

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

In The Matter of the Petition of	)	
	)	DOCKET NO. UT-053005
MULTIBAND COMMUNICATIONS,	)	
LLC	)	ORDER NO. 01
	)	
For Approval of Line Sharing	)	
Agreement With Qwest Corporation	)	PREHEARING CONFERENCE
Pursuant to Section 252 of the	)	ORDER
Telecommunications Act of 1996	)	
.....	)	

1 **PROCEEDINGS:** On January 18, 2005, Multiband Communications, LLC (Multiband) filed a request for approval of a line sharing arrangement<sup>1</sup> (Line Sharing Agreement or LSA) with Qwest Corporation (Qwest). The LSA was signed by Multiband and Qwest on September 29 and 30, 2004, respectively, and took effect on October 2, 2004.<sup>2</sup> Qwest filed the LSA for informational purposes only on October 26, 2004. Qwest asserts that the LSA does not require Commission approval pursuant to Section 252 of the Telecommunications Act of 1996. Staff, at least, contends Qwest is mistaken, as a matter of law.<sup>3</sup>

2 The Commission set the disputed question for hearing on February 23, 2005, and conducted a prehearing conference before Administrative Law Judge Dennis J. Moss on March 10, 2005.

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<sup>1</sup> Entitled *Terms and Conditions for Commercial Line Sharing Arrangements provided by Qwest Corporation to Multiband Communications, LLC* dated September 28, 2004.

<sup>2</sup> Qwest filed this LSA for informational purposes only on October 26, 2004. Although both parties agree that the LSA is binding, Qwest asserts that this LSA does not need to be filed for the Commission's approval pursuant to Section 252 of the Telecommunications Act of 1996 (the Act).

<sup>3</sup> Multiband's counsel, at prehearing, described the company's position as being between the proverbial rock and hardplace. While Multiband has filed for approval pursuant to Section 252, the company is not committed to the conclusion that Section 252 actually applies to the LSA.

3 **PARTY REPRESENTATIVES:** C. Douglass Jarrett, Keller and Heckman LLP, Washington, D.C., represents Multiband. Lisa Anderl, Qwest Corporation, represents Qwest. Shannon Smith and Jonathan Thompson, Assistant Attorneys General, Olympia, Washington, represent the Commission’s regulatory staff (“Commission Staff” or “Staff”).<sup>4</sup>

4 **PETITIONS TO INTERVENE:** No one petitioned to intervene.

5 **ISSUES:** The parties agree that this proceeding presents no disputed facts. The issues, as discussed at prehearing, are:

1. Whether the subject LSA is within the ambit of 47 USC 252, thus requiring Commission approval; and
2. Assuming 47 USC 252 applies, whether the Commission should decline to exercise jurisdiction.

6 **PROCESS AND PROCEDURAL SCHEDULE:** The Commission will proceed to decision on the basis of briefing by the parties. The parties requested, and will be allowed to file, initial briefs and reply briefs. Qwest requests 90 minutes for oral argument. Qwest’s request for oral argument is granted. Each side will be allowed 45 minutes.

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<sup>4</sup> In formal proceedings, such as this case, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding ALJ, and the Commissioners’ policy and accounting advisors from all parties, including Staff. *RCW 34.05.455*.

- 7 The Commission establishes the procedural schedule that is attached to this Order as Appendix 1, which is incorporated into the body of this Order by this reference. All filing dates are for service by electronic means. The original and required copies must be delivered to the Commission by the following business day for official filing.
- 8 **FILING; COPIES OF MATERIALS:** Parties must file with the Commission an original plus five copies of all pleadings, motions, briefs, and other prefiled materials to meet the Commission's requirements for official filing and internal distribution. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 9 All filings must be mailed to the Commission Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered by hand to the Commission Executive Secretary at the Commission's records center at the street address indicated above. Both the post office box and street address are required to expedite deliveries by U.S. Postal Service.
- 10 An electronic copy of all filings must be provided by e-mail delivery to <[records@wutc.wa.gov](mailto:records@wutc.wa.gov)>, or by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).

- 11 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this prehearing conference order will control further proceedings in this matter, subject to Commission review.**

DATED at Olympia, Washington, and effective this 15th day of March 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS  
Administrative Law Judge

**APPENDIX 1**

**PROCEDURAL SCHEDULE**  
**DOCKET NO. UT-053005**

<b>EVENT</b>	<b>DATE</b>
Request Filed	January 18, 2005
Prehearing Conference	March 10, 2005
Initial Briefs	March 23, 2005
Reply Briefs	March 30, 2005
Oral Argument	April 4, 2005 (90 minutes)

**APPENDIX 2**

<b>PARTIES' REPRESENTATIVES</b>				
<b>DOCKET NO. UT-053005</b>				
<b>PARTY</b>	<b>REPRESENTATIVE</b>	<b>PHONE</b>	<b>FACSIMILE</b>	<b>E-MAIL</b>
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