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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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Chairman
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Commissioner
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Commissioner
KRISTIN MAYES
Commissioner
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Commissioner

IN THE MATTER OF QWEST CORPORATION'S APPLICATION FOR ARBITRATION PROCEDURE AND APPROVAL OF INTERCONNECTION AGREEMENT WITH ANSWERPHONE, INC., 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 NOS. T-01051B-06-0175 T-02556A-06-0175 T-03693A-06-0175 **MOTION FOR ARBITRATION ORDER ADOPTING INTERCONNECTION AGREEMENT**

Qwest Corporation, ("Qwest") hereby moves for an arbitration order adopting the interconnection agreement proposed by Qwest pursuant to Section 252(b) of the Act, and ordering the parties to sign and file a conforming agreement with the Arizona Corporation Commission ("Commission") for approval under Section 252(e) of the Act, 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, (Released February 24, 2005) (the "*T-Mobile Order*").

I. BACKGROUND

The FCC has required Qwest to request and enter interconnection agreements for the termination of wireless traffic. Accordingly, Qwest diligently pursued such interconnection agreements with paging carriers, including Answerphone, in Arizona. Eleven such paging providers, including Answerphone, failed to negotiate initially with Qwest. The paging providers' failure to respond to Qwest's invitations to negotiate for an interconnection agreement amounted to a failure to negotiate in good faith under the federal Telecommunications Act of 1996 (the "Act"), and forced Qwest to seek approval of an interconnection agreement arrived at through arbitration as the preferable alternative to discontinuing services relating to termination of wireless traffic to those carriers.

In the *T-Mobile Order*, the FCC clarified a preference for contractual arrangements for wireless termination arrangements by (i) prohibiting LECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariff, (ii) amending its rules to clarify that a LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act, and (iii) identifying state commission implemented or approved rates as the applicable interim rates once a LEC initiates the negotiation process.

In response to the *T-Mobile Order* and the clarifying regulations (*see* 47 CFR § 20.11), Qwest implemented the interim rates approved by the *T-Mobile Order,* and initiated negotiations with the carriers by correspondence dated May 3, 2005.

Also in response to these orders and regulations, Qwest withdrew its tariffs, catalogs, and price lists for wireless termination service in all of its in-region states. In Arizona, Qwest filed to withdraw its tariff on December 27, 2005 in Docket No. T-01051B-05-0921. That filing went into effect by operation of law on January 26, 2006.

Qwest also notified the Commission of its efforts to implement the *T-Mobile Order* on

May 3, 2005.

Many carriers responded to Qwest's initial request for negotiations, and Qwest entered into and filed those agreements with the Commission. Other carriers, including the carriers named in the Application, including Answerphone, did not acknowledge Qwest's initial request for negotiations, so Qwest sent a second request for negotiations on October 11, 2005, again referencing the web address for the current version of the proposed agreement. As an accommodation to the non-responding carriers, that letter also reset the time period for negotiations, so that the window for requesting arbitration opened on February 22, 2005 (the 135th day after October 11, 2005) and closed on March 19, 2005 (the 160th day). Qwest also notified the Commission of its second attempt to initiate negotiations on December 6, 2005. A few more carriers responded to the second notice, and Qwest has entered into and filed those agreements with the Commission.

The carriers named in the Application, including Answerphone, did not respond to Qwest's second notice, so Qwest sent a third request for negotiations on January 13, 2006 (for paging providers) or February 2 (for wireless providers). These requests for negotiations also included a reference to the website address where the current template agreement could be located.

The carriers named in the Application, including Answerphone, still failed to respond to Qwest's requests for negotiation, so Qwest sent yet another request to wireless and paging carriers on February 21, 2006. Again, Qwest provided the carriers, including Answerphone, with the website address for the current template agreement.

