OPEN MEETING ITEM

ORIGINAL

0000126656

COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ARIZONA CORPORATION COMMISSION

RECEIVED

2011 JUN 28 A 8: 25

AZ CORP COMMISSION
DOCKET CONTROL

DATE: JUNE 28, 2011

DOCKET NOS.: T-03335A-09-0383 and T-01051B-09-0383

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane L. Rodda. The recommendation has been filed in the form of an Opinion and Order on:

NORTH COUNTY COMMUNICATIONS CORPORATION and
QWEST CORPORATION
(ARBITRATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 7, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JULY 12, 2011 and JULY 13, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED
JUN 28 2011
DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

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-03335A-09-0383 DOCKET NO. T-01051B-09-0383 DECISION NO. _____ **OPINION AND ORDER**

DATE OF ARBITRATION:	March 15, 2011
PLACE OF ARBITRATION:	Phoenix, Arizona
ARBITRATOR:	Jane L. Rodda
APPEARANCES:	Ms. Lisa Anderl and Mr. Norman G. Curtright, Qwest Corporation; and Mr. Dale Dixon Jr., Law Office of Dale Dixon, on behalf of North County Communications Corporation of 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

Procedural History

1. On August 3, 2009, pursuant to the Telecommunications Act of 1996 (the "1996 Act" or "the Act") Qwest Corporation ("Qwest") filed with the Commission a Petition for Arbitration of certain terms and conditions for interconnection and related arrangements ("Petition") with North

County Communications Corporation of Arizona ("NCC").[1]

2. By Procedural Order dated August 5, 2009, a Procedural Conference was set for September 2, 2009, to establish arbitration procedures.

3. On September 1, 2009, NCC docketed a letter requesting a 30 day continuance to give the parties an opportunity to negotiate the interconnection agreement ("ICA").

4. At the September 2, 2009, Procedural Conference, Qwest agreed to the continuance, and by Procedural Order dated September 2, 2009, a Procedural Conference for the purpose of obtaining an update of the status of negotiations was set for October 1, 2009.[2]

5. On September 30, 2009, NCC filed a request for another 30 day continuance, stating that the parties were making progress in their negotiations and were likely to resolve the matter consensually. By Procedural Order dated September 30, 2009, the Procedural Conference was continued until November 5, 2009.

6. By letter dated November 2, 2009, NCC filed another request for 30 day continuance and reported that the parties were still negotiating. By Procedural Order dated November 5, 2009, the Procedural Conference was continued to December 4, 2009.

7. At the December 4, 2009, Procedural Conference, Qwest and NCC confirmed that their discussions continued to be productive and that they hoped to have a completed agreement filed with the Commission by December 15, 2009.

8. By Procedural Order dated December 4, 2009, a Procedural Conference to determine the status of the matter was set for January 8, 2010. At the January 8, 2010, Procedural Conference, the parties reported that their differences on a new agreement were greater than they initially realized, and they agreed that the matter should be set for arbitration.

9. By Procedural Order dated January 8, 2010, the matter was set for arbitration to commence April 20, 2010.

10. On February 10, 2010, the parties filed separate position statements and issues

---

[1] Section 252(b) of the 1996 Act provides that any party involved in the negotiation of an agreement may petition the state commission to arbitrate any open issues. Section 252(b)(4) provides that the state commission shall limit its consideration to the issues set forth in the petition and in the response thereto.

[2] By Procedural Order dated September 23, 2009, the Procedural Conference was continued until October 5, 2009 to accommodate a scheduling conflict.

matrixes.

11. On March 4, 2010, the parties filed a Joint Motion for Suspension of Procedural Dates; Request for Procedural Conference; and Stipulation Regarding Responses. The parties stated that it was apparent from NCC's Position Statement that NCC contested the Commission's jurisdiction to arbitrate this matter and that the initial question of jurisdiction needed to be settled before proceeding further.

12. By Procedural Order dated March 9, 2010, the arbitration schedule was suspended and a Procedural Conference set for March 22, 2010. Because Commission jurisdiction was at issue, the Commission's Utilities and Legal Divisions ("Staff") were requested to appear.

13. A Procedural Conference commenced on March 22, 2010, with Staff, Qwest and NCC appearing through counsel. NCC agreed to file an Answer and any dispositive motions in the matter by April 9, 2010. By Procedural Order dated March 23, 2010, a schedule for the expected Motion to Dismiss was established.

14. On April 9, 2010, NCC filed its Motion to Dismiss and a Response to Qwest's Petition.

15. On April 29, 2010, Qwest filed its Response to the Motion to Dismiss.

16. On May 10, 2010, Staff filed a request for an extension of time to file its Comments on the Motion to Dismiss until May 24, 2010. By Procedural Order dated May 10, 2010, Staff's request was granted and the procedural schedule extended, with oral argument set for June 29, 2010.

17. On May 25, 2010, Staff filed a Motion for Extension of Time to file Staff Comments due to Staff's workload. In addition, subsequent to the May 10, 2010 Procedural Order, the Commission changed the date of its Open Meeting which conflicted with the scheduled oral argument. By Procedural Order dated May 28, 2010, Staff's Motion was granted, and oral argument was set for July 1, 2010.

18. On May 27, 2010, Staff filed its Comments on NCC's Motion to Dismiss.

19. On June 15, 2010, NCC filed its Reply in Support of its Motion to Dismiss.

20. On June 23, 2010, Qwest filed Supplemental Authority in support of its Response to the NCC Motion, consisting of the Oregon commission's denial of a similar NCC Motion to Dismiss

in the arbitration before that commission.

21. Oral argument commenced as scheduled on July 1, 2010, with the parties and Staff being represented by counsel and appearing telephonically.

22. By Procedural Order dated September 30, 2010, NCC's Motion to Dismiss was denied. The September 30, 2010, Procedural Order found that the existing, expired, ICA by its own terms contained a provision that it could be renegotiated after two years. The Procedural Order found: 1) that it would be unfair to deprive Qwest, the Incumbent Local Exchange Carrier ("ILEC"), the ability to re-negotiate an ICA when the ICA recognizes such right; 2) such denial would shift all power to NCC, the Competitive Local Exchange Carrier ("CLEC"); and 3) that to deprive the ILEC the ability to seek arbitration when negotiations fail would deprive the ILEC of the benefits of the Act. A Procedural Conference was set for October 28, 2010, to establish arbitration procedures.

23. On October 20, 2010, Qwest filed a Motion to Reschedule the October 28, 2010, Procedural Conference because Qwest's counsel had a prior conflicting court appearance. NCC did not object, and by Procedural Order dated October 21, 2010, the Procedural Conference was rescheduled for November 1, 2010.

24. On October 27, 2010, the parties filed a Joint Matrix of Disputed Issues ("Jt. Matrix").

25. Qwest, NCC and Staff appeared at the November 1, 2010, Procedural Conference, at which time a schedule for filing testimony and conducting the arbitration was discussed. The schedule was formally established in a November 3, 2010, Procedural Order.

26. On December 15, 2010, Qwest filed the Direct Testimony of Philip Linse, Director-Legal Issues for Network, and Renee Albersheim, Qwest's Staff Witnessing Representative in its Global Wholesale Market Organization; and NCC filed the Direct Testimony of Todd Lesser, President of NCC.

27. On January 4, 2011, Qwest filed an Unopposed Motion for Extension of Time to File Rebuttal Testimony, from January 14, 2011, to January 28, 2011, because of the involvement of Qwest's counsel in merger proceedings in multiple jurisdictions. By Procedural Order dated January 10, 2011, the testimony deadline was extended until January 28, 2011.

28. On January 26, 2011, NCC filed a Motion to Extend Time for Reply Testimony and

Arbitration Hearing because it had engaged new counsel for the arbitration. The request was granted by Procedural Order dated February 4, 2011, and the arbitration was continued to March 15, 2011, with Reply Testimony due February 11, 2011.

