

ORIGINAL

DOCKET NO



0000061230

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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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IN THE MATTER OF QWEST)
CORPORATION'S APPLICATION FOR)
ARBITRATION PROCEDURE AND)
APPROVAL OF INTERCONNECTION)
AGREEMENT WITH HANDY PAGE,)
AND PURSUANT TO SECTION 252(B))
OF THE COMMUNICATIONS ACT OF)
1934, AS AMENDED BY THE)
TELECOMMUNICATIONS ACT OF)
1996, AND THE APPLICABLE STATE)
LAWS.)

DOCKET NO. T-01051B-06-0175
DOCKET NO. T-02556A-06-0175
DOCKET NO. T-03693A-06-0175

INTERSTATE WIRELESS, INC D/b/a
HANDY PAGE'S REPLY TO THE QWEST
CORPORATION OPENING BRIEF AND
THE STAFF'S STATEMENT

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Introduction

Interstate Wireless, Inc. D/b/a Handy Page
REPLY BRIEF

Interstate Wireless, Inc. d/b/a Handy Page ("Handy Page") hereby submits its Reply to the Qwest Corporation Opening Brief and the Staff's Statement in accordance with the Arizona Corporation Commission's Procedural Order dated July 16, 2006 that questions whether Wide Area Calling ("WAC") should be subject to the terms and conditions of an Interconnection Agreement between Qwest Corporation ("Qwest"), a local exchange carrier and Handy Page, a Commercial Mobile Radio Service ("CMRS") carrier.

In this Reply Brief, Handy Page responds to the Opening Brief filed by Qwest and the Staff's Statement as filed by the Arizona Corporation Commission staff regarding the reasons why WAC is a type of interconnection arrangement subject to the Federal Communications Commission's ("FCC") TSR Order¹ and T-Mobile Order² and should be included in any proposed interconnection with Qwest. Handy Page also demonstrates that the FCC's TSR Order's conclusions regarding the dialing and transport of toll calls in its Wide Area Calling (also known as "Reverse Billing") discussion and conclusion is factually incorrect, and therefore the conclusions regarding WAC made by Qwest in its Opening Brief are not in conformance with FCC rules and common logic. The faulty TSR Order statements regarding the rating of toll calls and the resulting faulty conclusions regarding the Qwest WAC tariff as drawn by ACC Staff in their Staff Statement are also discussed. Handy Page herein demonstrates that WAC, as configured in the State of Arizona, is technically feasible, is necessary for interconnection and is in the public interest. Handy Page also explains why the Qwest "Weinstein Declaration" improperly and inaccurately describes WAC interconnection arrangements. Finally, Handy Page comments on Qwest's offer to pay termination compensation on WAC traffic.

Wide Area Calling and the TSR Order

Qwest equated the Wide Area Calling (WAC) described in its Opening Brief³ to the WAC described by the FCC in the TSR Order.⁴ However, the conclusions with respect to WAC in the FCC's TSR Order are not definitive with respect to the rating of calls (either local or toll) or the routing of calls (delivery to the terminating carrier).

As noted in the TSR Order;⁵

¹ See FCC 00-194, *TSR Wireless vs Qwest, et al.* Released June 21, 2000.

² See, *T-Mobile, etc. Petition for Declaratory Ruling FCC 05-42*, released February 24, 2005.

³ See Qwest Opening Brief in this Docket, page 2.

⁴ See, FCC 00-194, MEMORANDUM OPINION AND ORDER *In the Matters of TSR WIRELESS, LLC, et al., Complainants, v. U S WEST COMMUNICATIONS, INC., et al., Defendants.* Released June 21, 2000.

⁵ See Paragraph 31, FCC 00-194, MEMORANDUM OPINION AND ORDER *In the Matters of TSR WIRELESS, LLC, et al., Complainants, v. U S WEST COMMUNICATIONS, INC., et al., Defendants.* Released June 21, 2000.

Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier. This may result in the same call being viewed as a local call by the carriers and a toll call by the end-user. For example, to the extent the Yuma-Flagstaff T-1 is situated entirely within an MTA, does not cross a LATA boundary, and is used solely to carry U S West-originated traffic, U S West must deliver the traffic to TSR's network without charge. However, nothing prevents U S West from charging its end users for toll calls completed over the Yuma-Flagstaff T-1.
[Footnotes omitted]

In this paragraph taken from the TSR Order, the FCC does not explain where the “*toll calls completed over the Yuma-Flagstaff T-1*” would originate. At first glance, one would assume the calls dialed by Qwest end-users to the paging carrier assigned number resources (Type 1 number block or NXX code) in Yuma would be the “toll calls” referenced by the FCC. However, this cannot be true because calls are rated (a determination of local or toll) by the originating and terminating NXX codes,⁶ not the POI of the terminating CMRS carrier. In this case, the calls are local calls because both the Qwest originating line and the called number are always in the same rate center, based on the information in the TSR Order paragraphs 30 and 31. So, although according to the TSR Order, “*nothing prevents U S West from charging its end users for toll calls completed over the Yuma-Flagstaff T-1*”, there are no “toll calls” possible in this situation and only local calls are carried over the Yuma-Flagstaff T-1 (a dedicated inter-office trunk). Similarly, there are no “toll calls” possible over the Qwest Arizona Intra-MTA WAC that sends calls to Handy Page, because the originating line and the called number are in the same rate center and therefore the WAC could only originate local calls sent to Handy Page.

What the FCC is apparently confusing in the TSR Order example quoted above is that the rating of the call (a determination whether a call is local or toll) is not related to the routing of the call (delivery to the terminating carrier). For example, although the call described in the TSR Order is routed to Flagstaff, Arizona from its origination in Yuma, the call rating is, by the FCC’s prior definitions and industry practice, a local call because the Yuma caller has dialed a number provisioned as “local” by Qwest in the Yuma local exchange (a Type 1 or Type 2 number that is part of a NANPA assigned NXX code in Yuma). The FCC’s assertions regarding Qwest’s ability to access a toll charge (reverse

⁶ In the Qwest Arizona WAC configuration the dialed terminating NXX code is within the same rate center as the originating NPA-NXX code and is therefore a “local” call. See also Paragraph 301, DA 02-1731, *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*, rel. 7/17/2002. “We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes.”

billing) on the paging carrier or Qwest's traffic delivery obligations in the example given are not supported by the facts as stated in the TSR Order or the FCC's rules cited previously within the TSR Order. More to the point, under either Type 1 interconnection or Type 2 interconnection,⁷ the rating of calls dialed to CMRS NXX codes is not related to the routing of the calls to a CMRS carrier POI and the LEC obligation to deliver the call to the POI of the CMRS carrier, which POI can be geographically distant from the rate center where the call originated, as noted in the TSR Order.⁸ Under FCC rules, the Qwest obligation for the rating and routing of calls under a WAC arrangement is no different than the rating and routing of calls made to standard Type 1 or Type 2 interconnected NXX codes.

In other words, the FCC's TSR Order implies that a "toll" call is involved when a WAC number is dialed by a Qwest originating end user, when, by all FCC rules and orders, the call is a local call both to the caller and to the carriers involved. Qwest and the ACC Staff repeat this false notion in each of their Briefs in this case. Once this false notion is dispelled, that "toll" calling is somehow involved with WAC, it becomes clear that the Qwest Arizona Intra-MTA WAC, as configured in Arizona, is a non-access, local calling arrangement, is "necessary for interconnection" and should be included in an interconnection agreement between Qwest and Handy Page.

