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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

Arizona Corporation Commission

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AZ CORP COMMISSION
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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 NO. T-01051B-06-0175
T-02556A-06-0175
T-03693A-06-0175

STAFF'S STATEMENT

I. INTRODUCTION

On March 17, 2006, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") an application for arbitration and approval of interconnection agreements 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 Pac West Telecomm Inc. (collectively "Carriers"). Handy Page is the only remaining non-petitioning party.

On July 13, 2006, Qwest, Handy Page and Staff were ordered to file briefs on the issue of whether Qwest's "Wide Area Calling" offering¹ should be subject to negotiation and arbitration under Section 252 of the 1996 Act. The following is Staff's statement on this issue.

...

¹ "Wide area calling" service is a service in which a LEC agrees with an interconnector not to assess toll charges on calls from the LEC's end users to the interconnector's end users, in exchange for which the interconnector pays the LEC a per-minute fee to recover the LEC's toll carriage costs. TRS Opinion at footnote 6.

1 **II. BACKGROUND**

2 The Telecommunications Act of 1996 (“Federal Act” or “1996 Act”), opened all
3 telecommunications markets to competition. Section 251 of the Federal Act set forth standards for
4 interconnection among carriers as well as the obligations of Incumbent Local Exchange Carriers
5 (“ILECs”) such as Qwest Corporation (“Qwest”) to open their monopoly networks for use by other
6 carriers, Competitive Local Exchange Carriers (“CLECs”) desiring to provide service in competition
7 with Qwest. Section 252 of the Federal Act gives state commissions, such as the Arizona
8 Corporation Commission, the authority to mediate and arbitrate interconnection agreements between
9 telecommunications carriers.

10 The Federal Communications Commission has promulgated regulations implementing both
11 Sections 251 and 252 of the Federal Act. In addition, there is a large body of FCC decisions and
12 judicial opinions addressing the obligations of ILECs under these provisions of the Federal Act. The
13 Commission also has regulations pertaining to the interconnection and arbitration of interconnection
14 agreements.

15 Two FCC decisions, in particular, appear to decide the issue of the obligations of Qwest with
16 respect to Handy Page. Those FCC decisions are the *T-Mobile Declaratory Ruling*² and *TRS*
17 *Wireless Opinion*.³

18 **III. DISCUSSION**

19 **A. Under the *TRS Wireless Opinion*, Qwest’s “Wide Area Calling”
20 Service May be Offered on a Tariffed Basis.**

21 The primary issue raised is whether Qwest’s “Wide Area Calling Service” can be offered on a
22 tariffed basis or whether it is appropriately subject to negotiation as part of the Section 252 arbitration
23 process. If it is offered on a tariffed, basis it is are not subject to pricing at TELRIC rates as required
24 under Section 252(d) of the Federal Act.

26 ² In the Matter of Developing Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory
27 Ruling Regarding Incumbent LEC Wireless Termination Tariffs, CC Docket No. 01-92, Declaratory Ruling and Report
and Order (Released February 24, 2005)(“T-Mobile Declaratory Ruling.”)

28 ³ See in the matters of *TSR Wireless, et al., v. U.S. West Communications, Inc.*, Memorandum Opinion and Order 15
FCC Rcd 11166, (May 31, 2000)(“*TRS Opinion*”).

1 Under Section 252(d) of the Federal Act, state commissions are to set “just and reasonable”
2 rates for the interconnection of facilities and equipment for purposes of subsection (c)(2) of Section
3 251 and the just and reasonable rates for network elements for purposes of subsection (c)(3) of
4 Section 251. State commissions are also responsible under Section 252(d) of the Federal Act for
5 ensuring that the terms and conditions for reciprocal compensation are just and reasonable.

6 The FCC has determined that Commercial Mobile Radio Service (“CMRS”) Providers and/or
7 paging carriers offer “telecommunications services” for purposes of Sections 251 and 252 of the
8 Federal Act. In its *Local Competition First Report and Order*,⁴ the FCC determined that Section
9 251(b)(5) requires LECs to establish reciprocal compensation arrangements for the exchange of local
10 traffic between the LEC and a CMRS provider. For wireless or paging providers, the FCC defined the
11 Major Trading Area (“MTA”) or the wireless license territory in which the carrier operates, to be the
12 most appropriate local service area for CMRS traffic for purpose of reciprocal compensation under
13 Section 252(d).⁵

14 In the *T-Mobile Declaratory Ruling*, a number of CMRS providers claimed that by filing
15 tariffs setting forth reciprocal compensation arrangements, the ILECs were acting in bad faith by
16 attempting to preempt the Section 252 negotiation and arbitration process. In that Ruling, the FCC
17 amended its rules to express a preference for Section 252 contractual arrangements by prohibiting
18 LECs from imposing compensation obligations for non-access CMRS traffic (i.e., reciprocal
19 compensation traffic) pursuant to tariff. It also permitted ILECs to request interconnection from a
20 CMRS provider and invoke the negotiation and arbitration procedures set forth in Section 252 of the
21 Act. From the date of the FCC’s *T-Mobile Declaratory Ruling* going forward, ILEC tariffs
22 containing the terms, conditions and rates for CMRS reciprocal compensation arrangements were no
23 longer permissible.