29. On February 11, 2011, Qwest filed the Rebuttal Testimony of Mr. Linse and Ms. Albersheim, and NCC filed the Reply Testimony of Mr. Lesser.

30. On March 15, 2011, Qwest and NCC appeared before a duly authorized Administrative Law Judge acting as arbitrator in this matter. The arbitration required one day of hearing.

31. On April 22, 2011, Qwest and NCC filed their post-hearing briefs.

Background

32. Qwest is an ILEC pursuant to 47 U.S.C. § 252 and provides telecommunication services within Arizona.

33. NCC received a Certificate of Convenience and Necessity ("CC&N") to provide facilities-based and resold local exchange and inter/intraLATA telecommunications services throughout the state as a CLEC in Decision No. 62128 (December 14, 1999). In Arizona, NCC provides telephone service to businesses that take incoming calls.[3] Currently, traffic flows from Qwest to NCC for direct interconnection (i.e. NCC does not directly send calls to Qwest).[4]

34. Qwest and NCC entered into an ICA dated November 22, 1997.[5] The existing ICA at Section XXXIV (Miscellaneous Terms) ¶ V. (Term) provides:

> This Agreement shall be effective for a period of 2 ½ years, and thereafter the Agreement shall continue in force and effect unless and 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.

The ICA is currently in "evergreen status" while the parties negotiate/arbitrate a new agreement.

---

[3] Transcript of March 23, 2011 Arbitration ("Tr.") at 129-133.

[4] Tr. at 138.

[5] Ex Q-3 Albersheim Dir. at 3. The agreement was originally arbitrated between U.S. West Communications, Inc. and MFS Communications Company. A copy of the existing ICA was admitted as an exhibit in this proceeding. *See* Ex Q-6. On April 1, 2011, Qwest's parent company, Qwest Communications International, Inc. was acquired by CenturyLink, Inc. At the time of this proceeding, the entity that provides interconnection and local telephone service, continues to exist under the Qwest name.

35. Qwest believes that its ICA with NCC is outdated in that its terms and product descriptions do not match Qwest's current products and processes. Qwest believes that its proposed ICA, based on its current template agreement, will better address circumstances which Qwest claims have led to billing disputes with NCC under the existing ICA. Qwest states that it requested to negotiate a new agreement with NCC in 2008, and that it provided NCC a copy of its negotiation ICA template at that time as a basis to start negotiations.[6]

36. NCC believes that a new ICA is not necessary because it believes that the existing ICA satisfies all aspects of interconnection under the Act and state laws. NCC argues that Qwest has not demonstrated a legal or regulatory requirement for discarding the existing ICA and forcing NCC to accept a new agreement. NCC further asserts that Qwest is trying to impose its internal business desires and new terms on NCC that unilaterally benefit Qwest.[7]

37. NCC wishes to retain Multi-Frequency ("MF") signaling as its method of interconnection. In addition, NCC objects to Qwest's proposed cap on compensable minutes (Section 7.8.1.2); Qwest's proposed Relative Use Factor ("RUF") and restrictions on Virtual NXX ("VNNX") (Sections 7.3.1.1.3.1 and 7.3.2.2.1); Qwest's proposed prohibitions against using third-party tandem providers for interconnection (Section 7.2.1.1); Qwest's multiplexer ("MUX") fees and/or installation fees on trunks (in the alternative, NCC seeks to charge reciprocal MUX and installation fees on Qwest)(Section 7.3.2.3 and 7.3.3); Qwest's unwillingness to purchase Calling Number ("CNAM") data (i.e. Caller ID information); and seeks to prohibit Qwest from charging for the billing records that Qwest provides to NCC, which records NCC states it needs to bill Qwest for reciprocal compensation.[8]

38. Qwest states that it does not typically employ MF signaling, but rather uses Signaling System 7 ("SS7") for call management. However, to accommodate NCC, Qwest has modified the language in its template ICA that would allow NCC to retain MF signaling for calls sent from Qwest to NCC, but would require NCC to upgrade to SS7 to send calls to Qwest. Qwest also proposes

---

[6] Ex Q-3 Albersheim Dir. at 5.
[7] NCC Brief at 1-2.
[8] NCC Brief at 2. In its Brief, NCC lists the charges for billing records as an issue in this proceeding, but did not provide testimony or argument about this issue. We do not address this issue as part of this Order.

language that caps compensable minutes and establishes a billing procedure in order to verify NCC's bills to Qwest and to bill NCC for any traffic that NCC sends to Qwest.[9]

Issues in Dispute

MF Signaling vs SS7 Signaling and Cap on Compensable Minutes

39. Network signaling is the information that is sent between network elements and includes supervisory information used to initiate and terminate connections, indicate network connection status (i.e. whether the line is busy), managing the network connection and general information transactions.[10]

40. MF signaling is generally an audible analog code (i.e. a series of tones) that is used to manage connections between telecommunications switches. MF signaling is known as "in-band" signaling, which means that the path that the signaling uses to manage the trunk connections between switches is the same trunk connection as the conversation/talk path.[11]

41. SS7 signaling is a digital code that is used to manage connections between telecommunications switches and call related databases. It is a type of signaling that is known as Common Channel Signaling ("CCS") or out-of-band signaling.[12] "Out-of-band" signaling means that the path that the signaling uses to manage the trunk[13] connections between switches is not the same trunk connection as the conversation/talk path.[14] Qwest asserts that SS7 signaling is faster, more efficient, more flexible and more reliable than MF signaling.[15] Qwest states that SS7 technology is more advanced than MF signaling and allows carriers to more accurately track traffic and therefore, more accurately bill for traffic.[16] According to Qwest, unlike MF, SS7 provides for the signaling of both the calling and called numbers, so that the jurisdiction of the call can be determined.[17] Qwest asserts that the lack of calling party number, or a bare measurement of overall minutes of use, does

---

[9] Qwest Brief at 3.
[10] Ex Q-1 Linse Dir. at 3.
[11] Ex Q-1 Linse Dir. at 5.
[12] Ex Q-1 Linse Dir. at 4.
[13] A trunk is the connection used to provide a communications path between switches.
[14] Ex Q-1 Linse Dir. at 4.
[15] Ex Q-1 Linse Dir. at 6.
[16] Ex Q-1 Linse at 4-7.
[17] Ex Q-2 Linse Reb, at 8-9.

not provide adequate information for billing purposes.[18] Qwest states that SS7 signaling has become the dominant and preferred signaling method between telecommunications networks.[19]

42. According to Qwest, prior to the 1996 Act, it was not common to record information related to "local" telecommunications traffic (i.e. a call that originates and terminates in the same local calling area) because carriers charged a flat rate for local calling.[20] The 1996 Act required "reciprocal compensation" between local carriers for the transport and termination of telecommunications traffic.[21] Thus, for local calls that originate with one carrier and terminate to a phone associated with a different carrier, the originating carrier pays compensation for the transport and termination of the call to the terminating carrier based on the length of the call at a specified reciprocal compensation rate. Thus, under the current intercarrier compensation regime, it is important to record the originating caller. Calls that originate in different calling areas are considered toll calls. The 1996 Act did not alter the regime of intercarrier compensation that existed prior to the enactment of the Act for toll calls, which is based on tarrifed access charges.

