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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of
QWEST CORPORATION,

Petitioner,

v.

DIXIE COMMUNICATIONS and
OLD WEST PAGING,

Respondents.

Docket No. _____

**PETITION OF QWEST
CORPORATION FOR APPROVAL
OF INTERCONNECTION
AGREEMENTS TO IMPLEMENT FCC
RULING IN *T-MOBILE ORDER***

Qwest Corporation (“Qwest”) petitions the Public Service Commission of Utah for an order pursuant to 47 U.S.C. § 252(b) approving interconnection agreements between Qwest and Dixie Communications (“Dixie”) and Old West Paging (“Old West”) to implement the ruling of the Federal Communications Commission (“FCC”) in *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, FCC 05-42, (Released February 24, 2005) (the “*T-Mobile Order*”), as follows:

Parties and Jurisdiction

1. Qwest is an incumbent local exchange carrier (“ILEC”) and regional Bell operating company (“RBOC”) with its principal place of business in Denver, Colorado. Qwest is

certified as a local exchange carrier in Utah.

2. Qwest seeks approval of the Type 1 and Type 2 Paging interconnection agreement attached hereto as **Exhibit A** with Dixie and Old West. Upon information and belief, Dixie is a paging carrier whose principal place of business is c/o Old West Paging, 43 East Main Street, Salina, Utah 84654, and Old West is a paging carrier with the same address.

3. As required by Section 252(b)(2)(B) of the Telecommunications Act of 1996 (the "Act"), Qwest has arranged for service by hand-delivery of a copy of this Petition, together with all exhibits, upon Dixie and Old West.

4. This Commission has jurisdiction to arbitrate and approve these agreements with Dixie and Old West pursuant to Section 251(b)(1) of the Act, and also pursuant to the *T-Mobile Order* and clarifying regulations adopted thereunder.

5. This Petition is timely filed, as Qwest initiated, then restarted negotiations on October 11, 2005. Thus, the 160th day after Qwest restarted negotiations is March 19, 2006.

6. Pursuant to Section 252(b)(4)(C) of the Act, this arbitration is to be concluded not later than nine months after the applicable request for negotiations was sent to each Respondent, which for purposes of this Petition is July 11, 2006.

Background

7. Respondents are paging carriers that have been exchanging traffic with Qwest pursuant to Qwest tariffs, rather than an interconnection agreement. One or more Respondent may have an interconnection agreement with Qwest for another type of traffic (e.g., a carrier as to which Qwest is seeking a wireless Type 1 interconnection agreement may already have a wireless Type 2 agreement), but Qwest's petition is limited to seeking interconnection agreements with carriers that do not have any interconnection agreement for the type of traffic

specified above.

8. The FCC has required Qwest to request and enter into interconnection agreements for the termination of wireless and paging traffic, and Qwest has diligently pursued such interconnection agreements with Respondents, without any response. The Respondents' failure to respond to Qwest's invitations to negotiate interconnection agreements is a failure to negotiate in good faith under the Act. The Respondents' failure to negotiate has forced Qwest to seek approval of the interconnection agreement attached as Exhibit A as the preferable alternative to discontinuing services relating to termination of paging traffic to Respondents.

9. In the *T-Mobile Order*, the FCC clarified a preference for contractual arrangements for wireless termination arrangements by (i) prohibiting LECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariff; (ii) amending its rules to clarify that a LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in Section 252 of the Act; and (iii) identifying state commission implemented or approved rates as the applicable interim rates once a LEC initiates the negotiation process.

10. In response to that order and the clarifying regulations (*see* 47 C.F.R. § 20.11), Qwest implemented the interim rates approved by the *T-Mobile Order*, and initiated negotiations with Respondents by correspondence dated May 4, 2005 for wireless and paging Type 1 and Type 2 carriers. A copy of that notice is attached as **Exhibit B**. The notice included a proposed agreement.

11. Also in response to these orders and regulations, Qwest withdrew its tariffs, catalogs, and price lists for wireless termination service in all of its in-region states. In Utah, Qwest filed to withdraw on January 6, 2005, and the change became effective on January 13,

2005.

12. Qwest also notified the Commission of its efforts to implement the *T-Mobile Order* on or about May 4, 2005. A copy of that letter is attached as **Exhibit C**.

13. Many carriers substantively responded to Qwest's initial request for negotiations, and Qwest has entered into and filed those agreements with the Commission.

14. Other carriers, including Respondents, did not respond to Qwest's initial request for negotiations, so Qwest sent a second request for negotiations on October 11, 2005, again referencing the web address for the current version of the proposed agreement. As an accommodation to the non-responding carriers, this letter also reset the time period for negotiations, so that the window for requesting arbitration opened on February 22, 2005 (the 135th day after October 11, 2005) and will close on March 19, 2005 (the 160th day). A copy of this second notice is attached as **Exhibit D**.

15. Qwest also notified the Commission of its second attempt to initiate negotiations on December 2, 2005. A copy of that letter is attached as **Exhibit E**.

16. A few more carriers responded to the second notice, and Qwest has entered into and filed those agreements with the Commission.

