

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

In the Matter of the Petition for	)	DOCKET UT-093035
Arbitration of an Interconnection	)	
Agreement Between	)	
	)	
NORTH COUNTY	)	
COMMUNICATIONS CORPORATION	)	QWEST'S ANSWER TO NCC'S
OF WASHINGTON	)	MOTION TO COMPEL
	)	
and	)	
	)	
QWEST CORPORATION	)	
Pursuant to 47 U.S.C. Section 252(b).	)	
.....	)	

**I. INTRODUCTION and SUMMARY**

1 Qwest Corporation (“Qwest”) files this answer to North County Communications Corporation of Washington’s (“NCC”) motion to compel data request responses. Qwest discussed the motion with counsel for NCC on June 18, 2010. Qwest has agreed to supplement responses to data requests 1 and 2 because those requests were limited and narrowed in the motion to compel. Qwest has also agreed to supplement its response to data requests 3, 4 and 18. The other data requests remain in dispute, and Qwest asks the Administrative Law Judge to deny the motion to compel as to those requests.

**II. BACKGROUND**

2 NCC had repeatedly and continuously refused to define the issues in this docket in any sort of meaningful or detailed way. As such, and given NCC’s history of refusal to comply with deadlines, and many delay tactics, it is shocking and offensive that NCC now accuses Qwest of “gamesmanship” and “stonewalling” in the discovery process. Qwest has produced reasonable

responses to vague and overbroad questions, and has refused to provide responses to questions that have no bearing on the issues in this case.

3 NCC asked a number of data requests that did not reasonably define the scope of the question in terms of time, or were clearly overly broad. Instead of objecting, Qwest made certain limiting assumptions when it answered some of the data requests – assumptions that were clearly set forth in the answers. For example, NCC’s network is exclusively MF signaling for interconnection with Qwest, and Mr. Lesser’s testimony refers back to the time when Qwest’s “entire network was MF” signaling. Thus, for some data requests, Qwest interpreted the questions in the context of those facts. Further, to the extent that the issues have been defined, this arbitration is about the LIS interconnection trunks that exist between Qwest’s network and NCC’s network. Qwest appropriately qualified and answered NCC’s associated questions accordingly.

4 Qwest believes that the appropriate approach for NCC would be to ask follow up questions, or to seek clarification from Qwest, as opposed to bringing a motion to compel. Nevertheless, Qwest hereby provides its response to the motion.

### III. STANDARD OF REVIEW

5 Under the discovery rules applicable in this proceeding, NCC’s data requests must be “reasonably calculated to lead to discovery of admissible evidence.” WAC 480-07-400(4). Application of this standard necessarily involves balancing the potential relevance of the information sought against the breadth and burden of specific requests. *Sorosky v. Burroughs Corporation*, 826 F.2d, 794, 805 (9<sup>th</sup> Circ. 1987). To prevail in its motion to compel, NCC must demonstrate that the potential relevance of the information it seeks outweighs the burden of responding. *Nugget Hydroelectric, L.P. v. Pacific Gas and Electric Company*, 981 F.2d 429, 438-39 (9<sup>th</sup> Circ. 1992). In no event is NCC entitled to engage in a fishing expedition for information that has little or no relevance to the issues in dispute. *Hardrick v. Legal Services*

*Corp.*, 96 F.R.D. 617, 618 (D.D.C.1983).

6 Under this standard, NCC's motion to compel should be denied. In many cases, Qwest provided sufficient answers, and NCC is more dissatisfied with the quality of the questions than the answers. In other instances, NCC bases its argument for relevance on an inaccurate description of Qwest's position in this proceeding. One request is extremely burdensome, and requests public information that is otherwise available to NCC. For the reasons that follow, NCC's motion to compel should be denied.

#### IV. SPECIFIC REQUESTS

##### **Request Nos. 1 and 2.**

7 These requests asked broadly for "all testimony" ever provided by Ms. Albersheim and Mr. Linse. Qwest objected on the basis that the requests were overbroad, but Qwest did in fact provide a number of pieces of testimony in response to the request. In the motion to compel, NCC states that "[i]f [the Qwest witness] 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 [the witness's] credibility." Qwest agrees, but notes that this request is significantly narrowed from the original request. Qwest has advised NCC that the supplemental response for Ms. Albersheim is "there is no such testimony" and that Qwest will provide copies of any testimony that Mr. Linse filed that relate to the issues in this arbitration.

##### **Request Nos. 3 and 4.**

8 NCC's motion to compel on these requests is based on an incorrect premise, that "Qwest claims it cannot bill with MF trunks." Qwest has repeatedly and patiently explained to NCC that this is not Qwest's position – rather, that the issue is that Qwest is unable to segregate combined traffic on MF trunks where different traffic types are subject to different

compensation and billing requirements. NCC is the only carrier except for one very small ILEC who interconnects with Qwest using only MF signaling. Qwest responded to the questions in these data requests in the context of whether there were other carries that were exclusively MF, as NCC is. Upon NCC's request that Qwest expand its responses, Qwest has agreed to do so and will supplement these requests as follows:

- a. Request No. 3, Supplemental Response: When Qwest uses (or used) MF trunks, the billing was done in a way that is consistent with the original response to request 3, and with the responses and supplemental responses to 4 and 18. In other words, traffic was segregated by trunk, and local traffic was exchanged on a bill and keep basis, meaning there was no need for separate billing.
- b. Request No. 4, Supplemental Response: Qwest retains MF Signaling in its network today on very limited types of trunks. These trunks generally relate to Operator Services or 911. Traffic on these trunks is one-way, and is either not billable, or is segregated by traffic-type so that Qwest is able to bill for the traffic. This situation is consistent with the solution that Qwest has proposed in its proposed ICA, and is completely different from the interconnection that NCC has with Qwest under the expired agreement.

