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BEFORE THE ARIZONA CORPORATION COMMISSION

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KRISTEN K. MAYES

Chairman

GARY PIERCE

Commissioner

PAUL NEWMAN

Commissioner

SANDRA D. KENNEDY

Commissioner

BOB STUMP

IN THE MATTER OF QWEST CORPORATION'S PETITION FOR ARBITRATION AND APPROVAL OF INTERCONNECTION AGREEMENT WITH NORTH COUNTY COMMUNICATIONS CORPORATION OF ARIZONA PURSUANT TO SECTION 252(b) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996 AND APPLICABLE STATE LAWS

**DOCKET NO.: T-01051B-09-0383
T-03335A-09-0383**

RESPONDENT NORTH COUNTY COMMUNICATIONS CORPORATION'S POSITION STATEMENT AND MATRIX

Arizona Corporation Commission
DOCKETED

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1 **I. Introduction**

2 1. Allegedly, pursuant to 47 U.S.C. Section 252(b) of the Telecommunications
3 Act of 1996 ("the Act") and WAC 480-07-630, Qwest Corporation ("Qwest") petitioned
4 the Arizona Corporation Commission ("Commission") for arbitration of its attempt to
5 renegotiate a their interconnection agreement with North County Communications
6 Corporation of Arizona ("North County").
7

8
9 2. North County and Qwest already have an existing interconnection
10 agreement between the parties which was made effective on November 20, 1997, and
11 which has been regularly amended by agreement of the parties, with the most recent
12 amendment in 2008. This existing interconnection agreement was filed with Qwest's
13 Petition For Arbitration.
14

15
16 3. This Position Statement raises a threshold jurisdictional issue. To the
17 extent 47 U.S.C. § 252(b) and A.A.C. R14-2-1505 may apply, this position statement
18 also provides (1) a description of the parties; (2) a summary of the parties' negotiations;
19 (3) a description of the documentation North County is providing with this petition; and
20 (4) a description of the disputed issues and a statement of North County's position with
21 respect to each issue.
22

23
24 4. North County contends that the Commission lacks jurisdiction to arbitrate
25 and approve Qwest's proposed Agreement pursuant to Section 252(b)(1) of the Act.
26 Under the Section 252(a)(1), a LEC may only initiate Section 252 negotiations or
27 arbitration, "[u]pon receiving a request for interconnection, services, or network
28

1 elements pursuant to section 251 of this title”. These negotiations upon request for
2 interconnection were initiated in 1996 and resulted in an interconnection agreement
3 between the parties executed finalized on November 20, 1997. Qwest has offered no
4 authority for the proposition that it can use Section 252(b) compulsory arbitration to
5 force North County to renegotiate a new interconnection agreement when one is already
6 in place and neither party has initiated a request for any interconnection, service, or
7 network element not already covered by their exiting interconnection agreement.
8 Similarly Qwest has offered no authority for the proposition that the Arizona
9 Corporation Commission has jurisdiction pursuant to Section 252 over an attempt to
10 renegotiate an existing interconnection agreement.
11
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13

14 5. Qwest allegedly initiated negotiations by correspondence that was received
15 by North County on July 2, 2008. The parties agreed to extend the arbitration window
16 without conceding whether there was any right to arbitrate in order to attempt to come
17 to a privately negotiated agreement. While North County contends that negotiations
18 may still be fruitful and lead to a new agreement, Qwest has indicated in the most recent
19 status conferences that it believes the parties are at an impasse and wished to pursue
20 compulsory arbitration.
21
22
23

24 **II. Threshold Jurisdictional Issue**

25 6. Qwest has offered no authority for the proposition that it can use Section
26 252(b) compulsory arbitration to force North County to renegotiate a new
27 interconnection agreement when one is already in place and neither party has initiated a
28

1 request for any interconnection, service, or network element not already covered by
2 their exiting interconnection agreement.

3
4 7. Under the Section 252(a)(1), a LEC may only initiate Section 252
5 negotiations or arbitration, “[u]pon receiving a request for interconnection, services, or
6 network elements pursuant to section 251 of this title”.

7
8 8. Upon North County first interconnecting with Qwest in Arizona, the
9 parties entered negotiations and executed an interconnection agreement on November
10 20, 1997.

11
12 9. Qwest does not allege, nor is North County aware of, any request by either
13 party for any services or network elements not already covered by that existing
14 interconnection agreement.