Qwest followed up on these email notices with telephone calls to the carriers, including Answerphone, when a contact and phone number could be identified. Also, during that timeframe, Qwest conducted teleconference negotiation sessions on November 16, 30, and December 7, 2005 for paging providers. Qwest made several changes and updated the negotiation template agreement in response to concerns raised by the providers attending those

sessions.

II. HISTORY OF THIS PROCEEDING

This Commission has jurisdiction to arbitrate and approve the interconnection agreement proposed by Qwest in this proceeding pursuant to Section 251(b)(1) of the Act, and also pursuant to the *T-Mobile Order* and clarifying regulations adopted thereunder.

On March 17, 2006, Qwest filed its Application for Arbitration Procedure and Approval of Interconnection Agreement ("Application") with eleven non-responsive carriers, including Answerphone, Inc., ("Answerphone"). In the Application Qwest asked for arbitration and approval of the Type 1 and Type 2 Paging interconnection agreement which was attached to the Application as Exhibit B. As required by Section 252(b)(2)(B) of the Act, Qwest delivered a copy of the Application, together with all exhibits, to the carriers, including Answerphone. The Application was timely filed.[1]

On March 29, 2006, a procedural conference was held as scheduled. Answerphone did not appear. A second procedural order issued on March 29, 2006, ordered the non-petitioning parties to file a response in the docket no later than April, 11, 2006. Answerphone did not respond. Another procedural order dated April 19, 2006 set a procedural conference for May 4, 2006. Answerphone failed to respond or to appear.

After filing its Application, Qwest continued negotiations with the carriers, but Answerphone never responded to any of Qwest's communications. As a result of negotiations with the named carriers who eventually responded, Qwest entered into interconnection agreements with some of the carriers, or discovered that interconnection was not required. Qwest, therefore, moved periodically to dismiss each party with which it either executed an agreement or did not interconnect On May 9, 2006, Qwest filed its Third Amendment to its

[1] Qwest initiated, then restarted negotiations on October 11, 2005. Thus, the 160th day after Qwest restarted negotiations is March 19, 2006. Qwest filed the Application on March 17, 2006.

Application for Arbitration Procedure and Approval of Interconnection Agreement, Deleting Nextel West Corp. and Answerphone, Inc. That Amendment stated, "Answerphone [has] discontinued Type 1 Paging facilities in Arizona." Accordingly, by Procedural Order issued on May 24, 2006, Answerphone was dismissed from the proceeding.

Throughout all times discussed herein, no carrier named in the Application appeared, save for Interstate Wireless, Inc. d/b/a Handy Page ("Handy Page"), which raised unique issues concerning whether Qwest's billing service known as "Wide Area Calling" must be included in the arbitration. Because Handy Page raised no other issues, the Handy Page arbitration was bifurcated from the non-responding carriers. A hearing on Qwest's Application with respect to the remaining non-responding carriers was held on June 19, 2006. While the matter was under advisement, the remaining non-responding carriers finally communicated back to Qwest, and signed the proffered interconnection agreements. As a result Qwest dismissed the remaining carriers, except for Handy Page. On October 20, 2006, the Commission issued decision no. 68993, resolving the only remaining issues between Qwest and Handy Page.

On October 25, 2006, Qwest filed its motion to Re-Open Arbitration with Respect to Answerphone, Inc. Qwest stated that since the dismissal of Answerphone from this proceeding, Qwest discovered that Answerphone continues to operate as a wireless provider of paging services, and has continuously been interconnected with Qwest throughout the relevant time periods of this proceeding. By Procedural Order issued November 3, 2006, the Arbitrator ordered Answerphone to file a response to Qwest's motion by November 16, 2006. The Procedural Order further provided, "If Answerphone fails to file a response by November 16, 2006, Qwest's Motion shall be *considered granted* and the arbitration for interconnection agreement shall be re-opened." (Procedural Order, November 3, 2006, p. 2; emphasis added). Answerphone has not responded. Therefore, by the self-executing language of the Procedural Order, the arbitration is re-opened.

