

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 REPLY

1 The Washington Utilities and Transportation Commission (Commission) Staff (Staff) replies to the responses to its motion for partial summary determination filed by the parties in this case. In this reply, Staff will not repeat the arguments it made in its earlier pleadings and incorporates those arguments into this reply.

ARGUMENT

A. Reply to Qwest

2 In its response, Qwest Corporation (Qwest) agreed with Staff's argument that the obligation to file interconnection agreements set forth in Section 252 of the federal Telecommunications Act of 1996 (Act), 47 U.S.C. § 252, requires both incumbent local

exchange companies (ILECs) and competitive local exchange companies (CLECs) to file interconnection agreements. Qwest also argued that Agreement Nos. 27, 36, and 52 should be dismissed from the complaint. For the reasons set forth in Staff's response, the Commission should not dismiss the allegations regarding those agreements. *See* Commission Staff's Response to Motions to Dismiss or For Summary Determination, ¶¶ 36, 41, 46.

B. Reply to ATG and Covad

3 Advanced TelCom Inc., d/b/a Advanced TelCom Group (ATG) and Covad Communications Company each adopted the arguments made by Eschelon Telecom of Washington (Eschelon) and McLeodUSA Telecommunications, Inc. (McLeod) in their motions to dismiss. For the reasons set forth in Staff's response, the Commission should reject the arguments made by Eschelon and McLeod that Section 252 of the Act does not require CLECs to file interconnection agreements. *Id.*, ¶¶ 2-11.

C. Reply to AT&T and TCG

4 AT&T Communications of the Pacific Northwest, Inc. and TCG Seattle (collectively, "AT&T") argue that CLECs are not required to file interconnection agreements. AT&T joins in the motions filed by McLeod, Global Crossing Local Services, Inc. (Global Crossing), and XO Washington, Inc. (XO). Staff incorporates by reference the arguments it made in response to McLeod, Global Crossing, and XO.

5 AT&T further argues that Section 252 of the Act does not require CLECs to file interconnection agreements because Section 252 does no more than clarify an ILEC's obligations. Contrary to AT&T's argument, the requirements of Section 252 are directed at ILECs, CLECs, state commissions, and the Federal Communications Commission (FCC). For example, Section 252 requires the party filing a petition for arbitration to submit to the state commission all relevant documentation regarding the open issues. 47 U.S.C. § 252(b)(2)(A). This obligates those CLECs that petition for arbitration to file the necessary documents with the state commission. Section 252 also permits parties to request that the state commission mediate differences arising in a negotiation. Section 252 permits either party to a negotiation to request the state commission to mediate differences between the parties – this provision is equally available to CLECs. 47 U.S.C. § 252(a)(2). Section 252 also requires both parties to cooperate with the state commission, not just the ILEC. 47 U.S.C. § 252(b)(5). Plainly, Section 252 goes beyond listing ILEC obligations.

6 Like other CLECs, AT&T also incorrectly argues that the FCC has determined that Section 252 does not impose any requirements on CLECs. AT&T's Answer, at 6 (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)). As stated in Staff's response to the parties' motions, the FCC was not addressing the filing requirement in that paragraph. See Commission Staff's Response to Motions to Dismiss and For Summary Determination, ¶¶ 3-7. Likewise, in paragraph 1437 of the First Report and Order, the FCC simply noted the compliance requirements for companies that are subject to Section 252(i) as part of the FCC's Final Regulatory Flexibility Analysis. See citing First Report and Order, ¶ 1437. By noting that all ILECs must file interconnection agreements, the FCC did not absolve CLECs of their concurrent responsibility to file their interconnection agreements.

7 AT&T contends that the March 13, 2000, agreement between AT&T and Qwest is not subject to the filing requirement because it does not concern forward-looking obligations. AT&T's Answer, at 8. AT&T is wrong. AT&T and Qwest executed Agreement No. 13 on March 13, 2000, and the agreement expressly states that the parties will apply a methodology for calculating traffic termination volumes and charges until at least July 1, 2000. The agreement also provided that if the parties did not agree on a different methodology, the parties would continue to conform to the methodology until December 31, 2000. AT&T and Qwest also agreed on a billing arrangement for direct trunk transport that would continue through January 7, 2001. These are forward-looking provisions.

CONCLUSION

8 For the reasons set forth in the pleadings that Staff filed in this docket, the Commission should grant Staff's motion for partial summary determination and deny the motion to dismiss and for summary determination inconsistent with Staff's arguments.

Dated: January 6, 2004.

CHRISTINE O. GREGOIRE
Attorney General

SHANNON E. SMITH
Assistant Attorney General
Counsel for Commission Staff