

**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 REVISED
RESPONSIVE TESTIMONY OF
TODD LESSER**

REVISED RESPONSIVE TESTIMONY OF TODD LESSER

DATE: JUNE 28, 2010

RESOPONSIVE TESTIMONY OF TODD LESSER

Identification

Q: Please state your name and business address.

A: My name is Todd Lesser. My business address is 3802 Rosecrans Street, No. 485, San Diego, California 92110. My telephone number is (619) 364-4750. I am the president of NCC.

Summary

Q: Have you read the testimony of Philip Linse and Renee Albersheim submitted by Qwest?

A: Yes. This responsive testimony addresses Qwest's testimony.

Testimony

Q. Is Mr. Linse qualified to answer questions about the Central Office Capabilities of Qwest?

A. No. He appears to only have outside plant experience and hasn't work in a central office before. An outside plant employee works with things such as wires on telephone poles, installing jacks in people's houses and possibly fiber muxes in the field. They are not trained in the capabilities of a central office. In addition, he appears to have just designed and managed the installations and never actually performed installations himself.

Q: When you were negotiating with Qwest, did you feel that they were providing the correct technical responses to your inquiries?

A: No. It was clear from my conversations with Qwest on the conference calls, that they only has a limited understanding of the capabilities of a central

office switch and/or trunk monitoring equipment. I assume that Mr. Linse was their technical expert.

Q. What were they telling you that was incorrect?

A: They said they could only take PEG counts and couldn't keep track of actually calls and minutes sent to our trunk groups.

Q: Is Mr. Linse correct that they can only monitor PEG counts and not total usage?

A: Absolutely not. Let me explain. A PEG counter is a simplistic way to just count calls and call totals. What Mr. Linse apparently was never taught, is that all Central Office (CO's) on the Qwest network follow the Telecordia Document LSSGR (LATA Switching System Generic Requirements.) One of those requirements is the switch has a CDR (Call Detail Recording). In other words, every outbound and inbound call that is made or received is electronically recorded with all the call details.

Q. Is this a new requirement?

A. No. This has been around since the first electronic switches in the early 60's.

Q. Does Qwest have the ability to track and bill calls made on MF trunks?

A. Absolutely. We have had MF long distance trunks for years with Qwest. If someone dials our CIC code (incoming) or if we make an outbound call on their network, Qwest tracks the calls and bills us for the usage.

Q. Do MF trunks have the capability to provide calling party

information?

A. Yes. Although, for some unknown reason, Qwest won't let us send it to them on our local interconnection trunks like they do for our long distance trunks. To repeat, Qwest allows us to send them calling party information on our long distance MF trunks. In addition, they won't send us calling party information when they deliver calls to us.

Q. Have you interconnected with another carrier by MF over local interconnection trunks and sent calling party information?

A. Yes. Other carriers have provided us with the information, and we have provided the information to other carriers. They even had the same type of switch that Qwest has on their network.

Q. Why won't Qwest provide it to you when they have the capability?

A. This is a simple trunk configuration. I suspect they are doing it in an attempt to force us to switch to SS7. SS7 will significantly increase our cost in each market. Frankly, even if only our switch was SS7, the monthly fees to support SS7 would make us unprofitable. Qwest knows this. They want us to switch to SS7 because then they can charge us for the SS7 links. So by forcing us to switch to SS7 they give themselves another profit center.

Q. Is Mr. Linse correct that SS7 is more reliable than MF?

A. Absolutely not. He obviously isn't aware of some of the well-publicized SS7 outages across the country. For example, on June 26, 1991, over six million Bell Atlantic lines were cut off for seven hours in Washington, DC, Maryland, Virginia and West Virginia. Pacific Bell had an outage of three

and a half million lines on the same day for a few hours. This was all caused by one SS7 problem in Baltimore, Maryland where a bad circuit board disabled the whole network. SS7 has single points of failure. If your SS7 links or your STP fails, your entire network goes down. With MF signaling, each call receives the call routing direction on that specific trunk. If you have a problem, only one trunk or T1 goes down – not your whole network. In fact, many carriers around the country use MF signaling for 911 trunks even when the rest of their network is SS7. MF signaling is much more reliable than SS7 signaling.

