

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. 911-003/PI-65
on its own motion, seeking to)
determine whether it should) PROGRESSION ORDER NO. 2
obtain metrics data reports to) ORDER APPROVING COSTS
monitor performance of wireless) OF METRIC DATA REPORTS
enhanced 911 service.) FROM QWEST CORPORTATION
)
) Entered: March 4, 2003

BY THE COMMISSION:

In Progression Order No. 1 entered in this docket on January 22, 2003, the Commission found that it should obtain metrics data reports from local exchange carriers where available. Qwest Corporation, a local exchange carrier offering service in Nebraska, has proposed to provide metrics data for all public safety answering points (PSAPs) in its service area.

Qwest has identified costs as follows: \$3,200.00 in non-recurring charges to set up the above-described service, and \$60.00 per PSAP in monthly recurring charges.

O P I N I O N A N D F I N D I N G S

The Commission finds that it should obtain metrics reports from Qwest. Pursuant to Neb. Rev. Stat. § 86-465, the Commission has any powers necessary to carry out the intent and purposes of the Enhanced Wireless 911 Services Act (Act). The Commission finds that obtaining metrics reports from Qwest for the PSAPs served by Qwest is necessary in order to monitor the performance of wireless enhanced 911 services that have been funded by the Enhanced Wireless 911 Fund.

Qwest should provide to the Commission for each PSAP in Qwest's Nebraska service area a wireless call transfer report, which counts the number of times that calls from specific cell sectors are transferred to other PSAPs during a specific month, and also provides a rolling summary over a 12-month period. Such report should be produced for each PSAP in Qwest's 911 area in Nebraska, and should provide detail by both wireless carrier and individual cell sector.

Qwest should provide to the Commission for each PSAP a PSAP wireless workload report, which summarizes the number of wireless calls that a PSAP receives, including total number of calls, number of calls served directly by the PSAP, number of calls that are transferred to other PSAPs, and number of calls that have been transferred from other PSAPs to the PSAP. The

report should detail transfers received by the sending PSAP, carrier and cell sector.

Upon invoice that comports with this order, the Enhanced Wireless 911 Fund should pay the costs of this service as identified above for not less than 12 months.

Qwest should provide this service for 12 months from the effective date of this order.

Such reports should only be used to monitor performance of wireless enhanced 911 service. The Commission may distribute copies of reports containing data pertaining to one particular PSAP or wireless carrier to that PSAP or wireless carrier, but such reports will not otherwise be distributed by the Commission and will be kept confidential. If Qwest requires that a PSAP or wireless carrier keep such reports confidential, Qwest must take whatever measures it deems necessary to provide for non-disclosure.

Other terms of the service provided by Qwest are governed by the attached Memorandum of Understanding (Exhibit 1).

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that it shall obtain metrics data reports from Qwest where available pursuant to the terms and conditions set forth in this order and Exhibit 1.

IT IS FURTHER ORDERED that upon invoice that comports with this order, costs of such reports shall be paid from the Enhanced Wireless 911 Fund.

IT IS FINALLY ORDERED that the Commission shall keep such reports confidential as provided above.

MADE AND ENTERED at Lincoln, Nebraska, this 4th day of March, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

EXHIBIT 1

Memorandum of Understanding

1. Definitions.

Customer shall mean the Nebraska Public Service Commission.

Order shall mean the Nebraska Public Service Commission's Progression Order #2 in Application No. 911-003/PI-65, entered March 4, 2003.

Qwest shall mean Qwest Corporation.

Service shall mean Qwest's service of providing wireless call transfer reports as described in the Order.

2. Modification. Qwest reserves the right to modify the rates and charges or change certain components of the Service of providing wireless call transfer reports as described in the Order upon not less than thirty (30) days prior written notice to the Commission; provided that Qwest may reduce the foregoing notice period, as necessary, if such modification is based upon regulation and/or ruling, including modifications thereto, by any regulatory agency, legislative body or court of competent jurisdiction. Such notices shall be incorporated automatically into this Memorandum of Understanding. Service elements added after the Effective Date of the Order will be at the then-current applicable rates. Qwest's service records shall document such additions and are incorporated herein by reference.

3. Termination. Either Party may terminate this Memorandum of Understanding upon thirty (30) days prior written notice to the other Party.

4. Publicity. Neither Party shall, without the prior written consent of the other Party, use the trademarks or other proprietary identifying symbol of the other Party or its affiliates. Such consent by Qwest may be given only by the Executive Vice President of Corporate Communications or his or her designee. Any purported consent by any other person, including any Qwest sales or customer service representative, is void and of no effect.

