BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Petitioners, v. ADVANCED TELECOM GROUP, INC., et al, Respondents.	DOCKET NO. UT-033011 COMMISSION STAFF'S RESPONSE TO MOTIONS TO DISMISS OR FOR SUMMARY DETERMINATION

1 The Washington Utilities and Transportation Commission (Commission) Staff (Staff) responds to the motions to dismiss or for summary determination filed by the respondents in this docket. For ease of presentation, Staff consolidates its responses to the arguments of the respondents where possible. Staff incorporates into this response the arguments it presented in its Motion for Summary Determination filed on November 7, 2003.

ARGUMENT

A. Section 252 of the Telecommunications Act of 1996 Obligates Each Party To File Interconnection Agreements With the State Commission

2 Competitive local exchange company (CLEC) respondents contend that Section 252 of the federal Telecommunications Act of 1996 (Act), 47 U.S.C. § 252, does not

require CLECs to file interconnection agreements. They raise several arguments in support of their position.

1. Section 1230 of the FCC's First Report and Order Does Not Support Respondents' Argument.

3 CLECs argue that the Federal Communications Commission (FCC) has determined that Section 252 of the Act does not impose any obligations of utilities other than incumbent local exchange companies (ILECs). *See, e.g.*, Eschelon Motion, at 3; McLeod Brief, at 3-4 (citing *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Dockets 96-98, 95-185, First Report and Order, FCC 96-325, 11 FCC Rcd 15499, ¶ 1230 (1996) ("First Report and Order"). Respondents' reliance on this provision of the FCC's Order is not helpful to their argument.

4 CLECs take out of context the FCC's statement that Section 252 does not obligate other utilities, such as electric companies, to enter into interconnection agreements with CLECs for access to their poles, ducts, conduits, and rights-of-ways. While the FCC's statement makes sense in light of ILECs' obligations to provide such access under 47 U.S.C. §§ 224(f)(1) and 251(b)(4), it does not speak to the obligation to file interconnection agreements under Section 252.

5 All local exchange companies must provide access to poles, ducts, conduits, and rights-of-way pursuant to Section 251(b)(4). A CLEC may request an ILEC to negotiate the rates, terms, and conditions of such access. 47 U.S.C. § 252(a). The CLEC also may request such access from the ILEC pursuant to Section 224(f)(1). *See* First Report and Order, ¶ 1229.

6 In addition to the obligation set forth in Section 252, Section 224 "imposes on all utilities [local exchange carriers, electric, gas, water, steam or other public utilities] including LECs, the duty to 'provide a cable television system or any telecommunications carrier [except ILECs] with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.'" First Report and Order, ¶ 1119 (quoting 47 U.S.C. § 224(f)(1)); *see* 47 U.S.C. § 224(a)(1), (5) for bracketed material.

7 In the discussion relied upon by the CLECs, the FCC simply acknowledged that a telecommunications carrier may seek access to an ILEC's poles, ducts, conduits, or rights-of-way by requesting negotiation or arbitration under Section 252. The FCC clarified that the Section 252 procedure was applicable only to requests by telecommunications carriers for access to an ILEC's poles, ducts, conduits, or rights-of-way:

> We note that section 252 does not impose any obligations on utilities other than incumbent LECs, and does not grant rights to entities that are not

> telecommunications providers. Therefore, section 252 may be invoked in lieu of section 224 only by a telecommunications carrier and only of it is seeking access to the facilities or property of an incumbent LEC.

First Report and Order, ¶ 1230. In this paragraph, the FCC reiterated that a utility cannot request an electric company to negotiate access to the company's facilities pursuant to Section 252. The FCC did not hold that CLECs have no obligation to file interconnection agreements with state commissions.

2. Section 252(i) Does Not Support Respondents' Arguments

8 Respondents also argue that Section 252(i) of the Act supports their argument that CLECs have no obligation to file interconnection agreements. *See, e.g.*, Eschelon Motion, at 6; McLeod Brief, at 4. Staff agrees that Section 252(i) obligates ILECs to make available any interconnection, unbundled network element, or service provided under any agreement to any other requesting carrier on the same terms and conditions. However, Staff disagrees that this demonstrates the intent that the obligation to file interconnection agreements falls only on ILECs.

