[Service Date December 22, 2006]

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., TCG SEATTLE, AND TCG OREGON; AND TIME WARNER TELECOM OF WASHINGTON, LLC,	)	DOCKET UT-051682
Complainants,	)	ORDER 06
v.	)	
QWEST CORPORATION,	)	ORDER AFFIRMING INTERLOCUTORY ORDER; ALLOWING AMENDMENT OF COMPLAINT; DENYING MOTION FOR SUMMARY DETERMINATION
Respondent.	)	
. . . .	)	

1 ***Synopsis:*** *This order reaffirms an interlocutory order allowing a complaint to go forward. It accepts Qwest's and AT&T's*[1] *requested review of the interlocutory order, rejects the parties' arguments opposing the order, and allows amendment of the complaint to allege breach of complainants' contracts with Qwest as the basis of their cause of action.*

I. INTRODUCTION

2 **Nature of Proceeding.** This docket involves a complaint filed by competitive local exchange carriers AT&T Communications of the Pacific Northwest, Inc., TCG Seattle and TCG Oregon (collectively, AT&T) and Time Warner Telecom of Washington, LLC (Time Warner or TWTC) against Qwest Corporation (Qwest). The complaint alleges that Qwest charged the complainants more for certain facilities and services than Qwest charged other competitive local exchange carriers (CLECs) under unfiled agreements with them, that this practice violated federal and state laws and that complainants are entitled to compensation for the difference between the actual charges and the lower, unfiled rates.

3 **Procedural history.** Qwest moved for summary determination and dismissal of the complaint under WAC 480-07-380(1) and (2),[2] arguing that the pertinent statute of

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[1]Time Warner Telecom of Washington is not participating in the motion to amend the complaint, but otherwise remains a party. For convenience, as AT&T is participating in all arguments, we will use the term AT&T to include all of the allied parties that are involved in the issue under discussion.

[2] The initial order treated the motion as one for summary determination, rather than dismissal. The motion does not seek determination of any substantive issues in the complaint, but instead seeks dismissal based on

limitations would operate to bar the complaint. Complainants opposed the motion. The initial order proposed to grant the motion and dismiss the complaint, finding that the complaint accrued on June 8, 2004, and that the six-month limitation period of RCW 80.04.240 applied to bar the complaint.

4 Qwest and AT&T each challenged portions of the initial order. On review, we entered an interlocutory order modifying the initial order. Our order found that a complaint for breach of contract accrued on July 15, 2002, but that a six-year statute of limitations (RCW 4.16.040(1)) applies, and the action for breach survives. The order authorized AT&T to modify the complaint to allege breach of contract.

5 Both Qwest and AT&T now challenge the interlocutory order, and each answers in support of the order against the other's challenge. AT&T and TCG seek to modify the complaint, as contemplated in the interlocutory order. Qwest again moves for summary determination and dismissal of the complaint.

6 **Appearances.** Gregory J. Kopta, attorney, Seattle, Washington, represents complainants AT&T and Time Warner. Lisa A. Anderl and Adam Sherr, attorneys, Seattle, Washington, represent Qwest.

7 **Decision on review.** We deny the challenges to the interlocutory order, finding it legally sound; we grant AT&T's request to modify the complaint; and we deny Qwest's motion for summary determination and dismissal.

II. BACKGROUND[3]

8 The original complaint seeks reimbursement for alleged Qwest overcharges. The parties agree in most respects – for purposes of this motion – about the relevant facts leading to the complaint, but disagree about the interpretation of some of those facts.

9 Under section 251 of the Telecommunications Act of 1996,[4] competitive local exchange carriers ("CLECs," such as the complainants) may enter interconnection agreements with incumbent local exchange companies ("ILECs" such as the respondent) to receive services from the incumbents that enable them to serve their own customers. Other competitive carriers in similar situations may "opt into" terms of filed, approved agreements.

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complainants' asserted procedural failure to file within the statutory time frame. The intention of the motion is clear, irrespective of the label applied to it.

[3] The initial and interlocutory orders contain a more comprehensive explication of relevant facts. We here recite only the necessary information for understanding of this order, in context.

[4] The Telecommunications Act of 1996 is referred to in this order, for ease in reference, as "the Telecom Act."