43. According to Qwest, one of the limitations of MF signaling is its inability to segregate traffic on a jurisdictional basis, which causes billing problems because the nature of the traffic, (i.e. whether it is interstate, intrastate long distance, or local) affects how carriers bill each other.[22] Qwest believes that the limitations of MF signaling led to the on-going billing dispute with NCC involving Jointly Provided Switched Access ("JPSA") or "Meet Point Billing."[23]

44. Qwest explains that in 2001, Qwest and NCC had agreed on a methodology for NCC to invoice Qwest for reciprocal compensation. One step in that process involved the subtraction of minutes of use associated with the Qwest-provided JPSA records from the total minutes of use that NCC terminated over the local interconnect service ("LIS") trunk groups that interconnect with Qwest's tandem switches.[24] Qwest states that it is necessary to subtract the JPSA traffic from total

---

[18] Ex Q-2 Linse Reb. at 7.
[19] Ex Q-1 Linse Dir. at 8.
[20] Ex Q-1 Linse Dir. at 9.
[21] Ex Q-1 Linse Dir. at 10.
[22] Ex Q-2 Linse Reb. at 7; Ex Q-4 Albersheim Reb. at 5.
[23] JPSA is the process whereby two or more local exchange carriers jointly provide the transport element of switched access to a third party—the long distance provider. The LECs each receive transportation revenue according to their tariffs. JPSA is not subject to reciprocal compensation.
[24] A tandem switch connects trunk circuits between end office switches.

minutes of use because Qwest does not pay reciprocal compensation for JPSA.[25] Qwest states that at some point in 2003, NCC stopped identifying the JPSA traffic on its invoices, and identified the minutes associated with "Meet Point Billing Records" as "N/A". Qwest states that in 2008, it was able to verify that NCC was not removing JPSA traffic from its bills to Qwest. Of the 335 invoices that Qwest has received from NCC, Qwest disputes 147 for a variety of reasons.[26]

45. Qwest's template ICA Section 7.1 addresses interconnection. Qwest proposes the following modifications to its template language for Section 7.1.1 to accommodate NCC's desire to continue to use MF signaling, and proposes language for Section 7.8, concerning billing (modifications to Qwest's template agreement are designated in bold and underlined):[27]

> 7.1.1 This Section describes the Interconnection of Qwest's network and CLEC's network for the purpose of exchanging Exchange Service (EAS/Local traffic), IntraLATA LEC Toll and Jointly Provided Switched Access traffic. Intercarrier traffic exchange ~~will~~ **may** be mutual and reciprocal and all traffic exchanged between the Parties must be provisioned pursuant to this Agreement. **The Parties understand and agree that CLEC currently sends no traffic to Qwest and instead terminates traffic either originated by Qwest or originated by other carriers and passed through Qwest to CLEC. The Parties further understand and agree that CLEC currently uses multi-frequency ("MF") signaling in its receipt of traffic from Qwest and does not utilize SS7 signaling. The Parties agree that, should CLEC subsequently wish to originate traffic to send to Qwest for termination or passing of traffic to other Telecommunications Carriers, the Parties will mutually negotiate an amendment to this Agreement which will also include requirements for use of SS7 signaling in the mutual exchange of traffic.** A Party that has interconnected or gained access under sections 251(a)(1), 251(c)(2),or 251 (c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering Telecommunications Services through the same arrangement(s) as well. Enhanced or information service providers (providers or "Information Services" as that term is defined in 47 U.S.C. § 153 (20)) that do not also provide domestic or international telecommunications are not Telecommunications Carriers as defined by the Act and thus may not interconnect under this Agreement. Qwest will provide Interconnection at any Technically Feasible Point within its network, including but not limited to, (i) the Line Side of a local Switch (i.e., local switching); (ii) the Trunk Side of a local Switch, (iii) the trunk connection points for a Tandem Switch, (iv) Central Office Cross Connection points, (v) out-of-band Signaling Transfer Points necessary to exchange traffic at these points and access call-related databases, and (vi) points of access to Unbundled Network Elements. Section 9 of this Agreement describes Interconnection at points (i), (iv), (v) and (vi), although some aspects of these Interconnection points are described in

[25] Ex Q-3 Albersheim Dir. at 10.
[26] Ex Q-3 Albersheim Dir. at 10, and attached Ex RA-Summery of Billing Disputes.
[27] Ex Q-5 Qwest Proposed ICA.

Section 7. "Interconnection" is as described in the Act and refers, in this Section of the Agreement, to the connection between networks for the purpose of transmission and routing of Telephone Exchange Service traffic and IntraLATA LEC Toll traffic at points (ii) and (iii) described above. Interconnection, which Qwest currently names "Local Interconnection Service" (LIS), is provided for the purpose of connecting End Office Switches to End Office Switches or End Office Switches to local or Access Tandem Switches for the exchange of Exchange Service (EAS/Local traffic); or End Office Switches to Access Tandem Switches for the exchange of IntraLATA LEC Toll or Jointly Provided Switched Access traffic. Qwest Tandem Switch to CLEC Tandem Switch connections will be provided where Technically Feasible. New or continued Qwest local Tandem Switch to Qwest Access Tandem Switch and Qwest Access Tandem Switch to Qwest Access Tandem Switch connections are not required where Qwest can demonstrate that such connections present a risk of Switch exhaust and that Qwest does not make similar use of its network to transport the local calls of its own or any Affiliate's End User Customers.

7.2.1.1 This Section 7.2 addresses the exchange of traffic between CLEC's network and Qwest's network. Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective Tariffs or contractual offerings for such third party terminations. Unless otherwise agreed to by the Parties, via an amendment to this Agreement, the Parties will directly exchange traffic between their respective networks without the use of third party transit providers. **In addition, as discussed in Section 7.1.1 above, unless a later amendment is mutually negotiated by the Parties, CLEC will send no traffic to Qwest either for termination or for Qwest to send to other Telecommunications Carriers connected to Qwest.**

7.8 Billing Methodology for MF Traffic Terminated to CLEC

7.8.1 While the traffic between Qwest and CLEC is as described in Section 7.1.1 and this Agreement has not been amended otherwise, CLEC will use the following process to determine the amount of traffic originated by Qwest that CLEC is entitled to receive intercarrier compensation from Qwest for its determination.

7.8.1.1 CLEC will determine each calendar month the total number of non-VNXX minutes terminating to CLEC's end office switch from Qwest over the LIS trunk groups interconnecting Qwest and CLEC for each of its end office switches. That information will be provided to Qwest on a per-trunk group basis.

7.8.1.2 Qwest will have the right, once per calendar year, to request reports of the data and determination method of Section 7.8.1.1 in order to audit the usage underlying the billed reciprocal compensation minutes of use. At no time shall the total number of minutes of use per in-service DS1 exceed 400,000 on a calendar month basis and then only when the number of required trunks (as determined by Qwest's traffic measurements) exceeds the number of in-service trunks.

7.8.1.3 In determining the number of minutes for which CLEC is entitled to receive intercarrier compensation for termination from

Qwest, CLEC will subtract from the total monthly minutes of use determined in Section 7.8.1.1 :

(a) All wireline-originating minutes of use that transits Qwest's network and terminates to CLEC's switches during that calendar month. Qwest will provide CLEC summary level messages and minutes each month for these wireline-originating transit records.

(b) All wireless-originating minutes of use for traffic that transits Qwest's network and terminates to CLEC's switches during that calendar month. Qwest will provide CLEC summary level messages and minutes each month for these wireless-originating transit records.

(c) All minutes of use for Jointly Provided Switched Access ("JPSA") traffic originating from or terminating to CLEC's switches during that calendar month. Qwest will provide CLEC summary level messages and minutes each month for these JPSA records.

(d) All Qwest-originated IntraLATA LEC Toll traffic for which Qwest is the originating intraLATA toll provider. Qwest will provide CLEC summary level messages and minutes each month for these intraLATA toll records.

(e) For clarification, as discussed generally in Section 7 of this Agreement, Qwest has no obligation to compensate CLEC for local minutes terminating to CLEC that are originated by third party providers, IntraLATA LEC Toll minutes terminating to CLEC for which Qwest is not the originating toll provider, and JPSA Traffic.