9 Section 252(i) gives CLECs the right to access an ILEC's network at the same terms and conditions as any other CLEC. This provision makes interconnection more efficient for CLECs and prevents discrimination among carriers. *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of* 1996, CC

Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182, 11 FCC Rcd 14,171, ¶¶ 269-71 (1996).[1] A requesting carrier cannot choose to adopt an agreement about which it has no knowledge. Therefore, the filing requirement ensures that these carriers will have an opportunity to exercise their rights under Section 252(i).

10 The purposes of Section 252(i) are not better served by a holding that CLECs are not obligated to file interconnection agreements with the state commissions. A CLEC that is a party to an interconnection agreement not only competes with the ILEC that is the other party to the agreement, but also with other CLECs who may wish to compete with that ILEC. Therefore, it is important that agreements do not discriminate against carriers that are not parties to an interconnection agreement. *See* 47 U.S.C. § 252(e)(2)(A)(i) (state commission may reject negotiated agreement that discriminates against a carrier that is not a party to the agreement). Requiring the parties to file their interconnection agreements at the state commission furthers the non-discrimination purpose underlying Section 252(i). This purpose is thwarted if a CLEC obtains a

[1] In the NOPR, the FCC noted Congress' intent in enacting Section 252(i) was to "help prevent discrimination among carriers." *NOPR*, ¶ 270 & n. 378 (citing S. Rep. No. 104-23, 104th Cong., 1st Sess. 21-22 (1995)). The FCC also noted that Congress intended that Section 252(i) would "make interconnection more efficient by making available to other carriers the individual elements of agreements that have been previously negotiated[.]" *Id.*, ¶ 271 (citing S. Rep. No. 104-23, 104th Cong., 1st Sess. 21-22 (1995)).

favorable agreement with an ILEC and does not file the agreement with the state commission.

3. The Obligations Created by Section 252 Are Not Limited to ILECs

11 In arguing that Paragraph 1230 of the FCC's First Report and Order and Section 252(i) support the contention that CLECs are not required to file interconnection agreements, Eschelon states that Section 252 places no obligations on CLECs. Eschelon Motion, at 3. This is not correct. While some of the obligations contained in Section 252 may apply only to ILECs, some of the obligations apply to CLECs, as well. For example, if a CLEC petitions a state commission to arbitrate an interconnection agreement, the CLEC must submit the petition and all relevant documentation concerning the unresolved issues, the positions of each party, and any other issue discussed and resolved by the parties. 47 U.S.C. § 252(b)(1)(2). CLEC parties to an arbitration must cooperate with the state commission conducting the arbitration. *See* 47 U.S.C. § 252(b)(4).

B. The Commission Has Jurisdiction to Penalize Carriers For Failure to File Interconnection Agreements

12 SBC, Integra, and FairPoint each argue that the Commission lacks authority to penalize them for violations of the federal Act, assuming the Commission determined that they are required to file interconnection agreements pursuant to the Act. *See* SBC

Motion, at 13-14; FairPoint Motion, at 14-15; Integra Motion, at 12-13. The companies are wrong.

13 Federal courts have refused to interpret the authority of state commissions as narrowly as the companies. *See, e.g.*, *US West Communications, Inc. v. Hix*, 57 F.Supp.2d 1112, 1121 (D. Colo. 1999) (state commission has authority to include liquidated damages and penalty provisions in interconnection agreement). In fact, the federal courts have held that state commissions have the authority to enforce interconnection agreements. *See, e.g.*, *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Servs., Inc.*, 317 F.3d 1270, 1276-77 (11th Cir. 2003) ("[I]n granting to the public service commissions the power to approve or reject interconnection agreements, Congress intended to include the power to interpret and enforce in the first instance."); *Southwestern Bell Tel. Co. v. Brooks Fiber Communications of Okla., Inc.*, 235 F.3d 493, 497 (10th Cir. 2000) (state commission authority "to approve or reject and mediate or arbitrate interconnection agreements necessarily implies the authority to interpret and enforce specific provisions contained in those agreements"); *Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 946 (8th Cir. 2000) (Section 252's "grant of power to state commissions necessarily includes the power to enforce the interconnection agreement"); *MCI Telecommunications v. Illinois Bell Tel. Co.*, 222 F.3d