10 Qwest failed to file with the Commission certain agreements between Qwest and Eschelon Telecom (Eschelon) and between Qwest and McLeodUSA Telecommunications Services, Inc. (McLeodUSA). Among other terms, these agreements granted the contracting CLECs a 10% discount on certain services. These agreements were not initially filed and were not disclosed to other companies who might have received similar services under agreements entitling them to the same rate.

11 In March, 2002, Minnesota regulators filed an administrative complaint against Qwest regarding unfiled agreements in that state.[5] In May, 2002, AT&T brought the Minnesota proceeding to this Commission's attention in Qwest's then-pending request to provide long distance service under 47 U.S.C. 271 (271 proceeding).[6] The Commission declined to consider the unfiled agreements allegations in the 271 proceeding, both in the final order and in an order entered July 15, 2002, deferring the issue to some indefinite later time.[7]

12 Qwest "willfully and intentionally violated" both state and federal law "by not filing, in a timely manner, its transactions with Eschelon and McLeodUSA relating to rates and discounts off of rates for intrastate wholesale services."[8] Qwest accepted responsibility for the omission and paid a penalty of $7.8 million for the violations.[9]

13 AT&T and Time Warner filed this complaint on November 4, 2005. Qwest moved for summary determination and dismissal, contending that the complaint is barred by the pertinent statute of limitations.

14 The initial order determined that complainants' cause of action accrued on June 8, 2004, when the Commission Staff served an amended Commission complaint in the unfiled Washington interconnection agreements proceeding. The initial order also found applicable the six-month limitation period in RCW 80.04.220. Since the complaint was not filed within that period, the initial order concluded that Qwest's motion should be granted.

15 Both parties challenged the initial order. On review, the Commission ruled that the initial order correctly found the six-month statute to apply to the cause of action pleaded, and affirmed the initial order's use of the "discovery rule" to find the accrual date.

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[5] *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Docket No. P-421/C-02-197.
[6] *In re Investigation into Qwest's Compliance with Section 271(C),* Docket UT-003022. This proceeding commenced on March 30, 2000.
[7] Docket UT-003022, 40th Supp. Order, ¶ 7 (July 15, 2002).
[8] *WUTC v. Advanced Telecom Group, et al.,* Docket No. UT-033011, Order No. 21 (Feb. 28, 2005).
[9] *Id.*

16 The Commission disagreed with the initial order as to the point of accrual. The Commission, however, found that the complainants' inquiry accrued on entry of the Commission order in July, 2002 that declined to pursue the issue of hidden agreements in the 271 docket. At that point, the order noted, no definite agency action was planned, the complainants were aware of the existence of the Minnesota agreements and the possibility of secret Washington agreements (a claim that they brought to the Commission), and are charged with knowledge that a statute of limitations as short as six months could be running.

17 The order on review reversed the initial order's decision that Washington's six-year statute would not apply to a claim for breach of the interconnection agreement. We found that the contract theory was viable, that the accrual date fell within the state's six-year statute of limitations, for actions on written contracts that the complainants could amend the complaint and that the matter could proceed.

18 Both parties seek interlocutory review. Qwest challenges consideration and acceptance of the breach of contract cause of action; AT&T challenges the order's acceptance of the proposed accrual date. AT&T also petitions to amend the complaint to allege breach of contract under state law as a basis for the action, and Qwest again moves for summary determination.

II. DISCUSSION AND ANALYSIS

A. When did complainants' cause of action accrue?

19 The responsibility to use reasonable diligence to discover facts leading to injury is called the "discovery rule." The parties agree to application of the "discovery rule" to determine the accrual date of AT&T's cause of action. A person who has notice of facts sufficient to prompt a person of reasonable prudence to inquire is deemed to have notice of all the facts that a reasonable inquiry would disclose. The parties do disagree about when to find accrual on the facts presented.

