definition as described in the Communications Act of 1934, 47 U.S.C. § 153(46).

16. The term "Qwest's territory" means the following fourteen states: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

17. The term "AT&T's Petition" means *AT&T's Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, WC Docket No. 03-133 (filed May 15, 2003).

18. The term "FCC Order" means the Federal Communications Commission ("FCC") *Order and Notice of Proposed Rulemaking*, Docket Nos. 03-133 and 05-68 (adopted Feb. 16, 2005).

19. The term "endpoints" means the point where the calling party initiates the telephone call and the point where the call terminates to the called party.

20. The terms "pre-paid calling card calls" and "pre-paid card calls" mean telecommunications services provided by AT&T where a customer purchases a calling card, dials a number to reach AT&T's centralized switching platform, provides a unique personal identification number associated with the card for purposes of verification and billing, dials the destination number, and connects to the called party after being routed by the platform, as described in AT&T's Petition and the FCC Order.

21. The terms "pre-paid calling card platform" and "calling card platform" mean AT&T's centralized switching platform that transfers a call made with AT&T's pre-paid calling card to the called party.

INSTRUCTIONS

1. Please respond to these discovery requests in writing, under oath, and pursuant to the Federal Rules of Civil Procedure.

2. Please restate the text of each request preceding your responses. An electronic copy of these discovery requests will be made available upon request.

3. The terms "and" and "or" are to be construed either disjunctively or conjunctively, whichever is appropriate, so as to bring within the scope of this written discovery any information that might otherwise be considered beyond its scope.

4. The singular form of a word is to be interpreted as plural and the plural form of a word shall be interpreted as singular, whichever is appropriate, so as to bring within the scope of this written discovery information that might otherwise be considered to be beyond their scope.

5. If a claim of privilege is asserted, in whole or in part, or if you refuse to answer or produce on any other ground, please specify the basis for your claim. If any document is withheld from production hereunder on the basis of a claim or privilege or otherwise, please identify each document and the grounds upon which it is being withheld from production with specificity. Produce such privileged documents to the extent that they contain non-privileged information.

6. In the event you file a proper and timely objection to any portion of an interrogatory or request, please answer or produce documents and things relating to all portions of the interrogatory or request that do not fall within the scope of your objection.

7. If any document or thing identified was, but is no longer in your possession, custody or control, or was known to you but is no longer in existence, please describe the status of the document, including the identity of the person(s) who currently have possession, custody, or control of the document.

8. These discovery requests are continuing in nature pursuant to Rule 26(e) of Federal Rules of Civil Procedure. To that end, please supplement or correct any response if you discover that your response is incomplete or incorrect.

9. If you are unable respond to any interrogatory or request in full after exercising due diligence to secure the information to do so, then please respond to the fullest extent possible

and explain your inability to provide a complete answer. State whatever information or knowledge you have about the unanswered portion of any interrogatory or request.

I. INTERROGATORIES

1. Identify all persons who participated in your decision to pay interstate access charges for calls made using AT&T's pre-paid calling card services when the calling card platform is located outside the state in which the calling party or the called party is located. In your answer, please include a description of each person's role in the decision-making process.
2. Identify all persons who participated in any decision not to pay access charges on any pre-paid calling card calls for any reason. In your answer, please include a description of each person's role in the decision-making process.
3. Identify all persons who participated in your decision not to make Universal Service Fund contributions on pre-paid calling card calls for any reason. In your answer, please include a description of each person's role in the decision-making process.
4. Identify all persons who participated in designing the network architecture or determining call paths utilized by calls made using AT&T's pre-paid calling card services. In your answer, please include a description of each person's role in the decision-making process.
5. State, by local exchange carrier and by quarter, the access charge savings that AT&T obtained by paying interstate access charges (instead of intrastate access charges) for pre-paid calling card calls between callers and called parties located within the same state.
6. State, by local exchange carrier and by quarter, the access charge savings that AT&T obtained by not paying access charges on pre-paid calling card calls for any reason.

7. State, by quarter, the savings that AT&T obtained by not paying Universal Service Fund contributions on pre-paid calling card as a result of AT&T's characterization of calling card services as information or enhanced services.

8. Other than as described in the Complaint in this lawsuit and the Complaint in *Qwest Corp. v. AT&T Corp.*, Civil Action No. 04-N-909 (MJW) (D. Colo.), state whether AT&T has ever used any service obtained (directly or indirectly) from Qwest or any of its affiliates (such as PRI lines, LIS trunks, or long distance telephone services) for the termination of interexchange voice calls as a substitute for terminating switched exchange access obtained from local exchange providers. If so, identify the type of services used, the geographic location in which such services were obtained, and the savings AT&T realized by substituting those services for terminating switched exchange access.

II. REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents you reviewed or relied on in responding to Qwest's interrogatories.

2. Produce all documents estimating or discussing the actual or anticipated financial impact of AT&T's decision to pay interstate access charges for all calls made using AT&T's pre-paid calling card services when the calling card platform is located outside the state in which the calling party or the called party is located, including but not limited to, the impact on revenue, profits, or capital expenditures.

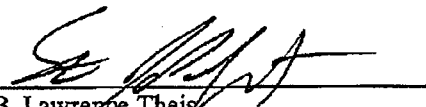
3. Produce all documents estimating or discussing the actual or anticipated financial impact of AT&T's decision not to pay access charges on any pre-paid calling card calls for any reason, including but not limited to, the impact on revenue, profits, or capital expenditures.

4. Produce all documents estimating or discussing the actual or anticipated financial impact of AT&T's decision not to pay Universal Service Fund contributions on pre-paid calling card as a result of AT&T's characterization of calling card services as information or enhanced services, including but not limited to, the impact on revenue, profits, or capital expenditures.

5. Produce all communications between you and any accountant, financial advisor, or auditor regarding AT&T's pre-paid card program, avoidance of access charges, or rating calls as interstate based on the location of the calling card platform instead of the endpoints of the call.

6. Produce all communications between you and any accountant, financial advisor, or auditor regarding AT&T's avoidance of Universal Service Fund contributions as a result of AT&T's characterization of calling card services as information or enhanced services.

DATED this 17th day of August, 2005.



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**ATTORNEYS FOR PLAINTIFF QWEST
CORPORATION**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of August, 2005, a true and correct copy of the foregoing **PLAINTIFF'S FIRST SET OF DISCOVERY TO AT&T, ET AL.** was served by first class, United States mail, postage prepaid, to the following:

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A handwritten signature in black ink, appearing to read "D. Schiffman", is written over a horizontal line.