323, 337-38 (7th Cir. 2000) ("A state commission's authority to approve or reject interconnection agreements under the Act necessarily includes the authority to interpret and enforce, to the same extent, the terms of those agreements once they have been approved by that commission."); *Southwestern Bell Tel. Co. v. Public Util. Comm'n of Texas*, 208 F.3d 475, 479-80 (5th Cir. 2000) ("[T]he Act's grant to the state commissions of plenary authority to approve or disapprove these interconnection agreements necessarily carries with it the authority to interpret and enforce the provisions of agreements that state commissions have approved.").

14 The enforcement of the obligation to file interconnection agreements is no less important than the enforcement of the agreements themselves. In fact, state commissions cannot even exercise their authority to approve, disapprove, or enforce the agreements unless the agreements are filed. *See* 47 U.S.C. § 252(e)(1) (state commissions must approve or disapprove of negotiated or arbitrated interconnection agreements).

15 This Commission has the authority to "take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the [Act]." RCW 80.36.610. As stated above, the Act plainly contemplates that state commissions will approve (or disapprove) interconnection agreements and enforce their provisions. In enforcing regulated companies' obligations, the Commission is authorized to impose

penalties for noncompliance. *See* RCW 80.04.380; 80.36.390; 80.36.405; WAC 480-120-530(d). Therefore, the Commission has jurisdiction to impose penalties for failure to comply with obligations under the Act. *See 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, Order Assessing Penalties (Minn. P.U.C. Feb. 28, 2003) (imposing monetary penalties against Qwest for failure to file interconnection agreements as required by 47 U.S.C. § 252(a) and (e); Minnesota law expressly provides for penalties upon a finding that a carrier violated an obligation under the Act).

C. Section 252(a) and (e) of the Act Require Parties to File Interconnection Agreements With the State Commission

16 The Act requires that all interconnection agreements reached through negotiation or arbitration be filed with the state commission. 47 U.S.C. § 252(a), (e). When a company fails to file an interconnection agreement as required, it has violated both Section 252(a) and (e). The Complaint properly stated a cause of action for the violation of each section

D. The Causes of Action Set Alleged in the Complaint Are Not Duplicative

17 Qwest argues that the Commission should dismiss Counts One, Three, and Four because they are impermissibly duplicative of other causes of action in the complaint. Qwest is wrong. As set forth above, the Commission properly alleged that the

respondents are required to file interconnection agreements pursuant to 47 U.S.C. § 252(a) and (e). A violation of one provision is a violation of the other provision; therefore the Commission should dismiss neither cause of action. However, the Commission may choose to impose penalties for the violation of only one of the provisions.

18 The allegations that Qwest violated 47 U.S.C. § 252(i) is not duplicative of any cause of action. As stated above, CLECs can take advantage of Section 252(i) only if they have notice of the agreements. Publicly filing agreements with the state commission is the manner by which CLECs obtain notice of them. Therefore, failure to file the agreements results in a violation of Section 252(i) because there is no way to assure an ILEC's compliance with Section 252(i) if the ILEC fails to file the agreement.

19 Qwest contends that because the Commission chose to pursue allegations of failure to file, the Commission is somehow precluded from alleging a violation of Section 252(i) because "there are no allegations of conduct other than possible filing violations that could support a claim for Section 252(i) violations." Qwest Motion, at 19. This argument presupposes that the Commission is no different than a trier of fact in a civil case. While the Commission engages in fact-finding, it also is a regulator. Therefore, the Commission's function is not simply to determine whether certain

conduct violates the law and impose penalties. The Commission must ensure that regulated companies fully comprehend their obligations to comply with laws and what conduct will result in a violation of which statutes. This means that the Commission must determine all of the legal consequences flowing from the conduct of regulated companies.[2]

E. The Allegations Properly and Sufficiently State a Cause of Action for Violations of Chapter 80.36 RCW

20 Qwest contends that claims of discrimination or prejudice based on the existence of settlement agreements have no basis in law and frustrate the state policy to encourage settlements. Qwest Motion at 8. Qwest is wrong. The fact that the agreements are settlements does not insulate them from Commission scrutiny. While it may be lawful and proper for Qwest to enter into settlements with other companies, it is not lawful and proper to do so where such agreements discriminate or prejudice other companies. The Commission should not dismiss the allegations pertaining to the agreements set forth in Exhibit B simply because the agreements settle disputes between the parties.

