

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for	)	DOCKET UT-093035
Arbitration of an Interconnection	)	
Agreement Between	)	
	)	ORDER 06
NORTH COUNTY	)	
COMMUNICATIONS	)	
CORPORATION OF WASHINGTON	)	ORDER DENYING
	)	MOTION TO DISMISS
and	)	
	)	
QWEST CORPORATION	)	
	)	
Pursuant to 47 U.S.C. Section 252(b).	)	
.....	)	

1 **NATURE OF PROCEEDING.** Docket UT-093035 involves a petition by Qwest Corporation (Qwest) for arbitration and approval of an interconnection agreement (ICA) with North County Communications Corporation of Washington (North County) pursuant to 47 U.S.C. §252(b) of the Telecommunications Act of 1996 (Telecom Act).

2 **MOTION TO DISMISS.** On March 29, 2010, North County filed a motion to dismiss the proceeding, asserting that the Commission lacks jurisdiction to arbitrate the dispute. On April 9, 2010, Qwest filed its response. On April 16, 2010, North County filed its reply along with the requisite petition to file a reply pleading.

3 **APPEARANCES.** Joseph Dicks and Chris Reichman, Dicks & Workman, APC, San Diego, California, represent North County. Lisa A. Anderl, Associate General Counsel, Seattle, Washington, represents Qwest.

4 **PARTY POSITIONS.** North County argues that unless Qwest makes a request to North County for interconnection, services, or network elements pursuant to Section 251 of the Telecom Act, Qwest has no authority to initiate negotiations or arbitration under Section 252 of the Telecom Act. According to North County, neither party could have made a request for interconnection or any other form of services or network elements from the other because the parties are *already* interconnected and

have been since 1997. North County contends this prevents Qwest from making such a request and therefore invalidates Qwest's petition for arbitration.<sup>1</sup>

5 In sum, North County contends that the existence of a currently effective ICA between North County and Qwest precludes the Commission from exercising jurisdiction under Section 252 of the Telecom Act to arbitrate a dispute between the parties over Qwest's proposed terms for a replacement ICA.<sup>2</sup>

6 Qwest counters North County's argument by pointing out that, taken to its logical conclusion, existing ICAs would be forced to exist in perpetuity without modification until and unless the parties terminate the agreement and negotiate a replacement.<sup>3</sup> Qwest relies on the terms of its existing ICA with North County that set an effective period of two and one-half years with a continuation clause preserving the ICA in force until a new agreement can be negotiated.<sup>4</sup> Qwest argues that the parties mutually agreed in their 1997 ICA to initiate negotiations no later than two years after its effective date, meaning that North County is deemed to have requested negotiations. According to Qwest, this undermines North County's current arguments which attempt to preclude the Commission from arbitrating the parties' stalemate regarding signaling technology.<sup>5</sup>

7 In its lengthy reply, North County reiterates its disagreement with Qwest's attempt to negotiate terms to update a decade-old ICA between the parties.<sup>6</sup>

---

<sup>1</sup> North County Motion to Dismiss, at pg. 4.

<sup>2</sup> *Id.* at pp. 3-5. North County goes so far as to suggest that "Congress did not want to give carriers the right to re-negotiate new interconnection agreements and compel costly state utilities commission arbitration proceedings whenever a carrier felt like it." *See* pg. 5.

<sup>3</sup> Qwest Answer to NCC Motion to Dismiss, ¶ 5 and ¶ 12.

<sup>4</sup> *Id.* at ¶ 6 and ¶ 13.

<sup>5</sup> *Id.*

<sup>6</sup> In compliance with WAC 480-07-370(1)(d), North County's Reply was accompanied by a motion seeking permission to file the reply. In order to document the tone of negotiations between the parties, the Commission will accept and allow North County's reply pleading.

8 **COMMISSION DECISION.** North County argues that its existing ICA with Qwest is a barrier to this Commission arbitrating the parties' differences as they attempt to work in good faith to amend or replace the existing ICA. North County's position is untenable and, if accepted, would force absurd results. Qwest correctly points out that language in the existing ICA imputes a request for interconnection, services, and network elements to both parties after the 1997 ICA had been in effect for two years. The parties are thus obligated to negotiate modifications or a successor agreement to the current ICA. If the parties' negotiations reach an impasse, the Telecom Act affords them the opportunity to seek out this Commission for binding arbitration. As explained below, we must conclude that the Telecom Act clearly establishes our jurisdiction to arbitrate this dispute.

