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BEFORE THE ARIZONA CORPORATION COMMISSION

PAC-WEST TELECOMM, INC.,	)	DOCKET NO.
	)	T-01051B-05-0495
Complainant,	)	T-03693A-05-0495
	)	
vs.	)	Procedural Conference
	)	
QWEST CORPORATION,	)	
	)	
Respondent.	)	
	)	

AT: Tucson, Arizona  
DATE: January 21, 2009  
FILED: February 4, 2009

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1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in a conference room of  
4 said Commission, 400 West Congress, Suite 218, Tucson,  
5 Arizona, commencing at 9:45 a.m. On the 21st day of  
6 January, 2009.

7

8 BEFORE: JANE L. RODDA, Administrative Law Judge

9 APPEARANCES:

10 For the Arizona Corporation Commission Staff:

11 Legal Division  
12 By Ms. Maureen Scott  
13 1200 West Washington  
14 Phoenix, Arizona 85007  
15 (Telephonic)

16 For Qwest Corporation:

17 QWEST CORPORATION  
18 By Mr. Norman Curtright  
19 20 East Thomas Road, 16th Floor  
20 Phoenix, Arizona 85012  
21 (Telephonic)

22 For Pac-West:

23 OSBORN MALEDON, P.A.  
24 Ms. Joan S. Burke  
25 2929 North Central Avenue, 21st Floor  
Phoenix, Arizona 85012-2793  
(Telephonic)

SHERYL BARKER, RPR  
Certified Reporter  
Certificate No. 50185  
(Telephonic)

1 ALJ RODDA: This is the time set for the  
2 Procedural Conference in Docket Numbers T-01051B-05-0495  
3 and T-03693A-05-0495 which is the Remand of the Complaint  
4 by Pac-West against Qwest Corporation.

5 Good morning, everyone, again, and welcome to  
6 the Arizona Corporation Commission. My name is Jane  
7 Rodda and I'm the Administrative Law Judge assigned to  
8 this matter.

9 For the record, I'm going to take the  
10 appearances of the parties. So on behalf of Pac-West?

11 MS. BURKE: Joan Burke with the firm Osborn  
12 Maledon appearing on behalf of Pac-West.

13 MS. RODDA: On behalf of Qwest Corporation?

14 MR. CURTRIGHT: Norman Curtright on behalf of  
15 Qwest Corporation.

16 ALJ RODDA: On behalf of Commission Staff?

17 MS. SCOTT: Maureen Scott on behalf of  
18 Commission Staff.

19 ALJ RODDA: Once again I would like to thank  
20 Qwest for arranging the bridge line and all of you for  
21 your flexibility in taking this matter up immediately  
22 following the previous matter. All right.

23 On my last Procedural Order I requested the  
24 parties to file position statements on the issues that  
25 needed to be decided, and the parties did file those, and

1 as I admitted off the record, I just got them FAXed to me  
2 this morning and haven't had a chance to review those  
3 thoroughly yet, but we are proceeding anyway.

4 Have the parties had a chance to meet and make  
5 recommendations for how to proceed in this matter?

6 MS. BURKE: Your Honor, this is Joan Burke on  
7 behalf of Pac-West. Pac-West filed a very short position  
8 statement and its position is the position that had been  
9 taken at the last Procedural Conference was that this  
10 matter can not be resolved by a dispositive motion as a  
11 result of the FCC's new order nominated the Mandamus  
12 Order appropriately so, and that order was issued on  
13 November 5, 2008.

14 You in your Procedural Order had granted us the  
15 opportunity to file a dispositive motion or at least did  
16 not preclude that at some date in the future. What we  
17 offered in our position statement was that we would file  
18 that dispositive motion on or before January 30, 2009.

19 We think that the issues in this case can be  
20 resolved by that motion, and we continue to think that  
21 and I'll perhaps let Mr. Curtright respond to that.

22 ALJ RODDA: Mr. Curtright?

23 MR. CURTRIGHT: Thank you. Well, Qwest does not  
24 believe that the Mandamus Order provides a basis for a  
25 dispositive motion. Ms. Burke, obviously, takes the

1 other side of that, and we are somewhat unable to say too  
2 much without having seen what Pac West's arguments would  
3 be and, of course, this is not the place for a  
4 substantive argument in any event.

5 But, it would be Qwest's position that the  
6 Mandamus Order did not change the issues in these cases  
7 that we have had all along, and that though substantively  
8 we believe that we will disagree, although we haven't  
9 seen Ms. Burke's arguments yet, but we also stated in our  
10 statement of issues that there are other issues which we  
11 believe should be decided, and if decided as we think  
12 they should be in our favor, we would not even reach the  
13 question of what the effect of the Mandamus Order was.

14 Just to say a little bit more specifically what  
15 I'm talking about, Qwest believes that there is ample  
16 basis for the Commission to conclude that BMXX during the  
17 time period of this contract was not admitted and was not  
18 permitted under the ICA.

19 So if we were right about that, then we wouldn't  
20 need to reach the legal issues that Pac-West seeks to  
21 raise from the Mandamus Order.

22 Having said all of that, if Pac-West files a  
23 dispositive motion, we could raise all of those arguments  
24 in our response to that, and then Your Honor would decide  
25 whether or not you indeed thought that it was dispositive

1 or not.

2 Our concern if we go down that route is one of a  
3 bit of logistics, if we are ready to talk about that, or  
4 I could stop there and let Your Honor ask Ms. Burke, but  
5 we do have a logistics issue that I wanted to get to.