46. NCC argues that the Commission should reject Qwest's proposed prohibition on MF signaling for traffic sent to Qwest and the proposed cap on billable minutes for traffic sent from Qwest to NCC.[28] NCC states that Qwest's proposed agreement is per se prejudicial and unlawful because other carriers that operate in Arizona are not prohibited from using MF signaling for outbound calls.[29] NCC argues that the entire Section 7.1.1 should be deleted because Qwest has no right or authority to dictate technologies.[30]

47. NCC asserts that Qwest's belief that it cannot certify NCC's billing under MF is erroneous, and that Qwest's switches can be programmed to obtain all necessary call information from NCC.[31] NCC asserts that Qwest has not explored with its switch manufacturers how to effect a programming change.[32]

---

[28] NCC Brief at 2.
[29] Tr. at 29 and 88; *See also* Jt Matrix.
[30] NCC Brief at 4. Jt Matrix at 1.
[31] NCC Brief at 3.
[32] NCC Brief at 3 *citing* Tr. at 53-54.

48. NCC claims that there are other ways to interconnect in addition to MF and SS7, such as ISDN ("Integrated Services Digital Network"), SIP ("Session Initiation Protocol") and Voice Over Internet Protocol ("VoIP"). NCC claims that it sought to include interconnection via SIP/VoIP in the ICA, but that Qwest refused to discuss allowing NCC to interconnection with VoIP technology.[33] NCC claims that it has the capability to interconnect by SIP or ISDN, and that SIP would address all of Qwest's concerns.[34]

49. NCC believes that the ICA should require Qwest to offer VoIP interconnection, as it is more efficient than SS7 with Time Division Multiplex ("TDM"). NCC argues that because Qwest currently offers IP interconnection on a wholesale basis to businesses and residential customers, it must make such interconnection available to requesting carriers that is equal in quality.[35] According to NCC, because Qwest can offer up to 46 voice lines per T1 by VoIP, compared to 24 voice lines per T1 using SS7, Qwest is being discriminatory and forcing competitors to provide services inferior to those offered by Qwest.

50. NCC argues that Qwest's proposed cap of 400,000 compensable minutes is arbitrary, prejudicial and unlawful.[36] NCC believes that Qwest picked an arbitrarily low number for the cap as Qwest's witnesses did not know NCC's actual usage in Arizona.[37] NCC states that Qwest customers calling NCC's customers would have no idea that there is a cap on minutes, and no incentive to stop calling numbers, and that NCC has no way to block calls. NCC argues that the only purpose of the 400,000 minute cap is to arbitrarily and prejudicially discount the price Qwest pays for use of NCC's network. NCC further argues that placing a 400,000 minute cap would constitute a regulatory takings under *United States v. Causby*.[38]

51. NCC states that the FCC recently recognized the widespread use of MF signaling and is in the process of developing rules that would address Qwest's concerns by requiring carriers that

---

[33] NCC Brief at 3.
[34] NCC Brief at 3 *citing* Ex N-3 Lesser Reply at 16-17.
[35] NCC Brief at 4, Ex N-3 Lesser Reply at 16.
[36] NCC Brief at 5. *See* proposed ICA section 7.8.1.2.
[37] NCC Brief at 6.
[38] 328 U.S. 256 (1946).

use MF signaling to transmit calling number information.[39] NCC urges the Commission not to take action in this proceeding that would contradict the FCC's planned rulemaking or prevent a carrier from using an industry standard.

52. NCC claims that Qwest is asserting that the cap is due to Qwest's inability to verify calls and billing under MF signaling because Qwest verifies calls and billing using its SS7 records.[40] NCC argues, however, that, as recognized by the FCC, SS7 was designed to facilitate call setup and routing, and its purpose is not to verify billing.[41]

53. NCC also argues that more importantly, the cap does not provide any growth rate on a per DS1 basis. NCC states that a DS1 uses up to a million minutes before needing to overflow into a second DS1, so Qwest's cap forces 60 percent inefficiency. NCC asserts that Qwest's cap will require NCC to purchase more DS1s in order to be fully compensated for the traffic that Qwest transmits to NCC.[42]

54. NCC states that Qwest's inability to accurately track usage from NCC's network is a fabrication, as NCC claims that Qwest can provide Automatic Number Identification ("ANI") to NCC and NCC could determine billable minutes.[43] NCC claims that ANI information is available for MF technology and that other ILECs provide similar information to NCC.[44] Furthermore, NCC asserts Qwest can back into the number, by subtracting the total SS7 minutes from the total minutes to determine the MF (or NCC) minutes.[45]

55. Qwest states that it designed its proposed contract language to allow NCC to continue to use MF Signaling for traffic that terminates with NCC, but give Qwest a way to verify the accuracy of NCC's bills and clarify that Qwest is not required to pay for minutes associated with

---

[39] *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, WC Docket No. 10-9-, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ("NPRM") FCC 11-13, ¶¶ 625-634 (rel. February 9, 2011).

[40] NCC Brief at 5.

[41] *NPRM* at ¶ 628; *see also* Ex N-3 Lesser Reply at 5-6; *and* Tr. at 47 and 83-84.

[42] NCC Brief at 7.

[43] ANI is the billing telephone number associated with the access line from which the call originates.

[44] NCC Brief at 7 *citing* Ex N-2 Lesser Dir. at 7-8.

[45] NCC Brief at 7 *citing* Tr. at 37-38.

JPSA, non-Qwest intraLATA LEC toll, wireless traffic, and minutes originated by third-party providers. Qwest insists that if the traffic between Qwest and NCC is going to be two-way, then Qwest will require NCC to upgrade to SS7 signaling because Qwest does not record the traffic that NCC routes to Qwest over MF trunks.[46] Qwest wants NCC to have responsibility for the tracking and billing of traffic because Qwest cannot tell the nature of the traffic using MF signaling.[47]

56. Qwest notes that although NCC argues to retain the current ICA, that agreement requires NCC to transition to SS7 signaling.[48]

57. Qwest argues that its proposed ICA terms do not discriminate against NCC, and that because it is proposing to accommodate NCC's request to interconnect in a manner that is different from how every other CLEC interconnects, it is appropriate to have different terms and conditions to address the problems raised by that method of interconnection.[49] Qwest states that these problems include an inability to track and measure local traffic that is destined for NCC's customers, making it difficult to validate NCC's bills to Qwest for reciprocal compensation, and an inability to track and measure local traffic that NCC might send to Qwest over those MF trunks. Qwest asserts that the terms are reasonable to ensure that Qwest is able to bill NCC for any traffic it sends to Qwest, while still using MF to receive traffic from Qwest.[50]

58. Qwest's proposed ICA language for Section 7.8.1.2 caps the total number of minutes that will form the baseline for the calculation of compensable minutes. The proposed cap is an average of 400,000 minutes per DS1, per month, and Qwest argues that it is reasonable based on the number of minutes historically billed by NCC to Qwest.[51] Qwest notes that the 400,000 minutes per

---

[46] Ex Q-1 Linse Dir. at 23.
[47] Ex Q-3 Albersheim Dir. at 17.
[48] Ex Q-6 at Section XXXIII of the 1997 ICA, and see Ex Q-4 Albersheim Reb. at 10. Section XXXIII of the existing ICA states: "within 6 months from the date of final approval of this Agreement, the Parties agree to make a good faith effort to complete each of the following interconnection arrangements . . . (c) SS7 Interconnection and Certification . . . ."
[49] Qwest Brief at 3.
[50] Ex Q-3 Albersheim Dir. at 12.
[51] Ex N-3 Albersheim Dir. at 18-19. Qwest took the total number of minutes of use, as reported by NCC, terminating to NCC's Arizona switches each month for the period January 2007 through July 2008, excluding August and September 2007 because the in-service trunk information was not available. Qwest divided that total by the number of in-service DS1's for each month. The 17 month average of the monthly minutes of use per DS1 was 419,551. Qwest did not believe that the 419,551 monthly average represented compensable minutes of use because Qwest used NCC's "unvalidated" billing data. Qwest states that it originally believed that a cap of 200,000 minutes for compensable local traffic, was reasonable, but doubled that estimate to arrive at its proposed 400,000 cap.

