

ORIGINAL  
OPEN MEETING ITEM



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COMMISSIONERS  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG



ARIZONA CORPORATION COMMISSION

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DATE: October 2, 2006  
DOCKET NO.: T-01051B-06-0175 et al.  
TO ALL PARTIES:

AZ CORP COMMISSION  
DOCUMENT CONTROL

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

QWEST CORPORATION et al.

(ARBITRATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

OCTOBER 11, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 17 AND 18, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission  
DOCKETED

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BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

1  
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman  
5 WILLIAM A. MUNDELL  
6 MIKE GLEASON  
7 KRISTIN K. MAYES  
8 BARRY WONG

9 IN THE MATTER OF QWEST CORPORATION'S  
10 APPLICATION FOR ARBITRATION  
11 PROCEDURE AND APPROVAL OF  
12 INTERCONNECTION AGREEMENT WITH  
13 HANDY PAGE, AND PURSUANT TO SECTION  
14 252(B) OF THE COMMUNICATIONS ACT OF  
15 1934, AS AMENDED BY THE  
16 TELECOMMUNICATIONS ACT OF 1996, AND  
17 THE APPLICABLE STATE LAWS.

DOCKET NO. T-01051B-06-0175  
DOCKET NO. T-02556A-06-0175  
DOCKET NO. T-03639A-06-0175

DECISION NO. \_\_\_\_\_

**ORDER**

12 Open Meeting  
13 October 17 and 18, 2006  
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 Having considered the entire record herein and being fully advised in the premises, the  
17 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. On March 17, 2006, Qwest Corporation ("Qwest") filed with the Commission an  
20 Application for Arbitration Procedure and Approval of Interconnection Agreement pursuant to  
21 Section 252(b) of the Communications Act of 1934 as amended by the Telecommunications Act of  
22 1996 (the "Act") for approval of an interconnection agreement between Qwest and each of eleven  
23 named wireless and paging carriers<sup>1</sup> to implement the ruling of the Federal Communications  
24 Commission ("FCC") *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-*  
25 *Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination*  
26 *Tariffs*, CC Docket 01-92, FCC 05-42 (Rel. Feb. 24, 2006) ("*T-Mobile Order*").

27 <sup>1</sup> Qwest's Application for Arbitration Procedure and Approval of Interconnection Agreement originally named eleven  
28 non-petitioning parties: Azcom Paging, Inc.; Smith Bagley, Inc.; Interstate Wireless, Inc. dba Handy Page; Answerphone,  
Inc.; Star Page, Inc.; Glen Canyon Communications, Inc.; Nextel West Corp.; Western Wireless Corporation; Tele-Page,  
Inc.; Westsky Wireless, LLC; and Pac-West Telecomm, Inc.

1  
2 2. After filing its petition in this docket, Qwest continued negotiations with the eleven  
3 named non-petitioning carriers, and as a result, entered into interconnection agreements with many of  
4 the carriers or discovered that interconnection was not possible. Qwest, therefore, moved  
5 periodically to dismiss each party with which it either executed an agreement or discovered it could  
6 not interconnect. Currently, all non-petitioning carriers, save Interstate Wireless, Inc. dba Handy  
7 Page ("Handy Page"), have been dismissed from this proceeding and the caption has been amended  
8 accordingly.

9 3. Qwest is an incumbent local exchange carrier ("ILEC") and regional Bell operating  
10 company ("RBOC") with its principal place of business in Denver, Colorado. Qwest is a local  
11 exchange carrier ("LEC") in Arizona.

12 4. Handy Page is a Commercial Mobile Radio Service ("CMRS") carrier licensed by the  
13 FCC. Handy Page is a one-way paging carrier in Arizona and currently connects with Qwest with a  
14 Type 2 interconnection.

15 5. Pursuant to the Act, the Commission was required to issue a final order within 120  
16 days, in this case, by July 11, 2006. Various procedural orders extended the deadline, and the  
17 timeclock currently expires on October 31, 2006.

18 6. According to Qwest and Handy Page, the only remaining issue to be decided is  
19 whether Wide-Area Calling ("WAC") is a matter that is subject to arbitration and interconnection  
20 agreement pursuant to the Act.

21 7. On July 13, 2006, by Procedural Order, Qwest, Handy Page and the Commission's  
22 Utilities Division ("Staff") were ordered to brief the issue.

23 8. On July 28, 2006, Qwest, Handy Page and Staff filed a Joint Request for Modification  
24 of Briefing Schedule in order to accommodate scheduling issues of Qwest counsel. The proposed  
25 briefing schedule was adopted by Procedural Order on August 2, 2006.

26 9. On August 16, 2006, Handy Page filed a request for an extension of time to file Briefs  
27 until August 25, 2006 and for Responsive Briefs to be filed September 1, 2006.

28 10. On August 17, 2006, Qwest and Staff filed separate responses to Handy Page's

1 request, each stating it consented to the requested extension. By Procedural Order on August 23,  
2 2006, Handy Page's requested extension was granted.

