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 POST-HEARING BRIEF**

NORTH COUNTY COMMUNICATIONS' POST-HEARING BRIEF

INTRODUCTION

There are now two issues in this arbitration. The first, and most important, is MF technology. NCC uses MF technology. Qwest has MF technology, but has recently changed to SS7 technology. There are other technologies Qwest could change to, but it chose SS7, and now is attempting to punish NCC for not converting to Qwest's chosen technology.

Nothing in any law or regulation allows Qwest to dictate NCC's technology choices. As Mr. Lesser's testimony made clear, MF technology is more reliable than SS7. NCC invested significant money in MF technology when Qwest chose that technology at the beginning of their relationship. NCC cannot afford to scrap its network and purchase SS7 technology. Moreover, though Qwest alleges that they cannot accurately track billing information on MF, that allegation is false. Qwest chooses not to track calling. Qwest could easily do so by programming its switches to track the information or by providing NCC with Automatic Number Identification or its equivalent, which would allow NCC to track the information. Qwest simply refuses to do either and then claims that it does not have sufficient information to properly track MF. Indeed, Qwest didn't even attempt to contact their support person at Lucent nor Northern Telecom to determine how that to "switch on" MF tracking capabilities or how to provide NCC with ANI so they can track it.

Most disturbing, the proposed language arbitrarily caps the number of billable minutes at 240,000 per DS1 line. Those lines are capable of one million minutes. So under this completely arbitrary cap, if NCC terminates a million minutes, it only is paid for the first 240,000. That forces NCC to either operate at 24% capacity or not get paid for the use of its networks. No other CLEC is forced to make that choice. Qwest, of course, will still bill its customers for the other 760,000 minutes per line. It just will not pay NCC the relevant termination fees for use of NCC's network. Importantly, NCC's use of MF technology does not change the procedures, which apply to all other CLECs, for challenging any invoice that Qwest believes is incorrect. Further, while Qwest's proposed language technically allows NCC to terminate calls using MF, it does not allow it to originate calls. Both the arbitrary cap on billable minutes and the prohibition on outbound calling are unlawful, prejudicial, and inconsistent with public policy.

The second issue is the relative use factor or RUF. Qwest arbitrarily has decided to count calls originating with its customer and terminating with NCC as if they were originated by NCC and terminated with Qwest. No other ILEC that NCC operates with does this. The RUF is supposed to determine either party's customer's relative use of the Qwest network and allocate network costs based on the relative use. Qwest admits that nearly 100% of calls are from Qwest customers to NCC's customers. The actual use is 100% by Qwest. Qwest seeks to count calls from Qwest's customers as if they were calls from NCC's customers. The factor should be based on reality, and should operate to determine relative use, as its name suggests, this includes proper allocation of thing such as MUX fees.

In sum, Qwest has failed to provide any justification for replacing the Existing ICA with the proposed ICA.

FACTUAL BACKGROUND

Qwest and NCC are already parties to an interconnection agreement that became effective on August 27, 1997 ("Existing ICA"). They have been operating under that agreement for 13 years. At the time the parties entered into the Existing ICA, Qwest was using MF technology and NCC designed its network to interconnect with Qwest. NCC's technology is not convertible to SS7 as apparently some of Qwest MF technology was.

Though the parties were already interconnected, on or about July 2, 2008, North County received a request for negotiations from Qwest regarding a new interconnection agreement. The parties agreed to an extension of the arbitration window without waiving any rights or making any admissions that arbitration was appropriate such that the window to file a petition for arbitration would commence on July 9, 2009 and end on August 3, 2009, inclusive. On July 31, 2009, Qwest initiated this proceeding to compel arbitration of a new interconnection agreement.

ARGUMENT

A. THE PROPOSED ICA'S CAP ON BILLABLE MINUTES IS COMPLETELY ARBITRARY AND IS UNLAWFUL, PREJUDICIAL AND INCONSISTENT WITH PUBLIC POLICY.

As Qwest has admitted, under the Existing ICA Qwest has the ability to challenge NCC's invoices, just like any other carrier's invoices. What Qwest now seeks to do is unlawfully discriminate against NCC by arbitrarily taking an effective deduction of 76% off NCC's invoices. It makes no similar deduction off any other CLEC's invoices. That arbitrary cap on billable minutes is per se prejudicial.