DS1 limit is 270 percent higher than the average of the Arizona CLECs interconnecting with Qwest in October 2010, and 72 percent higher than the next highest Arizona CLEC for that same period.

59. Qwest argues the cap is necessary because NCC's use of MF signaling prevents Qwest from being able to determine how much local traffic is being sent over the MF trunks. Qwest asserts that the cap is designed to limit Qwest's obligation to compensate NCC, which is important because NCC can receive all types of traffic over the MF trunks, and Qwest has no reasonable ability to determine if all of those minutes are compensable to NCC.[52]

60. Qwest explained that the cap would be applied on an average basis, rather than a per DS1 basis. Qwest states it is willing to modify the language in Section 7.8 of the ICA to clarify this position if necessary.[53]

61. Qwest states that if NCC wants to renegotiate the cap, it should be required to work with Qwest to negotiate a higher cap, after giving Qwest reasonable and verifiable assurance that the additional minutes of use will result in local, compensable traffic.[54] Qwest states that in allowing NCC to retain its MF trunks, Qwest is agreeing to undertake significant manual effort that it does not have to undertake with other CLECs because no other CLEC interconnects only with MF trunks.

62. Qwest asserts that the burden is on the billing party to establish that bills are accurate and proper. Qwest states that NCC's choice of using MF means that NCC cannot verify that it is billing only for local minutes and that Qwest is prevented from verifying the information itself.[55]

63. Qwest states that its proposed billing procedure under which Qwest will manually generate reports to NCC that identify the non-local traffic is similar to the arrangement that NCC has with AT&T and Verizon today.[56] NCC has explained that AT&T and Verizon send NCC reports that exclude the non-local minutes and that NCC prepares its bills based on that information.

Resolution

64. Carriers must be able to identify the type of traffic that they are exchanging in order to bill each other correctly. A service provider needs certain information such as the appropriate

[52] Ex Q-4 Albersheim Reb. at 8.
[53] Qwest Brief at 10.
[54] Qwest Brief at 4.
[55] Qwest Brief at 9.
[56] Ex Q-4 Albersheim Reb. at 7, fn 8.

upstream provider and the geographic location of the caller to identify the nature of the traffic. The FCC has recognized that a significant source of billing problems arise when the calling party number is not provided.[57] The FCC is seeking to amend its rules to require providers using MF signaling to pass CPN (calling party number) or the charge number (CN) in the MF ANI field.[58]

65. Qwest has demonstrated a legitimate concern that it cannot receive accurate bills from NCC which appears to be due, at least in part, to NCC's use of MF signaling. Qwest has proposed a process that it believes will provide assurances that NCC's bills for reciprocal compensation do not include minutes of use for JPSA or toll traffic.

66. Qwest submitted evidence that NCC is the only CLEC that interconnects exclusively through MF signaling.

67. NCC has argued throughout the proceeding that Qwest is able to provide ANI to NCC using MF signaling. However, Mr. Linse testified for Qwest that NCC minimizes the importance of "class or service" and Qwest's ability to provide or receive ANI on a local call.[59] NCC did not provide persuasive testimony or other authority that refutes Qwest's position that there is a significant difference between local interconnection trunks and IXC trunks and that traffic is signaled differently depending on its nature as local or toll.[60] Although NCC alleges that Qwest's switches are able to be reprogrammed to obtain necessary ANI from MF switches,[61] NCC did not provide evidence that it would be feasible for Qwest to reprogram its switches or the costs of doing so. Neither did NCC cite any authority that would require Qwest to reconfigure its local trunks to provide ANI over MF.

68. The evidence indicates that Qwest's practice under which ANI is not provided over local trunks comports with industry practice. NCC's claim that AT&T and Verizon have addressed the billing issue by providing monthly reports is not responsive to the question whether they are able to provide ANI over local trunks. NCC's claim that other carriers have given NCC ANI over MF for

---

[57] *NPRM* at ¶ 623.
[58] *NPRM* at ¶630.
[59] Ex Q-2 Linse Reb. at 19-24. Mr. Linse testified that a local class of service trunk group is used for originating local traffic to be routed over a MF signaled local interconnection trunk, and this class of service is routed using single-stage signaling without ANI. Originating toll traffic destined for MF signaled IXC trunks is routed using two-stage signaling with ANI. According to Mr. Linse, changing the class of service on the trunk group changes how the traffic would be treated, and local traffic originated over a trunk configured for toll, may be routed or billed incorrectly.
[60] Ex Q-2 Linse Reb. at 20.
[61] Ex N-3 Lesser Reply at 19.

local traffic and the abilities of Neutral Tandem[62] are not sufficiently supported for us to find in NCC's favor on this issue.

69. NCC did not propose any contract language that would allow it to interconnect via ISDN, SIP or VoIP. NCC did not provide evidence about how these technologies might substitute for SS7 signaling. NCC did not propose any alternative contract language in this proceeding, evidently preferring to rely on the existing, expired ICA.

70. Based on this record, Qwest has met its burden to demonstrate that circumstances warrant the additional contract language concerning the use of MF signaling that Qwest proposes for Section 7.1.1 and 7.2.1.1, and we find no impermissible discrimination.

71. Absent evidence about alternative interconnection technologies, Qwest's proposal to use MF signaling for traffic delivered to NCC and to require SS7 signaling if NCC starts to deliver traffic to Qwest is reasonable. Until NCC has a reasonable, concrete proposal for a different means of interconnection or a billing procedure that can verify its bills are accurate, Qwest's proposal as set forth in Section 7.1.1 is reasonable and should be adopted.

72. Qwest's proposed cap on compensable minutes of use is intended to limit its exposure to paying reciprocal compensation for traffic that is not local.

73. The proposed cap of an average of 400,000 minutes of use per month for all in-service DS1s was calculated based on NCC's current usage pattern and Qwest's best efforts to analyze that data based on information received from NCC. NCC did not provide evidence in this proceeding about its actual use of its in-service circuits, nor did it contest Qwest's calculations.

74. Under the new agreement, as proposed by Qwest, Qwest will be providing NCC with manually generated reports for NCC to use in generating its bills. We expect this process to allow the generation of accurate bills to both parties' satisfaction. We have not been presented with sufficient detail of a workable alternative process as Qwest's witness testified that it does not record its own local traffic.[63]

75. It is critical to be able to determine if traffic is local or toll or transit in order for

---

[62] Ex N-2 Lesser Dir. at 7.
[63] Tr. at 39-44.

carriers to accurately bill each other. The proposed cap is reasonably calculated to address a shortcoming in MF signaling for local interconnection that leaves carriers open to the potential of paying for traffic that should be compensated on some other basis or by some other party, or to not being able to charge the appropriate rate or party for terminating traffic.

76. Qwest has stated that it is willing to renegotiate the cap as long as it receives reasonable and verifiable assurance that the bills it receives are accurate. If NCC has a better method for proving assurance to Qwest that its bills do not include minutes of use for non reciprocal compensation traffic, then NCC should propose such method. In this proceeding, NCC did not propose alternative contract language for the billing procedures.

77. Consequently, we approve Qwest's proposed contract language for Section 7.8, except that we find the language in Section 7.8.1.2 should be modified to clarify that the monthly cap of 400,000 minutes of use per in-service DS1 relates to compensable minutes of use and is calculated on an average basis over all in-service DS1s. In addition, language should be added that would allow either party to request a modification of the cap, including its elimination, based on verifiably accurate records that the traffic is appropriately subject to reciprocal compensation.

