

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

NORTHWEST TELEPHONE, INC.,)	DOCKET UT-053081
)	
Complainant,)	
)	ORDER 03
v.)	
)	
QWEST CORPORATION,)	INITIAL ORDER RECOMMENDING
)	APPROVAL AND ADOPTION OF
Respondent.)	SETTLEMENT AGREEMENT
)	
.....)	

1 *Synopsis: This Order proposes approval and adoption of the parties' confidential Settlement Agreement, and dismissal of NTI's complaint with prejudice.*

I. INTRODUCTION

2 **Nature of Proceeding.** Docket UT-053081 is a complaint filed by Northwest Telephone, Inc., (NTI) with the Washington Utilities and Transportation Commission (Commission) alleging that Qwest Corporation (Qwest) has breached the parties' Local Interconnection Agreement by refusing to compensate NTI for Qwest's proportionate usage of interconnection facilities.

3 **Procedural history.** On September 27, 2007, Qwest answered the complaint and filed a motion to dismiss, alleging the Commission is without jurisdiction to order the majority of relief requested by NTI. NTI filed a response opposing Qwest's motion to dismiss.

4 The Commission convened a prehearing conference in this docket at Olympia, Washington on November 7, 2005, before Administrative Law Judge (ALJ) Karen Caillé. Qwest argued that the Motion to Dismiss should be decided prior to any hearing in the proceeding. NTI argued that the Motion to Dismiss should be carried with the case. The ALJ ruled that the Motion to Dismiss would be carried with the case.

5 On April 26, 2006, the parties filed a confidential Settlement Agreement, including
an amendment to their Interconnection Agreement, and accompanied by a narrative
supporting the Agreement, and a joint motion to approve Settlement Agreement and
dismiss complaint with prejudice.

6 **Initial Order.** The presiding administrative law judge recommends approval and
adoption of the confidential Settlement Agreement, and dismissal of NTI's complaint
with prejudice.

7 **Appearances.** The parties' representatives follow.

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Qwest Corporation	by Lisa A. Anderl Adam L. Sherr Qwest Corporation 1600 7 th Avenue, Room 3206 Seattle, Washington 98191
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II. DISCUSSION

8 NTI and Qwest are parties to an Interconnection Agreement (ICA) approved by the
Commission on June 13, 2001, in Docket UT-013046.¹ On September 7, 2005, NTI
filed a complaint against Qwest, alleging that the facilities NTI obtains from Qwest to
interconnect the Parties' networks should have been provided as local interconnection
service ("LIS") under the Parties' Interconnection Agreement and subject to relative
use cost sharing.²

¹ NTI Complaint, ¶4.

² *Id.* ¶¶ 5-6, Interconnection Agreement, Section 7.3.2.2.1.

9 **NTI Complaint.** The Complaint states that in October 2004, NTI requested that Qwest credit NTI, on a going-forward basis and for the prior two years, for Qwest's relative use of the LIS facilities based on the minutes of use each party delivers to the other.³ NTI complains that Qwest denied the request, refusing to pay its share of the interconnection facilities because NTI obtains the facilities as special access circuits out of Qwest's tariff.⁴ NTI asserts that Qwest also refused to pay for its share of the interconnection facilities because most of the traffic that Qwest delivers to NTI over those facilities is traffic bound for Internet Service Providers (ISPs) whose modems or servers are not physically located within the geographic boundaries of the same local calling area in which the Qwest customers placing the calls are physically located.⁵ NTI has refused to pay Qwest for circuits used as LIS facilities pending resolution of the Parties' dispute.⁶ NTI has deposited the disputed amounts into an escrow account and continues to submit disputed amounts on a monthly basis.⁷ NTI asks the Commission to order Qwest to comply with the Interconnection Agreement and federal and state law by compensating NTI for Qwest's relative use of the facilities the parties use to exchange traffic under the Interconnection Agreement.⁸

10 **Qwest Answer.** Qwest disputes the allegations in the complaint, responding that NTI obtains private line transport facilities from Qwest, and those facilities are purchased from Qwest's FCC tariff.⁹ Qwest states that it charges NTI the tariffed rates for those facilities, in accordance with the requirements of the tariff and federal law.¹⁰ Qwest contends that the nature of the facilities governs whether the cost must be shared or not.¹¹ According to Qwest, the cost of federally tariffed private line facilities is not required to be shared under the Parties' Interconnection Agreement, even if the facilities are used for local interconnection service.¹² For any facilities for which cost sharing would otherwise apply, Qwest contends that it is not required to share the costs for traffic delivered to an ISP customer of NTI where the ISP's server or modem

³ *Id.* ¶ 6.

⁴ *Id.* ¶¶ 6-7.

⁵ *Id.* ¶ 8.

⁶ *Id.* ¶ 9.

⁷ *Id.*

⁸ *Id.* ¶ 12.

⁹ Qwest Answer, ¶ 6.

¹⁰ *Id.*

¹¹ *Id.* ¶ 7.

