

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

WASHINGTON UTILITIES AND	)	DOCKET NO. UT-033011
TRANSPORTATION COMMISSION,	)	
	)	ORDER NO. 07
Complainant,	)	
	)	ORDER DENYING COVAD'S
v.	)	PETITION FOR REVIEW AND
	)	CLARIFICATION OF ORDER
ADVANCED TELECOM GROUP,	)	NO. 05; AND APPROVING AND
INC., et al.	)	ADOPTING FAIRPOINT
	)	SETTLEMENT AGREEMENT
Respondents.	)	
.....	)	

1 **SYNOPSIS.** *In this Order, the Commission denies Covad's Petition for Review of Order No. 05, affirming the decision in Order No. 05 that both ILECs and CLECs bear responsibility under Section 252 of the Telecommunications Act of 1996 to file interconnection agreements with state commissions. The Commission also denies Covad's Petition for Clarification concerning the interpretation of what constitutes a "reasonable time" to file agreements and requests that the parties address the issue in testimony. Finally, the Commission approves the settlement agreement between FairPoint and Staff as consistent with the law and the public interest.*

**I. BACKGROUND**

2 **Nature of the Proceeding:** This is a complaint proceeding brought by the Washington Utilities and Transportation Commission (Commission), through its Staff, against Qwest Corporation (Qwest) and 13 competitive local exchange carriers (CLECs) alleging that the companies entered into certain interconnection agreements and failed to file, or timely file, the agreements with the Commission as required by state and federal law. The complaint also alleges that the

companies entered into certain other agreements to resolve disputes, but that the carriers violated federal and state law by failing to make terms and conditions available to other requesting carriers, providing unreasonable preferences, and engaging in rate discrimination.

3 **Procedural History:** On February 12, 2004, the Commission entered Order No. 05 in this proceeding, an order resolving motions to dismiss and for summary determination filed by the parties.<sup>1</sup> In that Order, the Commission determined that both incumbent local exchange carriers (ILECs) and CLECs are required under Section 252 of the Telecommunications Act of 1996 (Act)<sup>2</sup> to file interconnection agreements with state commissions. *Order No. 05, ¶48.*

4 On May 10, 2004, Covad Communications Company (Covad) filed with the Commission a Petition for Review and Clarification of Order No. 05. On May 11, 2004, the Commission issued a notice requesting responses to Covad's petition. The following parties filed responses to Covad's petition: Commission Staff, WorldCom, Inc., on behalf of its regulated subsidiaries in Washington State (n/k/a MCI), Eschelon Telecom of Washington, Inc. (Eschelon), Integra Telecom of Washington, Inc. (Integra), and Qwest.

5 On May 14, 2004, Commission Staff filed with the Commission a settlement agreement between Staff and FairPoint Carrier Services, Inc. f/k/a FairPoint Communications Solutions Corp. (FairPoint), requesting an order approving the settlement.

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<sup>1</sup> A complete summary of the procedural history in this docket prior to the date the Commission entered Order No. 05 is contained in paragraphs 3-13 of Order No. 05.

<sup>2</sup> Pub. L. No. 104-104, 100 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.*

## II. MEMORANDUM

### A. Covad's Petition for Review.

- 6 **1. Covad's Argument.** Covad requests, based upon a recent decision issued by the Federal Communications Commission (FCC), that the Commission review and reverse its decision in Order No. 05 that CLECs are obligated to file interconnection agreements under Section 252. Covad also requests that the Commission dismiss all claims against Covad. The FCC decision to which Covad refers is a March 12, 2004, Notice of Apparent Liability for Forfeiture to Qwest Corporation,<sup>3</sup> in which the FCC found Qwest liable for a forfeiture of \$9 million for failing to file interconnection agreements with the Minnesota Public Utilities Commission and the Arizona Corporations Commission.
- 7 Covad states that the Commission relied heavily on the FCC's Declaratory Ruling<sup>4</sup>, a declaratory ruling addressing Section 252 filing requirements, in reaching its decision concerning filing obligations in Order No. 05. Covad argues that the FCC's NAL decision is a more recent interpretation of Section 252 filing requirements, and that the Commission should review Order No. 05 in light of the NAL decision.
- 8 Although Covad recognizes that petitions for interlocutory review should be filed with the Commission within ten days after the order is entered, Covad argues that the Commission has broad discretionary powers under WAC 480-07-

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<sup>3</sup> *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, File No. EB-03-IH-0263, NAL Account NO. 200432080022, FRN No. 0001-6056-25, Notice of Apparent Liability and Forfeiture, FCC 04-57 (March 12, 2004) [Hereinafter "NAL"].