78. NCC provides no analysis of how *U.S. v. Causby* applies to this situation.[64] We do not find that approval of Qwest's contract language amounts to a takings under the United States Constitution.

Relative Use Factor ("RUF") and VNXX

79. Qwest proposed its standard ICA language for the RUF as follows:[65]

> 7.3.1.1.3.1 The Provider of the LIS two-way Entrance Facility (EF) will initially share the cost of the LIS two-way EF by assuming an initial relative use factor (RUF) of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the EF as described in Exhibit A shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data. If CLEC's End User Customers are assigned NPA-NXXs associated with a rate center different from the

[64] In *Causby* the Court found that frequent and regular flights of military aircraft over a chicken farm rendered the property unusable for that purpose and constituted a taking of private property.
[65] Ex Q-3 Albersheim Dir. at 22. Joint Matrix at 6.

rate center where the End User Customers are physically located, traffic that does not originate and terminate within the same Qwest Local Calling Area, regardless of the called and calling NPA-NXXx involving those End User Customers, is referred to as "VNXX traffic." For purposes of determining the relative use factor, the terminating carrier is responsible for VNXX traffic. If either Party demonstrates with traffic data that actual minutes of use during the previous quarter justifies a new relative use factor that Party will send notice to the other Party. The new factor will be calculated based upon Exhibit H. Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent. Qwest has never agreed to exchange VNXX traffic with CLEC.

7.3.2.2.1 The provider of the LIS two-way DTT facility will initially share the cost of the LIS two-way DTT facility by assuming an initial relative use factor of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the DTT facility, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments for the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor. If CLEC's End User Customers are assigned NPA-NXXs associated with a rate center other than the rate center where the End Use Customers are physically located, traffic that does not originate and terminate within the same Qwest Local Calling Area, regardless of the called and calling NPA-NXXs involving those End User Customers, is referred to as "VNXX traffic." For purposes of determining the relative use factor, the terminating carrier is responsible for VNXX traffic. If either Party demonstrates with data that actual minutes of use during the previous quarter justifies a new relative use factor that Party will send a notice to the other Party. The new factor will be calculated based upon Exhibit H. Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent. Qwest has never agreed to exchange VNXX traffic with CLEC.

Exhibit H

Calculation of the Relative Use Factor (RUF)

<u>Minutes that are Qwest's responsibility (A):</u>

- All EAS/Local 251(b)(5) Minutes of Use (MOU) that Qwest sends to CLEC
- All Qwest Exchange Access MOU that Qwest sends to CLEC
- EAS/Local 251(b)(5) traffic that transits Qwest network and is terminated to CLEC, for which Qwest receives compensation from the originating Carrier for performing the local transiting function
- All Intra LATA transit MOU that Qwest send to CLEC
- All ISP-bound and FX MOU that CLEC sends to Qwest

<u>Minuets that are CLEC's responsibility (B):</u>

- All EAS/Local 251(b)(5)MOU that CLEC sends to Qwest
- All Exchange Access MOU that CLEC sends to Qwest
- All EAS/Local 251(b)(5) traffic that CLEC sends to Qwest for termination on another Carrier's network
- All Intra LATA transit MOU that CLEC sends to Qwest

- All Jointly Provided Switched Access (unless joint NECA 4 billing percentages have been filed) that Qwest sends to CLEC and that CLEC sends to Qwest
- All ISP-bound and VNXX MOU that Qwest sends to CLEC
- All VNXX MOU that transits Qwest network and is terminated to CLEC

The mathematical equation for RUF is as follows:

Qwest (A)/ (A + B) Rounded to the nearest whole percentage
CLEC (B)/(A+B) Rounded to the nearest whole percentage

Data used for the calculation will be the average of the most recent three (3) months usage determined not to be an anomaly.

80. Qwest's proposed ICA defines VNXX or Virtual NXX as:

All traffic originated by a Party's End User Customer and dialed with a local dialing pattern that is not terminated to the other Party's End User Customer physically located within the same Qwest Local Calling Area (as approved by the state Commission) as the originating caller, regardless of the NPA-NXX dialed. VNXX does not include originating 8XX traffic.[66]

81. NCC argues that the Commission should reject Qwest's proposed RUF, and terms for VNXX. NCC argues that the issue of VNXX is still undecided in Arizona and it would be inappropriate for Qwest's definition of VNXX to be adopted pending a final decision of the Commission. NCC proposed that the ICA provide merely that "VNXX will be treated in accordance with Commission rulings."

82. NCC argues that Qwest's VNXX language is without legal justification and self-serving by prohibiting NCC from receiving compensation for VNXX calls. NCC asserts that Qwest had not provided legal or regulatory justification to support its VNXX proposal, but simply wants to avoid compensation obligations.

83. NCC states that there has been no negotiation on the VNXX issue.[67] NCC argues that until the Commission creates rules that define and govern VNXX traffic, Qwest should not be permitted to impose a unilateral, self-serving definition and exclusions. NCC states that accepting Qwest's VNXX proposal will prohibit NCC (and any carrier opting into the agreement) from offering a full range of competitive telecommunications services.[68]

---

[66] Ex Q-3 Albersheim Dir. at 23.
[67] NCC Brief at 8.
[68] NCC Brief at 8.

84. At the hearing, NCC confirmed that it does not have any VNXX traffic in Arizona and that it does not have any ISP customers.[69]

85. With respect to the proposed RUF, NCC states that Qwest is proposing "to count certain calls originating with Qwest and terminating to NCC as if they were originated by NCC and terminated to Qwest."[70] NCC states that nearly 100 percent of the calls exchanged between the parties are calls from Qwest's customers to NCC's customers, and thus the actual use is 100 percent attributable to Qwest.

86. According to Qwest, the Relative Use Factor is applicable to local interconnection trunks when traffic data is available to allow each carrier to account for its proportion of traffic, and adjust billing accordingly.[71] Qwest states that its proposed ICA contains the standard language for the calculation of the RUF, and that NCC did not dispute the RUF language at the time it filed its Response to the Petition, but raised it issue in its rebuttal testimony.

87. Under Qwest's proposed language, the starting point for assigning facility costs for both the entrance facility and any direct trunked transport is a 50/50 sharing of the costs between both parties when the interconnecting companies have not exchanged LIS traffic previously.[72] The initial assignment is valid for three months, and then the parties may seek recalculation based on the actual relative use. Qwest states that these terms have been agreed to between Qwest and at least 48 other CLECs.[73]

88. Qwest states that in subsequent negotiations, it proposed a more favorable sharing to NCC that would assign 1 percent of the cost to NCC and 99 percent to Qwest, so long as the two parties file billing percentages in NECA 4 that give Qwest 100 percent ownership of the transport facilities.[74] Qwest states that no agreement was reached during negotiations.

89. In addition to the standard ICA language, Qwest added language in Section 7.8 to exclude VNXX traffic from NCC's bills to Qwest. Qwest asserts that this is consistent with the

---

[69] Tr. at 159.
[70] NCC Brief at 8.
[71] Ex Q-3 Albersheim Dir. at 19.
[72] Ex Q-3 Albersheim Dir at 19.
[73] Ex Q-3 Albersheim Dir at 23.
[74] Proposed ICA, Section 7.3.1.1.3.1 and Section 7.3.2.2.1. Qwest states that the specific 1%/99% RUF language is not in the ICA filed with Qwest's petition as that offer was made to NCC after that filing.

Commission's Decision in the Level 3 arbitration in which the Commission determined that VNXX should not be permitted, and that the parties could negotiate an "FX-like" alternative to VNXX.[75] Qwest asserts that the Commission's Decisions do not allow the use of VNXX over LIS trunks, but rather requires the establishment of direct end office trunks for the exchange of what is called "FX-Like" traffic.

