

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

ADVANCED TELECOM GROUP, INC;  
ALLEGIANCE TELECOM, INC.; AT&T  
CORP; COVAD COMMUNICATIONS  
COMPANY; ELECTRIC LIGHTWAVE,  
INC.; ESCHOLON TELECOM, INC. f/k/a  
ADVANCED TELECOMMUNICATIONS,  
INC.; FAIRPOINT COMMUNICATIONS  
SOLUTIONS, INC.; GLOBAL CROSSING  
LOCAL SERVICES, INC.; INTEGRA  
TELECOM, INC.; MCI WORLDCOM, INC.;  
McLEODUSA, INC.; SBC TELECOM,  
INC.; QWEST CORPORATION; XO  
COMMUNICATIONS, INC. f/k/a  
NEXTLINK COMMUNICATIONS, INC.,

Respondents.

DOCKET NO. UT-033011

DECLARATION OF  
LARRY BROTHERRSON

**DECLARATION**

1. Larry B. Brotherson declares as follows:
2. My name is Larry Brotherson. I am employed by Qwest Corporation ("Qwest") as a director in the Wholesale Markets organization. My business address is 1801 California Street, Room 2350, Denver, Colorado, 80202.
3. The purpose of this Declaration is to support Qwest's Motion to Dismiss and Motion for Summary Determination by addressing Qwest's decision to make certain interconnection agreements available for CLEC opt-in by posting them on Qwest's website beginning in September 2002.
4. In 1979, I joined Northwestern Bell Telephone Company. I have held several assignments within Northwestern Bell, and later within Qwest, primarily within the Law Department. In 1999, I assumed my current duties as Director of Wholesale Advocacy.
5. My current responsibilities include coordinating the witnesses for all interconnection arbitrations and for hearings related to disputes over interconnection issues. Additionally, I work with various groups within the Wholesale Markets organization of Qwest in connection with regulatory proceedings associated with interconnection services.
6. In the August – September 2002 time frame, the Federal Communications Commission ("FCC") had not yet issued its Declaratory Ruling outlining the scope of the interconnection agreement filing requirement contained in 47 U.S.C. § 252. As a result, it was unclear whether certain agreements Qwest had entered with CLECs had to be filed under 47 U.S.C. § 252. Out of an abundance of caution and in order to eliminate any concern that CLECs might be suffering discrimination as a result of not being able to obtain the provisions and terms of certain agreements, Qwest decided to make those agreements generally available for opt-in.

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7. As a result, in September 2002 Qwest made available for opt-in certain agreements it had previously entered with CLECs. Qwest posted these agreements on its wholesale website and noticed CLECs that they could opt into any agreement on the website and obtain the provisions of an agreement in any state in which the agreement was in effect according to the procedures set forth in 47 U.S.C. § 252(i).

8. Among the agreements posted by Qwest were fifteen agreements that had affect in Washington. This includes thirteen agreements the Commission Staff has identified as Exhibit A agreements in the Complaint and two agreements identified as Exhibit B agreements in the Complaint.

9. Five of the Exhibit A agreements that were posted on Qwest's website and available for opt-in were primarily concerned with settling historic disputes in exchange for retrospective consideration. The only going-forward provisions in effect for each agreement are described below:

- i. Ex. A, No. 8 – McLeodUSA, Inc. Confidential Billing Settlement Agreement, April 28, 2000. This agreement settled various historical billing disputes. The only going-forward provision in the agreement was an agreement to treat any interim rates, excluding reciprocal compensation rates, as final, such that the parties would not engage in a true-up in response to any final state commission orders on rates. No other CLEC has sought to opt into this provision.
- ii. Ex. A, No. 10 – SBC Telecom Inc. Settlement Letter Agreement, June 1, 2000. As part of the dispute settlement, Qwest agreed to make available to SBC the terms of any interconnection amendments with other parties that resulted from a settlement agreement between Qwest and the other party related to the Qwest/US WEST merger. No other CLEC has sought to opt into this provision.
- iii. Ex. A, No. 12 – Eschelon Telecom, Inc. Settlement Agreement, March 3, 2002. By this agreement, Qwest agreed to provide UNE-E offering to Eschelon according to existing terms of the parties' interconnection agreement. The parties also agreed to form a joint team that would formulate a plan for converting UNE-E lines to UNE-P lines (UNE-E and

UNE-P are variations on the product and service offerings for Unbundled Network Elements). No CLEC has sought to opt into these provisions.

