

BEFORE THE WASHINGTON 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 POST-HEARING BRIEF
OF WASHINGTON)	AUGUST 10, 2010
)	
and)	
)	
QWEST CORPORATION)	
Pursuant to 47 U.S.C. Section 252(b).)	
.....)	

I. INTRODUCTION

1 Pursuant to the schedule previously established in this matter, Qwest Corporation ("Qwest"), hereby submits its post-hearing brief in this arbitration with North County Communications Corporation of Washington ("NCC").

II. BACKGROUND

2 Qwest and NCC are parties to an interconnection agreement ("ICA") that dates from 1997. The agreement was originally arbitrated between U S WEST Communications, Inc., and MFS Intelenet. The agreement is, in Qwest's view, significantly outdated in terms of product and process descriptions, which do not match Qwest's current products and processes. Because of this, and because Qwest wanted to modify and clarify other terms and conditions between the parties regarding the exchange of traffic, Qwest requested renegotiation of that ICA in 2008.

At that time, more than two years ago, Qwest provided NCC with Qwest's negotiations template as a basis to start negotiations.

3 The parties negotiated for many months, and repeatedly agreed to extend the deadline by which to file for arbitration. As a result of the negotiations, and based on NCC's stated desire to retain Multi-Frequency ("MF") signaling as its method of interconnection with Qwest, Qwest modified the language in its template, and filed that modified language with its August 2009 petition for arbitration in this docket.

4 The modifications proposed by Qwest, all in Section 7 of the ICA, allow NCC to continue to use MF signaling, while still offering Qwest a reasonable opportunity to audit and validate the bills it receives from NCC. The modifications are unique to this ICA because no other CLEC in Washington interconnects with Qwest using only MF signaling.¹ And, while Qwest has been willing to modify the ICA in a way that addresses NCC's MF signaled trunks, NCC has not proposed any alternative language, and has not offered any language or practical proposals to address Qwest's right to be able to identify traffic in order to audit or verify NCC's bills, or to bill NCC for any traffic that NCC sends to Qwest.

5 NCC moved to dismiss Qwest's arbitration petition on the basis that the Washington Utilities and Transportation Commission ("Commission") lacks subject matter jurisdiction to consider the petition under 47 U.S.C. §252. NCC's motion has been denied by the Administrative Law Judge, and is pending review with the Commission. That matter, being fully argued and addressed in separate filings, will not be addressed further in this brief.

III. GENERAL ISSUES PRESENTED FOR ARBITRATION

6 The Commission has jurisdiction to both enforce NCC's obligation to negotiate, and to arbitrate a new agreement under Section 252 of the Act.

¹ Qwest response to NCC data request No. 12, Exhibit TL-8X.

7 There are certain issues that are not specific to certain sections of the ICA that nevertheless bear on the outcome of these proceedings. Qwest addresses those issues here. Specific contractual issues are addressed under the separate headings below.

a) **The template agreement was not created solely by Qwest and is not solely for Qwest's benefit.**

8 NCC claims that Qwest is trying to impose an ICA that was created solely by Qwest and that operates solely for Qwest's benefit.² This claim is inaccurate. As the Commission is aware, Qwest's current template, that provides the basis for the ICA in this arbitration, is essentially based on the terms that were developed in the docket that addressed Qwest's application for interLATA authority under Section 271 of the Telecommunications Act of 1996.³ The terms and conditions in the template agreement reflect many provisions that are favorable to the CLECs, including terms and conditions related to the change management process and wholesale service quality.⁴ In addition, the terms and conditions more accurately reflect both parties' legal rights and obligations, and reflect Qwest's current processes and products.⁵

b) **NCC has reviewed and signed voluminous ICAs in the past – the length and complexity of the ICA at issue, given the two years that NCC has had to review it, should not be an issue.**

9 NCC has claimed that it is unable to read through and digest a 300-page ICA.⁶ However, this contention is not convincing in light of the fact that NCC has had the agreement for over two years, has retained two different law firms to represent it, and has previously read and signed ICAs of comparable size.⁷

² Exhibit TL-2, page 9.

³ See, Washington Commission Docket Nos. UT-003040 and UT-003022. That proceeding extended over nearly three years, and produced over 48 orders from the Administrative Law Judge and the Commission. On multiple occasions Qwest was ordered to file terms and conditions that were consistent with those proposed by the CLECs, and which did not reflect Qwest's proposals in the proceedings. Qwest's final statement of generally available terms ("SGAT") was ultimately approved by the Commission as compliant with Commission orders and consistent with Qwest's obligations under the Act.