15
16 10. In any event, Qwest’s Petition does not allege that any request for
17 interconnection or services was made, only that it “initiated negotiations”.

18
19 11. While the condition precedent to compelling arbitration is indeed
20 negotiations, pursuant to Section 252(a), the condition precedent to forcing negotiations
21 is a request for some new interconnection or service.

22
23 12. Qwest’s Petition is fatally flawed in that it has no grounds to invoke
24 Section 252 since the parties are already interconnected and have been for some time,
25 and no request for services or network elements not already covered by their
26 interconnection agreement has been made. Without that condition precedent, Qwest
27 may not invoke Section 252 procedures in any way.
28

1 13. Similarly, the Arizona Corporation Commission (“Commission”) is
2 empowered to oversee Section 252 negotiation, mediation or arbitration only when
3 Section 252 procedures have been properly invoked. See, A.C.C. R14-2-1501, et. seq.
4 In pertinent part, the Commission only has jurisdiction over an interconnection
5 arbitration where a LEC “receives a request for negotiation under 47 U.S.C. 252(b)(1)”.
6 A.C.C. R14-2-1505(A)(1).
7

8
9 14. Here, as shown above, the arbitration Petition does not allege facts
10 sufficient to show that North County received a request for negotiation under 47 U.S.C.
11 252(b)(1) because the request for negotiation was not made upon interconnection or a
12 request for new services or network elements.¹
13

14
15 15. In fact, Qwest did not request negotiation at all, but in actually is
16 requesting re-negotiation of an existing agreement. Neither Section 252, nor the
17 Arizona Administrative Code, provides procedures for carriers to burden the
18 Commission with requests to renegotiate willy-nilly.
19

20 16. This is especially true where the current interconnection agreement has
21 worked for both parties for many years, includes a valid change of law clause to
22 accommodate regulatory changes, and where that agreement covers all the terms and
23

24
25 ^{1 1} Furthermore, Section 252(b)(1) arbitration jurisdiction facially does not apply where it is the ILEC initiating negotiation
26 and the CLEC receiving the request: “[d]uring the period from the 135th to the 160th day (inclusive) after the date on
27 which an incumbent local exchange carrier receives a request for negotiation...” [emphasis added]. Qwest offers no
28 authority which purports to impose an obligation on CLEC’s to comply with Section 252 procedures which explicitly are
limited to ILEC’s. Other Utilities Commissions have noted this jurisdictional problem. See, e.g., *Southwestern Bell
Telephone, L.P., d/b/a SBC Missouri’s Petition for Compulsory Arbitration of Unresolved Issues for a Successor
Interconnection Agreement to the Missouri 271 Agreement (“M2A”)*, Order Directing Notice Of Petition For Arbitration,
Missouri Public Service Commission, Case No. TO-2005-0336 (effective April 26, 2005) (attached hereto as Exhibit A).

1 conditions for the traffic between the parties.

2 17. Qwest's Petition facially fails to allege that there is a new interconnection,
3 service or network element request between the parties which could be the prerequisite
4 to invoking Section 252 procedures and the jurisdiction of the Commission.
5

6 18. North County contends that Qwest cannot make such an allegation because
7 no new interconnection or service request has been made and North County, and that
8 without such an allegation, the jurisdiction of the Commission cannot be invoked.
9 North County respectfully requests that the Commission dismiss the Petition with
10 prejudice since Qwest is not asking to compel negotiations, but asking to compel
11 renegotiations not covered by Section 252.
12
13

14 **III. Description of the Parties**

15 19. North County is a competitive local exchange carrier ("CLEC") providing
16 exchange and interexchange telecommunications services in this state pursuant to a
17 Certificate of Convenience and Necessity issued by the Commission. The name and
18 address of the duly authorized counsel for North County is as follows:
19
20

21 William G. Klain, #015851	Joseph G. Dicks, Cal. # 127362
22 LANG BAKER & KLAIN, PLC	DICKS & WORKMAN, APC
23 8767 E. Via De Commercio, Suite 102	750 B Street, Suite 2720
24 Scottsdale, Arizona 85258	San Diego, California 92101

25 20. Qwest is an incumbent local exchange carrier ("ILEC") providing
26 exchange and interexchange telecommunications services in this state pursuant to a
27 Certificate of Convenience and Necessity issued by the Commission. The name and
28

1 address of the duly authorized representative of North County is as follows:

2 Norman G. Curtright
3 Corporate Counsel
4 Qwest Corporation
5 East Thomas Rd., 16th Floor
6 Phoenix, Arizona 85012

7 **IV. Summary of Negotiations**

8 21. North County entered into negotiations purely out of courtesy to a carrier
9 with whom it had a long relationship since it disputes that the conditions precedent exist
10 for Qwest to force negotiations or any other procedures under Section 252.