3 11. On August 25, 2006, Qwest, Handy Page and Staff filed their Opening Briefs in this  
4 matter. Qwest and Handy Page each filed a Response Brief on September 1, 2006.

5 **Wide-Area Calling**

6 12. The question before us is whether WAC is properly subject to arbitration and  
7 interconnection agreement pursuant to the Act.

8 13. WAC, "also known as 'reverse billing' or 'reverse toll,' is a service in which a LEC  
9 agrees with an interconnector not to assess toll charges on calls from the LEC's end users to the  
10 interconnector's end users, in exchange for which the interconnector pays the LEC a per-minute fee  
11 to recover the LEC's toll carriage costs."<sup>2</sup> According to Qwest, "WAC provides a way for Qwest  
12 landline customers to make toll-free, direct-dialed, non-local calls to pagers in a manner that is  
13 similar to the way 800 Service works, i.e., charges are assessed to the paging carrier instead of to the  
14 originating landline customer."<sup>3</sup>

15 **Handy Page's Position**

16 14. Handy Page argues that WAC is in the public interest, and that WAC, as configured in  
17 Arizona, is necessary for interconnection. Handy Page draws a distinction between WAC as  
18 described by Qwest and the FCC in the *TSR Wireless Order* and Handy Page's rating and routing of  
19 calls. Handy Page states that although the *TSR Wireless Order* states "nothing prevents U S West  
20 from charging its end users for toll calls completed over the Yuma-Flagstaff T-1"<sup>4</sup>, because the  
21 Qwest originating line and the Handy Page assigned number are always in the same rate center, it is  
22 impossible for a "toll call" to be made over the Qwest Arizona Intra-MTA (Major Trading Area<sup>5</sup>)  
23 WAC that connects calls to Handy Page. Handy Page defines toll calls as those "for which the caller  
24

25 <sup>2</sup> Memorandum Opinion and Order, *In the Matter of TSR Wireless, LLC et al v. U S West Communications, Inc., et al.*, 15  
FCC Rcd 11166, n. 6 (Rel. June 21, 2000) ("*TSR Wireless Order*").

26 <sup>3</sup> Declaration of Robert H. Weinstein, Exhibit B to Qwest's Opening Brief ("*Weinstein Declaration*"), ¶ 3.

27 <sup>4</sup> *TSR Wireless Order* at ¶31.

28 <sup>5</sup> In its Order regarding *Implementation of the local Competition Provisions in the Telecommunications Act of 1996*, CC  
Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499 ("*First Report and Order*"), the FCC set forth MTAs, the wireless  
license territory in which wireless or paging providers operate, as the local service area for CMRS traffic for the purpose  
of reciprocal compensation under Section 252(d).

1 must dial 1+10 digits in Arizona and for which the caller is, or can be, billed a toll charge.”<sup>6</sup> Handy  
 2 Page takes issue with the characterization by Qwest and Staff that WAC is a reverse toll service and  
 3 argues that Staff’s reasoning and conclusions to that end are fundamentally flawed, based on Handy  
 4 Page’s understanding of WAC as stated above.

5           15. Consistent with its stated understanding of WAC service, Handy Page argues that  
 6 WAC calling must be a provision of an interconnection agreement. Handy Page further asserts,  
 7 based on its understanding that no toll calls exist with WAC service, that Mr. Weinstein  
 8 mischaracterizes WAC service when he states “WAC operates to suppress any toll charges that  
 9 would apply to any land-to-mobile toll call between exchanges when that call is originated by a  
 10 Qwest landline customer to a WAC telephone number.”<sup>7</sup>

11           16. Handy Page states that Qwest has improperly billed Handy Page for WAC because the  
 12 FCC rules only allow Qwest to charge for delivering “non-local” calls to Handy Page, and there are  
 13 no non-local calls taking place between Qwest and Handy Page. Handy Page further argues that all  
 14 Qwest WAC tariff charges for intra-MTA calls are prohibited by FCC rules promulgated under the *T-*  
 15 *Mobile Order*. According to Handy Page, under the FCC rules, all WAC calls sent to Handy Page  
 16 are subject to section 251(b)(5) of the Act, and therefore subject to reciprocal compensation.

17           17. Handy Page also lodged objection to what it characterizes as “Qwest’s inadequate,  
 18 dubious, and legally questionable responses to Handy Page’s data request.”<sup>8</sup>

19 *Qwest’s and Staff’s Position*

20           18. Qwest points out that Handy Page’s argument relating to whether WAC is in the  
 21 public interest is not properly before the Commission in this matter, because the sole issue remaining  
 22 in this docket is whether WAC is necessary for interconnection.

23           19. Staff and Qwest agree that under the *T-Mobile Order*, the FCC amended its rules to  
 24 prohibit LECs from imposing compensation obligations for reciprocal compensation traffic pursuant  
 25 to tariff. The FCC also permitted ILECs to request interconnection from a CMRS provider and  
 26

27 <sup>6</sup> Handy Page Reply Brief at 4.

28 <sup>7</sup> *Id.* at 11.

<sup>8</sup> Handy Page Opening Brief at 11.

