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BEFORE THE
RECEIVED
ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

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

2011 JUL -7 P 4:00
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUL - 7 2011

DOCKETED BY

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
DOCKET NO. T-03335A-09-0383

**NORTH COUNTY COMMUNICATIONS CORPORATION'S
EXCEPTIONS TO FINAL RECOMMENDATION**

I. THE EXISTING ICA SHOULD REMAIN IN PLACE.

Qwest seeks to revise its interconnection agreement ("ICA") with NCC, despite the fact that the existing ICA satisfies all aspects of interconnection under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act") and state laws.¹ Qwest has not pointed to a single provision of the existing ICA that is unlawful or requires amendment for legal reasons. To the contrary, Qwest admits that the existing ICA is in full compliance with all laws.² The Final Recommendation permits Qwest to impose terms that are unilaterally beneficial to Qwest but are not required by law.

Qwest has not met its burden of proof insofar as it has not shown a legal reason to

¹ Indeed, the existing ICA contains a change-of-law provision, which the parties used in the past to amend the ICA to reflect all necessary legal changes.

² See, e.g., Arb. Tr., 80:18-25; 81:20-25; 82:1-19 (admitting that no provisions of the existing ICA violate Arizona law, Arizona telecommunications, federal law, or federal telecommunications law).

1 reject the existing ICA. On that basis alone, the Commission should not approve the
2 proposed ICA and should rule that the existing ICA will continue to govern the parties'
3 interconnection relationship.

4 The arbitration demonstrates the power that Qwest holds in the State and in its
5 region. Qwest can utilize its team of lawyers to revise agreements on a monthly, weekly
6 or daily basis. As ICAs expire, Qwest is able to foist upon its competitors a new contract
7 that reflects Qwest's latest whims and protects its interests. This exercise contributes
8 greatly to the costs that CLECs must incur to continue doing business and benefits only
9 Qwest.

10 Although the Final Recommendation contends that NCC did not offer alternative
11 language, that position is incorrect. NCC has always asserted that the existing ICA is the
12 ICA that should be approved by the Commission. Accordingly, it is factually incorrect to
13 state that NCC has not offered alternative language. Approval of the Final
14 Recommendation merely allows Qwest to unilaterally impose its will on competitors in
15 Arizona. When an existing ICA has a change-of-law provision that has been utilized on a
16 regular basis and Qwest is unable to show anything unlawful in the existing ICA, the use
17 of Qwest's proposal as the template for negotiations results in preferential treatment
18 towards Qwest.

19 **II. THE ICA SHOULD INCLUDE INTERCONNECTION VIA VOIP.**

20 The Final Recommendation rejects the inclusion of any interconnection
21 technologies other than SS7 and limited use of MF signaling. A detailed section of
22 alternative language regarding VoIP should not be required to include that technology as
23 an interconnection method. VoIP standards were developed a long time ago, and AT&T,
24 Verizon, Vonage, Time Warner Cable, Cox, Magic Jack, Skype, AOL, AIM, Google
25 Voice and hundreds of other providers use IP.³ Even Qwest offer VoIP services to its
26 customers.

27
28 ³ Lesser Reply Testimony at 16-17.

1 NCC believes that its ICA should require Qwest to offer VoIP interconnection.
2 VoIP is much more efficient than SS7 with TDM. As stated in *Western Radio v. Qwest*
3 *Corp.*, “ILECS are required to provide interconnection to requesting carriers ‘that is at
4 least equal in quality to that provided by the local exchange carrier itself or to any
5 subsidiary, affiliate, or any other party to which the carrier provides interconnection...’”⁴
6 Qwest currently offers IP interconnection on a wholesale basis to businesses and even to
7 residential customers.⁵ Through VoIP, Qwest can offer up to 46 voice lines per T1,
8 compared to only 24 voice lines per T1 if NCC interconnects with Qwest using SS7.⁶
9 That distinction shows that Qwest engages in discriminatory interconnection and forces
10 competitors to take and provide services inferior to those offered by Qwest. The Final
11 Recommendation ignores the clear discrimination and points only to the absence of
12 competing contract language.

13 **III. THE PROPOSED CAP ON BILLABLE MINUTES IS ARBITRARY,**
14 **UNLAWFUL, PREJUDICIAL AND INCONSISTENT WITH PUBLIC**
15 **POLICY.**

16 The Final Recommendation adopts Qwest’s proposed cap of 400,000 compensable
17 minutes of use that it will pay to NCC for terminating Qwest’s calls to NCC where such
18 termination employs MF signaling. Qwest asserts that the cap is due to its inability to
19 verify calls and billing sent via MF signaling because Qwest verifies calls and billing
20 using its SS7 records. That argument should fail because Qwest has not demonstrated that
21 its switches cannot be programmed to obtain all necessary call information from NCC.
22 For instance, Qwest has not discussed with its switch manufacturers how to effect a
23 programming change. Instead, Qwest refused to comply with NCC’s discovery requests
24 and limited its communications with its switch manufacturers to obtaining a list of the
25

26 _____
⁴ 51 Comm. Reg. (P & F) 202 (Or. Dist. Ct. 2010).