20 The interlocutory order determined that the cause of action accrued on July 15, 2002. That was when the Commission entered the 40th Supplemental Order in the 271 docket, UT-003022**,** reaffirming a decision that the Commission would not explore the issue of unfiled agreements at all in that docket. The order did not establish a docket or process to follow up on the issues, and it committed only to the imposition of penalties as warranted.[10]

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[10] "If after considering a complaint by a third-party or upon the Commission's own motion concerning these agreements, the Commission determines that Qwest has violated federal or state law, then the Commission can and will impose appropriate penalties." *Paragraph 8, 40th Supplemental Order, UT-003022.*

1. Did the Commission err in making any factual determination in an order on summary determination?

21 AT&T argues that the interlocutory order was wrong to make any factual determinations about accrual, because the initial and interlocutory orders were styled as orders on summary determination. It argues that it is improper to resolve factual matters in such a proceeding. It points out that in the order the Commission resolved the disagreed fact, date of accrual.[11] Qwest responds that the order correctly found the proper accrual date.

22 We think that AT&T too restrictively views the administrative process. It is true that the parties, the administrative law judge (ALJ) and the Commission's order used the term "summary determination," although WAC 480-07-380[12] states that such a proceeding is characterized by a lack of factual disputes. The name applied to a process should not exclude a reasonable determination of matters offered by the parties for resolution, as it does not affect the parties' right to a considered decision on matters the parties brought forward.[13]

23 This is particularly true in an administrative hearing process where the "trier of fact" and "decider of law" are one and the same and sufficient evidence is already in the record. In the context of this case, a further fact-finding hearing is unnecessary and inefficient.

24 Moreover, AT&T and Qwest each presented factual assertions inconsistent from the assertions of the other, and all parties asked both the administrative law judge and the Commission to resolve the disputed facts. The result is a waiver of any error associated with labeling the motion as one for summary determination.

25 We find AT&T's contention without merit.

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[11] *Inter alia,* whether a plaintiff exercised reasonable diligence to discover a cause of action is a question of fact (*Virgil v. Spokane County*, 42 Wn.2d 796, 714 P.2d 692 (1986)).

[12] WAC 480-07-380(2) **Motion for summary determination.** (a) ***General.*** A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. * * *.
Compare, WAC 480-07-380(1), regarding motions for dismissal, which directs that the matter be considered as summary determination if a party presents factual material in support of the motion.

[13] *See,* WAC 480-07-395(4), noting the Commission's policy of liberal construction to disregard errors not affecting the substantial rights of the parties.

2. Was it wrong to make a factual determination on an assertedly-inadequate record?

26 AT&T also contends that the Commission erred in making factual determinations on an inadequate record. AT&T argues that it had no opportunity to present witnesses or to cross-examine others' witnesses on the topic of accrual.

27 Each party had the opportunity to present any written information and could have requested the opportunity to make an oral presentation or reserve the issue until trial and call witnesses. The parties could have objected to the presentations of the other party or to the process implemented by the administrative law judge, but did not. Instead, both parties repeatedly asked her for a decision on contested matters and affirmatively agreed with the process being used. Although they disagreed with her decision, they made no objection to process at the review level. They obtained a decision on the issues they raised, based on the paper record that was totally under their control, either by presentation or by right to object. Preparing and accepting the process, the parties waived objections to findings of fact or mixed findings of fact and law that were inherent in their presentations. We find this contention also without merit.

3. Is the accrual date immaterial and therefore inappropriate for resolution?

28 AT&T contends that because the final order finds applicable a statutory limitation period that includes the asserted accrual date, the accrual date thus becomes immaterial and should not be the subject of a finding or conclusion.

29 It bases its argument on RCW 34.05.461(3), which requires initial and final orders to explain the reasoning for resolving certain matters:

> (3) Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the **material** issues of fact, law, or discretion presented on the record, . . . *(Emphasis added.)*

30 AT&T's narrow view of materiality is inappropriate in application to administrative proceedings.

31 "Material" in this context may be defined as "both relevant and consequential,"[14] or "Of such a nature that knowledge of the item would affect a person's decision-making process; significant; essential."[15]

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[14] *American Heritage Dictionary of the English Language*, *Third Edition* (Houghton Mifflin Co., 1996, page 1109).

32 The parties argued strenuously before the administrative law judge and the Commission that the accrual date was material, by urging the adoption of their own proposal and the rejection of their opponent's proposal. The accrual date is material to determining whether a cause of action remains, under any determination of facts and law. That all proposed accrual dates occur within a six-year limitation period does not lessen need to resolve matters material to each party's case, nor does it lessen the legal need to determine that the actual accrual date occurred at a point within an appropriate limitation period.