11 22. Due to miscommunications on the part of North County's previous
12 counsel, negotiations, did not start in earnest until Qwest filed its Petition for
13 Arbitration in August of 2009.

14 23. Once the Dicks and Workman firm was engaged, these negotiations
15 continued at a respectable pace and with enough progress that both parties and the
16 Commission felt confident in agreeing to numerous stays of formal arbitration in hopes
17 the negotiations would solve any issues between the parties.
18

19 24. While Qwest took its proposed new interconnection agreement as the
20 baseline for negotiations, North County repeatedly reiterated its primary concern that
21 there be no material changes from the current interconnection agreement between the
22 parties. Qwest made attempts to conform its proposed new agreement to the primary
23 terms of the existing interconnection agreement between the parties.
24
25
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1 25. While the negotiators for Qwest were able to conform many of the material
2 provisions of their proposed new agreement to the terms and interpretation of those
3 terms that had served the parties well in the existing agreement, Qwest would not agree
4 to providing any sort of written statement that the material terms or historical
5 interpretation of the terms would be unchanged from the existing agreement to Qwest's
6 new proposed agreement.
7

8
9 26. On or about December 16, 2010, North County discovered that Qwest
10 interpreted their new proposed agreement as requiring new fees and charges on
11 important network elements that it did not interpret the existing interconnection
12 agreement as charging. The new fees and charges revolve around a "relative use factor"
13 determining who pays for trunks for Qwest to interconnect to North County.
14

15
16 27. The existing interconnection agreement between the parties would not
17 allow charges for this "relative use factor" under any interpretation including the
18 change of law clause in the existing interconnection agreement since no lawmaking or
19 administrative body has even inferred that such a charge is mandated.
20

21 28. North County has repeatedly reviewed Qwest's proposed new
22 interconnection agreement, however it cannot identify where changes in interpretation
23 of that complex and voluminous agreement might have occurred from the exiting
24 agreement that has served the parties well and provides consistency in their business
25 relationship.
26
27
28

1 contends that the Commission lacks jurisdiction to arbitrate this unilateral re-
2 negotiation attempt where a valid interconnection agreement is already in place.

3
4 39. North County also disputes any change in the proposed new agreement
5 from the existing agreement. North County has consistently maintained that it is only
6 willing to negotiate based on the premise that the proposed new agreement would
7 engender no material changes in effect from the existing interconnection agreement
8 which both parties understand well and have a course of dealings based upon.
9

10
11 40. Any agreement North County expressed to any part of Qwest's proposed
12 new interconnection agreement in negotiations was predicated on reaching total
13 agreement that the material terms would be no different in effect than the existing
14 interconnection agreement between the parties.
15

16 41. While it seems that the parties might have been able to reach an agreement
17 based on North County's condition of no material change from the existing agreement
18 to Qwest's proposed new agreement, any failure to reach total agreement invalidates
19 any partial agreement because North County's premise for negotiating regarded the
20 entire relationship between the parties and not any particular issue.
21

22
23 42. Therefore, north County does not agree that any disputes may have been
24 resolved by partial agreement in negotiations where the entire exercise of negotiation
25 was explicitly premised by North County on not making material changes from the
26 existing, valid, and approved interconnection agreement.
27
28

1 reluctantly compelled to move the Commission to examine its jurisdiction in this matter
2 and requests that the Commission dismiss this Petition with prejudice. Assuming
3
4 arguendo that the Commission finds jurisdiction, North County reluctantly has to
5 contend that any and all discrepancies between the existing interconnection agreement
6 and Qwest's proposed new agreement are in dispute because North County's express
7
8 position all along has been that it would be willing to consider a new agreement out of
9
10 courtesy so long as that agreement did not materially alter the primary rights of the
11 parties.