¹² *Id.*

is not physically located in the same local calling area as the Qwest customers who are placing the call.¹³ Qwest asks the Commission to dismiss NTI's complaint, or, in the alternative deny it in its entirety.¹⁴ Qwest further asks the Commission, consistent with its prayer for relief in Pac-West (Docket UT-053036) and Level 3 (Docket UT-053039) to enter an order prohibiting NTI from using VNXX numbers.¹⁵

- 11 **Settlement Agreement.** The proposed confidential Settlement Agreement is a full settlement of all issues presented in this proceeding, executed by Qwest and NTI. A redacted version of the proposed confidential Settlement Agreement is attached to this Order as Appendix A, and is largely self-explanatory. Generally, the Parties agree upon a mutually acceptable method for billing the use of facilities that are the subject of this complaint. The confidential Settlement Agreement resolves the past compensation issues and includes an amendment to the parties' Interconnection Agreement, attached to this Order as Appendix B, to address other issues. NTI and Qwest agree that the amendment to the Interconnection Agreement between the Parties will be filed with the Commission for approval in a separate docket. NTI and Qwest agree that the Parties shall continue to operate under the Interconnection Agreement, as amended, and that NTI and Qwest shall pay all monies as required by the ICA on a going-forward basis.
- 12 **Decision.** This Order recommends that the Commission approve and adopt the confidential Settlement Agreement and grant the joint motion to dismiss NTI's complaint against Qwest with prejudice.
- 13 The Commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the Commission. WAC 480-07-750. Here, the Commission resolves these questions by reviewing the confidential Settlement Agreement, the narrative supporting the Settlement Agreement, and the record in this proceeding.

¹³ *Id.* ¶8.

¹⁴ *Id.* ¶16.

¹⁵ *Id.*

14 Based on the record developed in this proceeding, the issues raised in this complaint are adequately addressed and resolved by the confidential Settlement Agreement. The Parties have reached an agreement that settles the past compensation issues, and includes an amendment to their Interconnection Agreement to address those and other issues going forward. Under the circumstances, the confidential Settlement Agreement is fair and in the public interest, and should be approved and adopted as a full resolution of the issues pending in Docket UT-053081.

FINDINGS OF FACT

15 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the undersigned ALJ now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

- 16 (1) Qwest Corporation is a Bell operating company within the definition of 47 U.S.C. §153(4), and incumbent Local Exchange Company, or ILEC providing local exchange telecommunications service to the public for compensation within the state of Washington.
- 17 (2) Northwest Telephone, Inc. is authorized to operate as a competitive local exchange carrier, or CLEC providing switched and non-switched local exchange and long distance services in the State of Washington.
- 18 (3) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state, and to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the Telecommunications Act of 1996.

- 19 (4) NTI and Qwest negotiated an Interconnection Agreement approved by the Commission on June 13, 2001, in Docket UT-013046.
- 20 (5) On September 7, 2005, NTI filed a complaint against Qwest for payment of interconnection facilities costs.
- 21 (6) On April 26, 2006, NTI and Qwest filed a confidential Settlement Agreement that, if approved would resolve all the issues in this complaint.
- 22 (7) The confidential Settlement Agreement resolves the past compensation issues, and includes an amendment to the Parties' Interconnection Agreement to address those and other issues going forward.

CONCLUSIONS OF LAW

23 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the undersigned ALJ now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 24 (1) The Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.
- 25 (2) The Washington Utilities and Transportation Commission is designated in the Telecommunications Act of 1996 as the agency responsible for arbitrating, approving and enforcing interconnection agreements between telecommunications carriers, pursuant to Sections 251 and 252 of the Act.
- 26 (3) The confidential Settlement Agreement, attached to this Order in a redacted version as Appendix A, and incorporated by reference as if set forth in full in the body of this Order should be approved and adopted by the Commission as a reasonable resolution of the issues presented.

- 27 (4) The confidential Settlement Agreement includes an Amendment to the parties' Interconnection Agreement, attached to this Order as Appendix B, that should be filed with the Commission for approval in a separate docket.
- 28 (5) The Commission should dismiss NTI's complaint with prejudice.
- 29 (6) The Commission should retain jurisdiction to effectuate the terms of this Order.

Based on the above findings of fact and conclusions of law, the undersigned administrative law judge makes and enters the following initial order.

INITIAL ORDER

THIS ORDER RECOMMENDS That the Commission:

- 30 (1) Approve and adopt the confidential Settlement Agreement filed by NTI and Qwest on April 26, 2006, which is attached to this Order in a redacted version as Appendix A, and incorporated by reference as if set forth in full in the body of this Order.
- 31 (2) Direct the parties to file the amendment to the parties' Interconnection Agreement, which is attached to this Order as Appendix B, for approval in a separate docket.
- 32 (3) Dismiss NTI's complaint with prejudice.
- 33 (4) Retain jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective June 27, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

KAREN M. CAILLÉ
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise

administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and twelve copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
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