All WACs are NOT Created Equally

The FCC's declarations in the TSR Order⁹ regarding WAC apply only to "toll" (access) calls; that is, calls for which the caller must dial 1+10 digits in Arizona¹⁰ and for which the caller is, or can be, billed a toll charge. The caller dialing 1+10 digits also understands that such calls are not "local" to the caller. It is clear that the FCC's conclusions in the TSR Order, because they are factually incorrect (there are no "toll" calls involved in the WAC scenario cited) and logically flawed (the FCC confused the

⁷ See the Qwest wireless Type 1 and Type 2 and Type 1 and Type 2 paging connection service templates for the State of Arizona (available at <http://www.qwest.com/wholesale/clecs/wirelessagreements.html>) and existing approved Interconnection Agreements with CMRS carriers in Arizona.

⁸ See also, *On Petition for Review of an Order of the Federal Communications Commission* United States Court of Appeals for the District of Columbia Circuit, No. 02-1255, *MOUNTAIN COMMUNICATIONS, INC., PETITIONER v. FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, RESPONDENTS, T-MOBILE USA, INC., ET AL., INTERVENORS*; Decided January 16, 2004

⁹ See, FCC 00-194, MEMORANDUM OPINION AND ORDER *In the Matters of TSR WIRELESS, LLC, et al., Complainants, v. U S WEST COMMUNICATIONS, INC., et al., Defendants*. Released June 21, 2000.

¹⁰ See NANPA Planning Letter(s) PL268, et al., "All home NPA local calls may be dialed on a 7-digit basis with no prefix (NXX-XXXX), All foreign NPA local calls will be dialed with 10 digits (NPA+NXX+XXXX), **All direct dialed toll calls, i.e., calls that generally incur an extra charge, must be dialed with a prefix "1" and 10 digits (1+NPA + NXX + XXXX)**, All operator assisted calls, including credit card, collect, and third party calls, will be dialed with a prefix "0" and 10 digits (0+NPA+NXX+XXXX)." (bold for emphasis)

rating of calls with the routing of calls), cannot apply to the Intra-MTA WAC as configured by Qwest in Arizona, or to general rate center consolidation, EAS, or other similar schemes that allow "local" calling over an extended geographic area.

For example, if the Qwest WAC calls are to be considered "toll" calls as described in the Qwest Opening Brief¹¹ then Qwest has not explained or described how such calls would or could be billed to the originating caller or what the charge might be.¹² More importantly, although both Qwest and the ACC Staff rely heavily upon the TSR Order as being definitive of the WAC calling in the instant dispute, there is nothing in the TSR Order that describes the Qwest WAC, as configured and provisioned in Arizona, where the Qwest originating caller is dialing a locally rated Type 2 number,¹³ not a "toll" rated number. A careful reading of the TSR Order at paragraph 31, which describes a Type 1 interconnection and a dedicated Intra-LATA T-1 circuit, does not reveal any similarity to the configuration of local dialing and Type 2 interconnection as is the case with the Qwest Arizona WAC.¹⁴ As a practical matter, the Qwest Arizona Intra-MTA WAC calls would not be "toll" calls under any circumstance, since Handy Page has the option of provisioning a separate, distinct NXX code in any rate center that would be treated as a "local" NXX code by Qwest.

In the Staff Statement filed in this Docket, the ACC Staff describes WAC as a "reverse toll service",¹⁵ but ACC Staff does not cite its basis for this conclusion. For example, the ACC Staff does not explain how it determined that the calls made to a WAC NXX code

¹¹ See, Qwest Opening Brief at Page 2, "WAC provides an optional billing service that allows Qwest landline customers to direct dial a pager anywhere in the LATA without incurring toll charges. WAC operates to suppress any toll charges that would apply to such calls."

¹² See, Qwest's Responses to Interstate Wireless, Inc's., d/b/a Handy Page ("Handy Page") First Set of Data Requests, Nos. 001-044, in Arizona Docket T-03632A-06-0091, Qwest Responses to Handy Page Data Requests Nos. 021- 023.

¹³ In the Qwest Arizona WAC configuration the dialed terminating NXX code is within the same rate center as the originating NPA-NXX code and is therefore a "local" call. See also Paragraph 301, DA 02-1731, *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*, rel. 7/17/2002. "We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes."

¹⁴ "This may result in the same call being viewed as a local call by the carriers and a toll call by the end-user. For example, to the extent the Yuma-Flagstaff T-1 is situated entirely within an MTA,¹⁴ does not cross a LATA boundary, and is used solely to carry U S West-originated traffic, U S West must deliver the traffic to TSR's network without charge. However, nothing prevents U S West from charging its end users for toll calls completed over the Yuma-Flagstaff T-1." See Paragraph 31, FCC 00-194, MEMORANDUM OPINION AND ORDER *In the Matters of TSR WIRELESS, LLC, et al., Complainants, v. U S WEST COMMUNICATIONS, INC., et al.*, Defendants. Released June 21, 2000.

¹⁵ See, Page 5, Line 3, Arizona Corporation Commission Staff's Statement, Docket No. T-0105B-06-0175 et al.

by Qwest subscribers are “toll” calls other than to state, “That the service is offered through tariff also appears appropriate given the nature of the service itself, a reverse toll service.” This statement implies, incorrectly, that for Qwest subscribers making a WAC call, a toll charge inherently must be paid by either the Qwest subscriber or Handy Page. The Staff assumption ignores the Qwest traffic delivery obligations for Intra-MTA call traffic and, as the FCC failed to do in the TSR Order, does not separate the *rating* of calls (determination of local or toll) with the *routing* of calls (Qwest traffic delivery obligation). Since LECs such as Qwest have acknowledged a LATA-wide traffic delivery obligation as demonstrated by current interconnection agreements, either a call is dialed by a subscriber as a call rated in the local rate center using 7 (or 10 digits) and routed by the originating LEC to the POI of the called CMRS carrier without charge to the carrier, or it is dialed as a toll call using 1+10 digit dialing and routed to an IXC. However, in the State of Arizona, a call dialed as 7 (or 10) digits cannot be a toll call. As a result of this industry standard rating and routing scheme,¹⁶ there is no toll involved in any call from a Qwest subscriber to a CMRS carrier that is dialed as a 7 digit call in Arizona.

The ACC Staff’s assertions¹⁷ that the FCC’s findings in the TSR Order are definitive for the Qwest Arizona WAC are given without regard to the actual wording of the TSR Order and rely on the FCC’s faulty conclusions¹⁸ as detailed above. We note that the FCC in the TSR Order made its comments in relation to a situation involving a Type 1 interconnection, where the paging carrier uses a block of numbers obtained from the LEC, as opposed to a separate NXX code, and included a dedicated Intra-LATA T-1 line to carry the call traffic to the paging carrier POI. The configuration described by the FCC in the TSR Order is wholly unrelated to the provisioning of Type 2 interconnection as described in the Qwest Arizona WAC tariff and as is the case with the WAC calling as delivered by Qwest to Handy Page. It is because of this key factual difference in the two interconnection arrangements that the TSR Order is not controlling in this matter.

Assuming that any of the WAC Calls Dialed by Qwest Subscribers are “Toll” Calls, the Configuration of the Qwest WAC Tariff in Arizona Contains Several Unlawful Provisions

¹⁶ In the Qwest Arizona WAC configuration the dialed terminating NXX code is within the same rate center as the originating NPA-NXX code and is therefore a “local” call. See also Paragraph 301, DA 02-1731, *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*, rel. 7/17/2002. “We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes.”

¹⁷ See, Page 4, lines 21-27, Arizona Corporation Commission Staff’s Statement, Docket No. T-0105B-06-0175 et al.

¹⁸ *I.e.*, not in conformance with prior orders of the Commission or logical reasoning.