5. Indemnification. Customer agrees to defend, indemnify and hold harmless Qwest, its affiliates, and contractors from any and all third-party claims, liabilities, costs and expenses, including reasonable attorneys fees, arising from or related to

the use or modification of the Service by Customer or its end users.

6. Limitation of Liability. Except for Customer's payment and indemnification obligations expressly set forth in this Memorandum of Understanding, neither party, its affiliates or contractors shall be liable for any indirect, incidental, special, punitive or consequential damages or for any lost or imputed profits or revenues or lost data or costs of cover arising from or related to the services or this Memorandum of Understanding, regardless of the legal theory under which such liability is asserted and regardless of whether a party has been advised of the possibility of any such liability, loss or damage. Customer's exclusive remedies for any and all claims related to the service shall be limited to the total monthly recurring costs paid by customer to Qwest for service in the month immediately preceding the occurrence of the event giving rise to the claim. Qwest's total aggregate liability arising from or related to this Memorandum of Understanding shall not exceed the total monthly recurring costs paid by customer to Qwest pursuant to this Memorandum of Understanding in the month immediately preceding the occurrence of the event giving rise to the claim.

7. Disclaimer of Warranties. Qwest is providing the service "as is" and does not warrant or guarantee the correctness or the completeness of the service. Qwest is providing the service without warranties of any kind, either express or implied, including, but not limited to, warranties of title, non-infringement, merchantability, fitness for a particular purpose, and non-infringement of third-party rights. No advice or information given by Qwest, its affiliates or its contractors, or their respective employees shall create any warranty.

8. Force Majeure. Neither Party will be liable for any delay or failure to perform its obligations hereunder if such delay or failure is caused by an unforeseeable event (other than a failure to comply with payment obligations) beyond the reasonable control of a Party, including without limitation: act of God; fire; flood; labor strikes or unrest; sabotage; fiber cut; material shortages or unavailability or other delay in delivery not resulting from the responsible Party's failure to timely place orders therefore; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; or acts of terrorism.

9. Lawfulness. This Memorandum of Understanding and the Parties' actions under this Memorandum of Understanding shall

comply with all applicable federal, state and local laws, rules, regulations, and all applicable court and governmental agency orders.

10. General Provisions.

This Memorandum of Understanding shall be governed by the laws of the State of New York, without regard to its choice of law principles.

Neither Party's failure to insist upon strict performance of any provision of this Memorandum of Understanding shall be construed as a waiver of any of its rights hereunder.

If any provision of this Memorandum of Understanding is held to be unenforceable, the unenforceable provision shall be construed as nearly as possible to reflect the original intent of the Parties, and the remaining provisions shall remain in full force and effect.

All terms and provisions of the Memorandum of Understanding which should by their nature survive the termination of this Memorandum of Understanding shall so survive.

Customer may not assign this Memorandum of Understanding or any of its rights or obligations hereunder without the prior written consent of Qwest. The terms, representations, warranties and agreements of the parties set forth in this Memorandum of Understanding are not intended for, nor shall they be for the benefit of or enforceable by, any person or entity that is not a Party.

Except as otherwise provided herein, all required notices shall be in writing, transmitted to the Parties' addresses specified below, Qwest's Customer billing address, or such other addresses as may be specified by written notice, and will be considered given either (a) when deposited in either registered or certified U.S. Mail, return receipt requested, postage prepaid; or (b) when delivered to an overnight courier service.

This Memorandum of Understanding (together with the Order approving the related expenditure) constitutes one and the same legally binding instrument and the entire agreement between Customer and Qwest with respect to the subject matter hereof, and supersedes all prior offers, contracts, agreements, representations and understandings made to or with Customer by Qwest, whether oral or written, relating to the subject matter hereof. All amendments to this Memorandum of Understanding shall be in writing and signed by authorized representatives of

the Parties. Qwest may act in reliance upon any instruction, instrument, or signature reasonably believed by Qwest to be genuine. Customer agrees that any employee of Customer who gives any written notice or other instruction in connection with this Memorandum of Understanding has the authority to do so.

Addresses for notices:

Nebraska Public Service Commission
300 The Atrium, 1200 N Street
P.O. Box 94927
Lincoln, NE 68509
Fax number: (402) 471-0254
Attn: Director, Enhanced Wireless 911 Fund

Qwest Corporation
1801 California Street, Suite 300
Denver, CO 80202
Fax number: (303) 295-6975
Attn: Legal Department