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Transcript Exhibit(s)

Docket #(s): T-01051B-06-0175

T-02556A-06-0175

T-03693A-06-0175

Exhibit # : S-1

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LEGAL DIV.
ARIZ. CORPORATION COMMISSION

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MEMORANDUM

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2006 JUN -6 P 3: 09

AZ CORP COMMISSION
DOCUMENT CONTROL

TO: Docket Control
Arizona Corporation Commission

FROM: Ernest G. Johnson
Director
Utilities Division

EA for EGJ

Date: June 6, 2006

RE: STAFF'S POSITION IN THE MATTER OF QWEST CORPORATION'S APPLICATION FOR ARBITRATION PROCEDURE AND APPROVAL OF INTERCONNECTION AGREEMENTS WITH AZCOM PAGING, INC., HANDY PAGE, ANSWERPHONE INC., GLEN CANYON COMMUNICATIONS INC., TELE-PAGE, INC., AND PURSUANT TO SECTION 252(B) OF THE COMMUNICATIONS ACT OF 1932, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996, AND THE APPLICABLE STATE LAWS (DOCKET NOS. T-01051B-06-0175, T-02556A-06-0175, T-03693A-06-0175)

Introduction

On March 17, 2006, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("ACC" or "Commission") an application for arbitration procedure and approval of interconnection agreement ("ICA") with AzCom Paging, Inc., Smith Bagley, Inc., Handy Page, AnswerPhone Inc., Star Page Inc., Glen Canyon Communications Inc., Nextel West Corp., Western Wireless Corporation, Tele-Page, Inc., Westsky Wireless, L.L.C. and PacWest Telecomm, Inc. (the "Carrier").

Since Qwest filed its application, it has heard from a number of the Carriers listed in its original application and they have been able to agree on new interconnection agreements. Qwest has not heard from and has been unable to reach an agreement with the following Carriers: AzCom Paging, Inc., Handy Page, Glen Canyon Communications Inc., and Tele-Page, Inc. It is Staff's further understanding that the agreement with Handy Page will be resolved in a separate proceeding.

On May 9, 2006, by Procedural Order, Staff, Qwest, and other parties were ordered to file testimony or a position paper by May 25, 2005.

On May 25, 2006, Staff filed a Request for Modification of the May 9, 2006 Procedural Order to allow it to first review the testimony or position papers filed by Qwest. Staff, among other things, requested that it and other parties be given until June 6, 2006 to file their position papers in this matter. Qwest had no objection to Staff's requested changes.

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Background

On September 6, 2002, T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners ("Petitioner") jointly filed with the Federal Communications Communication ("FCC") the *T-Mobile USA, Inc. et al. Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carriers Wireless Termination Tariffs,* in CC Docket Nos. 01-92, 95-185, 96-98 ("T-Mobile Petition"). In the T-Mobile Petition, the Petitioners requested that the FCC declare that the Incumbent Local Exchange Carriers ("ILEC") wireless termination tariffs as well as the refusal to negotiate ICAs conflict with Section 251 and 252 of the Telecommunications Act of 1996 ("Act") and FCC's rules, and to clarify that ILEC engages in bad faith by unilaterally filing wireless termination tariffs without first negotiating in good faith with Commercial Mobile Radio Services ("CMRS") providers.

On February 24, 2005, the FCC issued its Declaratory Ruling and Report and Order ("Order"), *In the Matter of Developing a unified Intercarrier Compensation Regime T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent Local Exchange Carriers Wireless Termination Tariffs,* in CC Docket No. 01-92. The FCC in its Order amended its rules to prohibit ILECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariff and made it clear that an ILEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act. The Order further established interim compensation requirement under section 20.11 consistent with those already provided in section 51.715 of the FCC's rules that would apply while interconnection arrangements are established and provided that existing wireless termination tariffs shall no longer apply upon the effective date of the amended rules. The rules became effective on April 29, 2005.

Prior to the FCC's Order, Qwest service offerings for Wireless and Paging Type 1 and Type 2 Interconnection were offered pursuant to tariff. On May 3, 2005, Qwest sent a letter to Staff in which it advised Staff that it was providing notice to Wireless and Paging Type 1 and Type 2 Interconnection Customers, requesting interconnection negotiations and implementing interim arrangements for rates, terms and conditions. Attached to the letter were Qwest's notice to Wireless and Paging Customers, a Type 1 Wireless Interconnection Model Template, a Type 2 Wireless Interconnection Model Template and a Type 1and Type 2 Paging Connection Service Agreement Model Template.