Both the Qwest Brief and the ACC Staff Statement presuppose that some WAC calls destined for the network facilities of Handy Page are rated as "toll" calls. Were this supposition accurate, Qwest's tariff would be unlawful on several counts:

First, if WAC calls were truly "toll" calls, Qwest has not explained how it screens for presubscription¹⁹ of a toll carrier, as required by FCC rules, when the caller only dials 7 digits and not 1+10 digits. Seven digit presubscription screening is not technically possible because a 7 digit number is not a complete telephone number. Ten digits are required in the North American Numbering Plan (NANP) to determine a whole telephone number. Qwest has also not revealed how it can carry a "toll" call from a calling line that is not presubscribed to Qwest Intra-LATA toll service. Qwest is clearly prohibited by FCC rules from carrying an Intra-LATA toll call unless it is the authorized presubscribed carrier of that calling line.²⁰ Based on this facet of WAC calling alone, it is evident that WAC cannot truly be a "toll" service as Qwest proclaims, otherwise Qwest would be in blatant violation of FCC rules prohibiting its carrying of toll traffic without regard to the presubscribed toll carrier of the originating Qwest local service subscriber. It is thus obvious that the WAC service as configured by Qwest in Arizona and listed in the WAC tariff is actually provisioned as a local calling rate center consolidation, where several rate centers are "consolidated" into one rate center to create one large local calling area. Calls made within a consolidated rate center are not part of any toll calling service.

Second, Qwest Arizona WAC calls are dialed as 7 digit local calls and not 1+10 digit toll calls as required by ACC dialing rules for "toll calls."²¹ Abbreviated 7 digit dialing of calls (as is done under the Qwest Arizona WAC) assumes that the dialed number will be terminated in the originating line NPA (Area code) and is the reason why the calls can only be rated as "local" calls.

Third, under the FCC's long standing rules, and because the calls are locally rated calls, the Qwest WAC tariff charges in the scenario described above are a violation of 47 C.F.R. 20.11(d) and 47 C.F.R. 51.703(b) because the traffic is entirely Qwest originated,

¹⁹ IntraLATA Presubscription gives telephone subscribers the ability to have all "1+" intraLATA toll traffic routed to either an interexchange carrier (IXC) or a local exchange carrier (LEC) of his choice on a non-discriminatory basis. It allows the customer to make intraLATA long distance calls without having to dial a string of long dialing codes. IntraLATA Presubscription is also sometimes referred to as IntraLATA Equal Access which means that dialing procedures for long distance calls would be the same for all intraLATA toll carriers when a telephone subscriber opts to subscribe to a primary long distance company other than his local exchange company.

²⁰ See in re: *Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 99-54, (3/23/1999) "Dialing Parity Order"

²¹ See NANPA Planning Letter(s) PL268, et al., (520 NPA Split, Creating 928 NPA, Arizona) "All home NPA local calls may be dialed on a 7-digit basis with no prefix (NXX-XXXX), All foreign NPA local calls will be dialed with 10 digits (NPA+NXX+XXXX), **All direct dialed toll calls, i.e., calls that generally incur an extra charge, must be dialed with a prefix "1" and 10 digits (1+NPA + NXX + XXXX)**, All operator assisted calls, including credit card, collect, and third party calls, will be dialed with a prefix "0" and 10 digits (0+NPA+NXX+XXXX)." (bold for emphasis)

within the same MTA and is, as measured by all parameters, "non-access" (local) traffic.²²

Fourth, Qwest is not legally permitted by Federal rules to charge for calls by Qwest customers to paging customers with numbers in the same local calling area as the caller, where the paging receiver receiving the call is located in the same local calling area as the originating caller.²³

Fifth, in Qwest's Opening Brief, Qwest witness Weinstein describes WAC in Arizona in this manner:

WAC provides an optional billing service that allows Qwest landline customers to direct dial a pager anywhere in the LATA without incurring toll charges. WAC operates to suppress any toll charges that would apply to such calls.

This is an inaccurate and misleading statement at best. What Mr. Weinstein fails to disclose in this statement is that there are no toll charges to "suppress" since all WAC calls are "local" calls and not "toll" calls and cannot and would not be "toll" calls under any circumstance. It should be noted that the description of WAC given by Mr. Weinstein exactly fits a non-WAC configuration of standard NXX codes provisioned in various rate centers under standard Type 2 interconnection (non-WAC). Under the standard NXX provisioning and in conformance with FCC rules, Qwest offers to deliver calls made by Qwest subscribers to Paging Carrier NXX codes in each rate center to the Paging Carrier's Point of Interconnection without charge.²⁴

Intra-MTA WAC as configured by Qwest in Arizona IS necessary for Interconnection and Should be Included in the Terms and Conditions of an Interconnection Agreement

It has been clearly established that Intra-MTA WAC as configured by Qwest in Arizona is technically feasible²⁵ and has been provisioned in Arizona by both Qwest and other

²² "Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier." (footnotes omitted) See Paragraph 31, FCC 00-194, MEMORANDUM OPINION AND ORDER *In the Matters of TSR WIRELESS, LLC, et al., Complainants, v. US WEST COMMUNICATIONS, INC., et al.*, Defendants. Released June 21, 2000.

²³ See 47 U.S.C. § 153(48) (allowing a "separate charge" beyond that required for local service for "telephone service *between* stations in different exchange areas") (emphasis added); 47 C.F.R. § 51.701(d) (defining a call's termination as the point at which the call is delivered to the called party).

²⁴ See the Qwest wireless Type 1 and Type 2 and Type 1 and Type 2 paging connection service templates for the State of Arizona (available at <http://www.qwest.com/wholesale/clecs/wirelessagreements.html>) and existing approved Interconnection Agreements with CMRS carriers in Arizona.

²⁵ See, Qwest Corporation, Access Service Price Cap Tariff for Arizona; Page 1, Wide Area Calling Service.

LECs.²⁶ Additionally, Handy Page has offered considerable evidence that WAC is in the public interest.²⁷ Based on the foregoing, it is apparent that Intra-MTA WAC as configured by Qwest in Arizona should be included in any interconnection agreement with Handy Page.

To illustrate why WAC is necessary for interconnection and should be included in any interconnection agreement, let us postulate a WAC scenario in which a Paging Carrier initially requests a one rate center WAC Type 2 arrangement with Qwest in the Phoenix rate center, which is entirely within a single MTA. This is a very plausible situation that shows several unlawful aspects of the Qwest Arizona WAC tariff and demonstrates why WAC should be part of an interconnection agreement.

Assume the Paging Carrier has been assigned an NXX code in the Phoenix rate center by the North American Numbering Administration (NANPA) prior to any Qwest provisioning. Under this circumstance, the Paging Carrier would be connected with Qwest on a one-way, Type 2 trunk facility running from a Qwest tandem switch in Phoenix to a physical Paging Carrier Point of Interconnection (POI) in the same wire center as the Qwest tandem. According to the Qwest Arizona WAC tariff, the Paging Carrier would be required to pay a non-recurring Service Establishment charge for the NXX provisioning, a monthly charge for the "underlying" Type 2 facilities, a possible monthly charge for PAL monthly usage and, under the Pricing Option 2, a measured Rate per Minute for all call traffic terminated by the Paging Carrier. Certainly this is a very plausible situation and conforms to all of the parameters of the Qwest Arizona WAC tariff. Additionally, this scenario is in accordance with all of the parameters of WAC as mentioned in the Qwest Opening Brief. However, it is obvious in this scenario that Qwest callers in the Phoenix exchange would not be dialing a "toll" call when dialing numbers in the Paging Carrier's assigned NXX code (as implied in the TSR Wireless order paragraph 31). Additionally, Qwest subscribers in the Phoenix exchange would not be required to pay a "toll" charge to call numbers in the Paging Carrier's NXX code under any circumstance. Calls from Qwest subscribers in the Phoenix exchange would be rated as "local" calls when dialing numbers in the Paging Carrier's Phoenix NXX code.