Q. In thirteen years, has North County ever had an outage with Qwest in Washington with its MF trunks?

A. No.

Q. Does MF equipment and circuits require more maintenance as Mr. Linse describes?

A. What Mr. Linse fails to tell you is that when you dial a telephone number at your house, the touch tones are in band signaling. The interoffice MF trunks are just a different set of tones. In the 60's there used to be transistorized MF transmitters and receivers. Today, they are all done with DSPs (Digital Signal Processors.). Those don't have issues. In fifteen years, we have never had a DSP card go bad.

Q. Does MF limit the number of carriers or the size of the recording capability in comparison to SS7?

A. No. This makes no sense whatsoever. Whether the signaling for call set up is sent in band or out of band with SS7, you still need to record it. In fact,

SS7 has a lot more parameters to record.

Q. Is SS7 recording more accurate?

A. No. In fact, in one jurisdiction, we proved that the SS7 recordings were incorrect by swapping call detail recording from our central office switch. The SS7 recordings weren't recording all the calls because the instructions the monitor was given wasn't correct. CDR (Call Detail Recordings) from MF trunks are so simple, you don't have problems like that.

Q. Qwest would like NCC to switch to SS7. Is that fair?

A. We both agreed to interconnect by MF. They should have to live with it. It is still a supported industry standard. It isn't fair to make us throw away our equipment. Qwest has a lot more resources than we do. They knew the lifespan of central office switches when they signed the interconnection agreement. Just because they installed SS7 capable switches when they got rid of their old central offices switches doesn't mean we should have to get rid of our switches. Our switches have many years of useful life left. Qwest operates under a double standard. It was fine to have MF in the agreement when they have MF only switches but when we do, it is no longer fine. A perfect analogy is that new switches support SIP, G.729, GSM, and ISDN and lots of other standards. All of these are out of band signaling.

It would be like me telling Qwest that they have to replace all their Lucent #5ESS and Northern Telecom Switches to support SIP. SIP is a lot more "efficient" than TDM (Time Division Multiplexing) used by MF and SS7 trunks.

SIP even supports video. This is what Skype and AIM/IChat use. Many wireless carriers use GSM compression.

If we switched to SS7, we would never make the money back. If we don't switch, under the proposed ICA, Qwest won't have to pay for interconnection. Either way it will force us out of business in Washington. Indeed, the cost of this arbitration may force us out of business in Washington.

Q. Why didn't you just sign their proposed interconnection agreement?

A. We are in a Catch 22 situation. If we sign the agreement they proposed, we would be out of business because of the immediate increase in expenses or loss of income. If we don't sign it, they force us into a costly arbitration that will probably force us out of business in Washington. Qwest is using its size and unlimited resources to bully a small CLEC into submission (or put it out of business entirely).

Q. Did you ever try to work on your existing agreement to see what changes Qwest wanted?

A. Yes. Qwest refused.

Q. What did you do then?

A. Our existing agreement was written by them. You can see the version numbers on the bottom of it. The new agreement they are proposing didn't just appear out of nowhere. I asked them for the redline version of our existing agreement and all the versions between the existing agreement and the proposed agreement.

Q. Did Qwest provide this to you?

A. No.

Q. What did you when they refused?

A. I asked them to make a list of all the material changes to our existing agreement and to list all the reasons why they want to change it. They refused to do it and said that they would just request arbitration if I didn't look at their new agreement. They are a multi-billion dollar company and they could easily tell by the amount of billing we do what our size was. They assumed we'd just buckle rather than spend money fighting and they refuse to provide us information with which we could adequately digest the 300+ page agreement they're forcing upon us.

Q. What are you asking this Commission to do?

A. I am asking for them to stand up for what is right. If this was a civil court and I signed an agreement without mandatory arbitration, I would be stuck with it. The Commission shouldn't allow Qwest to bully its competitors. Look how many CLEC's have gone out of business since the Telecom Act of 1996. Qwest isn't stupid. They didn't arbitrarily change the words in the agreement. All the changes they are making are for their sole benefit. They obviously are not making changes that help CLECs or increase the amounts Qwest pays CLECs. And they are not negotiating in good faith when they are failing to disclose the reasons why they are changing sections. Look how much we are fighting over just the few areas that we've been able to uncover. This document is over 300 pages long. There are probably lots of areas that have hidden negative consequences for North County. I am sure there will be many conflicts over

interpretation. We have worked through all the issues in the current ICA. It is a known quantity. The only thing we know about the proposed ICA is that Qwest has made significant changes solely for its benefit and refuses to identify or explain those changes.