- iv. Ex. A, No. 42 – McLeodUSA Telecommunications Services, Inc. Confidential Settlement Agreement, May 1, 2000. In this agreement Qwest agreed to provide McLeod with services for resale that were equal in quality to services provided to others. McLeod agreed it would provide Qwest with accurate end-user information, and that if it failed to do so the agreement would not apply. The parties also agreed to a process to investigate and determine if McLeod was in fact was receiving facility availability parity. No other CLEC has sought to opt into these provisions.
- v. Ex. A, No. 47 – Global Crossing Local Services, Inc. Confidential Billing Settlement Agreement, July 17, 2001. The parties agreed, in addition to settling a historical dispute for backward-looking consideration, to particular interim billing measures on a going-forward basis while lines were being converted from resale to UNE-P or EEL. No other CLEC has sought to opt into these provisions.

10. Four of the Exhibit A agreements that were posted on Qwest's website and available for opt-in were facilities decommissioning agreements. These agreements do not address interconnection offerings directly, but rather outline the terms by which particular collocations sites will be decommissioned and removed. Decommissioning was conducted according to a standard form agreement that was substantially similar for any decommissioning, regardless of the CLEC. In fact, the only substantive difference between the agreements is whether the CLECs elected to accept reimbursement in cash or as a credit. As a result, no CLEC has sought to opt into any of the decommissioning agreements in Exhibit A that were posted on Qwest's website. A comparison of the four agreements at issue demonstrates that the basic terms of all decommissioning agreements were the same:

- i. Ex. A, No. 14 – AT&T Corp. Facility Decommissioning Reimbursement Agreement, December 27, 2001. In this agreement Qwest agreed to:
  - a) waive charges and fees associated with decommissioning the site(s) (§ 1);
  - b) to reimburse AT&T for any nonrecurring charges already made for the decommissioning or recurring charges attributable to the site after the decommissioning request was received (§ 2);
  - and c) release and waive any claims against AT&T (§ 3b).AT&T agreed to:
  - a) release and waive any claims against Qwest (§ 3a);
  - b) remove its equipment within 30 days

from the agreement's effective date (§ 3c); c) allow Qwest to remove and store AT&T's equipment at AT&T's expense if the 30-day deadline was not met; and d) receive the return of the equipment within forty-five days of payment of the expenses (§ 3d).

- ii. Ex. A, No. 16 – Covad Communications Company Facility Decommissioning Agreement, January 3, 2002. In this agreement Qwest agreed to: a) waive charges and fees associated with decommissioning the site(s) (§ 1); b) to reimburse Covad for any nonrecurring charges already made for the decommissioning or recurring charges attributable to the site after the decommissioning request was received (§ 2); and c) release and waive any claims against Covad (§ 3a). Covad agreed to: a) release and waive any claims against Qwest (§ 3a); b) remove its equipment within 30 days from the agreement's effective date (§ 3b); c) allow Qwest to remove and store Covad's equipment at Covad's expense if the 30-day deadline was not met; and d) receive the return of the equipment within forty-five days of payment of the expenses (§ 3c).
- iii. Ex. A, No. 25 – Integra Telecom Facility Decommissioning Agreement, November 20, 2001. In this agreement Qwest agreed to: a) waive charges and fees associated with decommissioning the site(s) (§ 1); b) to reimburse Integra for any nonrecurring charges already made for the decommissioning or recurring charges attributable to the site after the decommissioning request was received (§ 2); and c) release and waive any claims against Integra (§ 3d). Integra agreed to: a) release and waive any claims against Qwest (§ 3a); b) remove its equipment within 30 days from the agreement's effective date (§ 3b); c) allow Qwest to remove and store Integra's equipment at Integra's expense if the 30-day deadline was not met; and d) receive the return of the equipment within forty-five days of payment of the expenses (§ 3c).
- iv. Ex. A, No. 35 - MCI WorldCom Network Services, Inc. Facility Decommissioning Settlement Agreement, December 27, 2001. In this agreement, Qwest agreed to: a) waive charges and fees associated with decommissioning the site(s) (§ 1); b) to reimburse MCI WorldCom for any nonrecurring charges already made for the decommissioning or recurring charges attributable to the site after the decommissioning request was received (§ 2); and c) release and waive any claims against MCI WorldCom. MCI WorldCom agreed to: a) release and waive any claims against Qwest (§ 3a); b) remove its equipment within 30 days from the agreement's effective date (§ 3b); c) allow Qwest to remove and store MCI WorldCom's equipment at MCI WorldCom's expense if the 30-day deadline was not met; and d) receive the return of the equipment within forty-five days of payment of the expenses (§ 3d).