Note that there are no restrictions in the Qwest Arizona WAC tariff on the minimum number of rate centers that are required and there are no restrictions in the Qwest Arizona WAC tariff on the number of separate, additional WAC arrangements that could be made in disparate Qwest rate centers within the state. So it would be possible to have several separate WAC arrangements in local Qwest rate centers, none of which involve any "toll" calling of any kind. In summary, this is strictly a local calling situation that does not involve any toll calling whatsoever. Yet Qwest would be charging the Paging Carrier for

²⁶ See, Handy Page's Response to Qwest's First Set of Data Requests to Handy Page; Handy Page Responses to Qwest 1-020 and Qwest 1-021.

²⁷ See the Handy Page Opening Brief, "WAC is in the Public Interest" section, submitted to the Arizona Corporation Commission, August 25, 2006.

delivery of Intra-MTA call traffic in obvious violation of numerous FCC rules and Orders, including both the T-Mobile and TSR Orders.²⁸

Now let us examine another similar scenario in which a Paging Carrier makes a request to connect with Qwest using Type 2 interconnection at the Qwest Phoenix tandem using a NANPA assigned NXX code provisioned in the Phoenix rate center as a standard (non-WAC) NXX code. Under this circumstance, according to current FCC rules, and in accordance with Qwest's proffered Type 1 and Type 2 Paging Connection Service Agreement, Qwest would deliver all Qwest originated Intra-MTA traffic to the Paging Carrier POI without charge to the Paging Carrier.

In summary, what should be noted about the two scenarios described above, (WAC and non-WAC) is that they are exactly alike, physically and operationally; where local calls dialed to a Paging Carrier NXX code by Qwest subscribers are delivered by Qwest over Qwest interconnection facilities to a Paging Carrier POI. And most importantly, the calling scenarios listed above do not involve any "toll" calling of any kind. But in the first instance, (under the WAC tariff "service"), Qwest claims it is allowed to charge the Paging Carrier for sending call traffic for termination to the Paging Carrier based on a perceived, but non-existent FCC mandate in the TSR Order.²⁹ In the second scenario of standard NXX provisioning, Qwest delivers all non-WAC traffic to the CMRS carrier without charge. Additionally, it should be noted that there is no difference in Qwest's costs for either WAC or non-WAC traffic delivery which includes switching and/or routing of Qwest originated Intra-MTA calls that are delivered to a Paging Carrier such as Handy Page.

Note that the WAC local calling scope in the examples given above could be expanded by provisioning the same WAC NXX code in additional rate centers, whereas the standard NXX calling arrangement requires that distinctly different NXX codes must be provisioned in additional rate centers to expand the local calling scope for calls to the Handy Page network. The WAC method of provisioning obviously allows conservation of scarce numbering resources and delays the need for area code relief measures such as area code splits or overlays. Additionally, the WAC arrangement allows the dialing of a single 7 digit number over a geographically wide calling area and has many advantages for businesses, government agencies, public safety and other paging users. WAC also achieves a form of rate center consolidation and all of the conveniences of local dialing for its subscribers, without the expense and inconvenience to Qwest of having to provision multiple Type 1 interconnection arrangements in each of its local exchange areas with Handy Page or other paging carriers.

²⁸ See See, FCC 00-194, MEMORANDUM OPINION AND ORDER *In the Matters of TSR WIRELESS, LLC, et al., Complainants, v. US WEST COMMUNICATIONS, INC., et al., Defendants*. Released June 21, 2000 and *T-Mobile, etc. Petition for Declaratory Ruling, FCC 05-42, released February 24, 2005*.

²⁹ The FCC's TSR Wireless Order says LEC's such as Qwest can bill their customers for calls that would otherwise be billed as "toll" calls and that are delivered to CMRS carriers as "local" calls under FCC 51.703(b). However, Qwest has not shown that any of the calls it sends to Handy Page are, or would be, "toll" calls that would or could otherwise be billed to the Qwest subscribers. For example, all WAC calls are dialed as 7 digit local calls not 1+10 digit toll calls.

Contrary to Qwest's assertions, WAC is "necessary for interconnection" and should be included in the terms and conditions of an Interconnection Agreement between the parties.

The Qwest "Weinstein Declaration" Improperly and Inaccurately Describes WAC Interconnection Arrangements

The "Weinstein Declaration" substantially misstates the relationship of Qwest with other telecommunications carriers such as Handy Page using statements such as, "*By subscribing to WAC a paging carrier can substantially enlarge the geographic area from which Qwest landline callers can send toll-free messages to a pager.*"³⁰ In accord with well established law, CMRS carriers cannot be "subscribers" of Qwest or other LECs but instead are "co-carriers".³¹ Because Handy Page is a co-carrier and not a "subscriber" to Qwest services, the only possible arrangement in accordance with FCC rules and current law is an interconnection agreement that includes all of the terms and conditions necessary to exchange call traffic. Interconnection between telecommunications carriers such as Handy Page and Qwest is done *via* agreements between carriers, not subscription or tariffs.³²

Mr. Weinstein also substantially mischaracterizes WAC calling in his description of WAC, whereby he states, "*WAC operates to suppress any toll charges that would apply to any land-to-mobile toll call between exchanges when that call is originated by a Qwest landline customer to a WAC telephone number.*"³³ As previously demonstrated, Qwest customers dialing WAC numbers are dialing local telephone numbers that are provisioned to be local in the same rate center/local exchange as the originating Qwest customer. In fact, there are no toll calls dialed by Qwest customers calling WAC numbers.

The Weinstein Declaration also mentions charges Qwest imposes on paging carriers such as Handy Page for WAC calls originated from payphones. "*Due to Qwest's inability to record WAC usage from PAL (Public Access Lines), Paging carriers subscribing to WAC are also assessed a flat rated charge to recover the costs of any and all calls made to*

³⁰ Page 1, Declaration of Robert H. Weinstein, Arizona Corporation Commission Docket No. T-0105B-06-0175 et al.

³¹ See, FCC 96-325, paragraph 553, page 270, rel. August 8, 1996. "*New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement.*"

³² See *T- Mobile, etc. Petition for Declaratory Ruling, FCC 05-42, released February 24, 2005.*

³³ Paragraph 4, Page 2, Declaration of Robert H. Weinstein, Arizona Corporation Commission Docket No. T-0105B-06-0175 et al.

WAC numbers from payphones."³⁴ Because WAC numbers are rated as local calls by Qwest, there are no toll calls involved in dialing a WAC number from a payphone. Additionally, Qwest's "inability to record WAC usage" is because there are no WAC toll calls involved in calls originated from payphones. The Qwest costs of handling WAC calls from payphones is recovered in the PAL tariff charges Qwest makes to the operator of the payphone to recover all of the costs of local calls. Any cost recovery from paging carriers for PAL originations would be a double recovery by Qwest of the costs of handling payphone calls.

Qwest's Offer to Pay Termination Compensation on WAC Traffic

In Qwest's Opening Brief, it stated, "Qwest is agreeable to paying termination compensation for Qwest originated Intra-MTA calls, including WAC calls, for Type 2." This statement certainly supports Handy Page's position that WAC should be included in any interconnection agreement with Qwest. The Qwest offer to pay termination compensation is tacit agreement that the Qwest originated Intra-MTA WAC call traffic is "non-access" traffic and falls under 47 C.F.R. §51.703(b). Therefore, if the Qwest originated Intra-MTA WAC call traffic is "non-access" traffic, then such traffic is "local" by definition and cannot be considered "toll" traffic of any kind. According to 47 C.F.R. §51.703 and §51.711(b),³⁵ compensation paid for terminating call traffic can be based on the terminating carrier's costs of terminating the traffic. Since Qwest has acknowledged that it will pay termination compensation to Handy Page for WAC calls, then it is logical that the compensation paid to Handy Page would have to be sufficient to recover Handy Page's entire cost of terminating the WAC call traffic, which includes the Qwest WAC charges.³⁶ In essence, Qwest would end up paying a net termination fee to Handy Page that would totally offset all of the Qwest WAC charges. This irrational Qwest WAC

³⁴ Paragraph 9 Page 3, Declaration of Robert H. Weinstein, Arizona Corporation Commission Docket No. T-0105B-06-0175 et al.