⁴ See generally, Bench Exhibit 2.

⁵ Qwest responses to NCC's second set of data requests nos. 2 and 3, Exhibit TL-8X.

⁶ Exhibit TL-2, page 8.

⁷ Exhibit TL-2, page 11, and Tr. 236-237.

c) **Qwest is not obligated under the existing ICA or any provision of law to modify its systems to provide ANI over all MF trunks.**

10 NCC argued that Qwest can and should provide automatic number identification (“ANI”) over all MF trunks between Qwest and NCC. However, NCC has not provided any evidence or argument to show that Qwest has any legal obligation to provide ANI over MF for non-Feature Group D traffic. In fact, the existing, expired ICA very clearly limits ANI to being provided over long distance, or Feature Group D trunks.⁸ Further, Qwest has explained that ANI does not always provide sufficient information for billing purposes. ANI provides information regarding the calling party’s billed number, but not necessarily the actual, location specific number.⁹ For these and other reasons, NCC’s demands for ANI over MF trunks should be rejected.

d) **The existing ICA does not allow NCC to send traffic to Qwest via a third party, and the new ICA confirms that provision.**

11 NCC admitted at the hearing that it sends some traffic to Qwest through a third party.¹⁰ NCC’s existing ICA provides that:

Reciprocal traffic exchange addresses the exchange of traffic between North County end users and USWC end users. . . . Absent a separately negotiated agreement to the contrary, the Parties will directly exchange traffic between their respective networks, without the use of third party transit providers.¹¹

Qwest’s interpretation of that provision is that NCC is prohibited from sending traffic to Qwest through a third party unless Qwest and NCC have a specific agreement to do so. However, at the hearing, NCC offered a unique interpretation of that provision, stating that because Qwest and the third party transit provider presumably had an agreement to exchange traffic, it was

⁸ Exhibit B-1, Section III. E. provides that: “Automatic Number Identification” or “ANI” means a Feature Group D signaling parameter which refers to the number transmitted through a network identifying the billing number of the calling party.

⁹ See generally, Tr. 132-138.

¹⁰ Tr. 251.

¹¹ Exhibit B-1, Section V. A.

permissible for NCC to send traffic through the third party.¹² However, an agreement between Qwest and a third party can only cover obligations between those two parties and cannot modify the clear obligations that exist in the separate ICA between Qwest and NCC. The proposed ICA contains more specific language confirming Qwest's interpretation of that provision¹³, which Qwest believes to be the only reasonable one, since the terms and conditions of the Qwest and NCC relationship must, by law, be set forth in the ICA between them, not in any agreement with a third party.

e) **The existing ICA does not allow VNXX to be considered as local traffic**

12 NCC also testified that the existing ICA allows VNXX traffic to be exchanged as local traffic. This claim is not accurate. In fact, the ICA must be interpreted consistent with current law, and the law in Washington is that VNXX is not local traffic. Furthermore, there are no provisions in either the original ICA or any subsequent amendments that allow VNXX. Again, though, because NCC finds the silence in the ICA to be supportive of its position, which Qwest believes to be wrong under prior Commission orders, it is clear that the ICA should not be silent on this issue, but rather should clearly define the rights and obligations of the parties. VNXX is discussed below as well.

f) **The ICA is a binding contract, not a set of guidelines.**

13 The importance of a new ICA, with specific and detailed terms and conditions, is illustrated by some of the discussion above, but is highlighted by NCC's testimony that the ICA is more like a "guideline".¹⁴ This is completely contrary to Qwest's view, which is that the ICA is a contract – it contains a binding set of terms and conditions, and clearly defines the parties rights and obligations.¹⁵ NCC does not want an updated ICA because it contains much more

¹² Tr. 254.

¹³ Exhibit B-2, Section 7.2.1.1, quoted in Exhibit RA-1T, page 15.

¹⁴ Tr. 242:24 and 243:17.

¹⁵ *Pac. Bell v. Pac-West Telecomm, Inc.*, 325 F.3d 1114 (9th Cir. 2003).

detail about the interconnection terms and conditions, but that is precisely why it is so important to have the new ICA.

IV. SPECIFIC CONTRACTUAL ISSUES

A. Multi-Frequency Signaling, and SS7

- 14 Mr. Linse's testimony and Exhibit PL-2 explain that SS7 signaling is a digital code that is used to manage connections between telecommunications switches and call related databases. SS7 signaling is a type of signaling known as out of band signaling or Common Channel Signaling ("CCS"). This means that the path that the signaling uses to manage the trunk connections between switches is not the same trunk connection as the communication path.
- 15 MF or multi frequency signaling is generally an audible analog code that is used to manage connections between telecommunications switches. MF signaling is a type of signaling known as in-band trunk signaling. This means that the path that the signaling uses to manage the trunk connections between switches is also the same trunk connection as the communication or talk path. As Mr. Linse explains, SS7 signaling differs from MF signaling because it is more efficient, more reliable, and more flexible. This signaling technology is more advanced than MF signaling. It allows the carriers who use it to more accurately track traffic, and therefore more accurately bill for traffic, on the appropriate jurisdictional basis.¹⁶ As long ago as 1998, NCC entered into an ICA with Pac-Bell that states that "interconnection using SS7 is preferred."¹⁷
- 16 Contrary to NCC's allegations, Qwest has never alleged that it cannot bill from MF signaled trunks. Rather, Qwest has explained that MF signaling has limitations in its ability to record call information, and that in the past those limitations have been addressed by segregating

¹⁶ Exhibit PL-1T, pages 6-9 generally.

¹⁷ Exhibit TL-7X, Attachment 18, page 4 of 30, Section 1.4; Tr. 239.

traffic over MF trunks on a jurisdictional basis.¹⁸ NCC does not want to segregate its traffic in this way, so Qwest has proposed another way of addressing the issue.

17 Furthermore, even though NCC argues to retain the existing ICA, it should be noted that the existing, expired, ICA requires NCC to transition to SS7 signaling.¹⁹ This provision is in Section XXXIII of Bench Exhibit 1. NCC offered no written or oral testimony on that issue and did not cross examine Qwest's witnesses about it. Thus, the new ICA's terms which allow NCC to retain MF, albeit with conditions, may be more favorable to NCC than the existing agreement that NCC wants to retain.

18 Through its proposed language, Qwest agreed to continue to interconnect with North County using MF signaling. But to enable Qwest to receive accurate bills, and verify those bills, Qwest also added language to the contract that placed certain requirements on North County's bills. Additionally, Qwest's language recognizes the present one-way flow of traffic.

19 Qwest proposed to modify its contract language to allow North County to continue to use MF signaling, but also to address Qwest's right to receive accurate bills. Qwest's proposal to North County as filed in this arbitration can be summarized as follows:

20 In Sections 7.1.1, and 7.2.1.1, Qwest added language regarding interconnection of Qwest's and NCC's networks. These terms recognize that traffic is currently one-way from Qwest to NCC, that NCC will need to negotiate an amendment should it wish to send traffic to Qwest, and that NCC may not send traffic to Qwest through a third party. These are all reasonable terms to ensure that Qwest is able to bill NCC for any traffic it sends to Qwest, while still allowing NCC to use MF signaling for the traffic it receives from Qwest.²⁰ Qwest also modified the language regarding billing in Section 7.8 to facilitate accurate billing when MF signaling is

¹⁸ Exhibit PL-3T, page 4, lines 8-11.

¹⁹ Exhibit B-1, section XXXIII.

²⁰ Exhibit RA-1T, page 17, and pages 13-18 generally.

used. This language requires NCC to produce accurate bills for Qwest in light of the fact that Qwest is not able to verify traffic when MF signaling is used. It also clarifies that Qwest is not required to pay for minutes associated with Jointly Provided Switched Access (“JP SA”), IntraLATA LEC Toll, wireless traffic, and minutes originated by third party providers. The methodology in Section 7.8 provides that Qwest provide NCC a lot of data to ensure that Qwest is only billed for traffic for which Qwest is responsible. All of this information is garnered from sources other than measurements of the NCC/Qwest LIS trunks. All NCC must do is provide the total minutes of use terminating to it over the LIS trunk groups (subject to the monthly cap/DS1) and exclude VNXX traffic, if any. This structure is necessary because NCC’s use of MF signaling does not allow Qwest to do this.²¹

21 Qwest’s language also contains a cap on the number of minutes that will be used in the calculation of billable minutes. This cap, 240,000 minutes per DS1, per month, is reasonable based on the total number of minutes historically used by NCC to bill Qwest. Qwest proposed a higher cap in Arizona, based on higher historic billings from NCC. Qwest is willing to negotiate a different cap in Washington based on increased traffic, provided that Qwest can somehow validate the traffic.²² Because the burden is on the billing party to establish that it is billing properly, that is NCC’s responsibility. NCC’s choice of MF signaling means that it cannot verify that it is fulfilling its responsibility to only bill for local minutes, and it means that Qwest is effectively prevented from verifying that information itself. Thus, the cap is a reasonable way to address this issue – it allows NCC to continue to use MF signaling for its interconnection trunks, even though no other CLEC in Washington interconnects with Qwest using exclusively MF signaling²³, and it protects Qwest from being billed for traffic that it should not be billed for.

²¹ Exhibit RA-1T, pages 17-18.

²² Tr. 166.

²³ Qwest response to NCC data request No. 12, Exhibit TL-8X.

- 22 In fact, Qwest's proposal is very similar to the arrangement that NCC has with AT&T and Verizon today, as NCC described in a data request response.²⁴ NCC explained that AT&T and Verizon tell NCC what to bill each month, and NCC prepares its bills based on that information.
- 23 NCC raised concerns about the cap during the hearing, suggesting that if the cap were applied on a per-DS1 basis, as opposed to an average per-DS1 basis, that NCC could be over the cap on one trunk and under on another, but be denied payment.²⁵ Qwest clarifies in this brief that the cap would be applied on an average basis, so, for example, if there were four (4) DS1 trunks, and one had 900,000 minutes per month and the other three (3) had 10,000 minutes, all the traffic would still be considered as falling under the cap [900,000 + 10,000 + 10,000 + 10,000 = 930,000; 930,000/4 = 232,500]. Qwest is willing to modify the language in Section 7.8 of the ICA to clarify this position.
- 24 There are two other items to note in conclusion regarding the use of MF signaling and SS7. First, Qwest's proposal is a significant compromise for Qwest. Qwest has essentially signed up for a task of manual data collection in order to accommodate NCC's desire not to update its network, an update that would be required even under the 1997 ICA. Second, it is only because all of the other CLECs are interconnected with Qwest using SS7 that Qwest can even manually track their traffic terminating to NCC. Thus, NCC reaps a benefit from the rest of the industry having updated technology, even though NCC itself is resisting those updates.
- 25 Telecommunications networks are technology based and constantly evolving. Qwest's switching network has evolved from mechanical analog to completely digital and SS7 capable. Even regulation has demanded the advancement of technology in telecommunications such as Equal Access and Local Number Portability. Qwest has implemented these changes and more.

²⁴ Exhibit TL-3X.

²⁵ Tr. 257-259.

When the advancement of technology is ignored, such as with NCC's insistence upon its continued use of MF trunk signaling, customers and carriers can be impacted. Customers can be adversely impacted as the result of longer call set up times. Carriers can be adversely impacted as the result of NCC's network inefficiencies and the lack of calling party information.

26 Other carriers' networks can be adversely impacted because the SS7 network is designed to accommodate the inefficiency of NCC's network. Increased trunk utilization occurs when the customers of other carriers call NCC's customers and the called party's line is busy. Unlike SS7 networks, MF networks maintain the end to end connection for the duration of the busy signal. However, when MF signaling is used in combination with SS7 trunking, the SS7 trunking becomes inefficiently used because it must accommodate the MF technology to enable call supervision and call completion. The inefficient nature of NCC's MF network is then incorporated into the other carrier's SS7 trunking network with every call to and from NCC's network.

27 The bottom line is that MF signaling deprives carriers from validating call jurisdiction. This can lead to network arbitrage where compensation by the responsible party may be avoided. Although the use of SS7 can not eliminate this totally, it does assist with all carriers' transparent use of the network.

B. Relative Use Factor ("RUF")

28 The Relative Use Factor, or RUF, is applicable to recurring charges for local interconnection trunks when traffic data is available, to allow each carrier to account for its proportion of traffic, and adjust billing accordingly.²⁶ Qwest's proposed ICA contains the standard language for the calculation of the RUF, and includes Exhibit H, which details how the RUF is

²⁶ Exhibit RA-1T, page 18.

calculated. NCC had not disputed the RUF language at the time that Qwest filed the petition for arbitration in August 2009, but a dispute about that language was subsequently raised by NCC in its rebuttal testimony. Qwest addresses that issue here.

