

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

Qwest Corporation

and

Pacific Electronics, Inc.,

and

Advanced Paging and Communications
Incorporated

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

Docket No.

PETITION FOR APPROVAL OF
INTERCONNECTION AGREEMENTS
TO IMPLEMENT FCC RULING IN
T-MOBILE ORDER

1 Qwest Corporation, (“Qwest”) petitions the Washington State Utilities and Transportation Commission (“Commission”) for an order pursuant to 47 U.S.C. § 252(b) approving an interconnection agreement between Qwest and each of the Respondents to implement the ruling of the Federal Communications Commission (“FCC”) in *In the Matter of Developing a Unified Intercarrier Compensation Régime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, FCC 05-42, (Released February 24, 2005) (the “*T-Mobile Order*”), as follows:

I. PARTIES AND JURISDICTION

2 Qwest is an incumbent local exchange carrier (“ILEC”) and regional Bell operating company
3 (“RBOC”) with its principal place of business in Denver, Colorado. Qwest is certified as a
4 local exchange carrier in Washington.

5 Qwest seeks approval of the Type 1 Wireless interconnection agreement attached hereto as
6 **Exhibit A** with the following wireless carrier, consistent with the requirements of 47 U.S.C. §
7 252(b): Pacific Electronics, Inc.

8 Qwest also seeks arbitration and approval of the Type 1 and Type 2 Paging interconnection
9 agreement attached hereto as **Exhibit B**¹ with the following paging carrier: Advanced Paging
10 and Communications, Incorporated.

11 As required by Section 252(b)(2)(B) of the Act, Qwest has delivered a copy of this Petition,
12 together with all exhibits, to each of the providers identified above.

13 This Commission has jurisdiction to arbitrate and approve these agreements with the listed
14 carriers pursuant to Section 251(b)(1) of the Act, and also pursuant to the *T-Mobile Order* and
15 clarifying regulations adopted thereunder.

16 This Petition is timely filed, as Qwest initiated, and then restarted negotiations on October 11,
17 2005. Thus, the 160th day after Qwest restarted negotiations is March 19, 2006.

18 Pursuant to Section 252(b)(4)(C) of the Act, this arbitration is to be concluded not later than
19 nine months after the applicable request for negotiations was sent to each Respondent, which
20 for purposes of this petition is July 11, 2006.

¹ Both of these agreements are similar, and implement the requirements of the *T-Mobile Order* into the interconnection relationship between Qwest and each Respondent. The context of each agreement varies slightly to allow for certain differences between wireless telephony and paging providers.

II. BACKGROUND

- 9 Respondents are wireless and paging carriers that have been exchanging traffic with Qwest without interconnection agreements.
- 10 The FCC has required Qwest to request and enter into interconnection agreements for the termination of wireless traffic, and Qwest has diligently pursued such interconnection agreements with Respondents, without any response. The Respondents' failure to respond to Qwest's invitations to negotiate for an interconnection agreement, a failure to negotiate in good faith under the federal Telecommunications Act of 1996 (the "Act"), has forced Qwest to seek approval of the interconnection agreement attached as **Exhibit A** as the preferable alternative to discontinuing services relating to termination of wireless traffic to Respondents.
- 11 In the *T-Mobile Order*, the FCC clarified a preference for contractual arrangements for wireless termination arrangements by (i) prohibiting LECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariff, (ii) amending its rules to clarify that a LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act, and (iii) identifying state commission implemented or approved rates as the applicable interim rates once a LEC initiates the negotiation process.
- 12 In response to that order and the clarifying regulations (*see* 47 C.F.R. § 20.11), Qwest implemented the interim rates approved by the *T-Mobile Order*, and initiated negotiations with Respondents by correspondence dated May 3, 2005 for wireless Type 1 and Type 2 carriers and paging Type 1 and Type 2 carriers. A copy of that notice is attached as **Exhibit C**. The notice included a proposed agreement.
- 13 Qwest also notified the Commission of its efforts to implement the *T-Mobile Order* on May 4,

2005. A copy of that letter is attached as **Exhibit D**.

14 Many carriers substantively responded to Qwest's initial request for negotiations, and Qwest has entered into and filed those agreements with the relevant state commissions.

15 Other carriers, including Respondents, did not respond to Qwest's initial request for negotiations, so Qwest sent a second request for negotiations on October 11, 2005, again referencing the web address for the current version of the proposed agreement. As an accommodation to the non-responding carriers, this letter also reset the time period for negotiations, so that the window for requesting arbitration opened on February 22, 2005 (the 135th day after October 11, 2005) and will close on March 19, 2005 (the 160th day). A copy of this second notice is attached as **Exhibit E**.

16 Qwest also notified the Commission of its second attempt to initiate negotiations on December 5, 2005. A copy of that letter is attached as **Exhibit F**.

17 A few more carriers responded to the second notice, and Qwest has entered into and filed those agreements with the relevant state commissions.

18 Other carriers, including Respondents, did not respond to Qwest's second notice, so Qwest sent a third request for negotiations on January 13, 2006 (for paging providers) or February 2 (for wireless providers). Copies of those requests are attached as **Exhibit G** and **Exhibit H**, respectively. These requests for negotiations also included a reference to the website address where the current template agreement could be located.

19 Respondents still failed to respond to Qwest's requests for negotiation, so Qwest sent yet another request to wireless and paging carriers on February 21, 2006. A copy of that request is attached as **Exhibit I**. Again, Qwest provided Respondents with the website address for the current template agreement.

