BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Washington Utilities and Transportation Commission,	)	Docket No. UT-033011
Complainant,	)	XO REPLY TO STAFF'S RESPONSE TO DISPOSITIVE MOTIONS
v.	)	
Advanced TelCom, Inc., et al.	)	
Respondents.	)	

XO Washington, Inc. ("XO") provides the following reply to Commission Staff's Response to Motions to Dismiss or for Summary Determination ("Staff Response"). Staff concedes that three of the five agreements between XO's parent corporation and Qwest Corporation ("Qwest") or its affiliates should not be included in the Complaint and fails to justify pursuing any allegations with respect to the other two agreements. The Commission, therefore, should grant XO's motion.

DISCUSSION

1. Staff's Response fails to justify any of the allegations in the Complaint against XO. To the contrary, Staff agrees that three of the five agreements between XO and/or its affiliates and Qwest and/or its affiliates identified in the Complaint[1] pertain to activities outside

[1] Staff does not address the subsequent Amendment to Agreement No. 36, although Staff included that Amendment among the agreements at issue in this proceeding when providing copies of those agreements to counsel for XO. To the extent that the Amendment is at issue in the Complaint, Staff has failed to refute XO's argument in its motion that the Amendment does not address local telecommunications services governed by the Act (XO Motion at 4, paragraph 5(d)), and accordingly all claims with respect to the Amendment should be dismissed.

of Qwest's local service region and/or do not involve local telecommunications subject to Sections 251 and 252 of the Telecommunications Act of 1996. Staff Response at 14, paragraph 26. Staff tersely contends that the other two agreements should remain at issue. *Id*. at 19, paragraphs 41-42. XO will not repeat its arguments with respect to Agreement No. 36 (XO Motion at 5, paragraph 7), but Staff mischaracterizes Agreement No. 40, requiring further discussion.

2. Staff erroneously states that Agreement No. 40, the Confidential Billing Settlement Agreement dated and effective as of December 31, 2001, between Qwest and XO (and XO affiliates), "pertains to the rates for reciprocal compensation for non-ISP bound traffic" and "was not timely filed." Staff Response at 19, paragraph 42. The Agreement does not alter the rates for reciprocal compensation that Qwest was paying XO in Washington but requires only that the parties file amendments to existing interconnection agreements, *inter alia*, to reduce those rates. Agreement No. 40 at 4, paragraph 2(c) & 8, paragraph 2(c)(vi). Qwest and XO executed the required amendment on March 29, 2002, and Qwest filed the amendment with the Commission on April 8, 2002, in Docket No. UT-960356. The agreement that altered the reciprocal compensation rates thus was the Fifth Amendment to the parties' interconnection agreement, not Agreement No. 40, and that amendment was timely filed 10 days after its execution.

3. Staff also contends that Agreement No. 40 should have been filed with the Commission because it includes an escalation procedures clause that was to be used in the event

of future disputes. Staff Response at 19, paragraph 42. Staff, however, cites no provision of the Act or FCC rules that requires or even references the inclusion of an escalation procedures clause in an interconnection agreement. The Agreement itself provides that the procedures "will be used to settle business to business issues between the Parties," which may or may not be issues related to interconnection agreements. Agreement No. 40 at 12, paragraph 3(b). Such a provision is not a substantive rate, term, or condition of an interconnection agreement and reflects nothing more than the parties' desire to negotiate the resolution of intercarrier business issues before bringing them to the Commission or other third-party decision-maker for resolution.

4. Even if the escalation clause in Agreement No. 40 could be considered an interconnection agreement term or condition – which it cannot – Staff has lost sight of the purpose of filing interconnection agreements with the Commission. Staff correctly observes that "[r]equiring the parties to file their interconnection agreements at the state commission furthers the non-discrimination purpose underlying Section 252(i)." Staff Response at 5, paragraph 10; *accord* 47 U.S.C. § 252(e)(2)(A) (authorizing the Commission to reject negotiated interconnection agreements only if they are discriminatory or inconsistent with the public interest). No CLEC was denied the ability to have a comparable escalation clause in its interconnection agreement. To the contrary, the escalation procedure in Agreement No. 40 was far more beneficial to Qwest than to XO, especially in light of Qwest's efforts to keep as many issues as possible out of its ongoing Section 271 proceedings. Qwest undoubtedly was more

than willing to provide any other CLEC with the same escalation procedure. Nor is such a procedure inconsistent with the public interest, particularly when the Commission requires just such negotiations to attempt to resolve disputes prior to entertaining a petition for enforcement of an interconnection agreement. WAC 480-09-530(1)(a)(i). XO did not violate the letter or spirit of the Commission's filing requirements by not insisting that Qwest file an agreement whose only even debatable forward-looking term was favorable to Qwest.

CONCLUSION

For the foregoing reasons, as well as the reasons stated in XO's Motion, the Commission should grant XO's Motion and should dismiss, or grant summary disposition in favor of XO on, all claims against XO in the Complaint.

DATED this 5th day of January, 2004.

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By _____
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