³⁵ § 51.703 (a) "Each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier."
 § 51.711 (b) "A state commission may establish asymmetrical rates for transport and termination of local telecommunications traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§ 51.505 and 51.511 of this part, that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified."

³⁶ See, FCC 01-132 *Developing a Unified Intercarrier Compensation Regime* Page 34, Paragraph 93.(Footnote 151) "*Where LEC's and paging companies are unable to negotiate agreed upon rates, we direct states, when arbitrating disputes under section 252(d)(2), to establish rates for the termination of traffic by paging providers based on the forward-looking economic cost of such termination to the paging provider. The paging provider seeking termination fees must prove to the state commission the costs of terminating local calls.*" (*Local Competition Order*, 11 FCC Rcd. at ¶ 1093).

charge and Handy Page termination cost recovery process would simply be a funds exchange without purpose that results in unnecessary and unjustified expense to both Qwest and Handy Page subscribers.

Handy Page assumes this offer is based on the TSR Order provisions that require Qwest to deliver Qwest originated "local" call traffic³⁷ to Handy Page's Point of Interconnection over Qwest trunk facilities. Qwest's tacit admission that it is required to pay terminating compensation to Handy Page confirms Qwest's obligation to deliver the WAC traffic to Handy Page without charge, and provides further proof that WAC is a matter properly suited for negotiation as part of a forward-looking interconnection agreement between the parties.

Conclusions

The Qwest Intra-MTA WAC as configured in the State of Arizona is a local calling arrangement that is simply a form of rate center consolidation. There is no "toll" calling involved with Qwest Intra-MTA WAC. WAC is in the public interest, is necessary for interconnection and should be an option in any Qwest interconnection agreement with paging carriers such as Handy Page, and not a "billing service option" in the form of a Qwest tariff.

For all of the foregoing reasons, Handy Page requests the following actions from the Arizona Corporation Commission based on the information presented in this Reply Brief, current law and FCC rules as noted above:

- Determine that Wide Area Calling (WAC) as configured by Qwest in Arizona is technically feasible, is in the public interest and is necessary for interconnection.
- Require Qwest to include WAC provisioning of NXX codes (provisioning the same NXX code as a "local" NXX code in multiple rate centers) as part of any proposed interconnection agreement that includes Intra-MTA traffic delivery obligations.
- Require Qwest to eliminate all coin telephone charges both recurring and non-recurring as well as non-recurring NXX provisioning charges for Intra-MTA WAC.
- Require Qwest to revise its Arizona tariff to delete Intra-LATA/Intra-MTA WAC charges of any kind in conformance with FCC rules and include only WAC per minute of use charges for WAC Intra-LATA/Inter-MTA Access calls in accord with Interexchange Access pricing standards.

³⁷ CMRS call traffic that originates and terminates within the same MTA. See also, FCC §51.701.

- Require Qwest to refund/credit all WAC charges made to Handy Page for Intra-MTA calls and Intra-LATA interconnection facilities to comply with long standing FCC rules.

DATED this 1st day of September, 2006.

Interstate Wireless, Inc.

d/b/a Handy Page

By:  _____

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ORIGINAL and 13 copies hand-delivered
For filing this 1st day of September, 2006 to:

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 18, 2003 Decided January 16, 2004

No. 02-1255

MOUNTAIN COMMUNICATIONS, INC.,
PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION AND
UNITED STATES OF AMERICA,
RESPONDENTS

T-MOBILE USA, INC., ET AL.,
INTERVENORS

On Petition for Review of an Order of the
Federal Communications Commission

Benjamin J. Aron argued the cause for petitioner. With him on the briefs was *Robert H. Schwaninger, Jr.*

Charles W. McKee argued the cause for Wireless Carrier intervenors T-Mobile USA, Inc., et al., in support of petition-

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

er. With him on the briefs were *Luisa A. Lancetti*, *Doanne F. Kiechel*, *Thomas J. Sugrue*, *David M. Wilson*, *Laura R. Handman*, *Jonathan E. Canis*, and *Douglas I. Brandon*.

Stewart A. Block, Counsel, Federal Communications Commission, argued the cause for respondents. On the briefs were *R. Hewitt Pate*, Assistant Attorney General, U.S. Department of Justice, *Catherine G. O'Sullivan* and *Nancy C. Garrison*, Attorneys, *John A. Rogovin*, General Counsel, Federal Communications Commission, *John E. Ingle*, Deputy Associate General Counsel, and *Laurel R. Bergold*, Counsel.

Robert B. McKenna, Jr. argued the cause for intervenors Qwest Communications International Inc., et al., and *amici curiae* Verizon Telephone Companies. With him on the brief were *Michael E. Glover*, *John M. Goodman*, and *Edward H. Shakin*.

Before: SENTELLE and GARLAND, *Circuit Judges*, and SILBERMAN, *Senior Circuit Judge*.

Opinion for the Court filed by *Senior Circuit Judge* SILBERMAN.

SILBERMAN, *Senior Circuit Judge*: Mountain Communications, Inc. is a paging carrier that petitions for review of an FCC order dismissing its complaint against Qwest—the local exchange carrier (LEC) serving the areas where Mountain operates—for charging petitioner two types of fees. The dispute between the carriers as to one of the fees evaporated at oral argument, but we hold that the FCC's decision as to the other was arbitrary and capricious.

I.

Mountain serves customers in three Colorado local calling areas: Colorado Springs, Walsenburg, and Pueblo. All three local calling areas are within the same Local Access and Transport Area (LATA), and Qwest is the provider of local service within each of those local calling areas. Calls from a Qwest customer to another Qwest customer in the same local calling area are local calls, but if a Qwest customer were to

call from one of these local calling areas to another, he or she would incur a toll.

Though Mountain services all three local calling areas, it uses a single point of interconnection (POI) with Qwest, as it is entitled by statute. See 47 U.S.C. § 251(c)(2)(B) (providing that LECs must provide interconnection facilities with other carriers “at any technically feasible point within the [incumbent local exchange] carrier’s network”); see also 47 C.F.R. § 51.321(a); *In re: Developing a Unified Intercarrier Compensation Regime*, 16 FCCR 9610, 9650–51 ¶ 112 (2001). The POI is located in Pueblo. Customers in each of the three calling areas have pager numbers associated with their individual local calling areas. It is therefore the paging customer’s residence that correlates with the paging number, and a call from a telephone in a local calling area to a pager associated with the same local calling area will seem to the calling party to be a local call. But Mountain’s maintenance of a single POI in Pueblo, however, means that every call to a Mountain customer, regardless of the place where the call originated, must pass through Pueblo before Qwest hands it off to Mountain and Mountain delivers it to the pager. Thus, a Colorado Springs resident attempting to page a Colorado Springs Mountain customer dials a Colorado Springs exchange, but the call is first routed to Pueblo before being rerouted to Colorado Springs.