1 involve the negotiation and arbitration procedures set forth in Section 252 of the Act. From the date of  
2 the *T-Mobile Order* on a going-forward basis, ILEC tariffs containing the terms, conditions and rates  
3 for CMRS reciprocal compensation arrangements were no longer permissible.

4         20. Qwest argues that WAC is a billing service that is not subject to interconnection  
5 agreement under the Act, and asserts that WAC is not necessary for interconnection and is not  
6 required to be provided under the FCC's rules. Qwest cites the *TSR Wireless Order*, wherein the  
7 FCC stated explicitly that WAC is not necessary for interconnection or for the provision of the  
8 CMRS carrier to its customers, and further stated that LECs are not required to provide WAC under  
9 FCC rules. Qwest further stated that it does not bill Handy Page for local calls in violation of the *TSR*  
10 *Wireless Order*.

11         21. Staff provided a Statement analyzing the state of the law regarding WAC service.  
12 According to Staff, Qwest is obligated to establish reciprocal compensation arrangements for the  
13 exchange of local traffic between itself and a CMRS provider pursuant to the FCC's *First Report and*  
14 *Order*. Staff agrees with Qwest that under the *TSR Wireless Order*, Qwest's WAC service may be  
15 offered on a tariffed basis, rather than through interconnection.

16         22. Qwest points out the distinction drawn by the FCC between a LEC's duty to deliver  
17 calls within the MTA at no charge to the paging carrier, versus the ability of the LEC to charge its  
18 own end user for placing the call, where the former is considered carrier compensation under the  
19 FCC's reciprocal compensation rules and the latter is not. The FCC illustrated the distinction in the  
20 *TSR Wireless Order*:

21  
22                 Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for  
23 facilities used to deliver LEC-originated traffic that originates and  
24 terminates within the same MTA, as this constitutes local traffic under our  
25 rules. Such traffic falls under our reciprocal compensation rules if carried  
26 by the incumbent LEC, and under our access charge rules if carried by an  
27 interexchange carrier. This may result in the same call being viewed as a  
28 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. Similarly,

1 section 51.703(b) does not preclude TSR and U S West from entering into  
2 wide area calling or reverse billing arrangements whereby TSR can “buy  
3 down” the cost of such toll calls to make it appear to end users that they  
4 have made a local call rather than a toll call. Should paging providers and  
5 LECs decide to enter into wide area calling or reverse billing  
6 arrangements, nothing in the [FCC’s] rules prohibits a LEC from charging  
7 the paging carrier for those services.<sup>9</sup>

8 Qwest argues that the distinction reflects the two transactions involved between interconnecting  
9 carriers when a call is placed: one, between the originating network and terminating network; the  
10 second, between the originating network provider and its customer. Qwest asserts that the second  
11 transaction, between the originating network provider and its customer, is the toll service used by a  
12 Qwest customer who calls a pager number, and is associated with WAC. Staff and Qwest note that in  
13 its *TSR Wireless Order*, the FCC specifically determined that rule 51.703(b) did not prohibit Qwest  
14 from charging for WAC. Staff asserts that this essentially means that WAC is not a cost related to  
15 LEC originating traffic. Staff further notes that the FCC expressly stated that WAC is not necessary  
16 for interconnection or for the provision of TSR’s service to its customers. Staff therefore concluded  
17 that Qwest’s WAC service is not subject to reciprocal compensation and is therefore not subject to  
18 interconnection agreement.

19 23. Staff points out that Handy Page is not required to accept the template agreement if it  
20 disputes specific terms and may seek to arbitrate disputed issues before the Commission. However,  
21 because Handy Page and Qwest appear to have agreed on all issues except whether WAC is subject  
22 to interconnection agreement, there appears no issue to arbitrate between the two parties.

23 24. Qwest further argues that its WAC tariff and the interconnection agreement at hand in  
24 this docket are not “inextricably intertwined,” as asserted by Handy Page, because it is not necessary  
25 to purchase WAC in order to interconnect with Qwest.

26 25. In its response to Handy Page, Qwest argues that the justness and reasonableness of  
27 the WAC tariff rates may not be adjudicated in an arbitration under § 252(e) because WAC is not an  
28 interconnection facility or network element. Qwest states that WAC charges are established in  
Qwest’s Commission-approved tariff, and there is no basis to review the tariff in this proceeding.

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<sup>9</sup> *TSR Wireless Order* at ¶31 (footnotes omitted).



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5. The Commission has jurisdiction over Qwest and Handy Page and of the subject matter of the Petition.

6. The Commission's resolution of the issues pending herein is just and reasonable, meets the requirements of the Act and regulations prescribed by the FCC pursuant to the Act, is consistent with the best interests of the parties, and is in the public interest.

**ORDER**

IT IS THEREFORE ORDERED that Wide Area Calling is not a telecommunications service subject to arbitration under Section 251(b) of the Act.

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IT IS FURTHER ORDERED that Qwest and Handy Page shall file their negotiated Interconnection Agreement that is consistent with the findings herein within 30 days of the effective date of this Decision.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

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SERVICE LIST FOR:

QWEST CORPORATION et al.

DOCKET NO.:

T-01051B-06-0175 et al.

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