20 Qwest followed up on these email notices with telephone calls to Respondents when a contact and phone number could be identified.

21 Also, during this timeframe, Qwest conducted teleconference negotiation sessions on November 16, 30, and December 7, 2005 for paging providers, and on December 8, 2005 for wireless providers. Qwest made several changes and updated the negotiation template agreement in response to concerns raised by the providers attending those sessions.

III. UNRESOLVED ISSUES

22 Pursuant to 47 U.S.C. § 252(a)(2)(A) and WAC 480-07-630, a party petitioning for arbitration or approval of an interconnection agreement is ordinarily required to submit a list or matrix of unresolved issues from their negotiations. That is impractical in this case.

23 In this case, apart from Respondents' failure to respond to Qwest's many invitations for negotiations, there are no unresolved issues, precisely because of Respondents' failure to negotiate in good faith, or even at all. Thus, Qwest is not aware of any disputes or unresolved issues with respect to the proposed agreement.

IV. REQUEST FOR ARBITRATION AND APPROVAL WITHOUT DISPUTED ISSUES

24 Section 252 of the Act and 47 C.F.R. § 20.11 both impose on Respondents a duty to negotiate in good faith in response to the several requests for negotiation described above. Respondents' failure even to respond during an extended negotiation window violates this duty.

25 Because of the Respondents' violation of their duty to negotiate in good faith, Qwest asks that Respondents be barred from raising any disputed issues in response to this Petition. If any Respondent is allowed to raise disputes now, the statutory duty to negotiate in good faith would be rendered meaningless, and Respondents would be allowed to subvert the entire scheme for

negotiation and arbitration set up in the Act.

26 Thus, Qwest requests that the Commission approve the agreement attached as **Exhibit A** as an interconnection agreement between Qwest and the Type 1 wireless carriers identified in paragraph 2 above, and approve the agreement attached as **Exhibit B** as an interconnection agreement between Qwest and the paging carriers identified in paragraph 3, as written, without changes or disputed issues.

27 While Qwest asks that Respondents be barred from raising any disputed issues in response to this Petition, Qwest does not ask the Commission to neglect its duties under section 252 of the Act to ensure that the agreements attached as **Exhibits A and B** meet the requirements of section 251 of the Act, including the regulations prescribed by the FCC pursuant to section 251, or any other requirements within the Commission's state law authority that are consistent with the Act and FCC regulations, as permitted under section 252(e)(3) of the Act.

28 Indeed, **Exhibits A and B** fully comply with sections 251 and 252 of the Act, applicable state laws and the orders of this Commission, and are consistent with the *T-Mobile Order*. The agreements are not discriminatory, and are consistent with the public interest, convenience, and necessity.

29 The *T-Mobile Order* requires Qwest to enter interconnection agreements with wireless and paging providers – and forbids the use of tariffs – to set the terms and conditions for the termination of traffic originated by these carriers. Pursuant to the *T-Mobile Order*, 47 C.F.R. § 20.11, and 47 C.F.R. 51.715(c), the interim arrangements for pricing have governed the exchange of traffic between Qwest and the Respondents thus far and will continue to apply during the pendency of this proceeding, but may expire with this Commission's order either approving or rejecting the proposed agreements. Thus, if the Commission will not approve the agreements, Qwest will be forced to discontinue service to Respondents until an appropriate

interconnection agreement can be negotiated, approved, and filed. Qwest has taken every step possible to avoid such a drastic result, but cannot provide termination services to Respondents without an approved, filed agreement or tariff.

30 **WHEREFORE**, Qwest respectfully requests that this Commission:

1. Conduct a proceeding pursuant to Section 252(b) of the Act;
2. Bar Respondents from raising disputed issues in this arbitration as a consequence of their failure to negotiate in good faith as required by the Act;
3. Find that Qwest's proposed interconnection agreements contained in **Exhibits A and B** are consistent with applicable law and commercially reasonable;
4. Issue an Order adopting and approving the proposed agreements contained in **Exhibit A** as an interconnection agreement between Qwest and the Type 1 wireless provider Respondents identified in paragraph 2 of this Petition;
5. Issue an Order adopting and approving the proposed agreements contained in **Exhibit B** as an interconnection agreement between Qwest and the paging provider Respondents identified in paragraph 3 of this Petition; and
6. Grant Qwest such other and further relief as may be necessary.

DATED this 17th day of March, 2006.

QWEST



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EXHIBIT LIST

- Exhibit A Type 1 Wireless interconnection agreement
- Exhibit B Type 1 and Type 2 Paging interconnection agreement
- Exhibit C Template letter from Qwest to wireless Type 1 and Type 2 carriers and paging Type 1 and Type 2 carriers dated May 3, 2005
- Exhibit D Letter from Qwest to the Washington Utilities and Transportation Commission dated May 4, 2005
- Exhibit E Second template letter from Qwest to wireless Type 1 and Type 2 carriers and paging Type 1 and Type 2 carriers on October 11, 2005
- Exhibit F Letter from Qwest to the Washington Utilities and Transportation Commission dated December 5, 2005
- Exhibit G Third template letter from Qwest to paging Type 1 and Type 2 carriers sent on January 13, 2006
- Exhibit H Third template letter from Qwest to wireless Type 1 and Type 2 carriers sent on February 2, 2006
- Exhibit I Notice from Qwest to wireless Type 1 and Type 2 carriers and paging Type 1 and Type 2 carriers sent on February 21, 2006