12
13 Dated: February 19, 2010

DICKS & WORKMAN, APC

14
15 By: Walter G. Kuo #015851 for Joseph G. Dicks
16 Joseph G. Dicks,
17 Attorneys for Plaintiff North County
Communications Corporation of Arizona

18 Copies of the foregoing mailed/delivered
19 this 19th day of February 2010 to:

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21 Qwest Corporation
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EXHIBIT A

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's)
Petition for Compulsory Arbitration of Unresolved Issues) **Case No. TO-2005-0336**
for a Successor Interconnection Agreement to the)
Missouri 271 Agreement ("M2A").)

**ORDER DIRECTING NOTICE OF PETITION FOR ARBITRATION,
APPOINTMENT OF ARBITRATOR, APPOINTMENT OF ARBITRATOR
ADVISORY STAFF, ADDING PARTIES, SETTING INITIAL
ARBITRATION MEETING, DIRECTING FILING, AND ADOPTING
PROTECTIVE ORDER**

Introduction:

On March 30, 2005, Southwestern Bell Telephone, L.P., doing business as SBC Missouri, filed its Petition for Arbitration with the Commission pursuant to Section 4.2 of the M2A, Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as various sections of Title 47, United States Code ("the Act"), and Commission Rule 4 CSR 240-36.040. SBC's petition asks the Commission to arbitrate unresolved issues in the negotiation of interconnection agreements between SBC and various competitive local exchange carriers ("CLECs") to replace the M2A, the interconnection agreement approved by the Commission on March 15, 2001, in conjunction with its recommendation to the FCC that SBC Missouri be approved to provide in-region long distance service in Missouri pursuant to

Section 271 of the Act.^[1]

The M2A established terms for the resale of SBC Missouri's services and for the provision by SBC Missouri of Interconnection, Unbundled Network Elements, and Ancillary Functions as designated in the Attachments to the M2A. Most CLECs operating in SBC's territory have adopted the M2A. The M2A expired on March 6, 2005. However, under Section 4.2 of the M2A's General Terms and Conditions, the terms, conditions, and prices of the agreement will remain in effect for 135 days after its expiration for completion of negotiations and any necessary arbitration of a successor interconnection agreement. Thus, on July 19, 2005, the M2A will no longer be in effect. SBC's petition also moves the Commission to notify certain non-responsive CLECs that SBC's obligations to them will end on the 136th day following the expiration of the M2A on March 6, 2005. In the alternative, should the Commission decline to issue the requested notification, SBC requests that the Commission add the non-responsive CLECs to this arbitration as parties.

Parties:

SBC requests that the Commission add some 39 CLECs as parties to this arbitration. These include 20 CLECs with which SBC has been actively negotiating successor interconnection agreements.^[2] Arbitration is required to settle certain unresolved issues. Another seven CLECs notified SBC that they are quitting operations and do not intend to enter into new interconnection agreements with SBC.^[3] SBC requests that they be made parties to this arbitration. Another twelve CLECs failed to respond to SBC's request to negotiate a successor interconnection agreement.^[4] SBC prays that the Commission either notify these CLECs that SBC's obligations to them will end on the 135th day following the expiration of the M2A or make them parties to this arbitration. Finally, a fourth group of some 36 CLECs entered into a written Memorandum of Understanding with SBC stating that they did not intend to either negotiate or arbitrate a successor interconnection agreement, but would instead adopt one of the successor agreements resulting from this arbitration pursuant to Section 252(i) of

the Act. [5]

The Commission will make the CLECs listed in Footnotes 2, 3 and 4 parties to this arbitration.

Timeliness of the Petition:

SBC's Petition states that it is brought "pursuant to Section 4.2 of the M2A, Section 252 of the Federal Telecommunications Act of 1996 (the "Act"), and 4 CSR 240-36.040." Sections 4.1, 4.2 and 4.3 of the General Terms and Conditions of the M2A provide that all negotiations and any necessary arbitrations required to achieve successor interconnection agreements must be completed within a prescribed 270-day period commencing 135 days before the M2A's expiration and concluding 135 days after the M2A's expiration. The M2A expired on March 6, 2005. The negotiation-arbitration period prescribed by the M2A thus began on October 22, 2004, and will end on July 19, 2005.

Section 4.1 provides that negotiations for a successor interconnection agreement must be initiated by a written request to negotiate "not later than 180 days prior to the expiration of this Agreement," that is, by September 7, 2004. SBC states, at Paragraph 11 of its Petition, that it sent a letter expressing a desire to negotiate a successor agreement to each CLEC on September 3, 2004. Thus, SBC timely initiated negotiations under Section 4.1 of the M2A.