90. In response to NCC's argument that the ICA should not define VNXX, Qwest argues that the lack of specific terms in a contract is a recipe for future disputes and that its proposed language properly implements the requirements regarding VNXX.[76] Although NCC's disagreement with Qwest about the treatment of VNXX is hypothetical at this point (because NCC has stated it does not utilize VNXX), Qwest wants to include the VNXX language in the ICA because it is consistent with Commission decisions, and other carriers can opt into this agreement. Qwest states that if the ICA is silent as to this issue, the matter will come back to the Commission some day for resolution.

Resolution

91. FCC Rule 51.709(b) provides:

> The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportion may be measured during peak periods.

92. Qwest has proposed its standard RUF and VNXX language which assumes as an initial position that the exchange of traffic will essentially be equal or 50/50. NCC apparently believes that the ICA should not contain a provision concerning RUF for LIS trunks, and offers no alternative proposal for this section.

93. Qwest's proposed language concerning the RUF is generally reasonable, and allows a recalculation of the RUF based on actual data. However, because the parties have a history of exchanging LIS traffic, and the testimony in this proceeding is that currently, essentially all of the calls originate with Qwest and terminate with NCC, an initial RUF of 50/50 is not reasonable. These

[75] Decision Nos. 68817 (June 29, 2006) at 57 and 69176 (December 5, 2006) at 5-6.
[76] Qwest Brief at 6.

Sections should be modified by specifying that the initial RUF is 99/1, indicating that 99 percent of the traffic originates on Qwest's network and is thus Qwest's responsibility under the proposed Exhibit H. Although both parties testified that currently NCC sends no calls directly to Qwest, no party offered evidence of the actual historic relative use of the facilities. Consequently, an RUF of 99 percent Qwest's responsibility, and 1 percent NCC responsibility is a reasonable initial RUF factor.

94. Either party can utilize the procedures established in Section 7.3.1.3.1or 7.3.2.2.1 if it believes actual data supports a different RUF.

95. This Commission has not allowed CLECs to utilize VNXX.[77] NCC has not offered any authority that Qwest's language is contrary to law or policy in this state, nor did NCC offer alternative language for consideration. Qwest's proposed language in Sections 7.3.1.1.3.1 and 7.3.2.2.1 concerning VNXX is reasonable and comports with previous Commission Decisions.[78]

96. Consequently, with the changes to the initial RUF as set forth above, Sections 7.3.1.1.3.1 and 7.3.2.2, and Exhibit H are reasonable and should be approved.

Multiplexing, Non-recurring Trunk Fees and Third Party Interconnection Trunk Non-Recurring Charges

97. In Section 7.3.3 Qwest proposes the following language:[79]

> 7.3.3 Trunk Nonrecurring Charges
>
> 7.3.3.1 Installation nonrecurring charges may be assessed by the provider for each LIS trunk ordered. Qwest's rates are specified in Exhibit A.
>
> 7.3.3.2 Nonrecurring charges for rearrangement may be assessed by the provider for each LIS trunk rearrangement ordered, at one half (1/2) the rates specified in Exhibit A.

98. NCC opposes Qwest's nonrecurring charges and argues that Qwest should be responsible for the installation costs of facilities to deliver traffic to NCC.[80]

99. Qwest asserts that the issue of non-recurring charges for LIS trunks was raised by NCC in the issues matrix, but was not raised in response to the Petition and was not one of the issues

---

[77] Decision No. 68817 at 28-30.
[78] See Decision No. 68817.
[79] Jt. Matrix at 10.
[80] Jt. Matrix at 10.

negotiated by the parties.[81] Qwest asserts that NCC did not propose alternative language and did not provide legal or factual support for opposing Qwest's proposed language for trunk non-recurring charges. Qwest states that its standard language has been adopted in dozens of agreements, and references rates in Exhibit A, which contains Commission-approved rates.

100. Qwest states that NCC has paid the non-recurring charges under the existing ICA, and no other carrier has been granted an exemption such as NCC is seeking in this case. Qwest notes that it is the CLEC that requests trunks be set up, and incurs the charge only if the CLEC requests additional trunks.

Resolution

101. Qwest makes LIS Entrance Facilities available for interconnection for the exchange of local traffic. Section 251(c)(3) of the Act requires Qwest to make these facilities available at rates, terms and conditions that are just reasonable and nondiscriminatory.

102. Qwest incurs costs when CLECs order Entrance Facilities. Qwest is entitled to recover the costs of these facilities pursuant to the Act.

103. Qwest makes these facilities available to NCC on a non-discriminatory basis at rates that have been approved by the Commission.[82]

104. Qwest's language concerning non-recurring trunk costs comports with Qwest's Arizona SGAT,[83] and is standard ICA language that has been adopted in many other ICAs. We find that Sections 7.3.3.1 and 7.3.3.2 are reasonable and we adopt Qwest's proposed language for these Sections.

Multiplexing (MUX) Charges

105. In Section 7.3.2.3, Qwest proposes the following:

> 7.3.2.3 Multiplexing options (DS1/DS3 MUX or DS0/DS1 MUX) are available at rates described in Exhibit A.

106. Multiplexing facilities allow multiple signals to be carried on a circuit and are used to augment or dissemble a circuit's capacity.

---

[81] Qwest Brief at 16.
[82] Ex Q-5 at Ex A.
[83] See Docket No. T-01051B-99-0068. Qwest filed its 14th revised SGAT on August 29, 2003.

107. NCC argues that the Commission should reject Qwest's proposed MUX fees, as Qwest should not be allowed to bill NCC for 100 percent of the MUXs on Qwest's network while Qwest refuses to credit NCC for the use of the MUXs on NCC's side of the circuit. NCC claims that no other ILEC charges NCC for MUXs.[84]

108. NCC argues that Qwest should be fully responsible for its MUX fees.[85] NCC claims that based on the plain language of A.A.C. 14-2-1303(B), Qwest is responsible for any MUX or installation or monthly fees for T1's or DS3s that it uses or requires to interconnect with NCC. Thus, according to NCC, the Commission should prohibit Qwest from imposing fees on NCC for any Qwest MUX to the point of interconnection, or, in the alternative, impose a mutual obligation on Qwest to pay MUX fees to NCC. In addition, NCC argues the Commission should prohibit Qwest from billing NCC for installation fees for MUXs or trunks used by Qwest to interconnect with NCC.

109. NCC claims that if Qwest is permitted to impose MUX fees, NCC should be permitted to interconnect through a third party that will not charge MUX fees, installation fees or monthly fees to NCC.[86] NCC alleges that Qwest's proposed prohibition on third-party interconnection exists so that Qwest can charge MUX and installation fees on interconnecting carriers.[87]

110. Qwest states that NCC did not raise this issue in its response to the arbitration Petition, and did not propose alternative language or legal or factual support for opposing Qwest's proposed language on multiplexing. Qwest states that its ICA language is standard language that has been adopted in dozens of agreements and references multiplexing rates in Exhibit A, which contains Commission-approved rates.[88]

111. Qwest asserts that NCC is responsible for multiplexing charges under the existing ICA.[89] Qwest states that no other carrier has been granted an exemption from paying Qwest multiplexing charges as NCC is requesting in this case. Furthermore, Qwest states that multiplexing

---

[84] Ex N-3 Lesser Reply at 10-12.

[85] A.A.C. 14-2-1303(B) provides "each company interconnecting pursuant to this provision of this Section shall be responsible for building and maintaining **its own facilities to the point of interconnection**." (emphasis added); NCC Brief at 9.

[86] NCC Brief at 9.

[87] *Id.*

[88] Qwest Brief at 15.

[89] Ex Q-6 at 76 provides for DS3-DS1 multiplexing for interconnection.

is only established and the cost incurred if the CLEC requests multiplexing.