33 Moreover, the parties remain in disagreement about factual and legal issues, and if the matter is appealed, the accrual date may become crucial to the final result. The statute requires a determination of the accrual date, which is relevant and consequential.

34 We reject this contention.

4. Is the accrual date in the interlocutory order correct?

35 Finally, AT&T challenges the selected accrual date as improperly early in the process. It argues that the initial order was correct, in that only after release in Washington in the Staff amendment to the Washington complaint were the documents in the public domain and only then did complainants know of their injury. Qwest responds that the accrual date is too late, and should be set at the earlier point when Minnesota regulators first complained against Qwest for failure to file the agreements.

36 We reject these claims.

37 The discovery rule is limited to claims in which the plaintiffs could not have immediately known of their injuries due to such factors as concealment by the defendant,[16] as Qwest admittedly did. One who has notice of facts sufficient to prompt a person of reasonable prudence to inquire is deemed to have notice of all the facts that a reasonable inquiry would disclose.[17]

38 We found that the correct date was July 15, 2002, when the Commission rejected urgings by AT&T and others to explore and resolve issues in the 271 docket that related to unfiled agreements. At that point, AT&T knew that the Minnesota agreements existed (including Minnesota counterparts of the relevant Washington agreements) and knew that there were similar agreements in Washington (as they had been filed in the 271 docket).

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[15] Garner, Bryan (Ed.), *Black's Law Dictionary, Seventh Edition,* (West Group, St. Paul, MN, 1999, page 991)

[16] *In re Estates of Hibbard*, 118 Wn.2d 737, 826 P.2d 690 (1992).

[17] *Enterprise Timber Inc. v. Washington Title Ins. Co.*, 79 Wn.2d 479, 457 P.2d 600 (1969).

39 AT&T's action in bringing the matter forward for a Commission investigation could be construed as reasonable under the circumstances, not occasioning accrual of its own cause.[18] However, when the Commission entered the order declining to explore the issue, a person of reasonable prudence would realize that a six-month limitations period for possible damages might apply and that steps should be taken immediately to pursue an individual remedy for possible financial harm. However, AT&T failed to act in 2002. That was not reasonable under the circumstances, for purposes of finding the accrual date.

40 AT&T also challenges as without factual basis the statement in our interlocutory order (assuming the contracts were in fact designated as confidential documents and that AT&T did not have actual or constructive knowledge of their contents) that refusal to release the relevant contracts at that point was not conceivable. That is not a factual determination but a legal determination.

41 Given the existence of the Minnesota and Washington contracts and the questions surrounding them, we believe it would be clear error in a properly pleaded docket for the Commission to refuse enforcement of an adequately worded data request for a copy of a properly described unfiled agreement. WAC 480-07-400(3) provides an entitlement (subject to exceptions not here relevant) in an adjudicative proceeding to:

> Information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant.

42 Similarly, in the context of this dispute, we believe that a court would be very unlikely to bar the release of information, even if confidential under RCW 80.04.095, when withholding the information in question could lead to, rather than prevent commercial harm.

43 In summary, we reject the parties' contentions that the interlocutory order erred in determining that the cause of action accrued on July 15, 2002.

B. What limitation period applies?

44 The initial order ruled at paragraphs 32-36 (incorrectly, we found in the interlocutory order) that the six-year limitation statute for actions for breach of contract was inapplicable because AT&T offered no legal support for its contention that the Commission had jurisdiction to hear "a pure breach of contract action which would

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[18] As discovery is an affirmative defense, the party claiming the defense has the burden of proof. However, in a motion for summary determination, we resolve contested factual issues relating to the defense against the movant, Qwest.

fall outside the scope of an interconnection agreement enforcement action."[19] The interlocutory order determined that federal statutes relating to interconnection agreements preserve independent breach of contract actions under state law.

45 Qwest vociferously challenges the Commission's decision to reverse the initial order, alleging several procedural and legal grounds in support of its arguments.

1. Did the interlocutory order err in authorizing amendment of the complaint?

46 Qwest contends that the Commission prematurely authorized the amendment, inasmuch as AT&T had merely indicated a desire to offer the amendment in the future if the Commission found against it on claims otherwise argued against the initial order.