At Section 4.2, the M2A provides:

4.2 If either party has served a Notice to Negotiate pursuant to paragraph 4.1 above then, notwithstanding the expiration of the Agreement in accordance with paragraph 4.1 above, the terms, conditions, and prices of this Agreement will remain in effect for a maximum of 135 days after expiration of the Agreement for completion of said negotiations and any necessary arbitration. The Parties agree to resolve any impasse by submission of the disputed matters to the Missouri PSC for arbitration. Should the Missouri PSC decline jurisdiction, the Parties will resort to a commercial provider of arbitration services.

Section 4.2 does not set any particular deadline for requesting the Commission to arbitrate unresolved issues; however, Section 4.3 makes it clear that any arbitration must be completed by the 135th day following the expiration of the M2A. Based on its analysis of these provisions, the Commission concludes that SBC's Petition was timely-filed under Sections 4.1, 4.2 and 4.3 of the M2A.

Section 252(b) of the Act governs compulsory arbitration of interconnection agreements. The party seeking arbitration must file its petition with the state commission "during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section[.]"^[6] In its Petition, SBC states: "As the M2A, by its terms, expired on March 6, 2005, the negotiations that occurred were required to, and did, commence by October 22, 2004; and the 135 to 160-day period during which either party was permitted to file for arbitration under Section 252(b)(1) of the Act began on March 6, 2005, and will end on March 31, 2005, inclusive."

In the present case, SBC is the incumbent local exchange carrier ("ILEC"). The Act says nothing about requests to negotiate received by a CLEC from an ILEC; rather, the compulsory arbitration window defined by the Act is triggered by the opposite scenario: the receipt by the ILEC of a request for negotiations from another carrier. Although SBC has enumerated the steps that it took, beginning on September 3, 2004, it has not provided sufficient detail concerning any requests for negotiation that it received from any of the CLECs. At Paragraph 16, the Petition states:

SBC Missouri received various responses to its accessible letters. These responses included requests to begin negotiations, requests to adopt other available agreements, and requests to terminate negotiations, which came from CLECs that planned to exit the business. However, numerous CLECs did not respond to any of the accessible letters. SBC Missouri's Account Managers attempted to individually contact the nonresponding CLECs to determine their intent. Unfortunately, many of those CLECs remained silent in response to SBC Missouri's attempts to engage in meaningful negotiations.

Therefore, the Commission is unable to determine from SBC's Petition whether or not the Petition was timely filed under the Act.

Regulation 4 CSR 240-36.040 is the Commission's Arbitration Rule. At Section (2), "Time to File," the rule states that "[a] petition for arbitration may be filed not earlier than the one hundred thirty-fifth day nor later than the one hundred sixtieth day following the date on which an incumbent local exchange carrier receives the request for negotiation." Again, the

Commission cannot determine whether SBC's Petition was timely-filed under the rule because there is nothing in the record showing when the ILEC – SBC – received a request for negotiation.

The Commission will direct SBC to supplement its Petition so that the timeliness of the Petition can be determined. The Commission will further direct SBC and its Staff to prepare Memoranda of Law advising the Commission of the effects, if any, should SBC's Petition for Arbitration have not been timely-filed under Section 252(b)(1) of the Act and Section (2) of the Commission's Arbitration Rule.

Unresolved Issues:

At Section 252(b)(2)(A), the Act requires that the petitioner shall, simultaneously with its petition for arbitration, "provide the State commission all relevant documentation concerning (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issues discussed and resolved by the parties." Section (3) of the Commission's Arbitration Rule states the same requirements. Attached to SBC's Petition are exhibits, including 9 matrices setting out the unresolved issues remaining in the negotiation of successor interconnection agreements with various CLECs and groups of CLECs. It appears that the Petitioners have complied with Section 252(b)(2)(A) of the Act.

Timely Service:

At Section 252(b)(2)(B), the Act requires that the petitioner "shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition." Section (2) of the Commission's Arbitration Rule states the same requirement. SBC's Petition includes a Certificate of Service that states, "I hereby certify that copies of the foregoing document were served to all parties by e-mail on or about March 31, 2005." Electronic mail is a valid method of service in Commission cases and such service is complete upon actual receipt.^[7] SBC filed its Petition with the Commission on March 30, a day earlier than it served its Petition on the other parties.