A. Qwest wants you to agree to convert to SS7 if you start making calls. Is this necessary?

A. Absolutely not. AT&T and Verizon are able to bill us for outbound calls on our MF trunk groups. Qwest is able to bill us on our long distance MF trunk groups. Saying they don't have the ability to do it is a complete fabrication. They would have you believe that tracking and recording MF is a lost art. With all due respect, they have service contracts with Lucent and Northern Telecom. If they can't figure out how to do it, their service providers surely can. They have the resources. Clearly AT&T, Verizon and hundreds if not thousands of rural phone companies in the U.S. know how to do it.

Q. Mr. Linse says that other CLECs interconnect with Qwest using MF. Why would they still keep their MF trunks if SS7 is so much more reliable?

A. They wouldn't. They keep them as a back up in case their SS7 links go down. Most small CLEC's order their SS7 links from companies such as Verisign/TNS. These links costs thousands of dollars. Qwest can afford to have more than two links. Small CLECs, if they have a need to go to SS7, only order two. This makes it less reliable. In other words, if two circuits go down, your entire network goes down. If we were forced to switch to SS7, we would lose money on the costs of the link alone.

A. Ms. Albersheim testified that North County delayed the negotiations. Is that accurate?

A. No. If anyone delayed the negotiations it was Qwest. We asked Qwest numerous times for them to have people on the conference calls that had the technical knowledge to answer all the technical questions. They refused. We asked them to have someone on the call who had authority to make an agreement. They refused. Each time, they had to go back to talk it over with someone else or another organization. We asked them for redline versions and reasons why they wanted to make the changes. They refused. On the first phone call, I told them about a company in Massachusetts that because they signed a new agreement with Verizon, it put them out of business because of the shift in the cost of the circuits (RUF). It took them two years to finally disclose that there were more material changes than just, "updating definitions." This is just one example of the delay and disinformation tactics that Qwest used. I question how many other material changes there are that they aren't disclosing. It is a telltale sign that they are not willing to say what the material changes are.

Q. Ms. Albersheim mentioned that, at the start of an arbitration, it usually is not a mystery as to what the issues are. Do you agree with this?

A. First of all, I don't believe they have the right to force arbitration. Second, prior good faith negotiations typically would reveal all the potential issues for an arbitration. Qwest refused to negotiate in good faith.

Q. Please explain?

A. Generally, the party asking for the arbitration or negotiation acts in good faith. Both parties sit down and they explain to you what they would like changed with the existing agreement. They don't plop down on the table a 300+ page document and say we aren't going to tell you what we don't like about the existing agreement, and we aren't going to tell you what we changed, and we aren't going to tell you how it's going to affect your business. In a true negotiation, one party does not say "either do what I want or I'm going to force on arbitration on you that is not authorized by our agreement." I had to hire three different attorneys to try to figure out why Qwest wanted to change the agreement. Qwest has teams of lawyers that work full time on this. Our initial attorney simply couldn't handle such a complex negotiation when Qwest was unwilling to work off our existing agreement and/or tell us all the material changes. The interesting thing is we asked them to say the only material changes to the agreement where in Section 7. They once again refused. We have no idea what the material changes are and how else the proposed agreement negatively impacts North County to the benefit of Qwest.

Q. Ms. Albersheim stated the process that Qwest has to go through to investigate billing issues. Is she accurate?

A. No. Qwest is purposely tying one hand behind its back. Their switches have the capability to track MF calls. Further, if they would provide us an ANI (Automatic Number Identification) on each call in MF, we could give them EMI (Exchange Message Interface) records of every call. They simply refuse to do so and then say: "we can't track calls." The truth is they choose not to track MF

calls. It is simply a choice on their part and since the original agreement was for MF calls, and since we built our entire network around their original agreement, as between Qwest putting the effort into tracking MF calls or North County completely scrapping its entire network and converting to SS7, it is Qwest that should bear the burden of its choice to change its technology.

Q. Does Qwest have the technical ability to give you ANI on MF trunk groups?

A. Yes. This is a simple Class Of Service option on the trunk group. Qwest gives us ANI on our MF long distance trunks. Other ILECs have given us ANI on our local interconnection trunks.