<sup>4</sup> *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 (October 4, 2002) [Hereinafter "FCC Declaratory Ruling"].

810 to review an interlocutory order at any time if the review can save the Commission and the parties substantial effort or expense and is consistent with the public interest. *Covad Petition at 2; Covad Reply at 3.* Covad argues that the NAL is a “seminal unfiled interconnection agreement case” that repeatedly addresses the Declaratory Ruling, and which the FCC released after the parties had filed briefs on the issue of Section 252 filing requirements in this proceeding. *Covad Reply at 5-6.* Covad further argues that reviewing Order No. 05 at this point in the proceeding would “reduce the number of agreements at issue, reduce the number of respondents, and narrow the scope of the docket.” *Covad Petition at 3.*

9 Covad asserts that the FCC’s NAL decision modifies the Declaratory Ruling, making clear that only ILECs bear a responsibility for filing agreements with state commissions. Covad argues that the FCC assessed a penalty only against Qwest, not CLECs, for the failure to file certain agreements with the Minnesota and Arizona Commissions. Covad cites to specific paragraphs of the NAL to support its position, in particular, paragraphs 3, 17, and 45, as well as references in the NAL to FCC decisions granting Section 271 authority in Michigan and Minnesota. *Covad Reply at 7-9.*

10 Specifically, Covad argues that the NAL makes clear that the Declaratory Ruling was intended to clarify only the ILECs’ obligation to file interconnection agreements with state commissions under Section 252(a)(1), and did not address CLEC filing obligations. *Covad Petition at 4; Covad Reply at 7-9.* Covad notes that the NAL refers to the Commission’s proceedings in this Docket, as well as Order No. 05, in footnote 15. Covad asserts that if the FCC agreed with the Commission that CLECs have an obligation to file, the FCC would have specifically ruled against CLECs in the NAL. *Covad Petition at 5.*

- 11 **2. CLEC Responses.** MCI, Eschelon, and Integra filed letters with the Commission supporting and concurring in Covad's petition. MCI requests that the Commission dismiss all claims against MCI, while Integra requests that the Commission dismiss all claims against all CLECs.
- 12 **3. Qwest Response.** Qwest argues that the NAL decision focuses exclusively on Qwest's conduct, not the conduct or obligations of a CLEC, and therefore provides no basis for reconsidering Order No. 05. *Qwest Response at 2.* Qwest asserts that the NAL represents the FCC's decision, after investigation, to pursue an enforcement action against Qwest. Qwest asserts that the Commission should read nothing into the absence of an equivalent inquiry into CLEC actions by the FCC. *Id. at 3.* Qwest further argues that Covad fundamentally misconstrues the NAL when it argues that the FCC's discussion of Qwest's apparent liability demonstrates that CLECs are not subject to Section 252 filing requirements. *Id. at 3-4.*
- 13 **4. Staff Response.** Staff argues that the Commission should reject the petition as the filing was not timely made and does not meet the standards for granting interlocutory review under WAC 480-07-810. While Staff recognizes that the Commission may modify the ten-day filing deadline if doing so is in the public interest, Staff asserts that Covad has not provided any justification for not filing the petition in a more timely manner. *Staff Response at 2-4.* Staff specifically states that Covad should have petitioned for review of Order No. 05 shortly after the FCC released the NAL decision, instead of waiting nearly two months to do so. Staff also asserts that consideration of the NAL decision will involve more substantial time and effort than will be saved. *Id. at 4-5.*
- 14 If the Commission accepts the petition for review, Staff requests that the Commission affirm Order No. 05. *Id. at 5.* Staff argues that the FCC's NAL decision does not change the soundness of the Commission's decision in Order No. 05 that both parties to an agreement bear the responsibility for filing the

agreement with state commissions. Staff argues that several paragraphs of the NAL, paragraphs 11, 22, and 33, reaffirm that “carriers” generally and “LECs” generally must file interconnection agreements with state commissions, supporting the Commission’s interpretation in Order No. 05. *Id. at 6-7*. Further, Staff argues that the FCC notes the Commission’s complaint in this proceeding and Order No. 05 in footnote 15 of the NAL, but does not criticize the Commission’s actions. *Id. at 5-6*.