The effect of SBC's late service must be that the Petition is deemed to have been

filed on the date that service was accomplished, as both the Act and the Commission's Arbitration Rule require. Therefore, the Commission will deem the Petition to have been filed on March 31, 2005, rather than on March 30, 2005.

Response Deadline:

The Act, at Section 252(b)(3), provides that the "non-petitioning party . . . may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition." Section (7) of the Commission's Arbitration Rule is essentially similar. The Commission received the petition on March 30, 2005, and the 25th day thereafter is Sunday, April 24, 2005. However, as explained above, the Commission will deem the Petition to have been filed on March 31. The 25th day thereafter is Monday, April 25, 2005, and that is the deadline for the CLECs' responses.

Notice of Appointment of Arbitrator:

Section (4) of the Commission's Arbitration Rule provides for the appointment of an Arbitrator. The Parties are advised that the Commission has appointed Kevin A. Thompson, Deputy Chief Regulatory Law Judge, as the Arbitrator in this matter.

Notice of Appointment of Arbitrator Advisory Staff:

Section (12) of the Commission's Arbitration Rule provides for the Arbitrator's appointment of an Advisory Staff from the Commission's Staff to assist him in the decision-making process. The Parties are advised that the Arbitrator hereby appoints Natelle Dietrich, Mick Johnson, Mike Scheperle, Adam McKinnie, and Nathan Williams to his Advisory Staff for the purposes of this proceeding.

Notice of Scheduling of Initial Arbitration Meeting:

Section (9) of the Commission's Arbitration Rule provides for an Initial Arbitration Meeting for purposes such as setting a procedural schedule, establishing a time limit for submission of final offers, allowing the filing of testimony, setting times by which testimony may be filed, simplifying issues, or resolving the scope and timing of discovery. The Parties

are advised that the Initial Arbitration Meeting shall be held on Thursday, April 14, 2005, commencing at 10:00 a.m. in Room 310 of the Governor Office Building in Jefferson City, Missouri.

Adoption of Protective Order:

On March 31, SBC moved the Commission to adopt its standard protective order for the purposes of this proceeding because Highly Confidential and Proprietary information will necessarily be involved. The Commission will adopt its standard protective order for this proceeding.

IT IS THEREFORE ORDERED:

1. That these carriers are made Parties to this case: The AT&T Group: AT&T Communications of the Southwest, TCG Kansas City and TCG St. Louis; the CLEC Coalition: Big River Telephone Company, LLC, Birch Telecom of Missouri, Inc., Ionex Communications, Inc., NuVox Communications of Missouri, Inc., Socket Telecom, LLC, XO Communications Services, Inc., Allegiance Telecom of Missouri, XO Missouri, Inc., Xspedius Management Co. of Kansas City, LLC, and Xspedius Management Co. Switched Services, LLC; the MCI Group: MCI WorldCom Communications, Inc., and MCImetro Access Transmission Services, LLC; and others: Charter Fiberlink-Missouri, LLC, Metro Teleconnect Companies, Inc., Navigator Telecommunications, LLC, Sprint Communications Company, L.P., The Pager Company, and WilTel Local Network, LLC. ALLTEL Communications, Inc., Ameritel Missouri, Inc., Business Telecom, Inc., CD Telecommunications, Inc., Magnus Communications, doing business as M Comm, Steve's Wildcat Web, Inc., and Sure-Tel, Inc. Cat Communications International, Inc., Cinergy Communications, Family Tel of Missouri, LLC, ICG Telecom Group, Inc., KMC Data, LLC, KMC Telecom III, LLC, Mark Twain Communication Company, Ren-Tel Communications, Inc., Victory Communications, Inc., Quick-Tel Communications, Inc., The Phone Connection, doing business as Affordable Phone Company, and TruComm Corporation.
2. That the Data Center of the Missouri Public Service Commission shall serve a

copy of this Order upon each of the carriers listed in Ordered Paragraph No. 1, above. Their counsel shall be added to the service list.

