BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Petitioners, v. ADVANCED TELECOM GROUP, INC., et al, Respondents.	DOCKET NO. UT-033011 COMMISSION STAFF'S MOTION FOR PARTIAL SUMMARY DETERMINATION

1 The Washington Utilities and Transportation Commission (Commission) Staff (Staff) moves for summary determination on the issue of which party to an interconnection agreement is obligated to file the agreement with the Commission. Staff asks the Commission to decide that, as a matter of law, both parties to the agreement are obligated to file the interconnection agreement with the Commission pursuant to 47 U.S.C. § 252.

ARGUMENT

A. Procedural History

2 The Commission issued a Complaint and Amended Complaint, on August 14, 2003, and August 15, 2003, respectively, charging each respondent with violations of federal law stemming from failure to file interconnection agreements to which each

respondent was a party. One of the respondents, Qwest Corporation (Qwest), is an incumbent local exchange company (ILEC). The remaining respondents are competitive local exchange companies (CLECs).

3 On September 10, 2003, the administrative law judge established a schedule for filing dispositive motions. Pursuant to that order, Staff files for summary determination on the obligation of both parties to the agreement (Qwest and the CLEC) to file their interconnection agreements with the Commission pursuant to the federal Telecommunications Act of 1996 (federal Act or Act).[1]

B. Relevant Obligations of Carriers Pursuant to the Federal Act

4 The federal Act obligates telecommunications companies to comply with its local competition provisions. However, not all companies share the same obligations. All telecommunications companies are required to interconnect with other carriers. 47 U.S.C. § 251(a)(1). Local exchange companies (LECs) must allow other carriers to resell their services, provide local number portability, provide dialing parity, allow access to their rights-of-way, and establish reciprocal compensation arrangements with other carriers. 47 U.S.C. § 251(b). Incumbent local exchange companies (ILECs) must provide direct interconnection at cost-based rates, provide unbundled access to network

[1] 47 U.S.C. §§ 151 *et seq*.

elements at cost-based rates, provide services for resale at wholesale rates, and permit competing carriers to collate their equipment at the ILEC's premises. 47 U.S.C. § 251(c).

5 In addition to their various obligations to provide access to their networks, ILECs must negotiate interconnection agreements with competitive local exchange companies (CLECs) to establish the terms and conditions under which the CLEC will access the ILEC's network. 47 U.S.C. § 251(c)(1). ILECs and CLECs must negotiate these agreements in good faith. *Id.*

6 If a CLEC and ILEC are unable to negotiate an agreement, either party may request the state commission to arbitrate the issues upon which the parties cannot agree. 47 U.S.C. § 252(b)(1). When conducting arbitrations, state commissions must ensure the resulting agreements meet the requirements of Section 251 and the pricing provisions of Section 252(d). *Id.* § 252(c). The state commission must approve an interconnection agreement reached through arbitration unless the agreement fails to meet the requirements of Sections 251 and 252(d). *Id.* § 252(e)(2)(B).

7 An ILEC and CLEC voluntarily may negotiate an interconnection agreement without regard to the provisions of Sections 251 and 252. 47 U.S.C. § 252(a). The resulting agreement must be submitted to the state commission for approval pursuant to Section 252(e). *Id.* The state commission must approve such an agreement unless it discriminates against another carrier or is not in the public interest. *Id.* § 252(e)(2)(A).

8 The federal Act provides that state commissions must approve (or reject) any agreement reached through arbitration or negotiation. 47 U.S.C. § 252(e)(1). The federal Act further requires that all interconnection agreements approved by the state commission must be filed with the state commission and available for public inspection. *Id.* § 252(h).

B. The Obligation to File Interconnection Agreements Under the Telecommunications Act Rests With Both Parties to the Agreement

9 The federal Act expressly requires that all interconnection agreements negotiated or arbitrated between an ILEC and a CLEC be filed with the state commission. 47 U.S.C. §§ 252(a), 252(e)(1), 252(h).[2] The federal Act squarely places this obligation on both parties to the agreement.

