

ISSUED: May 10, 2010

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 918

In the Matter of

QWEST CORPORATION

Petition for Arbitration and Approval of an
Interconnection Agreement with NORTH
COUNTY COMMUNICATIONS
CORPORATION OF OREGON.

RULING

DISPOSITION: MOTION TO DISMISS DENIED

I. INTRODUCTION

Qwest Corporation (Qwest) first petitioned the Public Utility Commission of Oregon (Commission) for arbitration of its interconnection agreement with North County Communications Corporation of Oregon (North County) in August of 2009. The parties spent several months in informal negotiations. At a telephone conference held on March 16, 2010, counsel for North County requested the opportunity to brief the threshold question of this Commission's jurisdiction to address Qwest's petition. North County subsequently filed a motion to dismiss. In this ruling, I deny North County's motion to dismiss Qwest's petition for arbitration.

II. PROCEDURAL HISTORY

North County filed its motion to dismiss Qwest's petition for arbitration on April 5, 2010. Qwest filed a response to the motion on April 19, 2010, and filed a letter with an attachment to the response on April 20, 2010. North County submitted a reply in support of its motion to dismiss and Qwest filed a notice of supplemental authority on April 26, 2010.

III. DISCUSSION

A. Background

Qwest is an incumbent local exchange carrier (ILEC) that provides telecommunications services in Oregon. North County is a wireline competitive local exchange carrier (CLEC). North County and Qwest are parties to an interconnection agreement in Oregon (existing agreement) that became effective on November 29, 1997, and,

under its terms, remains in effect until a new agreement becomes effective between the parties. In the existing agreement, the parties agreed "to commence negotiations on a new agreement no later than two years after this Agreement becomes effective."¹ Qwest seeks a new agreement to address changes in signaling technology since the parties' agreement was signed.²

B. Position of the Parties

1. *North County*

North County contends that this Commission lacks jurisdiction to hear Qwest's petition for arbitration because there is an existing and active interconnection agreement in place between the parties. North County argues that under the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (the Act), ILECs may not initiate compulsory arbitration until a CLEC first requests interconnection, services, or network elements, and that since North County did not request interconnection here, Qwest may not force arbitration.³ In support of its Motion, North County cites orders from the Regulatory Commission of Alaska and the Ohio Public Utilities Commission.⁴

2. *Qwest*

Qwest states that this Commission and other Commissions have arbitrated successor ICAs under Section 252 without first requiring a request for negotiation from a CLEC. Qwest cites to several orders from this and other Commissions regarding arbitration of successor ICAs, and places particular emphasis on this Commission's Order No. 05-088. Qwest argues that under the terms of the parties' ICA, North County should be deemed to have requested interconnection and negotiation. Finally, Qwest reviews the course of the parties' negotiations to argue that North County has acknowledged Qwest's right to seek arbitration before this Commission.

C. Resolution

Under Section 252(b)(1) of the Act, after an ILEC "receives a request for negotiation," either party to the negotiation may petition a State commission to arbitrate open issues. In Order No. 05-088, this Commission noted two ways that the requirements of Section 252(b)(1) could be met even when an ILEC did not receive a request for negotiation. First, the Commission cited decisions from other state Commissions holding that a CLEC's

¹ North County Communications Corporation Motion to Dismiss Petition for Arbitration (Motion to Dismiss), Exhibit A, at 73.

² *In the Matter of Qwest Corporation's Petition for Arbitration and Approval of Interconnection Agreement with North County Communications Corporation of Oregon* (Qwest Petition for Arbitration) at 4.

³ Motion to Dismiss at 3-4, citing 47 U.S.C. Sections 252(a)(1) (ILEC may initiate negotiations "[u]pon receiving a request for interconnection, services, or network elements"), 252(b)(1) (after an ILEC "receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues").

⁴ Motion to Dismiss at 7-9, citing Regulatory Commission of Alaska Case No. U-02-18, Order No. 2; Ohio Public Utility Commission Case No. 09-195-TP-ARB.

participation in the negotiation process satisfied the negotiation requirement of Section 252(b)(1).⁵ Second, the Commission held that the negotiation requirement was met if language in an existing ICA permitted either party to initiate negotiations.⁶

Both of the Commission's bases for permitting an ILEC to petition for arbitration without receiving a request for negotiation apply here. North County's letters to the Commission requesting stays in this proceeding state that North County "opened negotiations with" Qwest, and that both parties believed they may "amicably negotiate an interconnection agreement."⁷ In addition, the ICA language the Commission relied on in Order No. 05-088 to find either party could initiate negotiations under the Act is virtually identical to the language in the North County – Qwest ICA.⁸ As Qwest notes, this Commission has arbitrated and approved ICAs in arbitration proceedings initiated by ILECs in the past.⁹ North County has not demonstrated that Qwest's petition should be treated differently in this case.

Finally, neither of the out-of-state cases cited in North County's briefs supports the company's position. The Alaska decision addressed arbitration on issues addressed in an ICA during the initial term of the ICA, and the Ohio order involved an arbitration to add terms to an existing ICA, not to arbitrate a new agreement.

North County has not provided persuasive authority for its claim that this Commission lacks jurisdiction to consider Qwest's petition for arbitration. After failing to resolve their dispute through negotiation, either Qwest or North County may petition this Commission to arbitrate open issues. Qwest properly did so, and this Commission may now resolve the parties' dispute.

D. Schedule

I received Qwest's letter requesting changes to the procedural schedule in this docket and North County's reply to Qwest's request. I will issue a ruling addressing Qwest's request. Until then, the parties should comply with the current procedural schedule.

⁵ *In the Matter of Qwest Corporation, Petition for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Universal Telecommunications, Inc.*, Order No. 05-088 at 4-5 (February 9, 2005).

⁶ *Id.* at 5-6.

⁷ NCC and Qwest's Joint Motion Requesting Stay (September 1, 2009).

⁸ *See* Order No. 05-088 at 7; Motion to Dismiss, Exhibit A, at 73.

⁹ *See, e.g.*, Oregon Commission Orders No. 06-190 (April 19, 2006), No. 04-699 (December 2, 2004).

IV. ORDER

North County Communications Corporation's Motion to Dismiss Qwest Corporation's Petition for Arbitration is denied. The parties are directed to comply with the revised procedural schedule adopted on April 14, 2010.

Dated at Salem, Oregon, this 10th day of May, 2010.



Shani Pines
Administrative Law Judge