3. That Southwestern Bell Telephone, L.P., doing business as SBC Missouri, shall, by Friday, April 15, 2005, supplement its Petition for Arbitration as discussed above so that the timeliness of the Petition under Section 252(b)(1) of the Telecommunications Act of 1996 and under Regulation 4 CSR 240-36.040(2) can be determined. Additionally, by the same date, Southwestern Bell Telephone, L.P., doing business as SBC Missouri, and the Staff of the Missouri Public Service Commission shall prepare Memoranda of Law advising the Commission of the effects, if any, should SBC's Petition for Arbitration have not been timely-filed under Section 252(b)(1) of the Act and Section (2) of the Commission's Arbitration Rule. Any of the carriers made parties in Ordered Paragraph No. 1 may also file such Memoranda by the same deadline.

4. That the parties listed in Ordered Paragraph No. 1, above, may file a response to the Petition for Arbitration, as well as any other information they may desire, not later than Monday, April 25, 2005, with the Secretary of the Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, and must serve a copy of any response, as well as a copy of any additional information they provide, upon Petitioners as well as the General Counsel of the Missouri Public Service Commission and the Office of the Public Counsel.

5. That Kevin A. Thompson, Deputy Chief Regulatory Law Judge, is hereby appointed as the Arbitrator in this matter.

6. That Natelle Dietrich, Mick Johnson, Mike Scheperle, Adam McKinnie, and Nathan Williams are hereby appointed to the Arbitration Advisory Staff for the purposes of this proceeding.

7. That the Initial Arbitration Meeting shall be held on Thursday, April 14, 2005, beginning at 10:00 a.m. The meeting will be held at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, Room 310, a building that meets the accessibility standards required by the Americans with Disabilities Act. If any person need

additional accommodations to participate in this meeting, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or dial 711 for Relay Missouri.

8. That the Protective Order attached hereto as Attachment A is adopted for this proceeding. The parties are directed to comply with it.

9. That this order shall become effective on April 6, 2005.

BY THE COMMISSION

(SEAL)

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Kevin A. Thompson, Deputy Chief
Regulatory Law Judge, by delegation
of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 6th day of April, 2005.

[1] In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. TO-99-227, (Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri Interconnection Agreement (M2A), issued March 15, 2001).

[2] Including the AT&T Group: AT&T Communications of the Southwest, TCG Kansas City and TCG St. Louis; the CLEC Coalition: Big River Telephone Company, LLC, Birch Telecom of Missouri, Inc., Ionex Communications, Inc., NuVox Communications of Missouri, Inc., Socket Telecom, LLC, XO Communications Services, Inc., Allegiance Telecom of Missouri, XO Missouri, Inc., Xspedius Management Co. of Kansas City, LLC, and Xspedius Management Co. Switched Services, LLC; the MCI Group: MCI WorldCom Communications, Inc., and MCImetro Access Transmission Services, LLC; and others: Charter Fiberlink-Missouri, LLC, Metro Teleconnect Companies, Inc., Navigator Telecommunications, LLC, Sprint Communications Company, L.P., The Pager Company, and WiTel Local Network, LLC.

[3] ALLTEL Communications, Inc., Ameritel Missouri, Inc., Business Telecom, Inc., CD Telecommunications, Inc., Magnus Communications, doing business as M Comm, Steve's Wildcat Web, Inc., and Sure-Tel, Inc.

[4] Cat Communications International, Inc., Cinergy Communications, Family Tel of Missouri, LLC, ICG Telecom Group, Inc., KMC Data, LLC, KMC Telecom III, LLC, Mark Twain Communication Company, Ren-Tel Communications, Inc., Victory Communications, Inc., Quick-Tel Communications, Inc., The Phone Connection, doing

business as Affordable Phone Company, and TruComm Corporation.

[5] AccuTel of Texas, Inc., ACN Communications Services, Inc., Affordaphone, Inc., American Fiber Network, Inc., American Fiber Systems, Inc., BasicPhone, Inc., Budget Phone, Inc., Cbeyond Communications, LLC, CenturyTel Solutions, LLC, Chariton Valley Telecom Corporation, Comm South Companies, Inc., Davidson Telecom, LLC, DSLnet Communications, LLC, Empire District Industries, Inc., Ernest Communications, Inc., Everest Midwest Licensee, LLC, Excel Telecommunications, Inc., ExOp of Missouri, Inc., Fidelity Communications Services III, Inc., Local Line America, Inc., McLeod USA Telecommunications, Inc., Missouri Network Alliance, LLC, Missouri Telecom, Inc., New Edge Network, Inc., Nexus Communications, Inc., NOW Intermedia, Inc., PNG Telecommunications, Inc., Preferred Carrier Services, Inc., Qwest Communications Corporation, Sage Telecom, Inc., Southern Telcom Network, Inc., Talk America, Inc., Tele-Reconnect, Inc., VarTec Telecom, Inc., Western Communications, Inc. (Logix), and Z-Tel Communications, Inc. (TRINSIC).