17. Other carriers, including Respondents, did not respond to Qwest's second notice, so Qwest sent a third request for negotiations on January 13, 2006. A copy of that request is attached as **Exhibit F**. This request for negotiations also included a reference to the website address where the current template agreement could be located.

18. Respondents still failed to respond to Qwest's requests for negotiation so Qwest sent yet another request to wireless and paging carriers on February 21, 2006. A copy of that request is attached as **Exhibit G**. Again, Qwest provided Respondents with the website address

for the current template agreement.

19. Qwest followed up on these email notices with telephone calls to Respondents when a contact and phone number could be identified.

20. Also, during this timeframe, Qwest conducted teleconference negotiation sessions on November 16, 30, and December 7, 2005 for paging providers. Qwest made several changes and updated the negotiation template agreement in response to concerns raised by the providers attending those sessions.

Unresolved Issues

21. Pursuant to 47 U.S.C. § 252(a)(2)(A) and Utah Administrative Code R746-100-10(H), a party is ordinarily required to submit a list of unresolved issues as part of a joint exhibit filed with the Commission before a hearing. That is impractical in this case.

22. In this case, apart from Respondents' failure to respond to Qwest's many invitations for negotiations, there are no unresolved issues, precisely because of Respondents' failure to negotiate in good faith, or even at all. Thus, Qwest is not aware of any disputes or unresolved issues with respect to the proposed agreement.

Request for Arbitration and Approval Without Disputed Issues

23. Section 252 of the Act and 47 C.F.R. § 20.11 both impose on Respondents a duty to negotiate in good faith in response to the several requests for negotiation described above. Respondents' failure even to respond during an extended negotiation window violates this duty.

24. Because of the Respondents' violation of their duty to negotiate in good faith, Qwest asks that Respondents be barred from raising any disputed issues in response to this Petition. If any Respondent is allowed to raise disputes now, the statutory duty to negotiate in good faith would be rendered meaningless, and Respondents would be allowed to subvert the

entire scheme for negotiation and arbitration set up in the Act.

25. Thus, Qwest requests that the Commission approve the agreement attached as **Exhibit A** as an interconnection agreement between Qwest and the paging carriers identified in paragraph two, as written, without changes or disputed issues.

26. While Qwest asks that Respondents be barred from raising any disputed issues in response to this Petition, Qwest does not ask the Commission to neglect its duties under Section 252 of the Act to ensure that the agreement attached as **Exhibit A** meets the requirements of Section 251 of the Act, including the regulations prescribed by the FCC pursuant to Section 251, or any other requirements within the Commission's state law authority that are consistent with the Act and FCC regulations as permitted under Section 252(e)(3) of the Act.

27. Indeed, **Exhibit A** fully complies with Sections 251 and 252 of the Act, applicable state laws and the orders of this Commission, and is consistent with the *T-Mobile Order*. The agreement is not discriminatory, and is consistent with the public interest, convenience, and necessity.

28. The *T-Mobile Order* requires Qwest to enter into interconnection agreements with wireless and paging providers – and forbids the use of tariffs – to set the terms and conditions for the termination of traffic originated by these carriers. Pursuant to the *T-Mobile Order*, 47 C.F.R. § 20.11 and 47 C.F.R. § 51.715(c), the interim arrangements for pricing have governed the exchange of traffic between Qwest and the Respondents thus far and will continue to apply during the pendency of this proceeding, but may expire with this Commission's order either approving or rejecting the proposed agreements. Thus, if the Commission will not approve the agreements, Qwest will be forced to discontinue service to Respondents until an appropriate interconnection agreement can be negotiated, approved, and filed. Qwest has taken every step

possible to avoid such a drastic result, but cannot provide termination services to Respondents without an approved, filed agreement.

WHEREFORE, Qwest respectfully requests that this Commission:

1. Conduct a proceeding pursuant to Section 252(b) of the Act;
2. Bar Respondents from raising disputed issues in this arbitration as a consequence of their failure to negotiate in good faith as required by the Act;
3. Find that Qwest's proposed interconnection agreement contained in **Exhibit A** is consistent with applicable law and commercially reasonable;
4. Issue an Order adopting and approving the proposed agreement contained in **Exhibit A** as an interconnection agreement between Qwest and the paging provider Respondents identified in paragraph two of this Petition; and
5. Grant Qwest such other and further relief as may be necessary.

RESPECTFULLY SUBMITTED this 16th day of March, 2006.

Melissa K. Thompson
QWEST SERVICES CORPORATION

Attorney for Qwest Corporation

CERTIFICATE OF SERVICE

I certify that the original and five copies of **PETITION OF QWEST CORPORATION FOR APPROVAL OF INTERCONNECTION AGREEMENTS TO IMPLEMENT FCC RULING IN *T-MOBILE ORDER*** were sent by overnight delivery on March 16, 2006 to:

Julie P. Orchard
Commission Administrator
Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84111

and a true and correct copy was sent by U.S. mail on March 16, 2006 to:

Dixie Communications
c/o Old West Paging
43 East Main Street
Salina, UT 84654

Old West Paging
43 East Main Street
Salina, UT 84654

Qwest will supplement this filing with a certificate of service from a courier/process server that will hand-deliver a copy of this Petition with all exhibits to the Respondents on March 17, 2006 at the address listed above.