10 The federal Act provides:

> Any interconnection agreement adopted by negotiation or arbitration shall be submitted to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

47 U.S.C. § 252(e)(1). Congress's intent to place the burden of filing the agreement on both parties is further expressed in Section 252(h), which makes both parties equally

[2] With respect to the filing requirements of Section 252(a)(1), the Federal Communications Commission has defined "interconnection agreement" as an agreement that contains "an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation . . ." *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum Opinion and Order, FCC 02-276, 17 FCC Rcd. 19,337, ¶ 8 (2002).

responsible to reimburse the state commission for its costs in approving and filing the agreement:

> A State commission shall make a copy of each agreement approved under subsection (e) and each statement approved under subsection (f) available for public inspection and copying within 10 days after the agreement or statement is approved. The State commission may charge a reasonable and non-discriminatory fee to the *parties to the agreement* or to the party filing the statement to cover the costs of approving and filing such agreement or statement.

Id. § 252(h) (emphasis added). With these provisions, Congress clearly and unambiguously intended to make each party responsible for filing the agreement with the Commission.[3]

11 Where Congress intends its requirements to apply only to one class of company, it expressly says so. For example, only ILECs are required to comply with the provisions of Section 251(c).

12 The requirement that parties to interconnection agreements file the agreements at the state commission serves two purposes. First, it affords the state commission with the opportunity to consider whether the negotiated agreements are in the public interest or discriminate against other carriers, and whether arbitrated agreements comply with the requirements of Sections 251 and 252(d). 47 U.S.C. § 252(e)(2). Second, filing the

[3] In ascertaining the plain meaning of a statute, courts will "look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S.281, 291, 108 S.Ct. 1811, 101 L. Ed. 2d 313 (1988).

agreements is the means by which the public (including other carriers) may acquire the ability to inspect the agreements and to take notice of the terms and conditions contained in the agreements. *Id.* § 252(h).

13 The filing requirement is key to ensuring that carriers have a meaningful opportunity to take advantage of 47 U.S.C. § 252(i). Section 252(i) allows any requesting carrier to adopt an agreement, or portions of an agreement, entered into between other carriers. If the carrier seeking to adopt an agreement has no notice of other agreements or the opportunity to inspect them, then that company cannot take advantage the rights afforded to it by Section 252(i).

14 These purposes are not better satisfied by an interpretation of the federal Act that would obligate only one party to file the agreement. Rather, the federal Act is indifferent as to which party files the agreement, so long as the filing is accomplished.

15 The Federal Communications Commission (FCC) similarly interprets this requirement. For example, in extending the filing requirement to agreements that predate the federal Act, the FCC said that "*incumbent LECs and new entrants* having interconnection agreements that predate 1996 Act must file such agreements with the state commission for approval under section 252(e)."[4]

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[4] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Dockets 96-98, 95-185, FCC 96-325, 11 FCC Rcd 15499, ¶ 1366 (1996) (emphasis added).

16 The FCC also directs that "parties" to an interconnection agreement must file "their agreements" with the FCC, as well as the state commission, when the FCC performs the state's responsibilities to mediate or arbitrate the agreement.[5] Plainly, the FCC contemplates that the obligation to file agreements rests with both parties to the agreement.

17 As stated above, the plain language of the federal Act places the obligation to file the agreement on both parties. However, if this Commission were to find that the federal Act is ambiguous as to which company—ILEC or CLEC—is obligated to file an interconnection agreement, the intent of the federal Act supports an interpretation of Section 252 that would make CLECs and ILECs equally obligated to file the agreement with the state commission. Therefore, a determination by the Commission that both parties are obligated to file their interconnection agreement would be a rational interpretation of the federal Act.

18 Placing the obligation to file the agreement on both parties does not mean that the Commission must receive two copies of every interconnection agreement. The parties are free to agree which company will file the agreement. However, if neither company files the agreement, both have violated the filing requirement.

[5] *Id.* ¶ 1320

CONCLUSION

19 As argued above, the federal Act places an equal obligation on each party to an interconnection agreement to file the agreement with the Commission. This interpretation best serves the purposes of the filing requirement. The Commission should grant Staff's motion for summary determination on this issue.

Dated: November 7, 2003.

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