Moreover, the cap is completely arbitrary. First, Mr. Linse testified that there was an engineering reason for the cap, although admitting that the number was just a guess.[1] Mr. Linse goes on to testify that the 240,000 cap is there "disincentivize people to use more than 240,000 minutes."[2] That makes no sense. Qwest's customers who are calling into NCC's customers have no idea there is a 240,000 cap on minutes. They have no incentive to stop calling into the number and NCC has no ability to block calls. The only purpose of the 240,000 is to arbitrarily and prejudicially discount the price Qwest pays for use of NCC's network.

Next, Ms. Albersheim stated that there was a billing reason for the cap, and it was purely coincidental that out of the one million minutes that a DS1 can support she just happened to pick the exact same number as Mr. Linse.[3] There is literally a one in a million chance of that happening. Even more unbelievable, Ms. Albersheim said that Qwest picked that number to provide a margin for growth over the current traffic to Qwest from NCC. That assertion is ridiculous on its face. First, why would anyone pick a growth rate of 39%? What does that have to do with anything? Qwest obviously just pulled an arbitrarily low number out of the air and then worked backwards from that number to come to 39%. There is no other explanation for such a random growth rate. Moreover, why does Qwest get to determine how much NCC can grow its business? There is nothing that allows Qwest to make that determination.

---

[1] Linse TR. 139:16-28; 143:5-9.
[2] Linse TR. 142:12-15.
[3] Albersheim TR. 163:5-6.

Second, and more importantly, the cap does not actually provide any growth rate at all on a per line basis. How DS1 lines work is that you use one line until it's full and then you use the second line and so on. What Qwest did is average all NCC DS1 lines (24 trunks per line) and then compared that average to 240,000 minutes.[4] But that is not how the lines work. NCC uses up to a million minutes on a line before needing to overflow into a second line.[5] So what Qwest's arbitrary cap does is forces 76% inefficiency in each of the lines. Indeed, if NCC used fifty million minutes a month it could currently support those minutes on the roughly 56 lines it currently purchases from Qwest. Under the proposed language NCC would need to purchase **150** more DS1 lines if it wanted to be compensated for Qwest's use of NCC's network.[6]

The other "reason" behind a billable cap is Qwest's purported inability to accurately track usage from NCC's network. That "reason" is a fabrication. Qwest can absolutely track minutes from NCC's network. First, Qwest can provide the ANI information to NCC and NCC could determine the billable minutes. ANI is available for MF technology.[7] Other ILECs provide similar information to NCC.[8] Qwest simply chooses not to provide it. Qwest says it has not set up its switches track MF for local call trunks. But that is a choice that Qwest has made. As Mr. Lesser, who has far more real world experience than Mr. Linse,[9] made clear, Qwest simply has to "turn on" that option.[10] It's like turning on the option in your email program to auto-reply. It is a capability in the switch that simply needs to be turned on. But let's assume Qwest really does not want to turn on the switch. That's fine, but Qwest cannot penalize NCC for Qwest's refusal to provide the information it "requires" to verify NCC's invoices.

Second, Qwest can simply segregate the trunks based jurisdiction. So all of the minutes coming into the NCC trunks are for local termination.[11] Then Qwest would

---

[4] Hearing Ex. TL8X (Qwest Response to NCC Data Request 3-1).
[5] Lesser TR. 258:12-24.
[6] *See e.g.* 274:19-25.
[7] Lesser TR. 224:9-15; 267:1-268:17; 269:19-; *see also* Lesser Revised Responsive Testimony at 3-4, 12-13.
[8] Lesser TR. 245:22-246:8; *see also* Lesser Revised Responsive Testimony at 3, 12.
[9] Linse TR. 119:14-16 (no actual experience); Lesser TR: 240:25-241:5 (expert experience).
[10] Lesser TR. 224:9-15; *see also* Lesser Revised Responsive Testimony at 3-4.
[11] Linse TR. 130:24-131:4

only need to total number of minutes, so peg counts (which they currently admit to having) would be sufficient.[12]

Third, if, as Qwest claims, NCC is the only carrier with local MF calls, then all it has to do it subtract the total SS7 minutes from the total minutes, and that will yield the number of MF minutes (or NCC minutes) terminated. If NCC is the only one with "untrackable" minutes, then all "untrackable" minutes belong to NCC.