15 Staff asserts that nothing should be read into the lack of enforcement action against CLECs, arguing that the matter was an enforcement action against Qwest based on specific facts at issue, *i.e.*, Qwest’s actions during efforts to seek Section 271 approval. *Staff Response at 7-10*. That the FCC did not pursue enforcement action against CLECs does not mean the FCC has determined that CLECs bear no responsibility for filing agreements: The FCC, like the Commission, has prosecutorial discretion to determine the focus of its enforcement priorities. *Id. at 10-11*.

16 **Discussion and Decision.** The Commission’s procedural rules require parties seeking review of an interlocutory order to do so promptly, *i.e.*, within ten days after service of the order. *WAC 480-07-810(3)*. Such a time limit prevents unnecessary delay in the procedural schedule and allows the Commission to resolve preliminary matters quickly. The rule also provides that interlocutory review is discretionary with the Commission, and that the Commission may modify the filing deadlines in the rule when doing is in the public interest. *WAC 480-07-810(2), (3)*.

17 The Commission looks with disfavor on a petition for interlocutory review filed nearly two months after such a petition could have been filed. The Commission will entertain Covad’s late-filed petition, however, finding that it is in the public interest to do so. Whether both CLECs and ILECs are subject to the Section 252 filing requirements is a central issue in this proceeding. The Commission should

consider any FCC decision that addresses this key issue, particularly one released after Order No. 05 was entered, in order to ensure that the decision in Order No. 05 is sound. The public interest requires that the Commission resolve the issues Covad raises now, rather than at the end of the proceeding, to narrow the issues for the parties and allow the parties to better focus their efforts in preparing for hearing. Such a review also meets the standard that “review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.” *WAC 480-07-810(c)*.

- 18 While the Commission entertains Covad’s petition for review, the Commission denies Covad’s petition, finding that the FCC’s NAL decision is consistent with, and does not undermine, the Commission’s decision in Order No. 05 concerning Section 252 filing requirements.
- 19 Covad argues that the NAL decision makes clear that Section 252 filing requirements do not apply to CLECs. Covad asserts that the FCC intended the Declaratory Ruling to clarify only the ILECs’ responsibility for filing agreements with state commissions under Section 252(a)(1), and that these requirements do not apply to CLECs. While Covad is correct that the Declaratory Ruling and the NAL decision both focus on the Section 252 filing obligations of ILECs, and Qwest in particular, such a focus does not preclude a finding that CLECs are also responsible for filing agreements under Section 252.
- 20 The focus on ILECs and Qwest in the NAL decision and the Declaratory Ruling is reasonable. Qwest filed the petition for declaratory ruling that resulted in the FCC’s Declaratory Ruling in order to avoid multiple inconsistent rulings by state commissions. The NAL decision is an FCC enforcement proceeding focused on Qwest due to its actions, and failures to act, during Section 271 proceedings that followed the FCC’s issuance of the Declaratory Ruling. The fact the FCC has taken no enforcement action against CLECs cannot be interpreted as a FCC

decision that CLECs are not subject to Section 252 filing requirements. As Staff and Qwest assert in their responsive pleadings, the lack of FCC enforcement action should be attributed to prosecutorial discretion, not an interpretation of Section 252 filing requirements.

- 21 Despite the focus on ILECs and Qwest, the FCC has used language in both decisions stating that all carriers and LECs, generally, bear responsibility for filing interconnection agreements with state commissions under Section 252. In paragraphs 8, 10, and 12 of the Declaratory Ruling, and paragraphs 11, 22, and 33 of the NAL decision, the FCC provided that all carriers, including LECs generally, must file interconnection agreements with state commissions for approval. The FCC could have limited the application of the Declaratory Ruling and NAL decision only to ILECS, but instead used broad language in both decisions to apply Section 252 filing requirements to all carriers, including LECs generally.
- 22 In a footnote describing state investigations in Qwest's region, the FCC identifies that the Commission initiated a complaint proceeding against Qwest and thirteen CLECs. *NAL Decision*, n. 15. The FCC also notes that the Commission entered an order regarding section 252(e)(1) filing requirements, citing to Order No. 05. *Id.* The FCC merely identifies the status of the Washington Commission's and other state commissions' unfiled agreement proceedings, and in no manner states an opinion as to the merits of the Commission's decision in Order No. 05. The language in the footnote has no bearing on this proceeding or the soundness of Order No. 05.
- 23 Finally, other states have recognized that both parties to an interconnection agreement are responsible for filing the agreement with state commissions. As noted by Qwest in its response to Covad's petition, the Iowa Utilities Board reached such a conclusion in 2002. *Qwest Response*, n.2, citing *Order Making Tentative Findings, Giving Notice for Purposes of Civil Penalties, and Granting*



