

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

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

INTRODUCTION

Respondents AT&T Communications of the Pacific Northwest, Inc. and TCG Seattle ("AT&T") respectfully submit their Reply to Answers of Washington Utilities and Transportation Commission Staff ("WUTC Staff"), Public Counsel

Public Counsel Section of the Office of the Attorney General of Washington (“Public Counsel”) and Qwest Corporation (“Qwest”).

WUTC Staff, Public Counsel and Qwest all argue both parties to an interconnection agreement are required to file the interconnection agreement with the Commission. As a matter of law, this position 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. In addition, AT&T respectfully requests that the Administrative Law Judge dismiss AT&T from this proceeding with prejudice.

ARGUMENT

CLECs are Not Required to File Interconnection Agreements.

WUTC Staff, Public Counsel and Qwest claim in their Answers both CLECs and ILECs are required by Section 252 to file interconnection agreements with the Commission. WUTC Staff Answer at 1; Public Counsel Answer at 6; Qwest Answer at 2. WUTC Staff, Public Counsel and Qwest all rely on similar arguments. (Because Public Counsel relies on the arguments made by WUTC Staff, Public Counsel Answer at 6, for purposes of brevity the response herein to WUTC Staff Answer is also applicable to Public Counsel Answer). They argue because Section 252 of the Telecommunications Act does not expressly state only ILECs are required to file agreements, it must be inferred that both ILECs and CLECs are required to file agreements. For example, Qwest argues Section

252(e) “does *not* specify that a particular party is responsible for filing interconnection agreements,” Qwest Answer at 2 (emphasis in original), thereby leading to the conclusion that both parties must file agreements. The principles of statutory construction contest such a finding.

Congress structured Section 251 to impose certain duties on all telecommunications carriers, additional duties on all local exchange carriers, and even greater duties specifically on incumbent local exchange carriers (“ILECs”). Section 251 first sets forth the “general duty” of all telecommunications carriers. 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. 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).” 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. 47 U.S.C. § 251(c). Qwest does not dispute the structure of Section 251. Qwest Answer at 2. This statutory construct belies any Congressional intent to obligate ILECs to file interconnection agreements. This obligation ensures ILECs behave in a nondiscriminatory manner toward all CLECs.

Neither Qwest nor WUTC Staff dispute Section 252 imposes obligations on ILECs. Qwest Answer at 2; WUTC Staff Answer at 6. Of course, Section 252, like the Act itself, is intended to foster competition in the telecommunications marketplace. H.R. Conf. Rep. No. 104-458, at 113 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 124. Certainly it is appropriate to consider Congress' intent when interpreting a statute like the Act, acknowledged as "not a model of clarity," *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 397 (1999).

In addition to imposing duties on ILECs, Sections 251 and 252 are intended to benefit CLECs. "The centerpieces of the 1996 Telecommunications Act are sections 251 and 252, codified as 47 U.S.C. §§ 251 and 252, which together impose a series of affirmative duties on ILECs [] for the benefit of competitive local exchange carriers." *Covad Comm. Co. v. BellSouth Corp.*, 299 F.3d 1272, 1277 (11th Cir. 2002) (footnotes omitted) (noting Section 252(e) provides for the submission of interconnection agreements for approval); *Accord Cavalier Tel. L.L.C. v. Verizon Virginia, Inc.*, 330 F.3d 176, 185 (4th Cir. 2003) (Section 251 and 252 "imposed commands on incumbent local exchange carriers to interconnect with and assist new would-be competitors," obligations that did not exist before passage of the Act).

Since Sections 251 and 252 are for the benefit of CLECs, the rules of statutory construction compel the ALJ to not interpret the statutes in a manner that penalizes the very parties intended to benefit from the statute. For example,

in *Salute v. Greens*, 918 F. Supp. 660, 663 (E.D.N.Y. 1996), the court found it more appropriate to interpret a housing statute in a manner that did not “harm the very class of people [the statute] was enacted to benefit.” Adopting a “mechanical interpretation and application”, harming the intended beneficiaries, “literal terms notwithstanding, [] makes no sense.” *Id.* Likewise, adopting a “literal” or “mechanical interpretation and application” of Section 251 and 252 would impose new duties on a CLEC and counter the purposes of the Telecommunications Act intended, in part, to benefit competition and CLECs. *Covad Comm. Co.*, 299 F.3d at 1277. Sections 251 and 252 may be silent as to which party is required to file agreements, but the context of the obligation is clear – Sections 251 and 252 impose duties on ILECs, for the benefit of CLECs. Therefore, 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).

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CONCLUSION

Because CLECs are not required to file agreements, AT&T respectfully requests dismissal from this proceeding with prejudice.

Respectfully submitted this 6th day of January, 2004.

DAVIS WRIGHT TREMAINE LLP
Attorneys for AT&T Communications
Of the Pacific Northwest, Inc. and TGC
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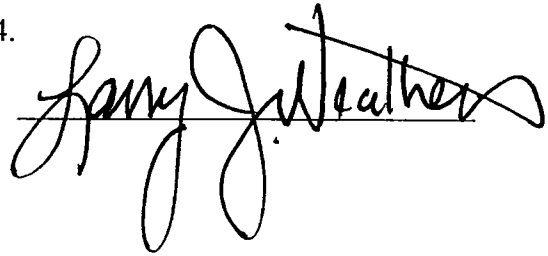
A handwritten signature in black ink, appearing to read 'Daniel M. Waggoner', is written over a horizontal line. The signature is stylized with large loops and a long tail.

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CERTIFICATE OF SERVICE
WUTC Docket No. UT-033011

I hereby certify that a true and correct copy of the Reply Brief of AT&T Communications of the Pacific Northwest, Inc. ("AT&T") and TCG Seattle ("TCG") to Washington Utilities and Transportation Commission Staff, Public Counsel, and Qwest's Answers to Motions for Summary Determination was sent to each of the parties of record shown on the attached Service List via methods indicated on the Service List.

Dated this 6th day of January, 2004.



A handwritten signature in black ink, appearing to read "Gary J. Weather", written over a horizontal line.

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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
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Complainant,)	AT&T'S MOTION FOR
)	EXTENSION TO FILE HARD
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)	
ADVANCED TELECOM GROUP,)	
INC; ALLEGIANCE TELECOM, INC.;)	
AT&T CORP; COVAD)	
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AT&T Communications of the Pacific Northwest and TCG Seattle
(collectively, "AT&T") respectfully move for an extension to file hard copies of
its Reply Brief in this matter. Because of the inclement weather on January 6,

2004, AT&T is unable to file hard copies of its Reply Brief by hand and seeks a one-day extension to file hard copies of its brief via overnight mail. AT&T is timely serving electronic copies of its Reply Brief on January 6, 2004.

Respectfully submitted this 6th day of January, 2004.

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