## BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

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

- Qwest Corporation ("Qwest") files this motion to strike the responsive testimony filed by 1 North County Communications Corporation of Washington ("NCC") on June 17, 2010. NCC's testimony should be stricken in its entirety because it is late filed without good cause. Such late filing is not an isolated incident, but rather, as the Commission is aware, reflects a pattern by NCC of ignoring or disregarding Commission requirements.
- 2 If NCC's rebuttal testimony is not stricken in its entirety, then at a minimum the last five pages of Mr. Lesser's responsive testimony should be stricken. That testimony improperly references and responds to the rebuttal testimony of Qwest's witnesses, filed with the Commission only a few hours before NCC's testimony. Had NCC filed its testimony in a timely manner, NCC would not have had time to read and respond to Qwest's rebuttal. Therefore, Qwest is directly prejudiced by NCC's late filing, and the proper remedy is to strike the testimony.

Qwest

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- Beginning on page 19, with the question, "Have you read Mr. Linse's rebuttal testimony?",
  Mr. Lesser responds to Mr. Linse's rebuttal testimony. This continues through page 21, with
  the question, "Have you read Ms. Albersheim's rebuttal testimony?" Mr. Lesser then proceeds
  to respond to Ms. Albersheim's rebuttal testimony through page 23 where his testimony ends.
- Per the scheduling order (Order 05) for this docket, both parties were to file their rebuttal testimony on June 17, 2010. When parties file electronically, such filings are due by 3:00 p.m.<sup>1</sup> Qwest made a timely filing at 2:39, 21 minutes before the deadline. NCC completely missed the deadline, and filed electronically at 4:40 p.m.
- If it were simply a matter of a late filing by an hour and forty minutes, Qwest would not protest. But a late filing, where the lateness was clearly caused by NCC's attempt to obtain an unfair advantage in the case by taking extra time to read and respond to Qwest's testimony essentially filing surrebuttal which was not permitted by the schedule is highly objectionable. It was not appropriate for North County to wait for receipt of Qwest's rebuttal filing, add a response to Qwest's testimony, and subsequently file its own rebuttal testimony late by approximately the amount of time it took to draft five pages of surrebuttal. Qwest therefore moves that responsive testimony of North County witness Todd Lesser be stricken in its entirety, or, in the alternative, at a minimum from page 19, line 8 through page 23, line 7.

Qwest's Motion to Strike NCC's

<sup>&</sup>lt;sup>1</sup> According to WAC 480-07-145(6), the parties may electronically submit documents to the Commission provided the electronic submission is received by 3:00 pm on the filing deadline and the Commission receives the original and required number of copies by 12:00 pm on the following business day.

## Dated this 21st day of June, 2010

**QWEST** 

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