Qwest has sought to collect fees from Mountain for these types of calls—calls that originate and terminate in Colorado Springs or Walsenburg but go through Mountain’s POI in Pueblo. Qwest considers these calls to be toll calls, but does not charge its own customer—the caller—for placing such calls, perhaps because it lacks the technological ability to do so. See *Starpower Communications, LLC v. Verizon South, Inc.*, 2003 FCC LEXIS 6245, at *23 ¶ 17 (Nov. 7, 2003) (attributing such a technological incapacity to Verizon). Instead, Qwest determines whether a customer’s call is a toll call by comparing the number of the caller with the number of the person receiving the call. If both are Colorado Springs numbers, Qwest does not charge the customer a toll even if the call is routed to Pueblo and then back to Colorado Springs.

Qwest claimed in response to Mountain's complaint before the FCC that it was entitled to charge Mountain for the tolls it was unable to charge its own customers. According to Qwest, Mountain could avoid the toll charges by establishing a POI in *each* of the three local calling areas—doubtless at an increased cost. Then, if a paging call were placed from a local number to another local number, no toll would be charged to anyone. If, on the other hand, a paging call were made from one local calling area to another, Qwest would transport the call to Mountain's POI—without crossing a local calling area boundary—at which time Mountain would assume responsibility for delivering the call across the local calling areas, presumably at Mountain's expense.

Mountain claimed before the FCC that the Commission's regulations, specifically 47 C.F.R. § 51.703(b), which states that LECs such as Qwest "may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network," prohibit Qwest from charging for transmitting calls from Qwest customers to Mountain's POI. Mountain also relied on a recent FCC decision, *TSR Wireless, LLC v. US West Communications, Inc.*, 15 FCCR 11166, 11184 ¶ 31 (2000), which interpreted that regulation and rejected a similar effort on the part of an LEC to charge a paging carrier for transmitting calls to the paging carriers' POI, where the POI and the caller are in the same LATA but different local calling areas.

The Commission rejected Mountain's contention. The FCC said that in its *TSR* decision it had cautioned,

nothing prevents [the LEC] from charging its end users for toll calls completed [between local calling areas]. Similarly, section 51.703(b) does not preclude [the paging carrier and the LEC] from entering into wide area calling or reverse billing *arrangements* whereby [the paging carrier] can 'buy down' the cost of such toll calls to make it appear to end users that they have made a local call rather than a toll call.

15 FCCR at 11184 ¶ 31 (emphasis added). This buy-down arrangement is the same concept behind conventional 800 numbers, where the called party is billed for the toll ordinarily incurred by the calling party.

The Commission concluded that here, by establishing a POI in Pueblo and then asking Qwest for lines to connect local customer numbers in Walsenburg, Colorado Springs, and Pueblo to the POI, Mountain made it appear to Qwest customers that they were making local calls from Colorado Springs numbers to Colorado Springs paging numbers—even though they passed through a Pueblo POI. “By configuring its interconnection arrangement in this manner, Mountain prevents Qwest from charging its customers for what would ordinarily be toll calls to access Mountain’s network.” *Mountain Communications, Inc. v. Qwest Communications Int’l, Inc.*, 17 FCCR 15135, 15138 ¶ 5 (2002). The Commission determined that Mountain had obtained a wide area calling service, which is similar to a wide area calling arrangement, and therefore Qwest was entitled to charge Mountain for that service.

II.

Although petitioner does not quarrel with the Commission’s caveat in *TSR*—that the regulation does not prohibit a wide area calling arrangement—it insists that this case is no different than *TSR*; the Commission has simply turned 180 degrees without explanation, and adopted a position at odds with its own regulation and the statutory provision allowing Mountain to make use of one POI within a LATA. We are befuddled at the Commission’s efforts to explain away its *TSR* decision; the facts seem—and are conceded to be—identical, but the results are opposite. In *TSR*, the FCC prohibited US West, the LEC, from charging *TSR*, the paging carrier, for the costs of transporting calls from US West customers to *TSR*’s POI.¹ In that case, just as in the present situation, the paging carrier served separate local calling

¹ US West was the predecessor company to Qwest, the LEC involved in the present dispute.

areas (Yuma and Flagstaff, Arizona), both of which were within the same LATA and served by the same LEC. TSR used a single POI, and a US West customer wishing to page a TSR customer within the same local calling area would have to place a call that would be routed across local calling area boundaries. US West attempted, as Qwest attempts here, to charge the paging carrier a fee for transporting those calls to the paging carrier's POI. The FCC ruled that such a charge would violate 47 C.F.R. § 51.703(b), because the calls *originated* on US West's network, and an LEC may not charge another carrier for traffic originating on the LEC's network. See *TSR*, 15 FCCR at 11176 ¶ 18, 11181 ¶ 25, 11184 ¶ 31.² The FCC concedes that the facts of *TSR* are identical to those presented here, but argues that the present network configuration nevertheless may be considered wide area calling, even if the same configuration in *TSR* was not so considered.

The Commission's attempt to stretch the concept of a wide area calling arrangement (essentially an agreement) to a wide area calling "service" is logically inconsistent with its *TSR* decision.³ The premise, according to the Commission's *TSR*

² In the words of the Commission, "[s]ection 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to [wireless] providers anywhere within the MTA [Major Trading Area] in which the call originated. . . ." *TSR*, 15 FCCR at 11184 ¶ 31. An MTA is the area within which wireless providers offer service, and within which the FCC's reciprocal compensation rules apply. All three local calling areas at issue here are within the same MTA. Section 51.701(b)(2), to which the Commission referred, defines "telecommunications traffic" as that traffic "exchanged between a LEC and a [wireless] provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter."

³ Mountain argues that under Qwest's tariffs, wide area calling services exist only where the wireless carrier uses an interconnection known as Type 2. Mountain uses a Type 1 interconnection, which differs from Type 2 in that Mountain's customers have telephone numbers associated with their individual local calling

reasoning, of a wide area calling arrangement is that the LEC can charge a toll call to its customers. In that event the paging carrier has an incentive to “buy down” that charge so that Qwest’s customer is not deterred by the toll from making a paging call. Here, for reasons not entirely clear to us, Qwest does not charge its customers for what it regards as a toll call if the originating number and the paging number are in the same local calling area. *See generally Starpower Communications*, 2003 FCC LEXIS 6245 at *23 ¶ 17 (Nov. 7, 2003) (noting that “industry practice among local exchange carriers . . . appears to have been that calls are designated as either local or toll by comparing the [phone numbers] of the calling and called parties”).⁴ Accordingly, Mountain has no incentive to enter into a wide area calling arrangement with Qwest. Mountain’s system of interconnection provides it no advantages other than those to which, presumably, it is entitled for free.⁵ The Commission nevertheless chooses to

areas instead of having numbers associated with the location of the POI, here, Pueblo. Before us, the FCC denies that there is any distinction between Type 1 and Type 2 interconnections for the purpose of establishing whether there is a wide area calling arrangement. We need not decide whether there can be a wide area calling arrangement in a Type 1 system, and our analysis does not turn on a conception of wide area calling being limited to Type 2 systems.

⁴ Mountain further argues that Qwest would not legally be permitted to charge for calls by Qwest customers to paging customers with numbers in the same local calling area as the caller. *See* 47 U.S.C. § 153(48) (allowing a “separate charge” beyond that required for local service for “telephone service *between* stations in different exchange areas”) (emphasis added); 47 C.F.R. § 51.701(d) (defining a call’s termination as the point at which the call is delivered to the called party). We need not decide whether the FCC could reasonably interpret the statute and regulation to allow a toll where a call begins and ends within a single local calling area but passes through a different one.

