

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

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,	)	DOCKET NO. UT-033011
)	
Complainant,	)	ANSWER OF AT&T
	)	COMMUNICATIONS OF THE
v.	)	PACIFIC NORTHWEST, INC.
	)	AND TCG SEATTLE TO
ADVANCED TELECOM GROUP,	)	WASHINGTON UTILITIES AND
INC; ALLEGIANCE TELECOM, INC.;	)	TRANSPORTATION
AT&T CORP; COVAD	)	COMMISSION STAFF'S MOTION
COMMUNICATIONS COMPANY;	)	FOR PARTIAL SUMMARY
ELECTRIC LIGHTWAVE, INC.;	)	DETERMINATION AND
ESCHELON TELECOM, INC. f/k/a	)	JOINDER IN RESPONDENTS
ADVANCED	)	MCLEOD USA, GLOBAL
TELECOMMUNICATIONS, INC.;	)	CROSSING, XO
FAIRPOINT COMMUNICATIONS	)	COMMUNICATIONS AND
SOLUTIONS, INC.; GLOBAL	)	MCI'S MOTIONS FOR
CROSSING LOCAL SERVICES, INC.;	)	SUMMARY DETERMINATION
INTEGRA TELECOM, INC.; MCI)	
WORLDCOM, INC.; McLEOD USA,)	
INC.; SBC TELECOM, INC.; QWEST)	
CORPORATION; XO)	
COMMUNICATIONS, INC. f/k/a)	
NEXTLINK COMMUNICATIONS,)	
INC.,)	
)	
Respondents.)	

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INTRODUCTION

Respondent AT&T Communications of the Pacific Northwest, Inc. and TGG Seattle ("AT&T") respectfully submits its Answer to Washington Utilities and Transportation Commission Staff's ("WUTC Staff") Motion for Partial

Summary Determination. In addition, AT&T joins the Motions for Summary Determination of McLeod USA, XO Communications, Global Crossing and MCI.

WUTC Staff argues both parties to an interconnection agreement are required to file the agreement with the Commission. WUTC Staff Motion at 1. As a matter of law, WUTC Staff is wrong; only the ILEC bears this obligation. AT&T respectfully requests the Administrative Law Judge find, as a matter of law, that only ILECs are required to file interconnection agreements. Consistent with the Motions for Summary Determination of McLeod USA, XO Communications, Global Crossing and MCI that AT&T joins, AT&T requests that the Administrative Law Judge dismiss AT&T from this proceeding with prejudice.

In addition, AT&T concurs with The WUTC Staff November 5, 2003 Motion to Dismiss Allegations Relating to December 27, 2001 Agreement Between AT&T and Qwest and respectfully requests the Administrative Law Judge grant the motion.

ARGUMENT

A. Procedural History.

The Commission issued a Complaint (later amended) on August 14, 2003, alleging each respondent violated federal and state law by failing to file certain documents purported to be interconnection agreements. With respect to AT&T, the Complaint alleges violations of 47 U.S.C. § 252(a) (First Cause of Action); 47

U.S.C. § 252(e) (Second Cause of Action); and RCW 80.36.150 (Fourth Cause of Action) by failing to file agreements with Qwest dated December 27, 2001 and March 13, 2000. Complaint Ex. A.

On November 5, 2003, WUTC Staff moved to dismiss the allegations against AT&T relating to the December 27, 2001 agreement listed on Exhibit A to the Complaint. On November 7, WUTC Staff filed its Motion for Partial Summary Determination. On the same date, McLeod USA, XO Communications and MCI, among other respondents, filed Motions for Summary Determination. On November 10, the Administrative Law Judge issued an Amended Notice of Opportunity to Respond to Motion to Dismiss Allegations and Other Motions, setting the Answer date on December 5, 2003. Global Crossing filed its Motion for Summary Determination on November 12.