Analysis

Generally, Carriers that request service from ILECs such as Qwest may: (1) purchase services and elements through the Statement of Generally Available Terms and Conditions ("SGAT") in states with effective SGATs; (2) adopt an entire agreement negotiated by another competitive carrier; or (3) negotiate a new interconnection agreement with the ILEC. If negotiation for interconnection fails, any of the parties may file for arbitration with the State Commission.

The Type 1 and Type 2 two-way Wireless Interconnection Agreements are Interconnection Agreements that set forth the terms, conditions and pricing under which Qwest will offer and provide to any requesting Wireless Service Provider network Interconnection and Ancillary services within the geographical areas in which both Qwest is providing Local Exchange Service at that time, and for which Qwest is the ILEC within the State for purposes of providing local two way Wireless Services; whereas, a Type 1 and Type 2 Paging Connection Service Agreement is an Interconnection Agreement that sets forth the terms, conditions and pricing under which Qwest will offer and provide to any requesting Paging Provider only one-way, intraLATA/intrastate, land-to-pager trunks, in which case Qwest delivers calls from Qwest's End Users to Paging Provider's POC.

As of June 2, 2006, Qwest has filed a number of the Type 1 Wireless Interconnection Agreements, Type 2 Wireless Interconnection Agreements and/or Type 1 and Type 2 Paging Connection Service Agreements. The Interconnection Agreements filed by Qwest includes those entered into with Star Page Inc., Sky Island Services, Inc., Westsky Wireless, LLC, Shores Com-Rent Inc. FKA Beeper 1, and Smith Bagley, Inc. DBA Cellular One of NE Arizona. Consistent with Section 252(e) of the Act, the State Commission may only reject an agreement, or any portion thereof, if it finds that the agreement, adopted by negotiations under subsection (a) of Section 252(e) either: (A) discriminates against a telecommunications service provider that is not a party to the agreement; or (B) is not consistent with the public interest, convenience, and necessity. Staff has reviewed both the Model Templates and the Interconnection Agreements mentioned above and found that they did not discriminate against any telecommunications service provider that is not a party to the agreement and is consistent with the public interest, convenience, and necessity. As such, Staff concludes that both the Model Templates and the Interconnection Agreements are consistent with the Act and the Arizona Administrative Code.

With regards to Qwest's relief requested, that the Commission issue an order adopting and approving the proposed interconnection agreement between Qwest and the remaining paging carriers, Qwest's only option absent of an order imposing an arbitrated and binding agreement on such carriers or a tariff will be to discontinue service to the carriers. Qwest has made a good faith effort in contacting the concerned carriers and entering into Interconnection Agreements with all but four (4) carriers. Although, the Model Template was unilaterally drafted by Qwest, nothing would stop a requesting Wireless Service Provider or Paging Provider from negotiating in good faith with Qwest using the Model Template as the starting point; adopting an entire agreement negotiated by another competitive carrier; or negotiating a new interconnection agreement with Qwest. Staff believes that Qwest's relief requested is reasonable and that the Model Templates should be approved subject to the Commission's ability to continue to review and approve it. The discontinuance of service to a carrier is a very drastic measure. Staff believes that the Model Templates can be treated just like the SGAT. An SGAT is a statement of terms and conditions that a Bell Operating Company ("BOC") such as Qwest, pursuant to Section 252(f)(1) of the Telecommunications Act of 1996, may prepare and file with a State Commission that such company generally offers within that State to comply with the requirements of Section 251 and the regulations thereunder and the standards applicable under Section 252. Consistent with Section 252(f) of the Telecommunications Act of 1996, a State

Commission may not approve a SGAT unless such SGAT complies with Sections 252(d) and 251 and the regulations thereunder. When a SGAT is filed, it goes into effect after 60 days by operation of law subject to the Commission's ability to continue to review and approve it. The ACC approved various sections of Qwest's SGAT as being Section 271 compliant.

Qwest further requested in its relief that should any of the carriers fail to appear before the Commission, the Commission should enter an order imposing an arbitrated and binding agreement on such carriers. For the reasons stated above, Staff believes that there is no compelling reason to deny Qwest's request. Staff believes it is in the public interest for the Paging and Wireless Carriers end-user to stay connected rather than loose services.

EGJ:BNC:tdp

Originator: Blessing Chukwu

Service List for: Qwest/Wireless Arbitration
Docket Nos. T-01051B-06-0175, T-02556A-06-0175, T-03693A-06-0175

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