6 ALJ RODDA: Well, let me ask you this, those  
7 issues about whether BMXX was permitted at all during the  
8 period or under the ICA, are those going to be legal  
9 arguments, Mr. Curtright, or are those --

10 MR. CURTRIGHT: We have characterized those as  
11 mixed questions of law and fact because whether or not it  
12 is permitted under the ICA I think would necessitate an  
13 understanding of the physical routing point.

14 ALJ RODDA: Okay. Maureen, do you have any  
15 comments?

16 MS. SCOTT: I agree with Mr. Curtright that  
17 there are mixed questions of law and fact here. At this  
18 time I am not prepared to say that the FCC order is  
19 dispositive of the issues in this case.

20 Because there are mixed questions in law and  
21 fact, I think that, you know, ultimately this may have to  
22 be decided through a hearing.

23 ALJ RODDA: Ms. Burke, did you have any reaction  
24 or comments to Mr. Curtright?

25 MS. BURKE: My reaction is only that I think if

1 the parties disagree, that is appropriate for the  
2 response. That is fine. We won't always agree on  
3 everything, but we can write out the arguments.

4 ALJ RODDA: All right. Mr. Curtright, what is  
5 your logistics problem?

6 MR. CURTRIGHT: We have decided that we are  
7 going to engage the services of Mr. Devaney from Perkins  
8 Coie. I believe you know Mr. Devaney. He is pretty  
9 burdened right now with his schedule and so we wanted to  
10 seek some indulgence on the ability to take a longer than  
11 normal period to respond than we would normally have for  
12 a dispositive motion.

13 In discussing this with him, obviously, it  
14 depends somewhat on when the motion gets filed, but we  
15 were just thinking about was that we have on the order of  
16 45 days for our response, and I discussed that with  
17 Ms. Burke this morning and she did not dismiss the idea  
18 out of hand.

19 I remind, Your Honor, that this is an instance  
20 where there is no ongoing damages. This is completely  
21 historical matter now and the sum of money which is  
22 ultimately at issue is in Pac-West's hands, not ours, so  
23 the only harm, I guess, that would come from us taking an  
24 extra length of time would be on ourselves.

25 So, that was the logistics issue, Your Honor.

1 ALJ RODDA: Is the logistic issue that he is  
2 really busy in February or busy in general so that you  
3 need the extra days as opposed to if Pac-West filed their  
4 motion later --

5 MR. CURTRIGHT: It is the next month and-a-half  
6 to two months where he has some trials ahead of him.

7 We are not trying to say that Pac-West has to  
8 file by the end of the month. I don't think that there  
9 is a time clock on that.

10 So, as Ms. Burke said, she did not want to have  
11 to rush her motion and then us have forever and two weeks  
12 to answer.

13 So, I would propose something along the lines  
14 of, you know, 45 days after they file, whenever that is,  
15 and obviously we don't expect this will go on for months  
16 and months, but that would give Ms. Burke some time to do  
17 it somewhat at her leisure, and for us to have the time  
18 to respond that we think that we need to respond.

19 ALJ RODDA: Ms. Burke, do you have anything to  
20 add to that?

21 MS. BURKE: No. Mr. Curtright has accurately  
22 characterized my concerns. I am fine with Mr. Devaney  
23 having 45 days, but we would want to push on the motion  
24 slightly.

25 ALJ RODDA: Yes, I don't see unless Ms. Scott

1 has some concerns, I don't see any need that we have to  
2 set an artificial date of January 30th or 31st. I think  
3 those are the dates that you mentioned. That is just  
4 next week.

5 So, we could leave it to when you do file the  
6 motion, we could give them -- you know, a Procedural  
7 Order would give them 45 days to respond. Then' do you  
8 have a request for a reply time?

9 MS. BURKE: You know, I would want 20 days at  
10 least. I mean, I'm going to endeavor to have this motion  
11 filed, and it may be advantageous to all if you just set  
12 a date. Do you mind doing that?

13 ALJ RODDA: I do not mind doing that.

14 MS. BURKE: I should be disciplined enough to  
15 just get it out the door, but --

16 MS. RODDA: I would love to facilitate.

17 MS. BURKE: Perhaps, like, February 13th.

18 ALJ RODDA: In time for Valentine's Day. There  
19 you go. All right. If we set February 13th as the  
20 deadline then on the date that you file your motion, and  
21 then we'll give whatever 45 days after that is, and then  
22 an additional 20 days.

23 Ms. Scott, do you know what your schedule is  
24 like?

25 MS. SCOTT: That should work with my schedule.

1 That should be fine.

2 ALJ RODDA: I think it is the best way to  
3 proceed because until Pac-West files that motion, we  
4 really don't know what we are responding to. So we'll  
5 see how it plays out. Okay.

6 Does anyone else have anything else that they  
7 want to say on this matter?

8 MR. CURTRIGHT: Nothing from Qwest.

9 MS. SCOTT: Staff does not.

10 ALJ RODDA: I'm sorry. I heard Mr. Curtright.  
11 Ms. Burke, did you have anything further?

12 MS. BURKE: Nothing.

13 ALJ RODDA: All right. Thank you all again for  
14 your participation and your patience with me, and I'll be  
15 issuing a Procedural Order along the lines that we  
16 discussed here today.

17 MS. BURKE: Thank you.

18 ALJ RODDA: I look forward to seeing you all in  
19 person some day.

20 MS. SCOTT: Thank you, Judge Rodda.

21 MR. CURTRIGHT: Thank you.

22 (The hearing was concluded at 9:55 a.m.)

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1 STATE OF ARIZONA )  
2 COUNTY OF NAVAJO ) ss.  
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6 I, SHERYL BARKER, Certified Court Reporter  
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11 ability.

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14 WITNESS my hand this 30th day of Janaury,  
15 2009.

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SHERYL BARKER, RPR  
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