

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

In the Matter of the Petition for
Arbitration of an Interconnection
Agreement Between

NORTH COUNTY
COMMUNICATIONS
CORPORATION OF WASHINGTON,

with

QWEST CORPORATION

Pursuant to 47 U.S.C. Section 252(b).

Docket UT-093035

**NORTH COUNTY COMMUNICATIONS
CORPORATION'S ANSWER TO
QWEST'S PETITION FOR
ARBITRATION**

I. History Of The Proceeding

1 As Qwest Corporation ("Qwest") admits in its Petition for Arbitration ("Qwest Petition"), Qwest and North County Communications Corporation (North County") are already parties to an interconnection agreement that became effective on August 27, 1997 ("Existing ICA"). Qwest Petition, 3:10. The parties also agree that the Existing ICA between them is currently effective and, by its own terms, remains in effect until a new agreement becomes effective between the parties. *Id.*

2 On or about July 2, 2008, North County received a request for negotiations from Qwest regarding a new interconnection agreement. The parties agreed to an extension of the arbitration window without waiving any rights or making any admissions that arbitration was appropriate

such that the window to file a petition for arbitration would commence on July 9, 2009 and end on August 3, 2009, inclusive.

3 On July 31, 2009, Qwest initiated this proceeding to compel arbitration of a new interconnection agreement with North County before the Washington Utilities and Transportation Commission (“Commission”) claiming such petition was filed pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 (“the 1996 Act”) and W.A.C. 480-07-630. Qwest Petition, ¶¶ 1, 3. Thereafter, both parties agreed to multiple stays of the arbitration proceeding to allow the parties, who had worked amicably under the old agreement for more than a decade, to try to negotiate a new agreement amongst them. Qwest felt that negotiations had reached an impasse after several months of negotiations. In Status Updates filed with the Commission on February 19, 2010, the parties indicated to the Commission that Qwest felt an impasse had been reached and had begin to prefer formal arbitration to continuing private negotiation, and while North County did not prefer to abandon negotiations, it deferred to Qwest’s request. North County respectfully contended that the petition is improper on its face and respectfully moved to dismiss on the grounds that this Commission lacks jurisdiction to hear the petition pursuant to 47 U.S.C. §§ 251, 252. The administrative law judge ruled that the Commission has jurisdiction, and North County will file for a full Commission review. *See generally*, Order on Motion to Dismiss.

II. Summary of Negotiations

4 North County entered into negotiations purely out of courtesy to a carrier with whom it had a long relationship since it disputes that the conditions precedent exist for Qwest to force negotiations or any other procedures under Section 252.

5 Due to miscommunications on the part of North County's previous counsel, negotiations did not start in earnest until Qwest filed its Petition for Arbitration in August of 2009.

6 Once the Dicks & Workman firm was engaged, these negotiations continued at a respectable pace and with enough progress that both parties and the Commission felt confident in agreeing to numerous stays of formal arbitration in hopes the negotiations would solve any issues between the parties.

7 While Qwest took its proposed new interconnection agreement as the baseline for negotiations, North County repeatedly reiterated its primary objective that there be no material changes from the current interconnection agreement between the parties. North County and Qwest made attempts to conform its proposed new agreement to the primary terms of the existing interconnection agreement between the parties.

8 While the negotiators for Qwest were able to conform many of the material provisions of their proposed new agreement to the terms and interpretation of those terms that had served the parties well in the existing agreement, Qwest would not agree to providing any sort of written assurances that the material terms or historical interpretation of the terms, and most importantly the charges imposed thereunder, would be unchanged from the existing agreement to Qwest's new proposed agreement. Within this fundamental disagreement, most of the specific areas of dispute were able to be tentatively resolved. Notably, the parties quickly resolved that Qwest did not object to North County's continued use of MF signaling in interconnection as long as the traffic between the parties continued its decade long trend of being one sided from Qwest to

North County. Curiously, Qwest's only stated reason for demanding a new ICA was its purported desire to compel SS7 signaling. Qwest Petition, ¶¶ 11 – 17.

9 Contrary to Qwest's position as set forth in its petition, North County discovered numerous billing practice changes from the old tried-and-true existing ICA to Qwest's proposed ICA. On or about December 16, 2010, North County discovered that Qwest interpreted their new proposed agreement as requiring new fees and charges on important network elements that it did not interpret the existing interconnection agreement as charging. The new fees and charges revolve around a "relative use factor" determining who pays for trunks for Qwest to interconnect with North County.

10 The existing interconnection agreement between the parties would not allow charges for this "relative use factor" under any interpretation, including the change of law clause, since no lawmaking or administrative body has even inferred that such a charge is mandated.

11 North County has repeatedly reviewed Qwest's proposed new interconnection agreement with an eye toward compromise. However it cannot identify each and every instance where changes in interpretation of that complex and voluminous agreement might have a substantial effect on the charges assessed to North County. The existing agreement has served the parties well and provides consistency in their business relationship.

12 Qwest indicated that there was no room to negotiate on this so-called "relative use factor" language and interpretation when the issue was raised on or about December 16, 2009. Qwest

then peremptorily stated that resolution of the issue along with others had to be completed that very day without any real forewarning.

13 North County continued to believe that negotiations could lead to a workable agreement, even with respect to the “relative use factor”, and asked the Commission at status conferences to continue to stay proceedings to see if the parties could resolve the issue.

14 Presumably due to busy schedules, communications between the parties dropped off significantly in January and February until the Commission decided to spark activity by setting a briefing schedule in this case. Communications picked up considerably, and it appeared that a negotiated agreement was still possible even over the “relative use factor” dispute and remaining outstanding issues, however the motion to dismiss has commanded the parties attention for the last few weeks.