47 We reject the contention. The issue was adequately posed, the Commission has plenary authority to review an initial order,[20] the Commission corrected the initial order's rejection of this theory, AT&T's offer to amend was clear in its pleadings, and the parties have had ample opportunity to argue the point in response to the interlocutory order. There is no harm to Qwest and no error.

2. Does the Commission have jurisdiction under state law to hear a dispute involving breach of an interconnection agreement?

48 Qwest asserts that the Commission has no jurisdiction to hear and resolve disputes involving breach of contract. We disagree.

49 A Washington statute, RCW 80.36.610,[21] authorizes us to hear matters arising under the Telecom Act, including the enforcement of interconnection agreements. While the parties have not argued this matter extensively, we believe that this grant of jurisdiction, coupled with the federal preservation of state remedies, allows us to proceed.

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[19] Order No. 3, paragraph 36.

[20] RCW 34.05.464(4) reads in part, "The reviewing officer [here, the Commissioners] shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer upon notice to all the parties.

[21] RCW 80.36.610 provides, in part, "(1) The Commission is authorized to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56), . . ."

3. Does federal or state law determine principles relating to the establishment and enforcement of interconnection agreements governing intrastate services?

50 This is the principal issue presented for decision. We have found the parties' briefing to be helpful and have considered numerous federal, state and commission decisions. We recognize that the decisions reflect apparent and in some instances actual differences in their conclusions. We determine that the Telecom Act in particular, sections 251 and 252, delegates to states the primary jurisdiction to hear and resolve interconnection contract issues relating to intrastate services, according to state law.[22]

51 Qwest argues that the dispute arises under and must be resolved according to federal law, and therefore a two-year federal communications statute of limitations must apply. Qwest cites state commission decisions in Oregon and Minnesota, and federal judicial decisions that federal law applies to resolve disputes.

52 AT&T, on the other hand, argues that the decision is proper, that the enforcement of ICAs has been delegated to the states, and that federal Courts of Appeal decisions support its position that state law – and thus the state statute of limitations – controls on enforcement issues.

53 We have reviewed the cited decisions and find AT&T's analysis to be persuasive. The Act requires state commissions to apply state law when resolving disputes about interconnection agreements governing intrastate services.[23]

54 Section 252(a)(1) of the Act speaks clearly to the matters at issue in providing that parties may negotiate terms of their interconnection agreements on a voluntary basis "without regard" to the requirements set forth in section 251.[24]

55 AT&T argues that language in the complainants' agreements with Qwest give them the right to the lowest prices at which Qwest contracts with other carriers for substantially the same products and services as a matter of state contract law, irrespective of – that is, "without regard to" – whatever rights AT&T might have under federal law.

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[22] The parties tacitly acknowledged this in earlier phases of the proceeding when they were arguing whether RCW 80.04.220 or 80.04.230 would apply, not whether either was barred because of federal preemption. *See, Order 03* (initial order), paragraph 14, page 6.
[23] *See*, the careful analysis in Judge Niemeyer's dissenting opinion in *Verizon Maryland v. Global Naps*, 377 F.3d 355, 369ff (2004).
[24] *See, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371-73 (1999); *Verizon Maryland v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 638 (2002)

56 Supporting AT&T's argument, the Ninth Circuit has held:

> [T]he [interconnection] Agreements themselves and state law principles govern the questions of interpretation of the contracts and enforcement of their provisions.

57 Other courts are in accord.[25]

58 Qwest argues strenuously to the contrary. It urges creatively that AT&T's cited authority is distinguishable because the FCC in its 271 docket order found Qwest's arguments "persuasive" that the specific contracts at issue here (but not those at issue in the judicial decisions we cite) did not present ongoing issues that would cause the agency to reject Qwest's bid to provide long distance service. We understand that order to mean that the underlying behavior – *i.e.,* hiding interconnection agreements – was no longer of a continuing nature, not that all issues relating to prior misdeeds were resolved as a matter of law. The FCC did not specifically address the question we face here – potential remedies for violations of interconnection agreements.

59 Qwest argues that the Commission cannot consider the violations because the agreements were filed more than four years ago, and the federal statute of limitations has expired. That appears to be a bootstrap argument that does not address the courts' determinations that state law applies. If state law applies, the federal statute of limitations would not apply and the distinction makes no difference.

