

**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 08
NORTH COUNTY)	
COMMUNICATIONS)	
CORPORATION OF WASHINGTON)	ORDER DENYING PETITION TO
)	FILE RESPONSE AND DENYING
and)	REQUEST FOR STAY OR
)	SUSPENSION OF THE
QWEST CORPORATION)	PROCEDURAL SCHEDULE
)	
Pursuant to 47 U.S.C. Section 252(b).)	
.....)	

- 1 **NATURE OF PROCEEDING.** Docket UT-093035 involves a petition filed 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 (the Act).

- 2 **REQUEST FOR STAY.** On May 6, 2010, North County filed its Request to Stay or Suspend Procedural Schedule Pending Resolution of Petition for Administrative Review of Order Dying Motion to Dismiss (Stay Request). North County filed this request after Administrative Law Judge Adam E. Torem entered an order denying North County’s motion to dismiss the proceeding, and a subsequent order on May 5, requiring North County to file an answer to Qwest’s arbitration petition.

- 3 **APPEARANCES.** Joseph Dicks and Chris Reichman, Dicks & Workman, APC, San Diego, California, and Anthony E. McNamer, McNamer and Company, PC, Portland, Oregon, represent North County. Lisa A. Anderl, Associate General Counsel, Seattle, Washington, represents Qwest.

4 **PROCEDURAL SCHEDULE.** Qwest filed its petition for arbitration on August 3, 2009. After an initial prehearing conference, the assigned arbitrator, Administrative Law Judge Ann E. Rendahl, granted the North County's request for a 30-day stay to try to resolve the issues in Qwest's petition. The arbitrator granted two additional continuances until February 8, 2010. After it was clear the parties would not reach resolution outside of a more formal process, the arbitrator set the matter for a prehearing conference and reassigned the matter to Judge Torem.

5 On Tuesday, March 9, 2010, the Commission entered a prehearing conference order adopting 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. 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.¹ 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

6 On Monday, April 26, 2010, the Commission entered Order 06, denying North County's 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.

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 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."

- 7 On May 3, 2010, North County filed a petition for review of Order 06, stating in its cover letter that “an answer will not be filed to preserve judicial resources” until the Commission enters a decision on its petition for review.
- 8 On May 5, Judge Torem entered an order requiring North County to file an answer to Qwest’s petition. On May 6, North County filed its answer as well as a request to stay the proceeding or suspend the procedural schedule pending resolution of its petition for review.
- 9 Qwest filed its answer to North County’s request for a stay on May 11. On May 14, North County filed a response to Qwest’s answer, accompanied by a petition for leave to file a response.
- 10 **PARTY POSITIONS.** North County requests a stay, asserting that until the Commission decides its petition for review, it would be wasteful to proceed with the current schedule in the case. If the Commission upholds the order, North County argues that the Commission can reset the schedule. If the order is overturned, the company states that any time spent by the parties and the Commission would be wasted. North County notes that both parties have waived the regulatory deadlines in this proceeding.
- 11 Qwest argues that North County’s request is untimely, as the company had the opportunity to object to the schedule at the March 9 prehearing conference. This schedule anticipated the filing of an answer after a decision on the motion to dismiss, as well as a May 19 deadline for Qwest to file its initial testimony. Qwest asserts that the reasons that North County identifies for a stay or continuance are circumstances that North County should have been aware of when the schedule was set. Qwest argues that North County could easily have asked the Commission to build time into the schedule to allow for the type of review it now seeks. Further, Qwest claims that the burden of going forward falls on Qwest, not North County, as Qwest is in the process of preparing its testimony. Qwest argues that it is harmed by North County’s continued attempts to delay the proceeding, and asks the Commission to deny North County’s request.

- 12 **COMMISSION DECISION.** We deny North County’s Petition for Response, and the company’s request for a continuance. Although North County’s original pleading is captioned a “request,” we deem the pleading to be a motion for continuance, and therefore the rules governing pleadings apply. Under these rules, the response to an answer is considered a reply, and no party may file a reply without a showing of cause and approval from the Commission.⁴ The rule requires parties to address “whether the answer raises new material requiring a response,” or to explain why a reply is necessary.⁵
- 13 We reject North County’s argument that Qwest has raised “new issues, arguments and authority” by asserting harm in the event of delay.⁶ Qwest neither identifies any “authority” in its answer, nor does it raise arguments justifying a reply. Qwest simply argues that North County had the opportunity at the prehearing conference to request a different schedule, and that it is harmed by further delaying the schedule. The standard for determining whether the Commission should grant a continuance includes whether “the requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the commission.” Qwest’s answer addresses the issues the Commission must consider in determining whether to grant or deny a motion for a continuance. In short, we find that a reply is not necessary.
- 14 Further, we find no reason to grant the request for a further continuance in this matter. North County does not demonstrate good cause. As Qwest states, North County should have foreseen the need for this change in the procedural schedule as first established. In addition, the Commission already has granted North County a number of continuances in this case. Qwest seeks to move forward with the proceeding without further delay and is scheduled to file testimony by May 19. Given Qwest’s statements, Qwest would be prejudiced by granting an additional continuance and only North County benefits by further delaying the schedule in the case. As North County has no filing obligation for another month, we deny the stay,

⁴ WAC 480-07-370(1)(d)(i).

⁵ WAC 480-07-370(1)(d)(ii).

⁶ See North County Petition for Response, ¶ 1.

and will resolve the issues North County raises in its petition for review to allow sufficient time for North County to file responsive testimony on June 17.

ORDER

THE COMMISSION ORDERS:

- 15 (1) North County's Petition for Response is denied.
- 16 (2) North County's Request to Stay or Suspend Procedural Schedule Pending Resolution of Petition for Administrative Review or Order Denying Motion to Dismiss is denied.

Dated at Olympia, Washington, and effective May 17, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner