

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PAC-WEST TELECOMM, INC.,)	
)	Docket No. UT-
Complainant,)	
)	PAC-WEST MOTION FOR
v.)	INTERIM RELIEF
)	
QWEST CORPORATION,)	
)	Expedited Consideration Requested
Respondent.)	
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Pursuant to WAC 480-07-375, Pac-West Telecomm, Inc. (“Pac-West”), brings the following Motion requesting that the Commission require Qwest Corporation (“Qwest”) to enable Pac-West to access the electronic interface through which Pac-West submits LNP requests to Qwest and to otherwise honor and process requests from Pac-West to port local telephone numbers from Qwest customers pending resolution of Pac-West’s Complaint in this docket. Pac-West further requests that the Commission consider this Motion on an expedited basis.

BACKGROUND

1. On April 30, 2007, the Pac-West debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 through 1330 (the “Bankruptcy Code”). Having negotiated a Plan of Reorganization with their major constituents, Pac-West had planned to emerge from bankruptcy early in November 2007. Qwest is the lone creditor of Pac-West still objecting to Pac-West’s Plan of Reorganization and has sought a delay in Pac-West’s emergence from bankruptcy. Affidavit of Ethan Sprague (“Sprague Aff.”) ¶ 2.

2. Pac-West and Qwest's dispute in the bankruptcy proceedings involves the status of the Parties' interconnection agreement ("ICA"). To eliminate the risk of liability associated with the Commission's disposition of Pac-West's Petition for Enforcement of Interconnection Agreement in Docket No. UT-053036, Pac-West notified Qwest on October 24, 2007, that Pac-West intended to exercise its rights under Section 365 of the Bankruptcy Code to reject the ICA and opt into another interconnection agreement. Qwest opposed Pac-West's plan, taking the position if Pac-West rejected the ICA, Qwest would terminate all existing services that Qwest provides to Pac-West, including all interconnection (which includes E-911) and other services on which Pac-West relies to provide telecommunications service to its customers. In an act of good faith and in an effort to minimize the disruption to its customers and its operations, Pac-West subsequently notified Qwest on or about November 2, 2007, that Pac-West would not reject but would assume the ICA. Qwest, however, continues to oppose Pac-West's plan to emerge from bankruptcy, claiming that Qwest lacks adequate assurance that Pac-West will satisfy any outstanding or contingent liabilities under the ICA, in particular making any payments required by the Commission in Docket No. UT-053036, and that such contingent liabilities must be paid upon Pac-West's emergence from bankruptcy. That issue is pending before the bankruptcy court. Sprague Aff. ¶¶ 3-4.

3. On October 24, 2007, after Pac-West provided Qwest with the now-withdrawn notice of intent to reject the ICA, Qwest denied Pac-West access to the electronic interface through which Pac-West for years has submitted requests to port local telephone numbers from Qwest customers. Local number portability ("LNP") requests are not orders for service, do not incur a charge, and are initiated by end-users, not carriers. Qwest's action effectively stopped

end-users in the state of Washington from choosing to port their telephone numbers to Pac-West or its wholesale customers. Sprague Aff. ¶ 5; Affidavit of Kim Rego (“Rego Aff.”) ¶¶ 4-8 & 14.

4. Qwest continues to block Pac-West’s access to the interface through which Pac-West submits LNP requests to Qwest and declines to otherwise honor requests from Pac-West to port local telephone numbers in Washington. Qwest thus is refusing to provide number portability to its Washington customers who choose to obtain service from Pac-West or its wholesale customers. Sprague Aff. ¶ 6; Rego Aff. ¶¶ 10 & 13.

5. Pac-West continues to provide service to its customers in Washington. Pac-West also continues to honor its obligations under the ICA and applicable law. Pac-West is paying for all services it receives from Qwest under the ICA in advance of receiving those services, and Pac-West is not in breach of any other obligation under that agreement. Sprague Aff. ¶ 7.

6. Qwest’s blocking of Pac-West’s access to the electronic interface through which Pac-West submits LNP requests to Qwest and Qwest’s refusal to honor requests from Pac-West to port local telephone numbers from Qwest customers is causing actual and substantial harm to Pac-West. Customers who will not obtain service from Pac-West or its wholesale customers are delaying or refusing to obtain such service as long as Qwest continues to refuse to port their telephone numbers. Qwest’s refusal to port customer telephone numbers thus results in financial harm to Pac-West and harms Pac-West’s relationship with its existing wholesale customers and Pac-West’s business reputation. Such harm is worsening with each day that Qwest refuses to port customer telephone numbers. Rego Aff. ¶¶ 16-18; Sprague Aff. ¶ 8.

7. Concurrently with filing this Motion, Pac-West is filing a Complaint against Qwest alleging that Qwest’s blocking of Pac-West’s access to the interface through which Pac-

West submits LNP requests to Qwest and Qwest's refusal to honor requests from Pac-West to port local telephone numbers from Qwest customers is a breach of the Parties' ICA and a violation of Washington and federal law. Under the standard time frames in which the Commission considers intercarrier complaints, Pac-West could not expect a final order from the Commission for several weeks or months, by which time Pac-West will have suffered tremendous harm to its business and its reputation, and consumers will have been denied their full right to obtain telecommunications services from the carrier of their choice. Pac-West, therefore, requests that the Commission require Qwest to allow Pac-West to access the electronic interface through which Pac-West submits LNP requests and to resume and maintain LNP provisioning to its customers pending a final order on Pac-West's Complaint.

MOTION

8. The Commission has authorized and established procedures for motions in its procedural rules, although the instant motion does not fit neatly into the "four basic categories of motion" that the Commission expressly recognizes in WAC 480-07-375. The Commission, however, "may modify the application of procedural rules in this chapter during a particular adjudication consistent with other adjudicative decisions." WAC 480-07-110(1). The Commission generally looks to superior court practice for guidance on adjudicative procedures, and Washington courts have long authorized motions for temporary relief pending the outcome of litigation in the form of motions for temporary restraining orders and preliminary injunctions. The Commission thus would be on solid ground to grant the temporary relief that Pac-West is requesting.

9. Washington courts grant temporary relief pending the final outcome of complaint

proceedings when the proponent of such relief shows “(1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) the acts complained of are either resulting in or will result in actual and substantial injury.” *Port of Seattle v. International Longshoremen’s and Warehousemen’s Union*, 52 Wn.2d 317, 319, 324 P.2d 1099 (1958). Pac-West easily satisfies this standard.

Clear Legal Right

10. Pac-West, its wholesale customers, and Qwest customers who choose to obtain service from them have a clear legal right to have Qwest port telephone numbers. The Act requires carriers to “provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.” 47 U.S.C. § 251(b). In its first rulemaking implementing the local number portability provisions of the federal Telecommunications Act of 1996, the Federal Communications Commission (“FCC”) recognized that “[t]he ability of end users to retain their telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase.” *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, ¶ 30 (1996) (“*First Portability Order*”). “Number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers.” *Id.* Conversely, “a lack of number portability likely would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. Business customers, in particular, may be reluctant to incur the administrative, marketing, and goodwill costs associated with changing telephone numbers.” *Id.*

¶ 31. The FCC promulgated rules that require carriers to transfer numbers to competing carriers when end-users decide to switch service providers. *See* 47 C.F.R. § 52.21, *et seq.*

11. Following its *First Portability Order*, the FCC has consistently expanded portability obligations and prohibited practices that would limit consumer choice. Specifically, when considering the extent of porting obligations between wireline and wireless providers of telecommunications services, the FCC adopted broad rules allowing wireless carriers to request porting wherever their cell sites could provide service and barred carrier practices that would impede the porting process. *See Telephone Number Portability; CTIA Petition for Declaratory Ruling on Wireline-Wireless Porting Issues*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697 (2003). Subsequently, the FCC clarified that wireless carriers could not obstruct the porting process because a customer had not paid their bill, was refusing to pay early termination fees, or for any other reason that was not technically related to the mechanics of the porting process. *See Telephone Number Portability; Carrier Request for Clarification of the Wireless-Wireless Porting Issues*, Memorandum Opinion and Order, 18 FCC Rcd 20971 (2003) *aff'd Cent. Tex. Tel. Coop. v FCC*, 402 F.3d 205 (D.C. Cir. 2005). Most recently, the FCC expanded portability obligations to include providers of interconnected Voice over Internet Protocol service providers, mandated porting procedures that will streamline and expedite the porting process industry-wide and initiated a proceeding that includes tentative conclusions that will further reduce the porting interval easing consumer transition to new carriers. *See Telephone Number Portability*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, FCC 07-188 (rel. Nov. 8, 2007).