11. On November 5, 2003, Staff filed a motion to dismiss Ex. A, No. 14, the facilities decommissioning agreement between AT&T and Qwest because the terms and conditions of the

agreement were contained in an interconnection agreement filed with the Commission on January 31, 2002. Qwest also filed interconnection amendments containing the terms and conditions of the remaining three facilities decommissioning agreements:

- i. Ex. A, No. 16 (Covad) was filed for approval on 8/21/02. The Commission approved the agreement on 9/25/02.
- ii. Ex. A, No. 25 (Integra) was filed for approval on 3/07/02 as part of an interconnection amendment for collocation cancellation and decommissioning. The Commission approved the amendment on 3/28/02.
- iii. Ex. A, No. 45 (MCI WorldCom) was filed for approval on 8/21/02. The Commission approved the agreement on 10/09/02.

12. Two of the Exhibit A agreements that were posted on Qwest's website and available for opt-in outlined particular escalation procedures. Escalation procedures are outlined in all of Qwest's interconnection agreements with CLECs. The two agreements at issue had the following terms:

- i. Ex. A, No. 9 – McLcodUSA, Inc. Confidential Agreement Re: Escalation Procedures and Business Solutions, October 21, 2000. This agreement established that the parties would engage in quarterly executive meetings to address unresolved business issues and/or disputes between them. It also outlined a six-level escalation procedure for resolving disputes. No other CLEC has sought to opt into these provisions.
- ii. Ex. A, No. 30 – FairPoint Communications Solutions Corp. Confidential Billing Settlement Agreement, September 4, 2001. This agreement primarily settled a historical dispute for retrospective consideration. In order to avoid such future disputes the parties agreed to implement a four-level dispute escalation procedure. No other CLEC has sought to opt into this escalation procedure.
- iii. Ex. A, No. 34 – MCI WorldCom Network Services, Inc. Business Escalation Agreement, June 29, 2001. In this agreement the parties agreed to implement a dispute resolution plan that included quarterly meetings among executives, and a three-level escalation procedure. No other CLEC has sought to opt into this escalation procedure.
- iv. Ex. A, No. 40 – XO Communications, Inc. (*et. al*) Confidential Billing Settlement Agreement, December 31, 2001. This agreement primarily settled a historical dispute for retrospective consideration. In order to avoid such future disputes the parties agreed to implement a four-level dispute escalation procedure (very similar to the procedure in Agreement

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30 of Exhibit A). No other CLEC has sought to opt into this escalation procedure.

13. Two of the Exhibit B agreements identified by the Complaint were also posted on Qwest's website. Again, while these agreements primarily concern settlements of historical disputes for backward-looking consideration, they contained some terms that arguably created ongoing obligations. Out of an abundance of caution, when it decided to post certain agreements on its website and make them available for opt-in, Qwest included these two agreements. As explained below, the agreements did not create any ongoing obligations inconsistent with Qwest's filed interconnection offerings:

- i. Ex. B, No. 6 – Ernest Communications, Inc. Confidential Settlement Agreement and Release, September 17, 2001. This agreement resolved a dispute over providing services to pay phone lines. As part of the settlement, Qwest agreed to accept orders for payphone lines according to the UNE-P PAL product offering. The agreement did not change the terms of the UNE-P PAL offering as filed. Thus, the agreement did not create any ongoing obligations that were inconsistent with its filed offerings. In exchange, Ernest agreed to certain restrictions on furnishing payphone services. No other CLEC has sought to opt into this provision.
- ii. Ex. B, No. 13 – MCI WorldCom Network Services, Inc. Confidential Billing Settlement Agreement, June 29, 2001. As part of this settlement agreement the parties agreed to negotiate a billing dispute resolution process. This agreement did not itself establish such a process, but was an agreement to agree in the future. The parties also agreed to a 50% Relative Usage Factor ("RUF") for LIS two-way direct trunk transport. The paragraph explicitly included an agreement that the parties would file an interconnection amendment to implement this 50% RUF agreement. No other CLEC has sought to opt into this agreement.

14. From September 2002 to the present, no CLEC has opted into any of the fifteen Washington agreements that Qwest posted on its website.

15. From September 2002 to the present, no CLEC as expressed any interest to Qwest in opting into any of the fifteen Washington agreements that Qwest posted on its website.

16. This concludes my Declaration.

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I declare under penalty of perjury of the laws of the State of Washington and the United States that the foregoing is true and correct.

11-7-03  
DATED

Larry B. Brotherson  
LARRY B. BROTHERSON

Subscribed and sworn before me on this 7<sup>th</sup> day of November, 2003.

Jean M. Towner  
NOTARY PUBLIC

My Commission expires on: 4-13-2006

SEAL

