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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

TEL WEST COMMUNICATIONS, LLC

Petitioner

v.

QWEST CORPORATION, INC.

Respondent.

Docket No. UT-013097

QWEST CORPORATION'S
MOTION TO COMPEL

Qwest Corporation ("Qwest"), by and through its undersigned counsel, hereby requests the Administrative Law Judge to compel Tel West Communications, LLC ("Tel West") to fully and immediately produce all documents responsive to Qwest data request Qwest-074 and/or to identify all responsive documents (if any) it has discarded after service of Qwest's Fourth Data Requests. This motion is made pursuant to WAC 480-09-480. Because the requested information is needed in advance of the deposition of Sheryl Hild, which is scheduled to commence the morning of May 31, 2002, Qwest requests the ALJ to consider Qwest's motion immediately.

Consistent with the procedural schedule set out in paragraph 15 of the Fifth Supplemental Order in this docket, Qwest served its fourth set of data requests on Tel West on April 22, 2002. That set of data requests included requests Qwest-071 through Qwest-0152. Qwest received Tel West's responses on April 29, 2002. Qwest followed up on May 3, 2002 with requests for supplemental responses and/or for clarifications on twenty of the responses. Tel West provided supplemental responses to all twenty on

1 May 10, 2002.

2 Tel West's May 10 supplemental data request responses include Tel West's continued refusal to
3 produce documents requested by data request Qwest-074.¹ That request sought production of all
4 documents relating to the independent contractor relationship between Tel West and its expert witness,
5 Sheryl Hild. Ms. Hild, until late March 2002, was a Qwest employee. She worked as a wholesale billing
6 service delivery coordinator and, more specifically, handled Tel West's account. Ms. Hild's testimony,
7 which was filed on April 15, 2002, is fairly vague as to when she began working for Tel West, whether
8 she was still an employee of Qwest at the time, and, if so, what type of work she was performing for Tel
9 West while still a Qwest employee.²

10 In a prior request (data request Qwest-073), Qwest had asked Tel West to describe the terms
11 and conditions of Ms. Hild's independent contractor relationship with Tel West. In response, Tel West
12 attached a copy of Ms. Hild's expert witness agreement with Tel West.³ That document still leaves
13 unanswered when Ms. Hild began working for Tel West and whether she was still a Qwest employee at
14 the time.

15 On May 24, 2002, just prior to Qwest's deadline for filing this motion, Tel West produced 12
16 pages (all marked confidential) in response to Qwest-074.⁴ The response sheet indicates that attached
17 were "all the documents in Tel West's possession that respond to this data request." Tel West's
18 response is in the present tense and leaves open the possibility that responsive documents were in Tel
19 West's possession between April 22 and May 24, but have since been discarded. Upon receipt, the
20 undersigned requested confirmation from Tel West's counsel that such was not the case, but such
21 confirmation was not provided prior to Qwest's filing deadline.⁵

22 _____
23 ¹ A true and correct copy of Tel West's response and supplemental response to data request Qwest-074 is
attached hereto as Exhibit A. That document contains the wording of Qwest's original request and of Qwest's May 3
supplemental request.

24 ² The relevant excerpt from the Direct Testimony of Sheryl Hild is attached hereto as Exhibit B.

25 ³ A true and correct copy of Tel West's response to data request Qwest-073 (including its "confidential"
attachment) is attached as Exhibit C.

26 ⁴ A true and correct copy of Tel West's May 24 response is attached hereto as Exhibit D.

27 ⁵ A true and correct copy of the undersigned's May 24 e-mail to counsel for Tel West is attached as Exhibit E.

1 Qwest needs the requested information, which is relevant for a number of reasons. First, any
2 correspondence or working papers may disclose information relevant to establishing whether Ms. Hild is
3 indeed qualified to serve as an expert witness on the subjects about which she has submitted testimony.
4 Second, if indeed Ms. Hild was an employee of Qwest at the time she was assisting Tel West in the
5 preparation of its litigation against Qwest or was otherwise acting in a fashion adverse to Qwest (either of
6 which would constitute a conflict of interest in violation of Qwest's Code of Conduct), such information is
7 relevant to determining Ms. Hild's credibility and/or bias.

8 As noted above, Ms. Hild's deposition is scheduled for May 31. Qwest needs to review all
9 responsive documents prior to her deposition, which Qwest needs to complete prior to filing its
10 responsive testimony on June 7. Given the compressed nature of the procedural schedule, Qwest sees no
11 alternative other than to request expedited consideration of this motion. Such is permitted by WAC 480-
12 09-480(7) ("Time limits may be imposed or modified by the commission or the presiding officer to the
13 extent necessary to conform to the commission's hearing schedule."). Qwest suggests the ALJ and the
14 parties convene a brief telephonic hearing on the morning of May 29, 2002 (after receiving Tel West's
15 answer to this motion on May 28) to discuss this matter further.

16 RESPECTFULLY SUBMITTED this ____ day of May, 2002.

17 QWEST

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19 _____
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