

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Washington Utilities and Transportation Commission,)	
)	Docket No. UT-033011
)	
Complainant,)	GLOBAL CROSSING MOTION
)	TO DISMISS OR FOR
v.)	SUMMARY DETERMINATION
)	
Advanced TelCom, Inc., et al.)	
)	
Respondents.)	
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Global Crossing Local Services, Inc. (“Global Crossing”) hereby moves the Commission to dismiss, or alternatively to grant summary determination in favor of Global Crossing on, all claims against Global Crossing in the Commission’s Amended Complaint dated August 15, 2003 (“Amended Complaint”). In support of its Motion, Global Crossing states as follows:

MOTION

1. The Amended Complaint includes multiple causes of action against Qwest Corporation (“Qwest”) and several competing local exchange companies (“CLECs”) because various agreements between Qwest and each CLEC were not filed with the Commission for approval. Specifically with respect to Global Crossing, the Amended Complaint alleges that Global Crossing violated both state and federal statutes by not filing the two billing settlement agreements between Global Crossing and Qwest listed in the appendices to the Amended Complaint (collectively “Global Crossing Agreements”). State statutes, however, do not require that Global Crossing file these agreements, nor are these agreements “interconnection agreements” that must be filed under the federal Telecommunications Act of 1996 (“Act”). Accordingly, the Commission should dismiss all claims against Global Crossing.

A. The Amended Complaint Fails to State a Claim Under State Statutes.

2. The Fourth Cause of Action in the Amended Complaint is for violation of RCW 80.36.150. Amended Complaint at 6-7. Subsection (1) of that statutory provision states, in relevant part,

Every telecommunications company shall file with the commission, *as and when required by it*, a copy of any contract, agreement or arrangement in writing with any other telecommunications company, or with any other corporation, association or person relating in any way to the construction, maintenance or use of a telecommunications line or service by, or rates and charges over and upon, any such telecommunications line.

(Emphasis added.) The Amended Complaint alleges that Global Crossing violated this provision by not filing the Global Crossing Agreements. The Commission, however, has never required telecommunications companies to file these types of agreements with other telecommunications companies.

3. The only arguably applicable Commission rule is WAC 480-120-027,¹ which provides in subsection (3), “Contracts (including modifications to previously executed contracts) *for services which are governed by this section* may be offered subject to the requirements of this subsection” (emphasis added), which include filing a copy of the contracts with the Commission. The “services” governed by this section are the intrastate telecommunications services that Global Crossing offers to customers under its Washington price lists. None of the Global Crossing Agreements establish rates, terms, or conditions, or otherwise relate to, any such services. The Commission rules, therefore, did not require Global Crossing to file the Global Crossing Agreements, and Global Crossing could not,

¹ The Commission has replaced this rule with an amended rule on the same subject. WAC 480-80-241. The prior rule, however, was the rule in effect when the Agreements were executed and would be the rule governing any filing obligations. The analysis nevertheless would be the same under the

and did not, violate RCW 80.36.150 by not filing those agreements.

B. Global Crossing Did Not Violate Federal Law.

4. The remaining claims against Global Crossing in the Amended Complaint are the First and Second Causes of Action, which allege violations of Section 252 of the Act. Amended Complaint at 5-6. That section requires, “Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission.” 47 U.S.C. § 252(e)(1).² The Commission recognizes that the Federal Communications Commission (“FCC”) considers an agreement to be an “interconnection agreement” that must be filed with state commissions as “an agreement creating ‘an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation.’” Amended Complaint at 2 (quoting FCC order). None of the Global Crossing Agreements are “interconnection agreements” as the FCC has defined that term.

5. Both of the Global Crossing Agreements resolve a dispute between the Parties with respect to interpretation of their interconnection agreement. Global Crossing sought to convert lines it was obtaining from Qwest on a tariff or resold basis to combinations of unbundled network elements (“UNEs”) known as UNE-P and enhanced extended links (“EELs”). Global Crossing claimed that Qwest improperly refused to do so. Qwest disagreed, but to resolve their dispute, Qwest agreed to make a payment to Global Crossing representing a significant portion of the difference between the

current Commission rule.

² The Amended Complaint alleges a separate cause of action for violation of Section 252(a), but that subsection requires that negotiated agreements “shall be submitted to the State commission under subsection (e) of this section.” To the extent that separate causes of action are appropriate, the analysis under both subsections of Section 252 is the same.

tariff and resale rates that Qwest had charged Global Crossing for the disputed lines and the UNE rates that Global Crossing claimed should have applied. The remaining terms of the Global Crossing Agreements require only that the Parties adhere to their obligations under their existing interconnection agreement and agree to agree on any necessary additional terms. None of these terms establish any ongoing obligation to provide Section 252 services, and the claims to the contrary in the Amended Complaint should be dismissed.

REQUEST FOR RELIEF

WHEREFORE, Global Crossing requests that the Commission grant the following relief:

A. An order from the Commission dismissing, or alternatively granting summary determination in favor of Global Crossing on, all claims against Global Crossing in the Amended Complaint; and

B. Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

DATED this 10th day of November, 2003.

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By _____
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