

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE NOTICE OF INQUIRY)
INTO BILLING AND MARKETING PRACTICES) **Case No. 08-00006-UT**
FOR TELEPHONE LOCAL EXCHANGE SERVICES)
(“TRUTH IN BILLING”))
_____)

**ORDER ON ATTORNEY GENERAL’S MOTION FOR FURTHER
INVESTIGATION AND RULEMAKING**

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon the filing, on May 16, 2008, of the *Attorney General’s Motion For Further Investigation And Rulemaking* (“AG’s Motion”) by New Mexico Attorney General Gary King; whereupon, being duly advised,

THE COMMISSION FINDS AND CONCLUDES:

1. This case was initiated upon the Commission’s issuance of a *Notice of Inquiry* (NOI) on January 10, 2008. The NOI cited the Consumer Protection Rules, including in particular the Access To Service And Rate Information Rule, Bills Rule, and the Fair Marketing Practices Rule, at 17.11.16.11(B)(5), 17.11.16.14(A) and (B), and 17.11.16.12 NMAC, respectively.

2. The originally stated purposes of the NOI were to determine whether more prescriptive local exchange carrier (“LEC”) billing standards would be beneficial to consumers and to provide a method for customers to obtain clear, unambiguous information on their telephone local exchange billings. *Id.* at 2-3, ¶ 8. In addition, the NOI included within its scope of inquiry the issues of whether more prescriptive LEC standards would be beneficial and whether LECs should be required to include in all published pricing their subscriber line charges and other fees that must be charged to customers. *Id.* at 3, ¶ 10.

3. Among other things, the NOI called for the filing by interested persons of comments on certain enumerated issues of potential concern. *See id.* at ¶ 9, ¶ A(1)-(5).

4. Ordering Paragraph 11 of the NOI requested in-state incumbent LECs and CLECs with 100 or more customers in New Mexico to supply sample bills, advertising materials, and white papers on or before February 28, 2008.

5. The following companies are of record as having filed responses in this Docket, although by no means are all of those responses substantive: ACN Communications, Alltel, AT&T Communications of the Mountain States, Budget Prepay, Inc., Bullseye Telecom, Covad (contact information only), Cricket, Cyber Mesa, DSLNet, Leaco Rural Telephone Coop., McLeod USA, Mescalero Apache Telecom, Inc. (“MATI”), New Mexico Exchange Carriers Group (“NMECG”) and Navajo Communications Company (jointly), Plateau Communications, Inc., PVT Networks, Inc., Qwest Corporation, Smith Bagley, Inc., Sprint Nextel, tw Telecom of New Mexico LLC, Verizon Business Systems, Windstream, Ymax Communications Corp., and Yucca Telecom., Inc.

6. Through the NOI, Staff was directed to provide an analysis of the Commission’s jurisdiction over wireless carriers providing intrastate services and a gap analysis concerning state and federal statutes and regulations. In its February 29, 2008 response filing, Staff provided a preliminary jurisdictional analysis.

7. Early in this proceeding, Staff, the AG, and the Department Of Information Technology (DoIT) filed requests to expand the scope of the proceeding. Staff urged that the scope of the proceeding be expanded to include all intrastate retail

carriers, including intrastate long distance providers.¹ Staff also argued in favor of broadening the jurisdictional analysis to include an array of opinions from all interested persons.² DoIT asked for more time in which to consider the inclusion of billing issues and asked the Commission to enlarge the scope of participation and publication to include the Commission's entire official telecommunications service list, as well as publication of notice in business publications through the State of New Mexico.³ The AG urged broadening the scope of issues to include the impact of billing and marketing practices on small business and on wholesale customers – especially billing disputes – and to enlarge the scope of participation to include local Internet Service Providers (ISPs).⁴

8. On February 28, 2008, the Commission issued the *Order to Expand Scope of Inquiry*. Pursuant to that Order, this proceeding would thenceforth include, in addition to all issues previously noticed for comment, certain additional enumerated issues specific to LECs that provide connection services to ten (10) or more carriers. *Id.* at 5, ¶ A. All LECs that provide connection services to ten or more telecommunications service carriers were required to file submittals of, and Staff was directed to compile a report on, that additional information.

9. On March 28, 2008, Staff filed *Staff's Report Regarding Summary Of Filings, Whitepapers And Staff's Recommendations*. That report includes Staff's summary of the compiled whitepapers from the following telephone companies: AT&T

¹ *Staff's Petition to Modify Scope of Proceeding and Further Recommendations*, filed January 18, 2008.

² *Staff's Motion to Amend Notice of Inquiry*, filed February 5, 2008.

³ *New Mexico Department Information Technology's Provisional Petition to Modify Scope of Proceeding and Request for Extension*, filed January 30, 2008.

⁴ *New Mexico Attorney General's Statement on Scope of Inquiry*, filed January 18, 2008.