9 In essence, North County interprets Section 252 of the Telecom Act to afford jurisdiction to state commissions to arbitrate disputes between local exchange carriers only when no ICA already exists between them.<sup>7</sup> North County's view of the Telecom Act would divest state commissions of their long-established role as arbiters of local disputes that need not rise to the FCC for resolution. We do not believe that the FCC intended for state commissions to arbitrate once and then be divested of their Section 252 authority to resolve subsequent good faith disputes in binding fashion.

10 North County's reliance on decisions from the Alaska and Ohio commissions is misplaced. In Alaska, the parties had a relatively new ICA that, under its own terms, had not yet met its three-year term of expiration. The Alaska Commission did not refuse to arbitrate a dispute to modify an existing ICA but simply declined to take up issues where the parties had already agreed to be bound under the provisions of the existing ICA.<sup>8</sup> Here, the ICA between North County and Qwest is not new and has, under its own terms, expired and become ripe for review and renewed negotiation.

---

<sup>7</sup> North County most succinctly states its position when it contends "[a] carrier simply cannot compel arbitration on issues settled by an existing interconnection agreement." North County Motion to Dismiss, at pg. 7.

<sup>8</sup> See, *In re GCI Communication Corp. and ACS of the Northland, Inc., Regulatory Commission of Alaska Order Granting Petition for Arbitration, Appointing Arbitrator and Ordering Prehearing Conference* (August 29, 2002), at text accompanying notes 25-26.

- 11 In Ohio, the parties entered an ICA in 2002 that deferred issues of voice over Internet protocol (VoIP) to a later date. When one party sought to have the Ohio Public Utilities Commission arbitrate the matter of proper compensation for VoIP-related services, the Commission refused to do so because arbitration of a single issue, rather than a successor ICA, was inconsistent with the ICA's dispute resolution provisions.<sup>9</sup> Here, the dispute resolution provision of the North County – Qwest ICA requires only a good faith *attempt* to resolve disputes between the parties through negotiation or non-binding arbitration but does not waive any party's right to seek regulatory intervention as provided by law.<sup>10</sup>
- 12 Section 252 of the Telecom Act contains no limitations on the number of arbitrations a state commission can conduct between parties negotiating to enter a new ICA or a successor agreement. Further, the parties' ICA, entered more than a dozen years ago, commits both North County and Qwest "to commence negotiations on a new agreement no later than two years after this Agreement becomes effective."<sup>11</sup> By its own terms, the existing ICA was intended to be reconsidered and, if necessary, modified to comport with the developing demands of telecommunications technology and the needs of the parties.
- 13 In the case now presented, Qwest seeks to require North County to upgrade its signaling technology and North County apparently does not wish to do so under the terms offered by Qwest. Qwest alleges there is a good faith dispute between the parties preventing the creation of a successor ICA. Neither the Telecom Act nor the terms of the parties' existing ICA deprives the Commission of jurisdiction to arbitrate the dispute between the parties. Therefore, North County's motion to dismiss Qwest's petition for arbitration must be denied.

---

<sup>9</sup> *In the Matter of the Petition of Global NAPs Ohio for Arbitration with the Ohio Bell Telephone Company, Ohio Public Utilities Commission* (January 7, 2010).

<sup>10</sup> North County Communications Corporation and US West Communications, Inc., Arbitrated Interconnection Agreement for the State of Washington, at pg .74.

<sup>11</sup> *Id.* at pg. 72.

**ORDER**

THE COMMISSION ORDERS:

- 14 (1) North County's Petition to Reply is granted.
- 15 (2) North County's Motion to Dismiss is denied.
- 16 (3) North County is directed to timely file its Answer to Qwest's petition as required by the procedural schedule established in Order 05.

Dated at Olympia, Washington, and effective April 26, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM  
Administrative Law Judge

**NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.**