60 Qwest disputes the relevance of the *Connect* decision, arguing that here it has had no obligation to have on file interconnection agreements that are terminated and not in existence. Qwest states that this is not a matter where state law is necessary to "interpret" an interconnection agreement. Again, we find no relevance in the argument. The relevant issue is whether or not state law applies to the resolution of interconnection contract disputes, and we believe that it does.

61 Qwest disputes application of the decision in *Connect* because the Oregon commission found that the CLECs' claims must be resolved under federal law. Here, however, we determine that the amended complaint presents an action on a contract for performance within the state, which is not a federal matter.[26] Qwest also urges

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[25] *Pacific Bell v. Pac-West Telecomm, Inc.*, 325 F.3d 1114, 1128 (9th Cir. 2003). *Connect Communications Corp. v. Southwestern Bell Tel. L.P.*, 467 F.3d 703, 2006 WL 3040611 (8th Cir. Oct. 27, 2006), *Southwestern Bell Tel. Co. v. Brooks Fiber Communications of Oklahoma, Inc.*, 235 F.3d 493, 495, 499 (10th Cir. 2000), *Southwestern Bell Tel. Co. v. Public Utilities Comm'n*, 208 F.3d 475, 485 (5th Circuit, 2003); *Michigan Bell Tel. Co. v. MCIMetro Access Transmission servs., Inc.,* 323 F.3d 348, 355-6 (6th Cir., 2003); *Illinois Bell Tel. Co. v. Worldcom Technologies, Inc.*, 179 F.3d 574 (7th Cir., 1999); *Global NAPS, Inc., v. Verizon New England Inc.*, 332 F. Supp.2d 341, 360 (D. Mass., 2004).

[26] We acknowledge the decision of the Oregon Public Utilities Commission accepting Qwest's views, *AT&T, et al., v. Qwest Corporation*, Order No. 06-230 (May 11, 2006), but respectfully disagree with its reasoning and decline to apply it to Washington intrastate issues of contract law.

that the *Connect* decision's deference to a state law on interconnection contract interpretation has no applicability to contract claims based on different interconnection disputes. We believe that is a distinction without a difference.

62 Qwest's contention that the Telecom Act transforms clearly state law issues relating to negotiated provisions of interconnection contracts into federal issues is incorrect. Even if an interconnection provision tracks or incorporates provisions of the Act or FCC rules state law governs the interpretation and enforcement of the provision. .[27]

63 In sum, we find the appropriate interpretation to be that state law, including state statutes of limitation, apply to this dispute.

4. If interconnection agreement enforcement is a matter generally of state law, should a federal statute of limitations nonetheless apply?

64 Qwest argues that a federal statute of limitations should apply because complex issues of responsibilities and rights under federal telecommunications statutes and rules will apply to govern the result. AT&T responds that interconnection agreements are contracts, and enforcement of intrastate contracts is subject to contractual principles in the state in which they apply. AT&T notes that courts have affirmed the application of state law in other, similar proceedings.

65 We note that both parties argued for the application of state law (albeit different provisions) at the outset of this dispute. Only now – unhappy with the outcome – does Qwest argue that state law cannot or should not apply. Further, over the years the parties have joined in many interconnection disputes before the Commission where state law has been applied to decide the matters. No persuasive argument has been advanced as to why the state statutes of limitations are somehow different.

66 The amended complaint involves fundamental issues of state, not federal, law although the application of a federal law may have a role in resolving the issues. The questions are whether the parties entered a contract governing intrastate services, whether the contract contained a specific term assuring the CLECs that Qwest would offer it the best terms given to other carriers, and whether Qwest failed to meet that obligation.

67 We see no reason why the state statute of limitations would not likewise be the controlling authority.

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[27] *See,* the *Brooks Fiber* decision, above at footnote 25, where a disputed contract provision tracked FCC regulations defining the requirements of Section 251(b)(5) of the Act. The court concluded that "[t]he Agreement itself and state law principles govern," nonetheless, to the interpretation and enforcement of the provision.

5. If interconnection agreement enforcement *is* subject to a federal limitation period, should a two-year or a four-year statute apply?

68 Qwest argues that the Telecom Act's original 2-year limitation statute,[28] Section 415, should apply to bar a lawsuit here. Qwest notes that the 1996 Telecom Act did not amend the 1934 provision, and therefore the 2-year statute should control.