12. In short, the FCC has consistently liberalized porting procedures and clarified that

any practices adopted by carriers that restrict, impede or delay the porting process are inconsistent with the Act. The Commission incorporated these requirements into its own rule, WAC 480-120-146, as did Pac-West and Qwest in section (F)2 of their interconnection agreement. For years, Qwest has made the electronic interface for LNP available to Pac-West, and both companies have been able to port telephone numbers as requested by Qwest and Pac-West customers. No party contends that there is any question about technical feasibility of number porting between the two carriers or the clear legal right to number portability.

Immediate Invasion of the Right

13. Pac-West also has a well-grounded fear of immediate invasion of the legal right to number portability. Indeed, Qwest has already invaded that right. Contrary to the Act and subsequent orders by the FCC, WAC 480-120-146, and the Parties' ICA, Qwest has simply disconnected the electronic interface and prohibited PacWest from submitting local number portability orders to Qwest. Qwest is blocking Pac-West's access to the electronic interface and otherwise refusing to port its customers' telephone numbers and thereby unlawfully retaining customers despite the fact that those customers have selected Pac-West (or one of its customers) as their service provider.

Actual and Substantial Injury

Pac-West and its wholesale customers are suffering actual and substantial harm as a direct result of Qwest's refusal to port the telephone numbers of its customers who choose to obtain service from those alternative providers. Not only do Pac-West and its wholesale customers suffer financial harm from an inability to serve these customers who otherwise would choose to switch to these providers, but Pac-West suffers harm to its relationships with its wholesale

customers and to its business reputation if it cannot provide the service it promises to deliver because Qwest will not port the customers' telephone numbers. Perhaps most importantly, customers who are dissatisfied with Qwest's service or who otherwise desire to change service providers while retaining their telephone numbers are harmed by being denied their right to obtain service from the provider of their choice.

Public Interest

13. Unlike a court, the Commission must also consider the public interest when granting any requested relief. Pac-West's motion is fully consistent with the public interest. Requiring Qwest to port its customers' telephone numbers facilitates consumer choice of telecommunications service providers by permitting customers to keep their existing telephone numbers when moving to a different carrier. Effective choice is the bedrock of the Act, Washington law, and this Commission's efforts to ensure that Washington consumers have access to efficient and technologically advanced telecommunications services at fair, just, and reasonable rates, terms, and conditions.

14. Qwest's actions, on the other hand, make a mockery of the public interest. Qwest has no legitimate reason for blocking Pac-West's access to the electronic interface and otherwise refusing to port the telephone numbers of its customers who choose to obtain service from Pac-West or its wholesale customers. Qwest simply is using whatever means it has at its disposal to prevent Pac-West from emerging from bankruptcy. Disabling the electronic interface has nothing to do with the Parties' disputes in bankruptcy, but Qwest is trying to use that denial of service to leverage a more favorable outcome (for Qwest) in the bankruptcy proceeding. Qwest, however, is prohibited from imposing "non-porting related restrictions on the porting out

process.” *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order, FCC 03-237, ¶ 11 (rel. Oct. 7, 2003). The Commission should not permit Qwest to use the porting process to leverage a particular outcome in the bankruptcy proceeding.

14. Qwest’s disputes with Pac-West, *no matter what they are*, do not entitle Qwest to take the unilateral action Qwest is taking. Qwest’s conduct directly and adversely impacts end-user customers and is fundamentally inconsistent with Qwest’s legal obligations and the public interest, to the ultimate detriment of, and demonstrable harm to, Washington telecommunications consumers.

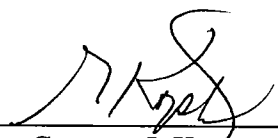
PRAYER FOR RELIEF

WHEREFORE, Pac-West prays for the following relief:

- A. An order from the Commission requiring that Qwest allow Pac-West to access the electronic interface through which Pac-West submits LNP requests and that Qwest resume and maintain LNP provisioning to its customers pending a final order on Pac-West’s Complaint; and
- B. Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

DATED this 9th day of November, 2007.

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