⁵ Neither in *TSR* nor in this case has the Commission suggested, or has Qwest claimed, that Qwest had any right to refuse to allow

term what Mountain has ordered from Qwest as wide area calling “*service*,” which presto becomes a reasonable facsimile of a wide area calling *agreement*. The FCC’s characterization of Mountain’s arrangement as a wide area calling “*service*,”—sort of a constructive agreement—is rendered even more dubious by the fact that there are no additional services provided by wide area calling. The only difference between wide area calling and traditional telephony is the entity billed for the tolls.

Unfortunately for the Commission, the exact same analysis could have been applied in *TSR*—but was implicitly rejected. Therefore the Commission has, just as Mountain has claimed, changed direction without explanation, indeed without even acknowledging the change.

Perhaps more fundamental, by abandoning the concept of a buy-down agreement between the parties and simply designating the service Mountain obtained as a wide area calling service, the Commission seemingly comes into direct conflict with its own regulation. See *MCImetro Access Transmission Servs. v. BellSouth Telecomms, Inc.*, No. 03-1238, 2003 U.S. App. LEXIS 25782, at *24 (4th Cir. Dec. 18, 2003) (holding that 47 C.F.R. § 51.703(b) “unequivocal[ly] prohibit[s] LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions”). In *TSR*, the Commission had interpreted its regulation 51.703(b), which prohibits LECs from assessing *charges* on other carriers for delivering traffic originating on the LEC’s network, as not applying to a voluntary *agreement* that a paging carrier enters into with the LEC to compensate the LEC for foregoing its option to charge its customers. In other words, the Commission implicitly construed such an agreement as not a “charge” for telecommunications traffic but rather compensation for a separate benefit. The Commission described “wide area calling” as “a service in which a

Mountain to obtain paging numbers associated with each local calling area. See *In re: Numbering Resource Optimization*, 15 FCCR 7574, 7577 n.2 (2000) (“A carrier must obtain a central office code [the first three digits of a seven-digit phone number] for each rate center in which it provides service in a given area code.”).

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." *TSR*, 15 FCCR at 11167 n.6 (emphasis added). But in this case the Commission abandoned that construction, instead allowing Qwest to *charge* Mountain for the wide area calling service it was deemed to enjoy, though there was no agreement. By shifting its characterization of the exception to § 51.703(b)'s prohibition on charges from an agreement to compensate LECs for a foregone opportunity, to a *charge* for the telecommunications traffic, the FCC decision appears to run afoul of § 51.703(b)'s prohibition on charges.

The Commission, moreover, has not even tried to explain how its position can be reconciled with the statutory provision, 47 U.S.C. § 251(c)(2)(B), which, it will be recalled, obliges an LEC to provide interconnection facilities with any other carrier at a single "technically feasible" POI. Mountain maintains that that statutory provision implicitly precludes an LEC from charging for such an interconnection, and the Commission has not responded to that argument. We do not, therefore, decide whether the Commission could reasonably interpret the statute to allow for such charges.

We therefore rather easily conclude that the Commission's decision on this issue is arbitrary and capricious. *See generally, e.g., Ramaprakash v. FAA*, 346 F.3d 1121, 1124-25 (D.C. Cir. 2003).

III.

In addition to the charges Qwest has assessed for delivering Qwest-originated calls to Mountain's POI, Qwest has also assessed "transit" charges for the delivery of calls originated by a customer of an entirely different network. If a non-Qwest customer wishes to page a Mountain customer, the call is routed to Qwest. Qwest then carries the call on its network—in like manner as if a Qwest customer had placed the call—to Mountain's POI. Mountain then assumes respon-

sibility for delivering the call to the Mountain customer. Qwest incurs costs for switching and routing these calls over the Qwest network, and Qwest charged Mountain for the last of five parts of those expenses—the cost of delivering the call from the Qwest end office switch to Mountain's POI. The FCC allowed Qwest to charge for this service, but indicated that Mountain could seek reimbursement from the originating carrier for whatever charges it paid to Qwest. *See Mountain Communications*, 17 FCCR at 15137 n.13. Mountain's petition challenged this FCC decision as well, claiming that the charge is arbitrary and capricious because it does not follow the standard practice of charging the cost of calls to the network of the party initiating the call. Mountain insisted that the prospect of reimbursement from the originating carrier was illusory, because Mountain never receives information from Qwest about which carrier initiates any individual call, and it is therefore impossible for Mountain to seek reimbursement from a third carrier.

It is undisputed that Qwest need not absorb these costs; the only question is whether Qwest can charge Mountain for one of the five portions of this cost or must instead look to the originating carrier for all of the costs. It might well be reasonable for the Commission to authorize Qwest to apportion those costs, but we do not understand why the Commission did so. It did not explain why it rejected Mountain's contention that the originating carrier should be charged for all the costs. In any event, by indicating that Mountain could charge the originating carrier, it suggested that Mountain was essentially correct in claiming that the originating carrier should bear *all* the transport costs. At oral argument, Qwest's counsel obviated any need for us to decide this issue by indicating that Qwest would provide Mountain with the information necessary so that Mountain could charge the originating carrier for reimbursement. Under those circumstances, Mountain dropped that part of its petition.

* * * * *

Accordingly, the Commission's order is vacated in part and the case is remanded.

Number: PL-268
Date: March 27, 2001
From: North American Numbering Plan Administration (NANPA)
Subject: 520 NPA Split, Creating 928 NPA (Arizona)

On September 5, 2000, the Arizona Corporation Commission (ACC) approved a relief plan calling for a geographic split of the 520 NPA, which currently serves most of Arizona excluding the greater Phoenix calling area.

The new 928 NPA will encompass most of the geographic area of the existing 520 NPA, excluding the rate areas within Cochise, Pima, Pinal and Santa Cruz counties in the greater Tucson calling area. The following rate areas will retain the 520 NPA: Ajo, Benson, Bisbee, Blackwater, Bowie, Casa Blanca, Casa Grande, Cascabel, Coolidge, Douglas, Elfrida, Eloy, Florence, Hayden, Komatke, Lone Butte, Maricopa Village, Maricopa, Nogales, Patagonia, Pearce, Portal, Sacaton, San Manuel, San Simon, Santa Rosa, Sasbe, Sells, Sierra Vista, Stutonic, Sunizona, Superior, Tombstone, Tucson, West San Simon, Whitflow, and Willcox.

The split of the 520 NPA, and the beginning of a permissive dialing period, will take place at 12:01 AM Mountain Time on June 23, 2001. The permissive dialing period will end on January 5, 2002. During the permissive dialing period, either the 520 or the 928 NPA code will be acceptable in a dialed number terminating in the new 928 NPA. After the permissive dialing period, all calls dialed with incorrect NPA codes, as defined in the NPA split information published in the Local Exchange Routing Guide (LERG), will be routed to intercept. This intercept recording announcement shall be available at least until March 9, 2002.

The attached map illustrates the 520 and 928 NPA configuration after the split is completed. Also attached are listings of the assigned central office codes (NXXs) and Rate Areas that will be associated with the 520 and 928 NPAs. These lists reflect assignments published in the LERG as of March 1, 2001. Since the attached NXX information may change over time, updated information may be found either in the LERG or the NPA NXX Activity Guide (NNAG). Current information in the NNAG is free of charge and from the LERG is available by license contract from Telcordia's Traffic Routing Administration (TRA) group, which can be contacted by dialing the TRA hotline at 732-699-6700.

All international and domestic carriers are asked to ensure that the new 928 NPA code has been activated throughout their networks prior to June 23, 2001. Test calls to verify routing to the new NPA code can be made by dialing either of the two test numbers: LATA 666 - (928) 526-4928, or LATA 668 - (928) 348- 7928. These test numbers will be in service as of June 23, 2001, and will be disconnected no earlier than March 9, 2002. Calls successfully completed to the test numbers will receive a recorded announcement.

