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BEFORE THE ARIZONA CORPORATION COMMISSION

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2010 MAY 27 P 4: 38

Arizona Corporation Commission

DOCKETED

MAY 27 2010

AZ CORP COMMISSION
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7 IN THE MATTER OF QWEST
 8 CORPORATION'S PETITION FOR
 9 ARBITRATION AND APPROVAL OF
 10 INTERCONNECTION AGREEMENT WITH
 11 NORTH COUNTY COMMUNICATIONS
 12 CORPORATION OF ARIZONA PURSUANT
 13 TO SECTION 252(B) OF THE
 14 COMMUNICATIONS ACT OF 1934, AS
 15 AMENDED BY THE
 16 TELECOMMUNICATIONS ACT OF 1996
 17 AND APPLICABLE STATE LAWS.

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

**STAFF COMMENTS ON NORTH COUNTY
COMMUNICATIONS CORPORATION'S
MOTION TO DISMISS AND QWEST
CORPORATION'S RESPONSE**

14 The Arizona Corporation Commission ("ACC") Legal Division Staff hereby comments upon
 15 North County Communications Corporation's ("North County") Motion to Dismiss Qwest
 16 Corporation's ("Qwest") Petition for Arbitration pursuant to Section 252 of the Telecommunications
 17 Act of 1996 ("1996 Act").

18 The Commission's Legal Division Staff agrees with Qwest's position in this case. North
 19 County appears to be questioning the Commission's authority to arbitrate the disputed provisions of
 20 an ICA which the parties are in the process of renegotiating. The Legal Division Staff believes that
 21 the Commission clearly has the authority to arbitrate disputes arising during the renegotiation of an
 22 ICA between Qwest and a CLEC.

23 First, under the ICA both parties (not just North County) have the right to commence
 24 negotiations on a new agreement, before the old agreement expires. The Agreement between the
 25 parties reads as follows:

26 This Agreement shall be effective for a period of 2 ½ years, and
 27 thereafter the Agreement shall continue in force and effect unless and
 28 until a new agreement, addressing all of the terms of this Agreement,
 becomes effective between the Parties. The Parties agree to
 commence negotiations on a new agreement no later than two years
 after this Agreement becomes effective.

1 Second, Qwest met the procedural requirements under the existing ICA and the 1996 Act.
2 From the parties' filings in this docket, it appears that Qwest timely filed a notice of its intent to
3 negotiate a new interconnection agreement ("ICA") with North County on July 2, 2008. North
4 County agreed to innumerable extensions of the arbitration window so that the parties could continue
5 to try to resolve their disputes without Commission intervention. When they were unsuccessful,
6 Qwest filed its Petition for Arbitration.

7 Third, there is no merit to the suggestion that only North County can seek renegotiation of the
8 ICA, and arbitration before the Commission under the 1996 Act. This Commission and others for
9 good reason have rejected this argument before.¹

10 North County argues in its Motion to Dismiss that notwithstanding the Commission lacks
11 jurisdiction to decide the petition pursuant to 47 U.S.C. §§ 251 and 252.² First, North County
12 contends that Qwest's request did not come about as a result of "a request for interconnection,
13 services or network elements."³ North County argues that since there is an interconnection
14 agreement in effect between the parties, Qwest's request could not be a "request for interconnection
15 or new services" as it believes the 1996 Act requires. North County goes on to argue that "no request
16 for interconnection or services covered by the existing ICA can be made."⁴ The Legal Division Staff
17 disagrees with North County's interpretation of the 1996 Act and its interpretation of the parties'
18 existing interconnection agreement. When an ICA is going to expire by its terms and automatic
19 renewal is not an option in the view of one or both of the parties, such party has the right to initiate
20 negotiations on a new agreement. Just as is the case with a new ICA, if agreement cannot be reached
21 between the parties, they may elect arbitration before the state commission. Contrary to North
22 County's arguments, in the Legal Division Staff's opinion, this meets the definition of a "request for
23 interconnection, services or network elements pursuant to section 251" of the Act.

24 We further agree with Qwest that North County's interpretation of the 1996 Act would
25 produce absurd results. If one or both parties were somehow precluded from renegotiating a new
26

27 ¹ See *In the Matter of Qwest Corporation's Petition for Arbitration and Approval of Amendment to Interconnection*
28 *Agreement with Arizona Dialtone, Inc.*, Docket Nos. T-01051B-07-0693 and T-03602A-07-0693.

² North County Motion to Dismiss at p. 2.

³ *Id.* at 4-5.

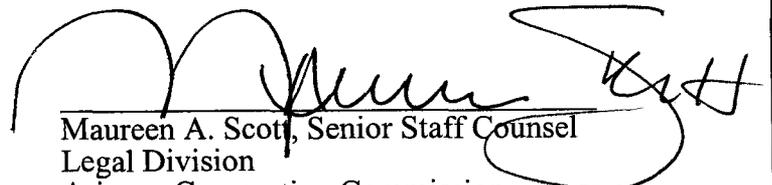
⁴ *Id.* at 5.

1 agreement due to a stalemate which could not be resolved by the state commission under the 1996
2 Act, the parties would essentially be locked in to what may be an outdated agreement that did not
3 reflect the current regulatory requirements and environment. One must question also whether North
4 County is suggesting that the existing ICA would first have to expire before negotiations could begin
5 anew under the 1996 Act. If that is the case, upon expiration Qwest would no longer be required to
6 provide North County with services under either § 251 and 252; an outcome which would appear to
7 be adverse to North County's interests. Further, with respect to the state commission's jurisdiction,
8 North County's arguments would result in the untenable position of the Commission having
9 jurisdiction only after the agreement between North County and Qwest expired. Again, the only
10 entity that this would work a hardship upon is North County.

11 In the end, North County apparently wants the 1997 agreement to remain intact because of
12 certain unknown benefits it receives from the agreement. However, Qwest as the other party to the
13 agreement, has a right to seek changes to the agreement during the renewal process. Nothing in the
14 1996 Act, the Commission's orders, rules or regulations would preclude this result. To the extent
15 voluntary agreement is not possible, either party has a right to come to the Commission to resolve
16 their disputes.

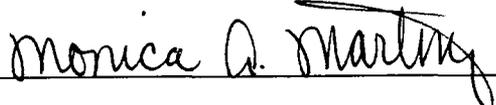
17 Finally, the Legal Division Staff does not believe that the two cases relied upon by North
18 County are relevant to the instant dispute between the parties because the facts outlined in those cases
19 are different.⁵

20 RESPECTFULLY SUBMITTED this 27th day of May 2010.

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22 
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25 Arizona Corporation Commission
26 1200 West Washington Street
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5 See *In the Matter of the Request by GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI for Mediation Regarding Glacier State Study Area Interconnection Disputes with ACS of the Northland, Inc. d/b/a Alaska Communications Systems, ACS Local Service and ACS*, Case No. U-02-18, Order No. 2, p. 5 (filed Aug 29, 2002; and *In the Matter of the Petition of Global NAPs Ohio for Arbitration Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with the Ohio bell Telephone company dba AT&T Ohio*, Finding and Order, Case No. 09-195-TP-ARB (filed January 7, 2010).

1 Original and thirteen (13) copies
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3 Docket Control
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6 Copy of the foregoing mailed this
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