Communications of the Mountain States, Inc.; Verizon Business; Qwest; NCC and the NMECG Companies. As this case goes forward, due consideration should be given to all of the carriers' filings and to Staff's report. However, for the limited purposes of this Order, those need not be addressed in substance. We return instead to consideration of the proper scope of inquiry for this case.

10. On May 16, 2008, New Mexico Attorney General Gary King filed the *Attorney General's Response to Scope of Inquiry* ("AG's Response"). Attached to the AG's Response is the *New Mexico Attorney General Expert's Report on the Billing Systems and Associated Business Practice of Phone Companies* ("AG's Report").

11. Also accompanying the AG's Response was the *Attorney General's Motion for Further Investigation and Rulemaking* ("AG's Motion"). Through that Motion, which has not been ruled upon, the AG moves the Commission to "open a notice of further inquiry and rulemaking into billing systems and associated business practices of ILECs for the purposes of determining whether they serve the public interest, convenience and necessity and if they are adequate to support the operations of a modern telecommunications network, the economic enterprise of small New Mexico businesses, and effective competition in New Mexico's telecommunications industry." *Id.* at 1. As grounds for the motion, the AG references the details of the AG's Report.

12. Staff and DOiT supported the AG's Motion. Qwest and Windstream opposed it.

13. Overall, the AG's concerns raise issues that could affect the public interest. To be clear, however, we do not intend to broaden the instant proceeding;

rather, it would result in greater efficiency and would minimize confusion of the issues if the Commission were to docket a new proceeding. This would result in two proceedings: the existing proceeding, to deal with the issues already noticed for inquiry, and a new one to address the much broader issues that were raised in the AG's Response, Report, and Motion.

14. We take administrative notice of our *Initial Order*, issued in Case No. 08-00353-UT on December 30, 2008, through which we have already opened a separate inquiry into the status of competition for public telecommunications services in Qwest's certificated area in New Mexico. The scope of the new proceeding should be complementary to, but not duplicative of, Case 08-00353-UT.

15. On June 2, 2008, there was filed in this proceeding the *Joint Response Of NMECG And Navajo Communications Company To Attorney General's Motion For Further Investigation And Rulemaking*. In that *Joint Response*, NMECG And Navajo Communications Company provided a chart indicating the "Number of ISPs Served and Billed" and "Number of CLECs Served and Billed." *Id.* at 3. The information in that chart has not been challenged. Assuming that the information is correct, we read it as showing that, of NMECG's member companies, only Windstream is a LEC that potentially provides connection services to ten (10) or more carriers. Therefore, among NMECG members, only Windstream came within the response requirement of our *Order to Expand Scope of Inquiry*. See *Id.* at 5, ¶ A.

16. Pursuant to the Telecommunications Act, NMSA 1978, § 63-9A-1, *et seq.*, and other applicable law, the Commission has jurisdiction over the parties and subject matter of this proceeding.

IT IS THEREFORE ORDERED:

A. An inquiry into the issues raised in the AG's Motion, as set out herein at ¶ 11 and as modified by ¶ 12 of this Order, shall be commenced in a separate Docket in Case No. 09-00044-UT, *In The Matter Of the Notice Of Inquiry Into Billing Systems And Associated Business Practices Of Incumbent Local Exchange Carriers (ILECs)*.

B. Further proceedings in this Docket may take place, pending further Order of the Commission.

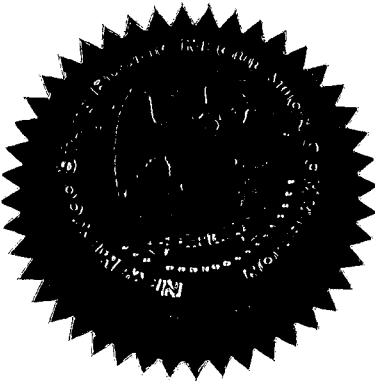
C. Copies of this Order shall be served upon all persons listed on the attached Certificate of Service.

D. A copy of this Order shall be also placed in the official record of Case No. 09-00044-UT.

E. This Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 12th
day of February, 2009.

NEW MEXICO PUBLIC REGULATION COMMISSION



A handwritten signature in cursive script, appearing to read "Sandy Jones".

SANDY JONES, CHAIRMAN

A handwritten signature in cursive script that reads "Telephonically approved".

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A handwritten signature in cursive script that reads "Telephonically approved".

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A handwritten signature in cursive script, appearing to read "J. D. Block".

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A handwritten signature in cursive script that reads "Excused".

CAROL K. SLOAN, COMMISSIONER

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SERVICES ("TRUTH IN BILLING"))
_____)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the **Order on Attorney General's Motion for Further Investigation and Rulemaking** issued February 12, 2009, was mailed February 13, 2009, by first-class, postage prepaid and/or emailed to the following:

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NEW MEXICO PUBLIC REGULATION COMMISSION


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