

**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 MOTION TO
COMPEL RESPONSES TO FIRST DATA
REQUEST AND REQUEST FOR EITHER
CONTINUANCE OF TIME TO SUBMIT
RESPONSIVE TESTIMONY OR TO
SUBMIT SUPPLEMENTAL
RESPONSIVE TESTIMONY**

Pursuant to WAC 480-07-405 North County Communications Corporation of Washington respectfully submits this motion to compel answers to its First Data Request. Because the information withheld by Qwest in relation thereto directly affects North County's ability to complete its Responsive Testimony. North County requests either a continuance of the date its Responsive Testimony is due, or the ability to submit supplemental responsive testimony after Qwest provides the relevant information.

INTRODUCTION

Essentially, Qwest avoided directly answering most of North County's data requests. For the requests for production they objected on the grounds they were burdensome. For requests for information, they either avoided the question or simply refused to answer it. Their responses are consistent with the evasive gamesmanship Qwest has shown throughout prior negotiations and these current proceedings. Qwest believes it can force arbitration on North

County, and then force North County into a one-sided ICA simply because that is what Qwest wants to do. Qwest refuses to explain the ICA, clarify the changes between the current ICA and proposed ICA, or articulate how those changes will affect North County. And now they refuse to provide any discovery that would allow North County to test the bald assertions made by Qwest in this proceeding. Qwest is stonewalling, and the ALJ should not sanction Qwest's tactics.

STANDARD OF REVIEW

Pursuant to WAC 480-07-400 a party may seek any information that is relevant to the proceedings, or that may lead to the production of relevant information. That the data requested may be inadmissible at hearing is irrelevant. WAC 480-07 mirrors Washington Civil Rule 26 and FRCP 26(b). Relevancy with regard to discovery is interpreted broadly and includes any matter that "bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders et al.*, 437 U.S. 340, 351 (1978). The party resisting discovery carries the heavy burden to show why discovery should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975).

SPECIFIC REQUESTS

North County's First Data Request, and Qwest's responses thereto is filed concurrently herewith. Specific requests and responses are set out below.

Request No. 1. Renee Albersheim is offering "expert" testimony and has apparently offered testimony in various other proceedings. North County requested copies of "all written testimony provided by Renee Albersheim to other state regulatory commissions, including the previous testimony indicated at 2:19-3:4 of her testimony."

Qwest refused to provide any testimony other than the testimony specifically referenced in

her direct testimony at 2:10-3:4. If Ms. Albersheim has submitted written testimony (or any testimony) on the topics at issue in this arbitration, or any similar topics, that testimony is relevant to both the underlying issues and Ms. Albersheim's credibility.

Request No. 2. Philip Linse is offering "expert" testimony and has apparently offered testimony in various other proceedings. North County requested copies of "all written testimony provided by Philip Linse to other state regulatory commissions, including the previous testimony indicated at 2:10-15 of his testimony."

Qwest refused to provide any testimony other than the testimony specifically referenced in her direct testimony at 2:10-15. If Philip Linse has submitted written testimony (or any testimony) on the topics at issue in this arbitration, or any similar topics, that testimony is relevant to both the underlying issues and Philip Linse's credibility.

Request No. 3. Qwest claims it cannot bill with MF trunks, but Qwest had MF trunks until as recently as April 30, 2010. As such North County asked Qwest to "[d]escribe how Qwest was able to bill its customers or other carriers when Qwest (and/or its predecessors) had networks that were MF (multi-frequency)." Instead of answering the question posed, Qwest rewrote the question artificially narrowing it to be about a period when Qwest was exclusively using MF signaling. The question was about any use of MF signaling, not just exclusive use. Qwest understood the question, but simply refused to answer.

Request No. 4. Again, the question requested that Qwest "[s]tate the last date that any of Qwest's networks used MF technology, and where that MF technology was used." Qwest again rewrote the question and then only partially answered it artificially narrowed question. The request was about any use of MF signally, not exclusive use of MF signaling. Qwest understood the question, but simply refused to answer. Additionally, Qwest failed to state where any of such

technology was use.

Requests Nos. 5-6, 13. During negotiations, Qwest refused to provide any information about how the proposed changes would affect the fees payable to North County. North County requested Qwest to describe how the proposed changes relating to MF signaling will effect the amount NCC receives for termination of Qwest's calls, with a description for Washington, Oregon and Arizona and provide an estimate of the decrease in fees to North County. Qwest refused to answer, claiming they simply didn't know. Qwest has made the proposed changes for a reason. Qwest must explain the reasoning behind the changes and provide a reasoned estimate on how those changes will affect North County.

Request Nos. 7-9. In order to comply with the proposed language regarding SS7 (and be paid for its services), North County will have to replace its central office. As such the cost of replacement is clearly relevant to the arbitration. North County requested Qwest provide an estimate of the cost to replace and lifespan of the central office and the costs to convert a MF sytsem to a SS7 system. Qwest refused, apparently disagreeing with North County's position on this issue. Qwest's disagreement is irrelevant. Qwest cannot refuse to provide discovery on claims and defenses it deems invalid. Relevancy is given a broad interpretation by the court and includes any matter that may bear on an issue in the case. *Oppenheimer Fund, Inc. v. Sanders et al.*, 437 U.S. at 351.

Request No. 11. Qwest claims that 87 out of 137 CLECs have opted into the template language (still leaving out 50 who haven't). The only way North County can verify this claim is by looking those referenced agreements. Qwest requested North County provide all agreements referenced in its direct testimony and North County provided those agreements (there were 5). Qwest objects that providing these agreements is unduly burdensome. First, Qwest is far more

than 27 times as big as North County, and North County produce its agreements 6 agreements (1/27 of the amount Qwest must produce). Second, as Qwest is well aware, Qwest has all these agreements in electronic form and can merely email a link to a zip file. It would take almost no time, and involve no actual document production for these electronic files to be provided. Qwest is abusing the discovery process. It submits testimony relying on these purported agreements, but then refuses to produce those agreements so that North County can properly test the accuracy of the testimony.

Request No. 18. Qwest claims it cannot bill with MF trunks, but Qwest interconnects with other ILECs who have MF trunks. North County asked Qwest to name the ILECs that have MF trunks. Instead of answering the question posed, Qwest rewrote the question artificially narrowing it to be about ILECs who exclusively use MF trunks. The request requires Qwest to provide the identity of ILECs who use any MF trunks. Qwest understood the question, but simply refused to answer.

Request No. 19. North County needs to know how Qwest is treating other carriers in relation to the purchase of CNAM data, to ensure that the proposed agreement treats North County similarly. Qwest refused to provide this information on relevance grounds. Again, relevancy with regard to discovery is interpreted broadly and includes any matter that “bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders et al.*, 437 U.S. 340, 351 (1978). The party resisting discovery carries the heavy burden to show why discovery should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975).

CONCLUSION

Qwest should be compelled to immediately respond to North County's First Data Requests. Additionally, since Qwest's refusal to respond directly affects North County's ability to complete its Responsive Testimony, the ALJ should either a continue the date North County's responsive testimony is due, or allow North County to submit supplemental responsive testimony after Qwest provides the relevant information.

Dated this 16th day of June, 2010, in Portland, Oregon.

Respectfully submitted,

s/Anthony McNamer

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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>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</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 16th day of June 2010, in Portland, Oregon.

s/Anthony McNamer
Anthony McNamer