112. Qwest believes that NCC saves money by using DS3 interconnection compared to DS1 interconnections (one DS3 is cheaper than 24 DS1 if ordered separately), but that DS3 interconnection requires multiplexing. Qwest argues that NCC is essentially requesting multiplexing from Qwest for free, which is contrary to the requirements of the Act that permits Qwest to recover its costs for facilities provided to CLECs.

Resolution

113. Qwest proposed language for Section 7.3.2.3 is identical to that in Qwest's Arizona SGAT (14th Revision filed August 29, 2003).

114. The Commission approved Qwest's rates for multiplexing in Phase II of the Arizona Cost Docket.[90]

115. Qwest's proposal here is the same as we approved in the Level 3 Arbitration where we found that MUXs should continue to be provided at the cost-based rates approved in Phase II of Qwest's Cost Docket.[91]

116. MUXing is something the CLEC requests. If the CLEC find it advantageous to order DS3s and then need multiplexing to bring those lines to DS1s, it should be responsible for the cost of providing those facilities. NCC has not provided any authority to the contrary, nor has NCC offered alternative contract language.

117. There was no evidence presented in this proceeding whether Qwest orders facilities, including MUXs from NCC. In any case, NCC did not propose contract language in support of its position.

118. We find that Qwest's language concerning the charges for MUXing in Section 7.3.2.3 is reasonable and should be approved.

Third Party Transit

119. In Sections 7.1.1 and 7.2.1.1 (discussed earlier) Qwest proposed language that prohibits interconnection through third party carriers unless the parties negotiate an amendment to the

[90] Decision No. 64922 (June 12, 2002).
[91] Decision No. 70356 at 72.

ICA allowing such interconnection.

120. Qwest notes that the existing ICA contains such provision as well: "Absent a separately negotiated agreement to the contrary, the Parties will directly exchange traffic between their respective networks, without the use of third party transit providers."[92]

121. NCC asserts that it should be able to interconnect with Qwest via a third party tandem provider.

122. Qwest asserts that the issues raised by a third party tandem provider are not covered in the standard ICA and include: 1) what agreement(s) between Qwest and the third party should also exist; 2) how the CLEC should appropriately notify the industry of such as agreement; 3) how the transit arrangement will affect Qwest's obligation to route other service providers' traffic to the CLEC; 4) compensation arrangements; 5) conditions for the exchange of records between the parties; 6) minimum required signaling information; and 7) what type of traffic may be restricted from being routed through a third party.[93] Qwest states that none of these issues have been discussed or negotiated, and it is not appropriate to decide them in this case.

Resolution

123. The FCC is seeking ways to address the problem of phantom traffic.[94] In its recent *NPRM*, the FCC found:

> When the originating and terminating networks are not directly connected, as is the case when calls are delivered via tandem transit service, complications with transmitting and receiving billing information related to a call can arise. In some instances, the operation of these systems can--intentionally or unintentionally--result in traffic arriving for termination with insufficient identification information, which makes it difficult or impossible for the terminating provider to identify and bill the originating provider.[95]

124. Qwest's proposed ICA language does not foreclose the possibility of the parties interconnecting through a third party provider. In this case, however, NCC did not provide contract language or sufficient evidence to support a finding such interconnection is appropriate at this time. Furthermore, use of a third party intermediary does not necessarily solve the problem of the lack of

[92] Ex Q-6 at 8, Section (V) A.
[93] Qwest Brief at 17-18.
[94] Phantom traffic does not have sufficient identifying information to allow for accurate identification. *See NPRM* at ¶ 620.
[95] *NPRM* at ¶ 622.

ANI if the originating carrier employs MF signaling to communicate with the intermediary. Consequently, we find that Qwest's proposed language in Sections 7.1.1 and 7.2.1.1 is reasonable and should remain.

CNAM Database Information

125. NCC asserts that the new ICA should include language that requires Qwest to purchase CNAM (Calling Name) information from NCC on the same terms and conditions that NCC purchases CNAM data from Qwest.[96]

126. NCC claims that Qwest is hindering its ability to provide competitive service offerings by refusing to purchase NCC's calling name and number data. CNAM data is the information that allows an NCC customer's name to appear on caller ID when that NCC customer calls a Qwest customer.[97]

127. NCC claims that Qwest's "refusal to purchase CNAM data is one of the main reasons NCC does not send outbound calls over its interconnection trunks in Arizona and/or convert to SS7."[98] NCC argues that Qwest's claim that A.A.C. 14-2-1303(A) only requires ILECs to make their CNAM data available to CLECs "ignores the fact that caller ID is such a part of telecommunications service today that NCC's offerings are inferior if they do not include CNAM data."[99]

128. NCC asserts that because Qwest's refusal to purchase CNAM data from NCC is anticompetitive and discriminatory, and because database access is part of the parties' interconnection obligations, the Commission should address the matter as part of this proceeding.

129. Qwest argues that there are multiple reasons not to include such requirement in this Order including: 1) the issue was not properly raised by NCC in either its response to the Petition or in the disputed issues list; 2) NCC cannot point to any legal obligation that Qwest has to purchase CNAM information from a CLEC; and 3) even if Qwest were to want a CNAM agreement with NCC, Qwest states that CNAM is only available with SS7 signaling.[100]

130. Qwest asserts that all of the requirements for interconnection, including access to

[96] NCC Brief at 9.
[97] NCC Brief at 9.
[98] NCC Brief at 10 *citing* Ex N-2 Lesser Dir. at 18; Ex N-3 Lesser Reply at 19-20.
[99] NCC Brief at 10.
[100] Ex Q-2 Linse Reb. at 26.

unbundled network elements and databases, are contained in 47 C.F.R. 51, and that no where is there a requirement on the ILEC to purchase database information. Qwest states that the multiple references to databases in the FCC Rule pertain only to the provision of such information by ILECs to CLECs.[101]

Resolution

131. NCC offers no contract language or legal authority to support its position. FCC rules require carriers to permit nondiscriminatory access to databases but do not appear to require a carrier to purchase CNAM data. NCC has failed to meet its burden to have such requirement added to the agreement.

CONCLUSIONS OF LAW

1. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. Qwest is an ILEC within the meaning of 47 U.S.C. § 252.

3. NCC is a public service corporation within the meaning of Article XV of the Arizona Constitution.

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

5. The Commission has jurisdiction over Qwest and NCC and of the subject matter of the Petition and arbitration.

6. The Commission's resolution of the issues herein is just and reasonable, meets the requirements of the Act and regulations prescribed by the FCC pursuant to the Act, is consistent with the best interests of the parties, and is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the Commission hereby adopts and incorporates as its Order, the resolution of the issues contained in the above Discussion.

. . .

. . .

[101] Qwest Brief at 18.

IT IS FURTHER ORDERED that Qwest Corporation and North County Communications Corporation of Arizona shall prepare and sign an interconnection agreement incorporating the terms of the Commission's resolutions.

IT IS FURTHER ORDERED that the signed interconnection agreement shall be submitted to the Commission for its review within thirty days of the date of this Decision.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SERVICE LIST FOR: QWEST CORPORATION and NORTH COUNTY COMMUNICATIONS CORPORATION OF ARIZONA

DOCKET NOS.: T-03335A-09-0383 and T-01051B-09-0383

Norman G. Curtright
CENTURYLINK
20 East Thomas Rd., 1st Floor
Phoenix, AZ 85012

Todd Lesser
NORTH COUNTY COMMUNICATIONS
3802 Rosecrans Street, Suite 485
San Diego, CA 92110

William Klain
LANG BAKER & KLAIN, PLC
8767 East Via De Commercio, Suite 102
Scottsdale, AZ 85258
Attorneys for North County

R. Dale Dixon, Jr.
THE LAW OFFICES OF DALE DIXON
7316 Esfera Street
Carlsbad, CA 92009
Attorney for North County

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Steven M. Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007