*Opportunity to Request Hearing, In re AT&T Corporation v. Qwest Corporation, Docket No. FCU-02-2, (Iowa Utilities Board, May 29, 2002).* More recently, the Texas Public Utility Commission directed both SBC Texas and Sage Telecom, Inc. to file an interconnection agreement with the Texas Commission. *See Joint CLEC Petition for ruling Relative to the Need for Public Review and Approval by the Commission of the April 3, 2004 Telecommunications Services Agreement Between SBC Texas and Sage Telecom, Order No. 04, Docket No. 29644, Before the Public Utility Commission of Texas (May 27, 2004).* The Commission's decision in Order No. 05 concerning CLEC filing obligations under Section 252 is affirmed.

**B. Covad's Petition for Clarification.**

24 **1. Covad's Argument.** Covad's pleading also includes a petition for clarification of Order No. 05. If the Commission does not reverse its decision in Order No. 05 regarding CLEC filing obligations, Covad requests that the Commission look to the NAL decision and equitable principles to find that a reasonable time to comply with filing obligations begins after being put on notice of the filing obligation, *i.e.*, the date the Commission entered Order No. 05. *Covad Petition at 6.* Covad argues that CLECs have only had "official and specific notice" of such a filing requirement for CLECs since February 12, 2004. *Id.* Covad argues that it has been standard industry and regulatory practice since implementation of the Act for ILECs to file agreements with state commissions and that Order No. 05 was the "first regulatory ruling of its kind." *Id. at 7.*

25 Covad asserts that, following release of the Declaratory Ruling, the FCC gave Qwest a reasonable time to file applicable agreements with states without sanctions or penalties. *Id. at 8.* Covad requests that the Commission extend a similar "courtesy" to the CLECs. If the Commission clarified the effect of Order No. 05 in this way, the Commission should dismiss the claims against Covad for the remaining agreements at issue, as the Commission approved these agreements in September 2002.

- 26 **2. CLEC Responses.** MCI, Eschelon, and Integra filed letters with the Commission supporting and concurring in Covad's petition.
- 27 **3. Qwest Response.** Qwest supports Covad's assertion that the Commission should find violations of Section 252 "only if a carrier fails to file within a reasonable period of learning of its obligation to file an agreement." *Qwest Response at 4.* Qwest argues, however, that Covad has not provided sufficient authority to support its "reasonable notice" argument. *Id.* Qwest notes that the Iowa Utilities Board entered a ruling in May 2002 determining that CLECs were required to file agreements with state commissions under Section 252. *Id.* Qwest also requests that any determination of what constitutes a reasonable time for compliance should apply equally to Qwest. *Id. at 5.*
- 28 **4. Staff Response.** Staff argues that Covad's petition for clarification is improper as there is no rule in chapter 480-07 WAC for a petition for clarification of an interlocutory order. *Staff Response at 11.* If the standards of WAC 480-07-835 apply, a motion for clarification may not be used to seek to change the outcome with respect to any issue in the order. *Id. at 11-12.* Staff argues that Covad's request for a particular interpretation of a reasonable time to file an agreement would result in Covad's dismissal from the case, arguing that such a pleading is either a challenge to a finding of fact or conclusion of law, or a dispositive motion. *Id. at 12-13.* Staff argues that Covad has waived the opportunity to file a late dispositive motion based upon the NAL decision, and that Covad's petition should be rejected. *Id. at 13-14.*
- 29 Staff urges rejection of Covad's petition, arguing that the language Covad cites from the NAL and Declaratory Ruling does not mandate adoption of a particular measure of a reasonable time to file. *Id. at 14-15.* Should the Commission clarify Order No. 5, Staff suggests that a reasonable time period for filing agreements is less than five months following execution of an agreement. *Id. at 15.*

30 **Discussion and Decision.** As Staff notes in its response, there is no provision in chapter 480-07 WAC for clarification of an interlocutory order. However, where the Commission can clarify the intent of an interlocutory order to allow the parties to more efficiently litigate a proceeding, a petition for clarification is appropriate.

