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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

OCT 20 2006

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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

DECISION NO. 68993

ORDER

Open Meeting
October 17 and 18, 2006
Phoenix, Arizona

BY THE COMMISSION:

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

FINDINGS OF FACT

1. On March 17, 2006, Qwest Corporation ("Qwest") filed with the Commission an Application for Arbitration Procedure and Approval of Interconnection Agreement pursuant to Section 252(b) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act") for approval of an interconnection agreement between Qwest and each of eleven named wireless and paging carriers¹ to implement the ruling of the Federal Communications Commission ("FCC") *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, FCC 05-42 (Rel. Feb. 24, 2006) ("*T-Mobile Order*").

¹ Qwest's Application for Arbitration Procedure and Approval of Interconnection Agreement originally named eleven 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."² 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."³

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"⁴, 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 Area⁵)
23 WAC that connects calls to Handy Page. Handy Page defines toll calls as those "for which the caller
24

25 ² 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 ³ Declaration of Robert H. Weinstein, Exhibit B to Qwest's Opening Brief ("*Weinstein Declaration*"), ¶ 3.

27 ⁴ *TSR Wireless Order* at ¶31.

28 ⁵ 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.”⁶ 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.”⁷

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.”⁸

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 ⁶ Handy Page Reply Brief at 4.

28 ⁷ *Id.* at 11.

⁸ Handy Page Opening Brief at 11.

1 invoke the negotiation and arbitration procedures set forth in Section 252 of the Act. From the date
2 of the *T-Mobile Order* on a going-forward basis, ILEC tariffs containing the terms, conditions and
3 rates 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.⁹

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.

⁹ *TSR Wireless Order* at ¶31 (footnotes omitted).

1 26. Qwest is agreeable to paying Handy Page termination compensation for Qwest
2 originated intra-MTA calls, including WAC calls, for Type 2 interconnection.

3 Resolution

4 27. No resolution of Handy Page's assertion that WAC is in the public interest is
5 necessary here, as the sole issue before us is whether WAC is a telecommunications service subject to
6 arbitration.

7 28. We agree with Qwest that the *TSR Wireless Order* addresses the same matter at issue
8 in this Docket. The FCC found that WAC service is unnecessary for interconnection or the provision
9 of the paging or wireless carrier to its customers.¹⁰ We find that Handy Page's arguments that no
10 "toll" calls exist between Qwest and Handy Page's interconnection is erroneous. We further agree
11 that Handy Page's remaining arguments are disposed of by our resolution of this matter, and find that
12 no other items remain to be arbitrated between Qwest and Handy Page.

13 29. Under the applicable law and rules, WAC is a tariffed billing service unnecessary for
14 interconnection, and is therefore not a telecommunications service subject to arbitration under
15 Section 251(b) of the Act. Qwest's offering of WAC by way of its tariff is appropriate.

16 30. Qwest and Handy Page have settled the remaining issues associated with the proposed
17 interconnection agreement, and should therefore file their negotiated interconnection agreement in
18 this Docket consistent with this Decision.

19 CONCLUSIONS OF LAW

20 1. Qwest is a public service corporation within the meaning of Article XV of the Arizona
21 Constitution and A.R.S. §§ 40-281 and 40-282.

22 2. Qwest is a telecommunications carrier and ILEC within the meaning of 47 U.S.C. §
23 252.

24 3. Handy Page is a public service corporation within the meaning of Article XV of the
25 Arizona Constitution.

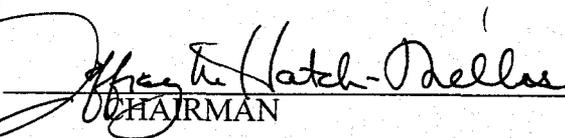
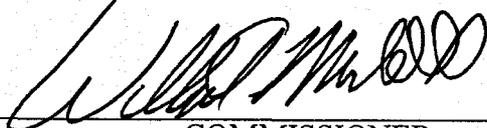
26 4. Handy Page is a telecommunications carrier within the meaning of 47 U.S.C. § 252.

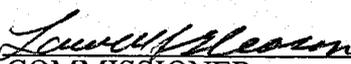
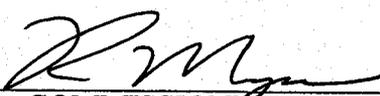
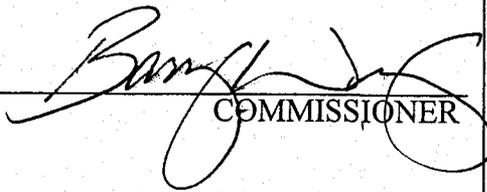
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28 ¹⁰ *TSR Wireless Order* at ¶30.

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

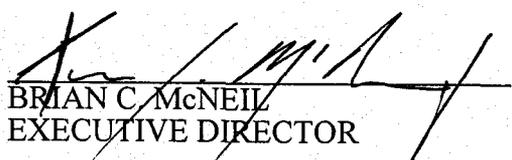
4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7  CHAIRMAN  COMMISSIONER
8

9
10  COMMISSIONER  COMMISSIONER  COMMISSIONER
11

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 20th day of Oct., 2006.

17 
18 BRIAN C. McNEIL
19 EXECUTIVE DIRECTOR

20 DISSENT _____
21

22 DISSENT _____
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1 SERVICE LIST FOR:

QWEST CORPORATION et al.

2 DOCKET NO.:

T-01051B-06-0175 et al.

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