[2] Qwest also contends that Count Four is duplicative of Counts Five through Seven because it arises from the same set of facts as alleged in causes of action. Staff disagrees with Qwest's argument, but because Staff agrees that the Commission has not established rules that require companies to file contracts with other carriers pursuant to RCW 80.36.150. Therefore, the Commission need not reach the merits of this argument.

21 The allegations in the complaint sufficiently notify Qwest that the agreements result in discrimination or prejudice to nonparties, or are unfairly prejudicial to the parties. That is all that is required by the rules of pleading. If Qwest is uncertain as to the precise nature of the allegations, it may move to make the allegations more definite and certain. There are no grounds to dismiss the allegations.

F. Agreements Must Be Filed in a Timely Manner

22 If the filing requirement set forth in Section 252(a) and (e) is to have any meaning, the agreements must be filed in a timely manner. The respondents have argued that because there is no statute specifying a time period in which agreements must be filed, there can be no violation for failure to file agreements in a timely manner. Staff disagrees.

23 Although Section 252 is silent on the timeline for filing interconnection agreements, this does not mean that there is no timeline. The filing requirement implies that the agreements will be filed within a reasonable period of time, otherwise, the parties can frustrate the provisions in Section 252 that provide for state commission approval or disapproval of agreements and adoption of agreements by other carriers. The Commission should not interpret the filing requirement of Section 252 to have an open-ended deadline.

24 The Commission issued an interpretive and policy statement to assist carriers with meeting their obligations regarding interconnection agreements. The statement provides that interconnection agreements will be filed within 30 days of their execution. *See In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996*, Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act, Docket No. UT-960269, 170 PUR 4th 367, 373 (June 27, 1996). While this is not binding, it advises carriers of a reasonable timeline for filing interconnection agreements.

G. The Commission Staff Agrees That the Commission's Rules Do Not Require Parties to File Interconnection Agreements

25 The Complaint alleges that all carriers are required to file agreements with other carriers pursuant to RCW 80.36.150. Commission Staff agrees that the Commission's rules currently do not require carriers to file interconnection agreements.

H. The Commission Staff Agrees That Agreements Pertaining to Conduct Occurring Exclusively Outside of Washington and Agreements That Do Not Pertain to Ongoing Obligations Need Not Be Filed

26 The Commission Staff agrees with the respondents that agreements pertaining to conduct outside of the State of Washington do not need to be filed with the Commission. The following agreements are not within the Commission's jurisdiction: **Agreement No. 11** between Eschelon f/k/a ATI and Qwest, which pertains to activities

in Minnesota; **Agreement No. 15** between Covad and Qwest, this is a CLEC to CLEC agreement because it was executed before the US West/Qwest merger; **Agreement No. 37** between XO and Qwest, this agreement does not involve local telecommunications subject to Sections 251 and 252 of the Act; **Agreement No. 38** between XO and Qwest, which pertains to activities outside of Qwest's local service region, and which may not pertain to Qwest's obligations under Section 251 of the Act; **Agreement No. 39** between XO and Qwest, which pertains to activities in Texas, and which may not involve Qwest's obligations under Section 251 of the Act; **Agreement No. 43** between McLeod and Qwest, which pertains to activity in Minnesota. Therefore, Staff believes dismissal is proper as to those agreements.

27 Likewise, the Staff agrees that agreements that do not create an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation are not required to be filed. The following agreements do not pertain to such ongoing obligations: **Agreement Nos. 22 and 24** between Eschelon and Qwest. Therefore, Staff believes dismissal is proper as to those agreements.

