

**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 07
NORTH COUNTY)	
COMMUNICATIONS)	
CORPORATION OF WASHINGTON)	ORDER REITERATING
)	OBLIGATION OF NORTH
and)	COUNTY COMMUNICATIONS
)	TO FILE ANSWER
QWEST CORPORATION)	
)	
Pursuant to 47 U.S.C. Section 252(b).)	
.....)	

1 **NATURE OF PROCEEDING.** Docket UT-093035 involves a petition filed by Qwest Corporation (Qwest) on Monday, August 3, 2009, 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 **PROCEDURAL SCHEDULE.** On Tuesday, March 9, 2010, the Commission entered Order 05, *Prehearing Conference Order*, and adopted a procedural schedule for this matter. The procedural schedule allowed an interval of time for North County to file a potentially dispositive motion to dismiss the petition for lack of subject matter jurisdiction.¹ In addition, the procedural schedule set a requirement for North County to file an Answer to Qwest’s petition within five business days after entry of the Commission’s order on the motion. Finally, the procedural schedule established various dates for the filing of each party’s evidence (pre-filed testimony and supporting exhibits) and for the arbitration hearing itself.²

¹ Order 05, ¶ 6. The procedural schedule noted that North County’s Answer would only be necessary if the presiding officer denied its motion to dismiss.

² *Id.* This portion of Order 05 specifically noted that the Commission did “not wish to deviate” from the case schedule and that the Commission would “not grant continuances or otherwise

3 On Monday, April 26, 2010, the Commission entered Order 06, *Order Denying Motion to Dismiss*. Order 06 reiterated the previously established requirement and deadline for North County to file its Answer to Qwest's petition.³ To be timely, North County was obligated to file its Answer on or before Monday, May 3, 2010.

4 **FAILURE TO FILE ANSWER.** North County failed to file an Answer to Qwest's petition on May 3, 2010. Instead, North County filed a petition for administrative review of Order 06.

5 North County's petition for administrative review was not accompanied by a request for a continuance of the established filing deadline for its Answer nor did North County seek a stay or to suspend the procedural schedule in this docket. In the cover letter accompanying its petition for administrative review, North County said:

Please note that an Answer to the Petition will not be filed to preserve judicial resources until such time as a decision is rendered on Respondent's Petition for Administrative Review.

In effect, North County unilaterally determined to ignore a requirement and deadline contained in two Commission orders.

6 Section 252(b)(4)(B) of the Telecom Act allows state commissions to require parties to compulsory arbitration "to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues" in the matter. Here, Order 05 required North County to file an Answer to Qwest's petition for arbitration.

7 North County did not object to any provision of Order 05.

8 Order 06 reiterated Order 05's provision requiring and setting a deadline for North County to provide the Commission with the information requested in the form of an Answer to Qwest's petition for arbitration. North County has failed to do so.

postpone deadlines except upon a formal motion showing good cause and demonstrating the absence of prejudice to the other party and the Commission, as required by WAC 380-07-385."

³ Order 06, ¶ 16, states "North County is directed to timely file its Answer to Qwest's petition as required by the procedural schedule established in Order 05."

9 Section 252(b)(4)(B) of the Telecom Act provides state commissions the following remedy when a party fails to comply with a state commission order:

If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

10 As noted at the prehearing conference, this arbitration proceeding will be best served if North County files an Answer to Qwest's petition sufficiently in advance of the deadline for Qwest filing its pre-filed testimony so as to allow Qwest an opportunity to focus its evidence on the issues actually in dispute.⁴ In this matter, the best information currently available to the Commission is that alleged by Qwest in its petition for arbitration.

11 According to the procedural schedule, only two weeks remain for Qwest to file its direct testimony. If North County continues to refuse to comply with the Commission's requirement to file an Answer, the Commission will proceed as though the allegations contained in Qwest's petition for arbitration are true and correct. In order to maintain the integrity of the established procedural schedule, the Commission must receive North County's Answer no later than the end of this week.

12 The presiding officer made it clear at the prehearing conference that the established procedural schedule would not be altered unless the Commissioners issued a stay based on a request from North County.⁵ No such stay was requested, yet the offer to "preserve judicial resources" contained in North County's cover letter attempts to effect a *de facto* delay of the procedural schedule by North County's own inaction. Under these circumstances, the presiding officer may consider recommending that the Commission issue a penalty assessment against North County for its failure to comply with a Commission order.

⁴ See TR. at 36:20 – 40:12.

⁵ *Id.* at 39:17 – 40:12.

ORDER

13 THE COMMISSION ORDERS that North County must file its Answer to Qwest's petition no later than 5:00 p.m. on Friday, May 7, 2010.

Dated at Olympia, Washington, and effective May 5, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Arbitrator and Administrative Law Judge