### **Requests Nos. 5, 6, and 13.**

- 9 In requests 5 and 6, North County asked Qwest to describe how the proposed changes relating to MF signaling will affect the amount NCC receives for termination of Qwest's calls, with a description for Washington, Oregon and Arizona. In 13 NCC asked a highly speculative and virtually impossible-to-answer question about other CLECs' bills, to which Qwest objected.
- 10 Qwest did respond to requests 5 and 6, and its answer is both sufficient and all that Qwest can provide at this time. Qwest stands on its objection to 13, and adds that performing such a

calculation, if it were even possible, would be unbearably time-consuming and burdensome, with no demonstrated connection to NCC's issues.

**Request Nos. 7-9.**

11 In requests 7-9, NCC asks Qwest to provide an estimate of the costs of a central office, and of the costs of conversion to SS7. Qwest objected to these requests because NCC has not put that information at issue in this case. Under Qwest's proposal, NCC may retain its MF trunks. NCC alleges, without proof or support, that under Qwest's proposal it will have to "replace its central office." First, it is Qwest's testimony that NCC will have to do no such thing. Further, Qwest has no information on what NCC's costs are for either switching equipment or SS7 signaling equipment. As such, the requests are not proper discovery – even if Qwest were to provide information on Qwest's own costs, there is no showing that those would relate to NCC's costs, or what the scope or scale of NCC's costs (if any) would be relative to Qwest's.

**Request No. 11.**

12 In its direct testimony, Qwest stated that 87 out of 137 CLECs have opted into Qwest's template language. NCC asked Qwest to produce all 137 interconnection agreements in the state of Washington. Qwest responded that the request was overly burdensome, due to the thousands of pages that would have to be copied, but offered to allow counsel to review those documents, and further provided a spreadsheet which would allow NCC to do its own research. NCC did not include that spreadsheet with its motion, so Qwest provides it as an attachment to its answer here.

13 So, when NCC argues that "[t]he only way North County can verify this claim is by looking those referenced agreements" Qwest does not necessarily disagree – Qwest has enabled that review. Second, contrary to NCC's allegation, Qwest *does not* have all these agreements in electronic form such that Qwest "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.” The electronic files are extremely voluminous – many ICAs are in multiple parts, or have multiple amendments or schedules attached, such that a single ICA might have upwards of 20 separate electronic documents associated with it, in multiple file formats including .doc, .pdf, and .xls. NCC was unable to even e-mail Qwest the ICAs Qwest asked for because of the size of those documents, and ultimately had to provide a link to three .pdf files that were over 41 MB in size. Qwest does not have the ability to respond as NCC requests, but Qwest has provided several reasonable alternatives for NCC. NCC here is simply looking for reasons to delay, and for reasons to excuse its failure to serve discovery on a timeline sufficiently in advance of other deadlines in this docket.

**Request No. 18.**

14 NCC moves to compel on request 18 on a similar basis to its motion regarding requests 3 and 4. Qwest has determined that it will supplement its response as follows: Most or all of the ILECs in Washington have some MF trunks between their networks and Qwest’s network. These trunks generally relate to Operator Services or 911. Traffic on these trunks is one-way, and is either not billable, or is segregated by traffic-type so that Qwest is able to bill for the traffic. This situation is consistent with the solution that Qwest has proposed in its proposed ICA, and is completely different from the interconnection that NCC has with Qwest under the expired agreement.

**Request No. 19.**

15 In request 19, NCC asks Qwest about any agreements Qwest has to purchase the CNAM (Calling NAME) data of other companies. NCC states that it 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

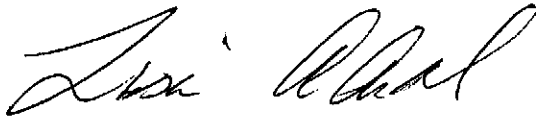
relevance grounds. This is because NCC did not raise either CNAM or the claim of possible discrimination as an issue in its Answer *or* in its opening testimony. Thus, the information has no bearing on the issues in this case. Further, CNAM is not a Section 251 service, and issues about that service are therefore not subject to arbitration in this proceeding. Qwest's objection is valid and should be sustained.

## V. CONCLUSION

16 Qwest should not be compelled to respond to NCC's First Data Requests. Qwest does not object to inclusion of its agreed supplemental responses being made a part of the record if NCC wishes to do so.

Dated this 21st day of June, 2010

QWEST



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Lisa A. Anderl (WSBA #13236)  
1600 - 7<sup>th</sup> Ave., room 1506  
Seattle, WA 98109  
(206) 345-1574  
[Lisa.anderl@qwest.com](mailto:Lisa.anderl@qwest.com)