III. REQUEST FOR ARBITRATION ORDER ADOPTING QWEST'S PROPOSED AGREEMENT

Section 252 of the Act and 47 CFR § 20.11 both impose on Answerphone a duty to negotiate in good faith in response to the requests for negotiation described above. Answerphone's failure to respond during an extended negotiation window violates this duty. Further, since the inception of this proceeding, Answerphone has failed to answer or appear despite numerous notices served on Answerphone by Qwest and by the Commission. Thus, Qwest requests that the Commission approve the agreement attached as Exhibit B as an interconnection agreement between Qwest and Answerphone, as written.

Qwest does not ask the Commission to neglect its duties under section 252 of the Act to ensure that the agreement attached as Exhibit B meets the requirements of section 251 of the Act, including the regulations prescribed by the FCC pursuant to section 251, or any other requirements within the Commission's state law authority that are consistent with the Act and FCC regulations, as permitted under section 252(e)(3) of the Act. Indeed, Exhibit B fully complies with sections 251 and 252 of the Act, applicable state laws and the orders of this Commission, and is consistent with the *T-Mobile Order*. The agreement is not discriminatory, and is consistent with the public interest, convenience, and necessity.

The agreement which Qwest asks the Commission to adopt is identical to the agreements that eleven other carriers have executed. All of those agreements have been filed with the Commission for approval under Section 252 of the Act.[2] The Commission has not found any

[2] Type 1 and Type 2 Paging Connection Service Agreements have been entered into between Qwest and the paging carriers listed below. The date Qwest filed each agreement for approval by the Commission is also stated: Shores Com-rent Inc. fka Beeper 1 (March 22, 2006), Sky Island Services Inc. (March 27, 2006), Star Page Inc. (April 13, 2006), Smith Bagley, Inc. dba Cellular One of NE Arizona (May 3, 2006), WestSky Wireless, LLC (May 9, 2006), Tele-page, Inc. (July 10, 2006), Glen Canyon Communications Incorporated (July 10, 2006), Metrocall, Inc. (July 21, 2006), American Messaging Services, LLC (September 12, 2006), Network Services, LLC (September 12, 2006), Wildgate Wireless, Inc. (October 2, 2006).

deficiencies with respect any of those agreements. All of those agreements are now approved by the Commission. (47 U.S.C. §252(e)(4), and A.A.C. R14-2-1907).

The *T-Mobile Order* requires Qwest to enter interconnection agreements with wireless and paging providers – and forbids the use of tariffs – to set the terms and conditions for the termination of traffic originated by these carriers. Qwest cannot continue to provide interconnection to Answerphone without a signed, filed, and approved interconnection agreement.

For the foregoing reasons, Qwest respectfully requests that the Aribtrator find that Qwest's proposed interconnection agreements contained in Exhibit B is consistent with applicable law and reasonable, issue an Order adopting the proposed agreement, and order Qwest and Answerphone to prepare, sign, and file a conforming agreement, for approval by the Commission.[3]

RESPECTFULLY SUBMITTED, this 22nd day of February, 2007.

QWEST CORPORATION

By:

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[3] In the event that the Commission issues the order requested herein, Qwest will send a conforming copy of the approved Agreement to Answerphone for execution; should Answerphone fail to execute the Agreement, Qwest will be forced to discontinue service to Answerphone. Qwest has taken every step possible to avoid such a drastic result, but cannot provide interconnection to Answerphone without an approved, filed agreement.

ORIGINAL and 13 copies hand-delivered
for filing this 22nd day of February, 2007, to:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

COPY of the foregoing hand delivered
this 22nd day of February, 2007, to:

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Copy of the foregoing mailed (Certified)
this 22nd day of February, 2007, to:

Answerphone, Inc.
Attention: D. Nady
1009 W. 16th Street
Yuma, AZ 85364

Diane Kupan