27 ⁵ Lesser Reply Testimony, Exhibit 6.

28 ⁶ *Id.*

1 manufacturers' legal representatives.⁷

2 In addition, the argument should fail because the Federal Communications
3 Commission ("FCC") recently recognized the widespread use of MF signaling and is in
4 the process of developing rules to would address Qwest's concerns by requiring carriers
5 that use MF signaling to transmit calling number information.⁸ The Commission should
6 not take action in this proceeding that would contradict the FCC's planned rulemaking or
7 otherwise prohibit a carrier from using an industry standard. Furthermore, the
8 Commission should follow the FCC's recognition of the validity of MF signaling and the
9 FCC's recognition that SS7 signaling was "was designed to facilitate call setup and
10 routing," not to verify billing.⁹

11 Moreover, the cap is arbitrary. First, Mr. Linse testified that he had no idea what
12 NCC's actual usage was.¹⁰ The 400,000-minute cap serves only to discount, arbitrarily
13 and prejudicially, the price Qwest pays for use of NCC's network. Approval of Qwest's
14 proposed 400,000-minute cap would constitute a regulatory takings. *See, e.g., United*
15 *States v. Causby*, 328 U.S. 256 (1946). In other words, Commission approval of the cap is
16 a government action that reduces NCC's rightful compensation and limits NCC's
17 compensable use of its network to a mere 40 percent of the actual capacity.

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20 ⁷ Arbitration Transcript ("Arb. Tr."), 53:17-25; 54:1-9 (admitting that Qwest did not discuss its switches'
capabilities with its switch manufacturers' representatives).

21 ⁸ *See In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just*
22 *and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an*
23 *Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and*
24 *Link-Up*, WC Docket No. 10-90, 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).

25 ⁹ *Id.*, ¶628; *see also* Lesser Reply Testimony at 5-6 and related Exhibit 1 (Washington Utilities and
26 Transportation Commission, WECA Docket 02-01, "Report on Phantom Traffic," dated September 27,
27 2005 at page 11: "Verizon also notes that SS7 signaling is intended primarily for routing, not billing, and
therefore does not contain all the information necessary for billing the carriers responsible for traffic that
transit Verizon tandem switches.").

28 ¹⁰ Arb. Tr., 47:1-7.

1 **IV. THE RELATIVE USE FACTOR (“RUF”) SHOULD BE ACTUAL USE.**

2 The RUF of 99:1 is closer to reality than the proposed 50:50; however, there is no
3 reason that the RUF should not reflect actual usage, which is 100 percent Qwest’s usage.
4 With a 99:1 RUF, Qwest will be imposing on NCC one percent of the cost of monthly
5 DS1 charges. That is an unjust and unfair result. NCC will be prohibited under the new
6 ICA from sending out-bound traffic, and it should not bear a cost for something it cannot
7 use. Thus, the RUF should be 100:0.

8 **V. QWEST SHOULD NOT BE PERMITTED TO BILL MUX FEES TO NCC.**

9 As noted, the actual use of the network is 100 percent Qwest, and the MUXes are
10 used solely by Qwest to deliver its traffic to NCC. To that end, and in keeping with the
11 RUF, Qwest should be responsible fully for the MUX fees. As the Final
12 Recommendation states, Qwest saves money by using a DS3 and a MUX as opposed to
13 installing and maintaining 28 T1s.

14 Furthermore, the Arizona Administrative Code, 14-2-1303(B), regarding “Points of
15 Interconnection,” states that “[e]ach company interconnecting pursuant to the provisions
16 of this Section shall be responsible for building and maintaining *its own facilities to the*
17 *point of interconnection.*” Emphasis added. Based on the plain language of the Code,
18 Qwest is responsible for MUX or installation or monthly fees for T1s or DS3s that it uses
19 or requires to deliver its traffic to NCC, and it is a clear violation of law for Qwest to pass
20 along that financial responsibility to NCC. Accordingly, the Commission should prohibit
21 Qwest from imposing fees on NCC for any Qwest MUX to the point of interconnection,
22 or, in the alternative, impose a mutual obligation for Qwest to pay MUX fees to NCC. In
23 addition, the Commission should prohibit Qwest from billing NCC for installation fees for
24 MUXes or trunks used by Qwest to deliver its traffic to NCC.

25 Contrary to the Final Recommendation, Qwest has installed those facilities for its
26 benefit to deliver its traffic to NCC’s network. NCC does not benefit from those MUXes.
27 Unlike the MUXes in the SGAT, which are used for two-way traffic and/or to deliver
28 CLEC traffic to Qwest’s customers, the MUXes at issue in this case are used solely by

1 Qwest. Thus, NCC has not asked Qwest to incur any costs. Under Qwest's logic, it
2 should be paying CLECs for CLECs' MUXes if the CLEC wants to deliver its traffic to
3 Qwest. If Qwest does not want to provision a MUX in delivering its traffic, then it should
4 use T1s.

5 **CONCLUSION**

6 The Commission should permit the existing ICA – which has worked for the
7 parties for a decade – to continue controlling their relationship.

8 Dated: July 7, 2011

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