31 A petition for clarification seeks to “clarify the meaning of an order so that compliance can be enhanced, so that any compliance filing may be accurately prepared and presented, to suggest technical changes that may be required to correct the application of principle to data, or to correct patent error.” *WAC 480-07-835(1)*. A petition for clarification of an interlocutory order seeking a substantive determination of a pending issue is more similar to a dispositive motion, and should be denied.

32 In this case, Covad requests that the Commission interpret a reasonable time to file agreements as a reasonable time for compliance with Order No. 05. This is more appropriately an issue to be litigated in the proceeding, or to be addressed in dispositive motion, rather than resolved in a petition for clarification of the meaning of Order No. 05. The varying responses of Qwest and Staff demonstrate that this is an issue to be addressed in prefiled testimony and in hearing, rather than determined on the basis of a petition for clarification and responses. Covad’s petition for clarification is denied, and the parties are instructed to address the issue in testimony filed with the Commission and during hearing.

### **C. The FairPoint Settlement.**

33 The settlement agreement between Staff and FairPoint filed by Staff on May 14, 2001, addresses a September 4, 2001, agreement between Qwest and FairPoint, referred to as Agreement No. 30 in Exhibit A to the Amended Complaint. Staff’s

filing includes both the settlement agreement as well as a narrative summary of the terms in the settlement agreement and the rationale for the settlement.

34 In the settlement, FairPoint “accepts and agrees to be bound by the terms of” Order No. 05, and admits that the September 4, 2001, agreement is an interconnection agreement. *Settlement*, ¶6. FairPoint agrees to pay a penalty of \$1000. *Id.*, ¶12. FairPoint asserts that at the time the agreement was executed, FairPoint believed the obligation to file the agreement with state commissions rested solely with Qwest, but admits that it has a legal obligation to file and seek Commission approval for all interconnection agreements. *Id.*, ¶¶ 7, 8. FairPoint agrees to file any future interconnection agreements within 30 days of execution, and any interconnection agreement not yet filed with the Commission within 30 days of approval of the settlement agreement. *Id.*, ¶¶ 9, 10. If approved, the settlement will resolve all issues raised against FairPoint in the Complaint and Amended Complaint issued by the Commission.

35 The parties entered into the settlement to avoid the additional expense, uncertainly and delay involved in litigation of the issues in this docket. The parties assert that the settlement agreement is consistent with the law and the public interest, as FairPoint accepts the terms of Order No. 05, agrees to a penalty for not filing the September 4, 2001, agreement with the Commission, and understands and agrees to comply with its Section 252 filing obligations in the future. The parties assert that while the penalty amount, \$1000, may be “small in proportion to the overall harm that may have been caused by Qwest and all competitive local exchange carriers identified in the Complaint and Amended Complaint,” but that FairPoint has played a “relatively small part” in the overall history of unfiled agreements in the state of Washington. *Narrative at 2-3.*

36 **Discussion and Decision.** Based on the information provided the Settlement Agreement and accompanying narrative, the Commission finds pursuant to WAC 480-07-740(1)(d) that a settlement hearing would not assist it in

determining whether to approve the proposed settlement. The ultimate determination to be made by the Commission in this proceeding is whether approving the settlement is “lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” *WAC 480-07-750(1)*.

- 37 The settlement is consistent with Section 252 and the Commission’s finding concerning Section 252 filing obligations in Order No. 05. FairPoint agrees to be bound by the provisions of Order No. 05 and to file interconnection agreements in the future within 30 days of execution of the agreement, as well as to file any outstanding agreements within 30 days of approval of the settlement. The settlement is in the public interest, as it reduces the expense, uncertainty and delay of litigation. The settlement allows parties an efficient way to effect future compliance and acknowledge their Section 252 filing obligations through specific terms and an appropriate penalty.
- 38 The information provided in the Settlement Agreement, its accompanying narrative statement, and the record in this proceeding, supports the agreements reached in the Settlement as well as the Commission’s approval of the Settlement. The parties expressed the basis and justification for the settlement in the Settlement itself and the narrative statement.
- 39 Based on the record developed in this proceeding, we find the issues pending against FairPoint in this complaint proceeding are adequately addressed and resolved by the terms of the Settlement. Under these circumstances, we are satisfied that the Settlement is lawful, appropriate, and consistent with the public interest. The Settlement should be approved and adopted as a full and final resolution of all issues pending against FairPoint in Docket No. UT-033011.