B. The WUTC Staff Motion to Dismiss Allegations Arising from the December 27, 2001 Agreement Should Be Granted.

On November 5, 2003, WUTC Staff moved to dismiss the allegations against AT&T relating to the December 27, 2001 agreement listed on Exhibit A to the Complaint because the December 27, 2001 agreement was incorporated into an amendment to an interconnection agreement filed on January 31, 2002. Motion to Dismiss Allegations Relating to December 27, 2001 Agreement Between AT&T and Qwest at 1. AT&T concurs with WUTC Staff and respectfully requests the Administrative Law Judge grant the motion.

C. CLECs are Not Required to File Interconnection Agreements.

In its November 7, 2003 Motion, WUTC Staff seeks a determination that as a matter of law, CLECs and ILECs are required to file interconnection agreements with the Commission. Motion at 1. The WUTC Staff Motion should be denied because as a matter of law; only the ILEC is required to file an agreement. The WUTC Staff Motion argues the Telecommunications Act is “better satisfied” if both parties are required to file the agreement. Motion at 6. But such an interpretation would be counter to the purposes of the Act. The purpose of Section 252 is to carry out an ILEC’s obligations under Section 251 to provide nondiscriminatory access to network infrastructure.

Congress structured Section 251 to apply certain duties to all telecommunications carriers, additional duties to all local exchange carriers, and additional duties specifically to incumbent local exchange carriers. If Congress intended CLECs to file interconnection agreements with state commissions, Congress could have done so. Section 251 first sets forth the “general duty” of all telecommunications carriers. *See* 47 U.S.C. § 251(a). The statute then lists obligations of all “local exchange carriers,” none of which is a requirement to file interconnection agreements with the state commission. *See* 47 U.S.C. § 251(b). Finally, Section 251 lists “additional obligations of incumbent local exchange carriers” “[i]n addition to the duties contained in subsection (b).” *See* 47 U.S.C. § 251(c). The Section 251(c) requirements for ILECs, the historical monopoly

provider, include the duty to negotiate with CLECs, interconnect with the networks of CLECs, and provide unbundled access to network elements, all on a nondiscriminatory basis. *See* 47 U.S.C. § 251(c).

Section 252 merely clarifies the ILECs' obligations; for example, Section 252(a) explains the procedure "an incumbent local exchange carrier" should follow "[u]pon receiving a request for interconnection, services or network elements pursuant to section 251." One of these obligations is submitting negotiated interconnection agreements to the State commission "under subsection (e) of this section." Thus, Section 252(a) imposes the Section 252(e) duty only on the ILEC.

The Complaint alleges AT&T violated two sections of a federal statute, 47 U.S.C. § 252(a) and (e). Yet neither of these section require CLECs to file interconnection agreements with state commissions; in fact, neither of these section impose *any* obligations on CLECs. Section 252(a) merely requires agreements "be submitted to the State commission under section (e) of this section." (Thus any cause of action under Section 252(a) is duplicative of any cause of action under Section 252(e).) Section 252(e) simply states, "Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." On their face, neither of these sections expressly require CLECs to file agreements.

The Federal Communications Commission has stated that the ILEC alone is responsible for filing agreements. In the FCC's August 8, 1996 First Report and Order implementing the Telecommunications Act, the FCC expressly noted "section 252 does not impose any obligations on utilities other than incumbent LECs." *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499 at ¶ 1230 (1996) (First Report and Order). Section 252 grants CLECs certain rights – such as the right to petition for arbitration on an agreement – but cannot be found to impose any duties on a CLEC. As a result, the FCC held that "Incumbent LECs, including small incumbent LECs, are required to file with state commissions all interconnection agreements entered into with other carriers, including adjacent incumbent LECs." First Report and Order at ¶ 1437. There are no similar FCC statements imposing these duties on CLECs.