I. Response to Arguments Regarding Specific Agreements

28 In response to the arguments made by the respondents regarding specific agreements, Staff believes that the allegations regarding those agreements that are set forth in Exhibit A to the complaint should not be dismissed for the following reasons.

29 **Agreement No. 10 (SBC and Qwest)**: This agreement sets forth an agreement between the parties regarding the provision of DS3s in Seattle, Washington. The fact that this will occur only once does not mean that the obligation is not ongoing. Qwest agreed to provide facilities by a date certain. The agreement also provides for testing interconnection arrangements prior to state commission approval of an interconnection agreement. This is an ongoing obligation.

30 **Agreement No. 16 (Covad and Qwest):** This agreement provides for decommissioning of collocated facilities at no charge. Although it occurred only one time, it is a collocation provision that other parties may have wanted to adopt. Therefore, it is an ongoing obligation subject to the filing requirement. The agreement was executed on January 3, 2002, but was not filed until August 8, 2002. The agreement was not filed in a timely manner.

31 **Agreement No. 17 (Eschelon and Qwest):** This agreement sets forth subjects directly related to interconnection and unbundled network elements. It provides for an

implementation plan to improve Eschelon's access to interconnection and unbundled network elements. To the extent this plan was implemented, it should be filed for all requesting companies to consider adopting. Whether this plan was implemented is a question of fact that should be litigated in this docket.

32 **Agreement No. 20 (Eschelon and Qwest):** Qwest contends that this agreement does not create ongoing obligations, but instead is an agreement to reach an agreement at a later point in time. This agreement states that Eschelon will provide Qwest with reciprocal compensation for EAS and ISP-bound traffic; LIS trunking services such as EICTs, DEOTs, unbundled network element DS1 and DS3 service, multiplexing, or mileage charges for two-way trunks between Eschelon and Qwest. This is not an agreement to agree at a later date, but an ongoing agreement regarding the rates for interconnection, unbundled network elements, and reciprocal compensation. Therefore, it is an interconnection agreement that must be filed with the Commission.

33 **Agreement No. 21 (Eschelon and Qwest):** This is a purchase agreement whereby Eschelon agrees to purchase products from Qwest. This agreement includes the purchase of interconnection, unbundled network elements, collocation, and other services and facilities subject to Sections 251 and 252 of the Act. The agreement

commits Eschelon to purchase products for a stated dollar amount and commits the parties to an ongoing business relationship.

34 **Agreement No. 23 (Eschelon and Qwest):** This agreement amends an interconnection between Qwest and Eschelon dated February 28, 2000. The agreement therefore is an interconnection agreement that must be filed with the Commission.[3]

35 **Agreement No. 25 (Integra and Qwest):** This agreement provides for facilities decommissioning without charge. Facilities decommissioning relates to collocation of facilities and is a typical subject of interconnection agreements and is the subject of interconnection agreement amendments. The fact that it may occur only one time does not mean that it is not ongoing. It is a provision that should be available to requesting carriers.

36 **Agreement No. 27 (ATG and Qwest):** This agreement provides for a rate for reciprocal compensation for ISP-bound traffic. This is a matter within the jurisdiction of the Commission. The agreement was executed on June 30, 2000, and the parties were obligated to file the agreement as to that date. ATG's bankruptcy filing on May 2, 2002 did nothing to relieve ATG of its obligation to file the agreement. ATG's bankruptcy

[3] *See In the Matter of the Implementation of Section 252(i) of the Telecommunications Act of 1996*, Docket No. UT-990355, Interpretive and Policy Statement (First Revision), ¶ 3 (April 12, 2000) ("The Commission has concluded that in the event that parties revise, modify, or amend an agreement approved by the Commission, the revised, modified, or amended agreement will be deemed a new agreement under the Act.").

reorganization plan was approved on May 13, 2003. ATG filed the agreement for the Commission's approval on November 7, 2003. The agreement was not timely filed. If the Commission is precluded from imposing the full range of penalties against ATG as a result of bankruptcy, that is no reason to dismiss the allegations against ATG.[4]

37 **Agreement No. 30 (FairPoint and Qwest):** This agreement provides for an ongoing dispute resolution/escalation process. FairPoint's argument that the provision is "boilerplate" does not remove the filing requirement. The FCC has stated that dispute resolution and escalation provisions are within the scope of the filing requirement. *In the Matter of 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, FCC 02-276, 17 FCC Rcd. 19,337, ¶ 9 (2002).