The dialing plan for the 928 NPA will be the same as the current 520 NPA dialing plan; namely,

- All home NPA local calls may be dialed on a 7-digit basis with no prefix (NXX-XXXX).
- All foreign NPA local calls will be dialed with 10 digits (NPA+NXX+XXXX)
- All direct dialed toll calls, i.e., calls that generally incur an extra charge, must be dialed with a prefix "1" and 10 digits (1+NPA + NXX + XXXX).
- All operator assisted calls, including credit card, collect, and third party calls, will be dialed with a prefix "0" and 10 digits (0+NPA+NXX+XXXX).

General questions concerning the geographic split may be directed to Joe Cocke, NeuStar, Inc.— NPA Relief Planning – Western Region at 805-520-1945. Questions of a technical nature should be directed to the NPA project coordinator of each respective service provider:

North American Numbering Plan Administration

are governed by section 251, and are subject to reciprocal compensation. Two common types of local LEC-CMRS interconnection include: connection through a LEC (typically an ILEC) end office (Type 1); and direct mobile switching center (MSC) connection with a LEC tandem (Type 2A). Where CMRS-LEC traffic volumes are small, as in rural areas, the CMRS carrier can connect to other LEC end offices and other carriers via a LEC end office switch.¹⁴⁸ The other interconnection alternative is a trunk between a MSC and the LEC tandem, whereby the CMRS carrier connects to LEC end offices connected to the tandem together with other carriers (including IXCs) interconnected through the tandem.

92. Under both types of LEC-CMRS interconnection, the LEC receives forward-looking economic cost- (FLEC-) based reciprocal compensation for the LEC's additional costs of terminating CMRS-originated calls. The CMRS carrier, on the other hand, is compensated at the LEC's FLEC-based rate, which is used as a presumptive proxy for the CMRS carrier's own termination costs,¹⁴⁹ unless the CMRS carrier submits a forward-looking economic study to rebut this presumptive symmetrical rate.¹⁵⁰ Local LEC-CMRS calls would presumably be governed by any new, unified bill-and-keep regime. We seek comment on whether any such regime should be applied to these types of LEC-CMRS interconnection. We also seek comment on the potential effects of a unified bill-and-keep regime on local LEC-CMRS interconnection.

93. LEC-paging traffic is exchanged largely by mutual agreement.¹⁵¹ LEC-paging interconnection are of the same three types technically as LEC-CMRS generally: Type 1 (through a LEC end office); Type 2A (direct connection with a LEC tandem office); or Type 2B (direct connection limited to a specific LEC end office).¹⁵² Paging companies are paid terminating compensation stipulated in their mutual contractual agreements. The compensation rates vary by agreement. Some agreements stipulate charges per minutes of use.¹⁵³ Terminating

¹⁴⁸ Alternatively, in rural settings, wireless carriers can elect to deliver CMRS-originated calls to a large ILEC (typically a Regional Bell Operating Company [RBOC]) for routing to the rural LEC carrier. The large ILEC and rural LEC are interconnected on a bill-and-keep basis for the exchange of wireline calls. Once the CMRS-originated traffic is switched by the ILEC tandem, CMRS-originated traffic travels on the same trunk as wireline calls to the ILEC. The CMRS carrier pays the ILEC for switching and transport, and the rural LEC can seek recovery of its termination costs (if it can segregate the traffic) by asking the ILEC to charge the CMRS carrier. Increasingly, the large ILEC is unwilling to bill for the rural carrier, so rural LECs have begun to insist that the CMRS carrier deliver calls directly to the rural LEC's switch.

¹⁴⁹ *Local Competition Order*, 11 FCC Rcd. at ¶ 1085; 47 C.F.R. § 51.711(a).

¹⁵⁰ *Local Competition Order*, 11 FCC Rcd. at ¶ 1089; 47 C.F.R. § 51.711(b).

¹⁵¹ Where LECs and paging companies are unable to negotiate agreed-upon rates, we direct states, when arbitrating disputes under section 252(d)(2), to establish rates for the termination of traffic by paging providers based on the forward-looking economic cost of such termination to the paging provider. The paging provider seeking termination fees must prove to the state commission the costs of terminating local calls. *Local Competition Order*, 11 FCC Rcd. at ¶ 1093.

¹⁵² Columbia Institute for Tele-Information *ex parte* in CC Docket Nos. 99-68 *et al.*, "Stakeholders' Workshop on Interconnection Pricing" at Attachment 4 (filed Dec. 22, 2000).

¹⁵³ For example, Sprint and Paging Networks, Inc. have agreed to a constant \$0.00425 per minute of use in a 16-state territory. *Id.* Verizon Wireless Messaging Services and SBC have contracted for SBC to pay \$0.005 per minute of use for Type 1 or Type 2A interconnection, and between \$0.00174 and 0.006 per minute of use for Type 2B interconnection. *Id.*

compensation is paid to paging companies on the basis of aggregated minutes at the end of each month. We seek comment on whether (and if so, how) a bill-and-keep regime may apply to LEC-paging interconnection arrangements.

94. We also seek comment on whether access charges, when they apply to interexchange traffic under sections 201, 251(g) and 251(i), should also apply to CMRS carriers, and to what extent. In that context, commenters should also address whether CMRS carriers are entitled to receive access charges, or some additional compensation, for interexchange traffic terminating on their networks.

95. We note that there are further examples of carrier-to-carrier interconnection involving CMRS carriers that are not currently rate-regulated. Pursuant to section 251(a), as well as sections 201(a) and 332(c), CMRS carriers have a general duty to directly or indirectly interconnect with each other. In the absence of detailed interconnection regulation, many CMRS carriers appear to have entered into voluntary interconnection agreements. Because intercarrier, local CMRS traffic is often insufficient to justify a dedicated trunk, the majority of CMRS-to-CMRS call exchange occurs through a RBOC tandem switch. Under this arrangement, CMRS carriers appear to exchange local traffic on a bill-and-keep basis. As wireless traffic is growing, however, CMRS carriers increasingly enter into direct interconnection agreements. When the traffic between these carriers justifies a trunk, wireless carriers typically interconnect directly. We understand that the recurring and non-recurring cost of the trunk line is divided among the carriers by mutual contractual agreement, and that the carriers exchange traffic on a bill-and-keep basis. No instances of unreasonable terminating charges for these CMRS-to-CMRS calls have been brought to our attention. While we do not contemplate extending compensation rules to these arrangements, we nonetheless seek comment on how well these existing unregulated bill-and-keep agreements work, and their implications for a possible unified regime. We also invite comment on why we have not seen unreasonable termination fees from CMRS firms, while we have from wireline CLECs. Finally, we seek comment on whether (and if so, how) adopting a unified bill-and-keep regime—such as COBAK or BASICS—might affect unregulated types of intra-MTA, CMRS-to-CMRS interconnection.

96. Another category of unregulated interconnected calls subject to neither reciprocal compensation nor access charges is CMRS-IXC interconnection.¹⁵⁴ For inter-MTA call traffic, CMRS carriers effectively act as resellers, buying large, volume-discounted bundles of minutes of use from IXCs, then reselling them to CMRS subscribers. We understand that the IXCs then pay any terminating access, frequently absorbing terminating access charges that exceed the wholesale, flat rates negotiated with CMRS carriers. We seek comment on whether (and if so, how) COBAK and BASICS might affect the current quasi-resale regime. We seek comment on how eliminating terminating access under bill and keep might change the frequency or terms of IXC-CMRS agreements.

9. Bill and Keep for Interstate Access Charges

97. The long-term goal of this *NPRM* is to develop a uniform regime for all forms of intercarrier compensation, including interstate access. We do not, however, anticipate

¹⁵⁴ This category of interconnected calls encompasses CMRS-to-IXC-to-a-third telecommunications carrier.