69 AT&T responds that even if the dispute is governed by federal law, or by a federal statute of limitations, Section 415's limitation period does not apply to the 1996 Telecom Act, which did not specify a limitation period for its provisions, because the latter is governed by a 1990 statute. Federal law (28 U.S.C. § 1658(a)) provides a new limitations period for later laws: "Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues."[29]

70 AT&T's argument is supported by several federal court decisions that the 1934 2-year limitation statute does not apply to the 1996 Telecom Act amendments.[30] Because AT&T's complaint was filed within four years of the accrual date of July 15, 2002, its contract claim would be timely even it arose under federal law.

6. Should a more specific statute of limitations apply in lieu of a more general statute?

71 Qwest urges, particularly under the specialized and complex law in question, that a statute of limitations that specifically applies to that field of law should take precedence over a general statute of limitations.

72 As AT&T points out, there are two persuasive flaws that prevent application of this principle in the manner Qwest suggests.

73 First, specificity is in the eye of the lawyer. In this application, the fundamental issue is not the application of telecommunications law, but the application of the state principles of contract law that apply specifically to issues of this type. We find in this instance that the state statute is the more specific.

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[28] The original 1934 statute was enacted as a one-year limitation. Congress extended the period to two years in 1974.

[29] *Verizon New England, Inc. v. New Hampshire Public Utils. Comm'n*, 2005 WL 1984452, *5 n.5 (D.N.H. 2005), citing *Pepepscot Indus. Park, Inc. v. Maine Cent. R.R. Co.*, 215 F.3d 195, 203 n.5 (1st Cir. 2000).

[30] *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 124 n.5 (2005; *e.spire Comms. Co., inc. v. Baca*, 269 F. Supp. 2d 1310, 1320 (D.N.M. 2003) ("Because the Telecommunications Act was enacted after December 1, 1990, the four-year statute of limitations applies to the claims under the federal Telecommunications Act."); *Verizon Maryland Inc. v. RCN Telecom Servs., Inc.*, 232 F. Supp. 2d 539, 552-54 (D. Md. 2002); *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Pub. Utils. Comm'n*, 107 F. Supp. 2d 653, 668 (E.D. Pa. 2000); *MCI Telecomms. Corp. v. Illinois Bell Tel. Co.*, 1998 WL 156674, *3-*5 (N.D. Ill. 1998).

74 A second and equally valid reason to reject Qwest's argument is that – as we determined above – the federal statute is no more applicable here than an Arkansas rule or a Wyoming statute even one specifically governing remedies for breaches of written interconnection contracts in those jurisdictions. Under its delegated authority, Washington State law applies as a matter of law, not the law of another jurisdiction.

III. Conclusion

75 The Commission rejects both parties' challenges to the interlocutory order and directs the administrative law judge to convene a prehearing conference for the purpose of determining a schedule to proceed on the amended complaint.

IV. ORDER

76 On review of the interlocutory order, the Commission denies challenges to the order and the renewed motion for summary determination. The Commission authorizes amendment of the complaint.

Dated at Olympia, Washington, and effective December 21, 2006.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is an order on review of an Interlocutory Order of the Commission that governs the remainder of the proceeding. Further administrative review of this order is not available.

GLOSSARY

TERM	DESCRIPTION
CLEC	Competitive local exchange company. Not an ILEC, and generally subject to limited regulation.
ILEC	Incumbent local exchange company; a company in operation at the time the Act was enacted (August 1996).
Interconnection	Connection between facilities or equipment of a telecommunications carrier with a local exchange carrier's network under Section 251(c)(2).
Interconnection Agreement	An agreement between an ILEC and requesting telecommunications carrier (which may be a CLEC) addressing terms, conditions and prices for interconnection, services or network elements pursuant to Section 251.
Section 251(c)(3)	The section of the Act that requires ILECs to provide unbundled access to network elements, or UNEs.
Section 271	The portion of the Act under which Bell Operating Companies, or BOCs, could obtain authority from the FCC to provide long distance service in addition to service within their in-state service areas.
Telecom Act or "Act"	Telecommunications Act of 1996, 110 Stat. 56, Public Law 104-104, Feb. 8, 1996.