38 **Agreement No. 31 (MCI and Qwest):** This agreement provides for access to and pricing of dark fiber, T1 facilities, and intraLATA sonet facilities. MCI and Qwest claim that the agreement pertains only to interstate services. However, these facilities also can be use for the provision of local telecommunications. It is unclear whether MCI

[4] The Commission Staff has not analyzed whether the Commission may impose penalties against ATG for its failure to file the agreement since its reorganization plan was approved. This is not an issue the Commission must reach at this time.

used or intends to use these facilities to provide local service. If so, the agreement should have been filed and made available to other carriers.

39 **Agreement No. 34 (MCI and Qwest):** This agreement was executed on June 29, 2001. It was not filed until August 22, 2002. The agreement was not filed in a timely manner.

40 **Agreement No. 35 (MCI and Qwest):** This agreement provides for terms and conditions related to the decommissioning of collocated facilities. Therefore, it is an ongoing obligation related to collocation and is an interconnection agreement subject to the filing requirements of the Act. The agreement was executed on December 27, 2001, but was not filed until August 22, 2002. Therefore, the agreement was not timely filed.

41 **Agreement No. 36 (NEXTLINK and Qwest):** This agreement sets forth ongoing rates for collocation with a true up following WUTC-established collocation rates.

42 **Agreement No. 40 (XO and Qwest):** This agreement pertains to the rates for reciprocal compensation for non-ISP bound traffic. The agreement was effective on December 31, 2001. It was filed on April 1, 2002. It was not timely filed. The agreement also includes an escalation procedures clause that is more than an agreement to agree. The agreement sets forth the escalation procedure the parties will use until December 31, 2003. The parties agreed to use this escalation procedure in future disputes.

43 **Agreement No. 41 (McLeod and Qwest):** This agreements sets rates, effective immediately, for subscriber list information. Therefore, it is an interconnection agreement.

44 **Agreement No. 47 (Global Crossing and Qwest):** This agreement establishes a going-forward rate for conversions from resale to UNE-P. It is subject to the filing requirement.

45 **Agreement No. 49 (ELI and Qwest):** This agreement contains an escalation clause that pertains to the parties' on-going business relationship. This agreement broadly applies to all aspects of their business relationship and would apply to disputes arising from interconnection agreements.

46 **Agreement No. 52 (Global Crossing and Qwest):** This agreement provides for an extension of standard service intervals for orders for more than 2000 UNE-P lines in any one month in any one state, notwithstanding the parties' interconnection agreements. This is an ongoing obligation relating to unbundled network elements. The agreement also establishes an ongoing obligation for installation intervals for manual UNE-P requests. This agreement is subject to the filing requirement.

47 **Agreements 8, 9, 10, 12, 14, 16, 25, 34, 35, 40, 42, 47:** In addition to any comments stated above, these agreements were not filed in a timely manner. Qwest posted these

agreements on its website, but not contemporaneously to their execution. The agreements were executed on or about the dates set forth below:

Agreement 8 – April 28, 2000
Agreement 9 – October 21, 2000
Agreement 10 – June 1, 2000
Agreement 12 – March 3, 2002
Agreement 14 – December 27, 2001
Agreement 16 – January 23, 2002
Agreement 25 – September 4, 2001
Agreement 34 – June 29, 2001
Agreement 35 – December 27, 2001
Agreement 40 – December 31, 2001
Agreement 42 – May 1, 2000
Agreement 47 – July 17, 2001

CONCLUSION

48 For the reasons stated above, and subject to the exceptions contained herein, the Commission should not dismiss the allegations set forth in the complaint.

Dated: December 12, 2003.

CHRISTINE O. GREGOIRE
Attorney General

_____
SHANNON E. SMITH
Assistant Attorney General
Counsel for Commission Staff