The cap on billable minutes is completely arbitrary and completely prejudicial and therefore illegal and against public policy. If Qwest believes that NCC's invoices are incorrect, it can challenge those invoices. It cannot single out NCC and treat it differently then every other carrier.[13] It cannot arbitrarily refuse to pay for 76% of Qwest's use of NCC's network. There is simply no basis in fact or in law for the arbitrary cap on billable minutes.

B. THE PROPOSED ICA'S RESTRICTION ON OUTBOUND MF SIGNALING IS UNLAWFUL, PREJUDICIAL AND INCONSISTENT WITH PUBLIC POLICY.

Currently NCC has little, if any, outbound calls. However, there is absolutely nothing that prevents NCC from offering such services, and NCC has plans to, at some point, offer outbound calling. While not one other carrier in Washington is restricted from terminating calls to Qwest, Qwest now seeks to place such a restriction on NCC, and only NCC. A prohibition that targets only NCC is per se prejudicial, and as such is unlawful and against public policy.[14]

Importantly, Qwest attempts to discriminate against NCC alone. Qwest has refused to provide NCC with a list of other current ICAs that do not ban or limit the use of MF. Qwest however, has admitted that such ICAs do exist, but Qwest believes that this is irrelevant because no other CLECs exclusively use MF technology. Qwest, however, misses the point. If other ICAs exist that do not have similar limitations, than

---

[12] *See e.g.* Lesser TR. 271:5-272:10.
[13] *See e.g.* Albersheim TR. 167:11-15.
[14] Qwest's "reason" for prohibiting outbound calls is it's supposed inability to accurately track MF. As set forth above, that inability is fabricated. Qwest chooses not to track such calls. Qwest's choice should not be used as a weapon to prohibit NCC's lawful outbound calling.

by definition, Qwest is attempting to discriminate against NCC by forcing this different, and highly prejudicial, agreement upon NCC.

Pursuant to 47 U.S.C. § 252(i), local exchange carriers must "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." Thus, to the extent such ICAs exist, NCC must be allowed opt into one of those agreements. For the Commission to force NCC into a different agreement contravenes what the FCC has called a "primary tool" for preventing improper discrimination among carriers. *In the Matter of the Implementation of the Local Competition Rules of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 F.C.C.R. 15499, 16132, First Report and Order (August 8, 1996) (Local Competition Order). Unless and until Qwest proves to the Commission that no other ICAs exist that do not restrict or prohibit MF technology, the Commission cannot force that discriminatory provision upon NCC.

C. THE RELATIVE USE FACTOR SHOULD BE BASED ON ACTUAL RELATIVE USE.

Qwest arbitrarily has decided to count calls originating with its customer and terminating with NCC as if they were originated by NCC and terminated with Qwest. No other ILEC that NCC operates with does this. The RUF is supposed to determine either party's customer's relative use of the Qwest network and allocate network costs based on the relative use. This includes circuits, cross-connects, and mux fees. Qwest admits that nearly 100% of calls are from Qwest customers to NCC's customers. The actual use is 100% by Qwest. Qwest seeks to count calls from Qwest's customers as if they were calls from NCC's customers (VNXX calls). Another specific example of the prejudicial nature of the propose RUF, is that Qwest is attempting to bill NCC for 100% of the muxes on Qwest's network and refusing to credit NCC for the use of the muxes on NCC's side of the circuit.

Additionally, Qwest's representative admitted under oath that the deletion of VNXX from the RUF would be reasonable (instead of allocating it to NCC).[15] However, on redirect Qwest's attorney convinced her to recant her prior admission.

Regardless, Ms. Albershiem's initial response was correct. The relative use factor should be based on reality, and should operate to determine relative use, as its name suggests.

McNamer & Company PC

s/Anthony McNamer/
Anthony McNamer, Esq.
Attorneys for North County
Communications of Washington

[15] Albersheim TR. 172:8-14.

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.

Lisa A. Anderl Qwest Corporation 1600 7th Avenue, Room 1506 Seattle, WA 98191 (206) 345-1574 Lisa.anderl@qwest.com	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
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	
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	

Dated this 10th day of August 2010, in Portland, Oregon.

s/Anthony McNamer/
Anthony McNamer