Q. What did Qwest say when you asked them to give you ANI?

A. They said our agreement doesn't require them to give it to us. In other words, they are creating a situation that causes a potential for billing problems.

Q. Are you saying that if they provided you with ANI on your interconnection trunks that you could give them all the information they need to validate the billing and address all their concerns?

A. Absolutely. It is a common practice in the industry to swap or provide EMI files if there is a billing dispute.

Q. What would it cost them to provide you the ANI?

A. Nothing. It is just a Class of Service change on our trunk group. They simply type a few commands into the computer.

Q. Ms. Albersheim testifies that Qwest can't track the minutes. Is she qualified to say this?

A. No. She is a lawyer. She is just repeating what other people have told her. I suspect she has never programmed a CO in her entire career.

Q. Ms. Albersheim mentioned the methodology that was used to create the billing. Is she telling the whole story?

A. Absolutely not. I will try to not over simplify it. There are three general types of calls that come over our trunk groups: Local, Switched Access (intralata toll or interlata toll), and Transit Calls. Qwest provides us with a billing tape of all the toll calls from long distance carriers and the transit records from wireless carriers and CLECs. The rest of the calls are from Qwest or small rural local exchange carriers that subtend their tandem. Qwest then only pays a percentage of this amount – not the entire amount reflected in the records. Because they refuse to provide us ANI, we are unable to validate the percentage they tell us. Indeed, during negotiations, we discovered their analysis was completely baseless. For example, in Tucson, Qwest was only paying us for 74% of the calls. Qwest told us that there were other carriers that connected up to them that weren't being tracked. This was completely false. There isn't a single rural local exchange carrier in the local Tucson area. In Phoenix, they were only paying us for 58% of the local calls. We discovered that Qwest covers over 99% of the Phoenix area and that there were only a few small Indian reservations that had very few people living there. Clearly this didn't justify only paying for only 58% of the calls. We are still working with Qwest to resolve these billing issues.

Q. Ms. Albersheim mentions that Qwest can't bill North County for

outbound calls because of MF. Is this true?

A. With all due respect, she simply doesn't know what she is talking about.

Qwest bills usage on our MF long distance trunks, and other carriers who have the same switches as Qwest bill us for outbound calls. I am at a loss at why Qwest is saying it can't do it.

Q. Is Qwest requiring the rural ILEC's convert to SS7 to interconnect with them?

A. No. Frankly, nothing in the Telecom Act allows them to dictate that the trunks would be configured using SS7. Again, they are the ones who decided to change their trunks from the MF trunks we both were using when we interconnected. Now they want to force us to convert to their technology and now claim that it's imperative even though for almost 14 years there were almost no issues with MF signaling. Indeed, according to Qwest's data request responses, they finally completed their conversion to SS7 in their last central offices on April 30, 2010 – just over a month ago. So they literally sought to require our conversion before their conversion was even complete. In addition, I suspect by the way they answered the discovery questions (or more accurately, failed to answer the discovery questions) that they still have MF trunks on their network; they just added SS7 service. As between Qwest using the resources it has to properly track MF, and North County being forced to either convert to SS7 or receive nothing for the provision of its services, equity dictates that Qwest should bear the burden of its technology choices. This is

particularly true where, as here, a small CLEC built its system based on Qwest's prior requirements and the current ICA drafted by Qwest.

Q. Have you read the Qwest's responses to North County's first data request, which were provided on June 15, 2010?

A. Yes.

Q. What are your thoughts after reading their responses?

A. I am even more upset about them demanding arbitration than before. They didn't answer most of the questions and were totally evasive on the ones they did answer. This is why it was so difficult to negotiate with them. They also clearly want to set up a double standard.

Q. In its response to Data Request No. 3, did Qwest accurately answer the question?

A. No. We asked them to provide a list of other carriers who still use MF trunking. Instead of answering that question, they say "we assume you meant carriers that had exclusively MF trunking." They are purposefully evading the question. Feature Group D trunks were around before the 1996 and are still available today. These are the trunks that handle 1010 calls such as 10-10-288-1+ Area Code Plus number. You can order them as MF or as SS7. The 1996 Act didn't change this. Using the same technology they bill for MF Feature Group D or B trunks, they can track usage the same way for local calls. You can actually configure interconnection trunks to act just like Feature Group D and B trunks.