Therefore, the WUTC Staff Motion should be denied, and the Administrative Law Judge should find, as a matter of law, that only ILECs are required to file agreements pursuant to 47 U.S.C. § 252(a) and (e).¹

D. State Law Does Not Require a CLEC to File Interconnection Agreements.

AT&T joins in the Motions for Summary Determination of Global Crossing, XO Communications and McLeod USA because the Fourth Cause of

¹ AT&T joins the Motion for Summary Determination of McLeod USA, and should the Administrative Law Judge find as a matter of law CLECs are not required to file interconnection agreements AT&T should be dismissed from this proceeding with prejudice.

Action in the Amended Complaint, for a violation of RCW 80.36.150, fails to state a claim against AT&T.

First, RCW 80.36.150 requires telecommunications companies to file with the commission “as and when required by it” any “contract, agreement or arrangement” with other telecommunications companies. The Commission has never required such filing. Although WAC 480-120-026 provides intrastate telecommunications service price lists or tariffs must be filed with the Commission, none of the agreements where AT&T is a party listed on Exhibit A to the Complaint is a price list or tariff. Therefore, state law does not require a CLEC to file the AT&T interconnection agreements at issue in this proceeding.

E. The Agreement Where AT&T is a Party is Not the Type of Agreement That Must Be Filed.

Even if a CLEC such as AT&T is required to file agreements, the agreement where AT&T is a party listed on Exhibit A to the Complaint is not the type of agreement that must be filed.

Section 252(e) does not define the type of interconnection agreement that must be filed with a state commission. The FCC determined “[O]nly those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1).” *In re: 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, 17 F.C.C.R. 19337 at ¶ 8 & n.26 (2002) (Declaratory Ruling).

The March 13, 2000 agreement (Number 13 on Exhibit A) does not create “ongoing obligations” or trigger the filing obligations, if any, of Section 252.² The agreement simply settles a billing dispute between Qwest and AT&T. The agreement, “Confidential Billing Settlement Agreement and Release” states its purpose is “to resolve [] differences and settle [] disputes” relating to the calculation of traffic termination volumes and charges for local and toll traffic, Direct Trunk Transport facilities, reciprocal compensation for Internet-related traffic, Interim Number Portability, Market Expansion Line, and Directory Assistance. The agreement called for certain payments of past due amounts through December 31, 1999. *See* Section 2. The agreement is a settlement agreement providing for “backward-looking consideration”, Declaratory Ruling at ¶ 12, and is therefore not the type of agreement that must be filed.³ Because this agreement need not be filed, AT&T cannot be found to violate CLEC filing requirements, if any, and AT&T should be dismissed from this proceeding with prejudice.

² Complaint Exhibit B lists an April 24, 2000 agreement between Qwest and AT&T, but AT&T understands from WUTC Staff that the Complaint only alleges a cause of action against Qwest arising from this agreement. *See* “Agreements Resolving Disputes With Certain Telecommunications Companies.” Complaint at Ex. B.

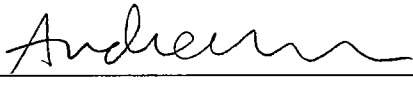
³ Because this agreement is confidential, AT&T has not attached it to this Motion. AT&T will produce a copy *in camera* at the Administrative Law Judge’s request.

CONCLUSION

The WUTC Staff Motion for Partial Summary Determination should be denied, and AT&T should be dismissed from this proceeding with prejudice.

Respectfully submitted this 12th day of December, 2003


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CERTIFICATE OF SERVICE
Docket Nos. UT-033011

I hereby certify that a true and correct copy of the Answer of AT&T Communications of the Pacific Northwest, Inc. ("AT&T") and TCG Seattle ("TCG") to Washington Utilities and Transportation Commission Staff's Motion for Partial Summary Determination and Joinder in Respondents McLeod USA, Global Crossing, XO Communications and MCI's Motions for Summary Determination was sent to each of the parties of record shown on the attached Service List in sealed envelopes, via methods indicated on the Service List.

Dated this 12th day of December, 2003.



Kay Elske, Legal Secretary

SERVICE LIST

PARTIES REPRESENTATIVES

DOCKET NO. UT-033011

Updated 10/29/03

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