1. The terms for calculating the RUF

29 Exhibit H to Qwest's ICA, identified as Exhibit RA-8, details how the RUF is calculated. The starting point for assignment of facility costs for both the entrance facility and any direct trunked transport is a 50/50 sharing of the costs between both parties for those parties that have not previously exchanged traffic.²⁷ This initial assignment is valid for 3 months, and then the parties may seek recalculation based on the actual relative use. The initial assignment applies to companies who have not previously exchanged traffic. Qwest's proposal in the ICA is more favorable for NCC in that it assigns only 1% of the cost to NCC and 99% to Qwest, so long as the two parties file billing percentages in NECA 4 that give Qwest 100% ownership of the transport facilities.²⁸

30 These terms have been agreed upon between Qwest and more than 70 CLECs, and are in effect in that same number of interconnection agreements that are on file with and approved by the Commission.²⁹ VNXX traffic, discussed below, is assigned to the terminating carrier, not the originating carrier, consistent with the Commission's ruling in Docket No. UT-063038.

2. The assignment of traffic types when calculating the RUF, including VNXX traffic.

31 Virtual NXX is defined in Qwest's proposed ICA as "all traffic originated by a Party's End User Customer and dialed with a local dialing pattern that is not terminated to the other Party's End User Customer physically located within the same Qwest Local Calling Area (as approved

²⁷ Id.

²⁸ Exhibit B-2, Section 7.3.1.1.3.1, and Section 7.3.2.2.1.

²⁹ Exhibit RA-1T, page 20.

by the state Commission) as the originating caller, regardless of the NPA-NXX dialed. VNXX does not include originating 8XX traffic.”³⁰ North County agreed during the hearing that local traffic is defined in accordance with Qwest’s local calling areas, and agreed that the ICA should comply with the Commission’s rulings on VNXX.³¹ North County raised concerns regarding the exclusion of VNXX traffic from the calculation of the RUF in subsequent negotiations. At the time that Qwest filed for arbitration of this agreement, the parties had not exchanged language regarding VNXX beyond what was filed by Qwest in section 7.8 and Exhibit H regarding the treatment of VNXX traffic from Qwest’s bills. The parties continued negotiations after Qwest filed for arbitration, but there has still been no agreement on language regarding the VNXX traffic. Standard language referencing VNXX is contained in paragraphs 7.3.2.2.1 and 7.3.1.1.3.1 regarding the RUF. In addition to the standard language, Qwest added language in the new Section 7.8 to exclude VNXX traffic from North County’s bills to Qwest. This is consistent with the Commission’s decision in Docket No. UT-063038, which held that if a carriers wants to use VNXX dialing patterns then the traffic must be exchanged on a bill and keep basis.³²

32 The need for a new ICA, which clarifies the terms and conditions relative to the exchange of traffic, is highlighted by NCC’s testimony during the hearing. NCC states that because the Commission has addressed VNXX, there is no need to address it in the ICA.³³ NCC also claims that the existing ICA should be retained because it allowed VNXX (presumably to be compensated as local traffic).³⁴ However, that is not what the existing ICA means, nor is it what the ISP-bound traffic amendment to the existing ICA meant, nor is it consistent with state

³⁰ Exhibit B-2, Section 4.0, Definitions, pages 25-26.

³¹ Tr. 216-219.

³² See, Docket No. UT-063038, Order 10, dated July 16, 2008, ¶ 337.

³³ Tr. 115

³⁴ Tr. 185. This is similar to the transit issue described in ¶ 11 above, which also illustrates why a new ICA will benefit both the parties and the Commission, by clarifying the rights and obligations of the parties and minimizing the likelihood of disputes.

law. Nevertheless, NCC's claim to the contrary brings into sharper focus the need for an ICA that is absolutely clear on these issues, to avoid any future disputes to the extent possible.

V. CONCLUSION

33 In conclusion, Qwest respectfully asks the Commission to order the form of the ICA proposed by Qwest in this matter, and to decide the disputed issues in favor of Qwest's position. Qwest has made numerous reasonable efforts to accommodate North County's desire to continue using MF signaling instead of the industry standard SS7 Signaling. The language Qwest has proposed in this arbitration strikes a balance by allowing North County to continue using MF signaling, but because different types of traffic cannot be tracked by Qwest if MF signaling is used, it also protects Qwest's right by spelling out the requirements that North County must fulfill when it submits bills to Qwest for terminating traffic.

DATED this 10th day of August, 2010.

QWEST



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