Q. When Qwest was demanding that you convert to SS7 to be able to

make outbound calls on their network, did they still have CO's that were exclusively MF?

A. Yes. In fact they had one CO that was exclusively MF until April 30th, 2010! They wanted us to convert to SS7 two years before they did.

Q. Does Qwest still have MF trunks in their CO's?

A. I don't know. They are refusing to answer the question. Since they evaded the question, I suspect they do.

Q. Does Qwest have MF interconnection trunks with any of the ILEC's they interconnect with?

A. I don't know. Qwest is refusing to answer the question. They only mentioned that one ILEC that exclusively has MF trunks.

Q. Do you know if Qwest has MF trunks with any other CLEC?

A. I don't know. Qwest is refusing to answer the question.

Q. Qwest states that they connect up to one ILEC in Washington exclusively by MF. Do you believe it is accurate that Qwest has less usage than NCC does in Washington?

A. I doubt that is accurate.

Q. Should that ILEC be allowed to interconnect with Qwest on a two-way basis and NCC be prohibited from interconnecting in the same fashion?

A. No. The Telecom Act is supposed to level the playing field. Qwest is not allowed to discriminate against CLECs.

Q. Is Qwest discriminating against NCC as a CLEC in other ways?

A. Yes. They are refusing to purchase our CNAM data. In other words, when our customers call one of their customers, the name won't show up on the caller ID. This is one of the main reasons we don't send outbound calls over our interconnection trunks in Washington. We use other carriers to route the calls to Qwest. Many business customers want their name displayed on the caller ID displays of the people they call. NCC requested that Qwest buy NCC's data under the same terms and conditions Qwest was selling us its data. What I find is even more shocking, is they appear to make a distinction between an obligation to purchase CNAM data from ILEC's versus CLECs.

Q. Qwest now admits that they can track incoming minutes in its response to Data Request No. 21, but says it is less accurate than SS7. Do they explain why?

A. No. They also don't explain if there is any statistically significant difference. I don't believe there would be any difference. They have never been able to explain why. I have asked them multiple times. I find it also interesting that they have been able to do it all along but were only willing to pay us a percentage of the calls they were sending us.

Q. Qwest states in its response to Data Request No. 16 that Qwest RCF service is different than the VNXX definition in their proposed interconnection agreement. Is this accurate?

A. Absolutely not. They say it is different because the customer is charged toll charges when calls are forwarded outside the local calling area. Their definition

of VNXX says nothing about what the customer is charged.

Q. If one of Qwest's customers has regular call forwarding on their line and forwards the calls outside the local calling area, would this meet Qwest's proposed definition of VNXX.

A. Yes. Qwest even offers unlimited long distance so their customers don't have to pay toll. Qwest wants to be able to offer the service but they say we can't. This simply is not fair.

Q. Qwest says that SS7 is the industry standard for interconnection. Is this correct?

A. No, it is simply one of the standards. So is MF. In fact, one of the new standards of interconnection between carriers is SIP. Qwest refuses to interconnect by SIP and VoIP (Voice over IP). SIP would also address all of their concerns. We have the capability to interconnect by SIP. We would like to interconnect using ISDN or SIP. Qwest is also refusing to interconnect using either of these standards. Again, Qwest is simply trying to force NCC to bear the burden of Qwest's technology choices.

Q. Does the Telecom Act allow Qwest to choose the standard they can interconnect?

A. No. Just like NCC can't force them to interconnect with me using SIP.

Q. Does Qwest even attempt to argue that their proposed RUF factor is meant to reflect actual relative use?

A. No. In their response to Data Request No. 14 they admit that less than 1% of outbound traffic is from NCC, yet they want to pretend that their outbound

traffic is really inbound traffic. There is no justification for that fabrication other than it allows Qwest to pay less money. Verizon and AT&T don't bill us the way Qwest is attempting to do it under their proposed agreement. The industry standard is for the carrier that originates the calls is the one who pays for the circuit to deliver that calls. This is the way Verizon, AT&T and every one ILEC I have dealt with does it. The proposed language should be rejected in its entirety and the RUF should be based on actual inbound and outbound calls.

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, and by electronic delivery at the email addresses set forth below.

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Dated this 28th day of June 2010, in Portland, Oregon.

s/Deborah Gumm
Deborah Gumm