III. Specific Responses To Factual Allegations

15 North County asserts, to the extent that paragraphs 1, 3, 4, 5, 8, and 9, inclusive, merely state what Qwest seeks in this suit or make legal arguments, the paragraphs contain no allegations to which a response is required. To the extent any response is deemed necessary, North County denies the allegations in paragraphs 1 and 3 through 5, inclusive, of the Qwest Petition.

16 North County admits the allegations of paragraphs 2, 6, 7, and 10, inclusive, of the Qwest Petition.

17 North County admits that it uses MF signaling. As to the remainder of the allegations in

paragraph 11, North County lacks knowledge or information sufficient to form a belief about the truth of, and on that basis denies the allegations in paragraph 11 of the Qwest Petition.

18 North County lacks knowledge or information sufficient to form a belief about the truth of, and on that basis denies the allegations in paragraph 12 of the Qwest Petition.

19 North County admits the allegations of paragraph 13 of the Qwest Petition.

20 North County admits the allegations of paragraph 14 of the Qwest Petition.

21 North County denies Qwest's allegation that North County has not objected to the proposed ICA. As to the remainder of the allegations in paragraph 15, North County lacks knowledge or information sufficient to form a belief about the truth of, and on that basis denies the allegations in paragraph 15 of the Qwest Petition.

22 North County lacks knowledge or information sufficient to form a belief about the truth of, and on that basis denies the allegations in paragraph 16 of the Qwest Petition.

23 North County lacks knowledge or information sufficient to form a belief about the truth of, and on that basis denies the allegations in paragraph 17 of the Qwest Petition.

24 North County asserts, to the extent that paragraphs 18, 19, 20, and 21, inclusive, merely state what Qwest seeks in this suit or make legal arguments, the paragraphs contain no allegations to

which a response is required. To the extent any response is deemed necessary, North County denies the allegations in paragraphs 18, 19, 20, and 21, inclusive, of the Qwest Petition.

IV. North County Arbitration Positions

- 25 North County respectfully contends that the Commission lacks jurisdiction to arbitrate this dispute pursuant to the plain language of 47 U.S.C. § 252(b) and WAC 480-07-630.
- 26 North County contends that the parties were able to resolve Qwest's stated reason for making this petition, accommodating signaling technology, by private negotiation and therefore this petition is made on questionable or evasive grounds.
- 27 North County contends that the minor changes Qwest requests in its Petition are better handled through amendment to the Existing ICA. The parties are well aware of the interpretation and their rights and responsibilities under the Existing ICA, which has a robust and well used amendment procedure and change of law clause to adapt to changing conditions. North County contends that the proposed ICA, as opposed to the existing ICA, is liable to widely differing interpretation by the parties, and is therefore a less reliable agreement which will almost inevitably lead to dispute and opens the door to a possible raft of dispute, acrimony, and possible formal arbitration or litigation. North County submits that there is simply no reason to risk the insecurity of this new agreement where the parties have worked amicably under the well defined and reliable existing ICA, and the changes Qwest officially says it desires are simple matters for amendment.

28 North County contends that amendment to the Existing ICA, most especially where the continued use of MF signaling is clearly predicated on grandfathered former use of MF signaling and predominately one-way traffic alleviates any concern Qwest might have of other carriers opting in to such a specialized agreement. Moreover, with respect to North County's use of MF signaling, North County submits that while Qwest has raised the issue in the context of a concern over its ability to track North County's out-bound calls, Qwest has, and always had the equipment and ability to track North County's MF out-bound calls. Qwest simply chose not to make the effort to do so. North County was, in the interest of compromise, willing to consider having its traffic/trunking be only one way to satisfy Qwest's unreasonable request. Given Qwest's insistence on arbitration, North County must reconsider its position on this issue, and submits that Qwest's request for one-way trunking may, under the circumstances, be unnecessary. North County submits that the specialized nature of the agreement is made even clearer by amending the Existing ICA than the use of a new ICA.

Dated this 6th day of May, 2010, in San Diego, California.

Respectfully submitted,



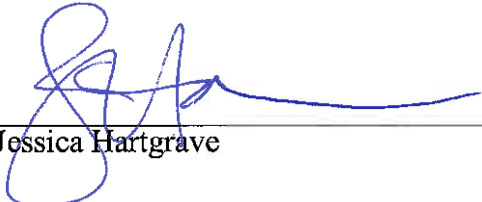
Joseph G. Dicks, CSB 127362
Dicks & Workman, APC
750 B Street, Suite 2720
San Diego, CA 92101
Telephone: (619) 685-6800
Facsimile: (619) 557-2735
Email: jdicks@dicks-workmanlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served the foregoing document this day upon all parties of record (listed below) in these proceedings by mailing a copy properly addressed with first class postage prepaid.

<p>Lisa A. Anderl Qwest Corporation 1600 7th Avenue, Room 1506 Seattle, WA 98191 (206) 345-1574 Lisa.anderl@qwest.com</p>	
<p>David W. Danner, Executive Director and Secretary Washington Utilities & Transportation Commission 1300 S. Evergreen Park Drive, SW P.O. Box 47250 Olympia, WA 98504-7250</p>	
<p>Adam E. Torem, Arbitrator Washington Utilities & Transportation Commission 1300 S. Evergreen Park Drive, SW P.O. Box 47250 Olympia, WA 98504-7250 atorem@utc.wa.gov</p>	

Dated this 6th day of May 2010, in San Diego, California.



Jessica Hartgrave