[6] 47 U.S.C. § 252(b)(1).

[7] 4 CSR 240-2.080(18).

EXHIBIT B

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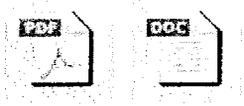
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RE: FW: North County Final ICAs (AZ, OR & WA)

Wednesday, December 16, 2009 7:31 AM

From: "Nodland, Jeff" <jeff.nodland@qwest.com>
To: "Todd Lesser" <todd@nccom.com>
Cc: "Batz, Nancy" <Nancy.Batz@qwest.com>, "jdicks@dicks-workmanlaw.com" <jdicks@dicks-workmanlaw.com>, "Donahue, Nancy" <Nancy.Donahue@qwest.com>, "Anderl, Lisa" <Lisa.Anderl@qwest.com>, "Hazzard... more"
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 - Austin Reichma...
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 - Portland
 - Reference
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I am sorry, I was on my Blackberry last night and unable to pull these. Nancy Donahue was kind enough to find these decisions for AZ and WA. Thanks so much, Nancy. For where we are at, I think that there are a few of the fundamental pieces:

1) Qwest will not agree to substantial changes in VNXX language, including the RCF piece proposed, for reasons already discussed, as VNXX has been significantly litigated in the three states at issue. While I do understand that there is a difference of opinion in the marketplace generally on the effect of the ISP Mandamus Order, Qwest is willing to implement a change in law if it occurs as a result of subsequent litigation in the ongoing court proceedings, and the language of Section 2.2 has specific provisions for that. The agreement also contains general non-waiver language, and I would be happy to review a further general non-waiver proposal, but the specific proposal that Joe made is not something that Qwest can accept.

2) On the minute caps issue. I am still exploring the thought that, upon a request for reduction in capacity from Qwest, once NCC submits the TGSRs to complete it, the minute caps would be recalculated, based on the aggregate number of MOUs for the previous average and applying it to a new, lesser number of trunks. We will have an answer to that today, but I do remain hopeful that something on that would make sense.

3) On the RUF, I think we have that issue resolved, other

on #1, Qwest is not agreeable to significant changes and would suggest that it remain with language that, based on past traffic and NCC maintaining the cap it be 100/0. If the caps are exceeded, a new RUF will be determined that will be 99/1 unless traffic volumes from NCC are more than 1%. I did not think Qwest knew that traffic was part of OR traffic, so we will have to discuss internally, but will have a response today.

4) On the mux issue, this is an issue for implementation, not negotiation in the ICA. If NCC wishes to change it interconnection architecture, I think that is a separate issue. Qwest charges all CLECs in the same manner on this issue and I do not believe that it would be appropriate for Qwest to change this midstream, and I believe that Qwest's business position is that it is also not appropriate. Thus, I suggest that this be dealt with in implementation, since this is already an existing issue under the old ICA.

Are there other outstanding issues? In going through the emails, I am not certain that there are. I am out of the country after today, so we need to reach final resolution today so that final agreements can be prepared or people can prepare for the arbitrations. Please let us know where NCC is at and whether you believe that other issues remain. Qwest will have final positions on number 2 and 3 later this morning. Thanks, Todd, I am eternal optimist, so I will do all I can to resolve this, provided we can agree.

Jeff

Jeffrey T. Nodland
303-383-6657

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-----Original Message-----

From: Todd Lesser [mailto:todd@nccom.com]
Sent: Tuesday, December 15, 2009 6:46 PM
To: Nodland, Jeff
Cc: Batz, Nancy; 'jdicks@dicks-workmanlaw.com'; Donahue, Nancy; Anderl, Lisa; Hazzard, Michael; Chris Reichman
Subject: Re: FW: North County Final ICAs (AZ, OR & WA)

I had to leave the office to pick up my daughter at the doctor's office. Can you get us the Level 3 decisions to help to move this along? These are out of our jurisdiction, and since you were a party

to each of them, it should be less difficult for you to get your hands on them. We would really appreciate it, as it appears we are very close, with very little left to handle. Can we pick this up again first thing in the AM?

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