24 The question in this case becomes then whether the “Wide Area Calling” service Qwest offers
25 is an interconnection service or a service which is covered by the FCC’s reciprocal compensation

26
27 ⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98
and 95-185, First Report and Order, 11 FCC Rcd 15499, 16016, para. 1041 (“*Local Competition First Report and*
Order”).

28 ⁵ *Local Competition First Report and Order*, 11 FCC Rcd. at 16014, para. 1036.

1 arrangements and Section 252(d) of the Federal Act. This issue appears to have been addressed by
2 the FCC in its *TRS Opinion*. In that case, the FCC addressed five separate complaints filed by paging
3 carriers alleging that the LECs were violating the FCC's reciprocal compensation rules by imposing
4 charges for facilities used to deliver LEC-originated traffic, DID numbers and "wide area calling
5 service."

6 With respect to LEC imposed costs for LEC-originated traffic, the FCC noted that in its *Local*
7 *Competition Order*, it promulgated Rule 51.703(b) which prohibited a LEC from assessing charges
8 on any other carrier for local telecommunications traffic that originates on the LEC's network." The
9 *TRS Opinion* also references a letter from Richard Metzger, chief of the FCC's Common Carrier
10 Bureau at the time, which specifically states that this ruling is applicable to paging services and thus a
11 LEC is not allowed to charge a paging services provider for the cost of "LEC transmission facilities
12 that are used on a dedicated basis to deliver to paging services providers local telecommunications
13 traffic that originates on the LEC's network."⁶

14 In paragraph 30 of its *TRS Opinion*, the FCC addressed Qwest's "wide area calling" service.
15 It found as follows:

16 TRS asserts that rule 51.703(b) prohibits U S West from charging for
17 'wide area calling' service (footnote omitted). We disagree. We find
18 persuasive U S West's argument that 'wide area calling' services are
19 not necessary for interconnection or for the provision of TSR's service
20 to its customers. (footnote omitted). We conclude, therefore, that
21 Section 51.703(b) does not compel a LEC to offer wide area calling or
22 similar services without charge. Indeed, LEC's are not obligated under
23 our rules to provide such services at all; accordingly it would seem
24 incongruous for LEC's who choose to offer these services not to be
25 able to charge for them.

26 In finding that rule 51.703(b) did not prohibit Qwest from charging for the service, the FCC
27 essentially found that it was not a cost related to LEC originating traffic. The FCC also expressly
28 found that the services are not necessary for interconnection or for the provision of TSR's service to
its customers. These findings, together, appear to suggest that the services provided by Qwest as part
of its "wide area calling" service are not Section 251 related services, and thus would fall outside of
the parties interconnection agreement. Certainly, Qwest could voluntarily agree to include the

⁶ *TRS Opinion* at para. 6.

1 service in its interconnection agreement negotiations with Handy Page; but absent Qwest's agreement
2 to do so, it appears that Qwest's decision to tariff this service is proper.

3 That the service is offered through tariff also appears appropriate given the nature of the
4 service itself, a reverse toll service. Access charges and toll pricing and rating are typically tariffed
5 services and are not typically addressed in the Section 252 negotiation or arbitration process.

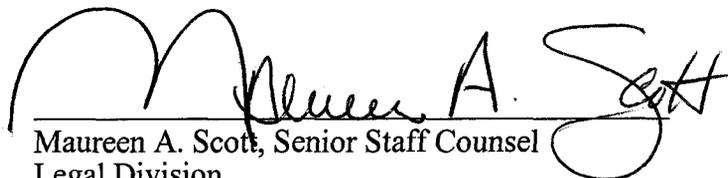
6 Given this, Handy Page's remedy, if it believes that the rates Qwest is charging for this
7 service area are inappropriate would be to file a formal complaint or intervene in the Company's next
8 Alternative Form of Regulation ("AFOR") filing and specifically seek review of the rates in question.

9 **B. Handy Page Does Not Have to Accept the Template Agreement if it Disputes**
10 **Certain of its Terms; but Instead May Seek to Arbitrate Disputed Issues Before**
11 **the Commission.**

12 To the extent Handy Page has other issues in dispute that are subject to the Section 251 and
13 252 processes, Handy Page does not have to accept the template agreement offered by Qwest. Rather
14 Handy Page has the same right as any other carrier to arbitrate any disputed issues with Qwest, before
15 the Commission.

16 Further, the Commission has never approved the template agreement for wireless
17 interconnection submitted by Qwest. Staff believes that the template agreement is equivalent to a
18 "Statement of Generally Available Terms and Conditions" ("SGAT") for wireless providers. If it is
19 treated as a Wireless SGAT, the Commission could allow it to go into effect by operation of law,
20 subject to continuing review and approval. However, even if the Commission treats it as a Wireless
21 SGAT, Handy Page is not required to accept it. Again, Handy Page has the same opportunity as
22 other carriers, to have any disputed issues arbitrated by the Commission.

23 RESPECTFULLY submitted this 25th day of August, 2006.

24 

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1 Original and thirteen (13) copies
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2 day of August, 2006, with:

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6 Copies of the foregoing mailed
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