### **III. FINDINGS OF FACT**

40 Having discussed above in detail the documentary evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues at impasse among the parties and the reasons and bases for those findings and conclusions, the Commission now makes and enters the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings stated below are incorporated into the ultimate findings by reference.

41 (1) Qwest Corporation is a Bell operating company within the definition of 47 U.S.C. § 153(4), and incumbent Local Exchange Company, or ILEC, providing local exchange telecommunications service to the public for compensation within the state of Washington.

42 (2) The respondent competitive local exchange carriers, or CLECs - Allegiance Telecom, Inc. (Allegiance), Advanced Telecom, Inc. (ATG), AT&T Communications of the Pacific Northwest, Inc. (AT&T) and TCG Seattle (TCG), Covad Communications Company (Covad), Electric Lightwave, LLC, Eschelon Telecom of Washington, Inc. (Eschelon), FairPoint Carrier Services, Inc. (FairPoint), Global Crossing Local Services, Inc. (Global Crossing), Integra Telecom of Washington, Inc. (Integra), McLeod Telecommunications, Inc. (McLeod), SBC Telecom, Inc. (SBC), Time Warner Telecom of Washington, Inc. (Time Warner), WorldCom, Inc., on behalf of its regulated subsidiaries in Washington State (n/k/a MCI), and XO Washington, Inc. (XO) - are local exchange carriers within the definition of 47 U.S.C. § 153(26), providing local exchange telecommunications service to the public for compensation within the state of Washington, or are classified as competitive telecommunications companies under RCW 80.36.310-.330.

- 43 (3) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state, and to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the Telecommunications Act of 1996.

#### **IV. CONCLUSIONS OF LAW**

44 Having discussed above in detail all matters material to this decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 45 (1) The Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.
- 46 (2) WAC 480-07-810(3) requires parties seeking review of an interlocutory order to do so promptly, *i.e.*, within ten days after service of the order. Such a time limit prevents unnecessary delay in the procedural schedule and allows the Commission to resolve preliminary matters quickly.
- 47 (3) Interlocutory review is discretionary with the Commission, and the Commission may modify the filing deadlines for petitions for interlocutory review when doing is in the public interest. *WAC 480-07-810(2), (3)*.
- 48 (4) The public interest requires that the Commission resolve Covad's petition for interlocutory review to narrow the issues for the parties and allow the parties to better focus their efforts in preparing for hearing.

- 49 (5) The FCC's NAL decision is consistent with, and does not undermine, the Commission's decision in Order No. 05 that both ILECs and CLECs must comply with Section 252 filing requirements.
- 50 (6) The Commission's procedural rules do not provide for clarification of an interlocutory order. A petition for clarification is appropriate, however, where the Commission can clarify the intent of an interlocutory order to allow the parties to more efficiently litigate a proceeding.
- 51 (7) A petition for clarification of an interlocutory order seeking a substantive determination of a pending issue is more similar to a dispositive motion and should be denied.
- 52 (8) The settlement agreement between FairPoint Carrier Services, Inc. f/k/a FairPoint Communications Solutions Corp. and Commission Staff is consistent with Section 252 and the Commission's finding concerning Section 252 filing obligations in Order No. 05. The settlement is in the public interest, as it reduces the expense, uncertainty and delay of litigation.

## **V. ORDER**

### **THE COMMISSION ORDERS:**

- 53 (1) The petition of Covad Communications Company for interlocutory review of Order No. 05 is denied.
- 54 (2) The petition of Covad Communications Company for clarification of Order No. 05 is denied: The parties must address in prefiled testimony



and at hearing the issue of what constitutes a reasonable time to file agreements.

- 55 (3) The Commission approves and adopts the Settlement Agreement between FairPoint Carrier Services, Inc. f/k/a FairPoint Communications Solutions Corp. and Staff as a complete resolution of the issues pending against FairPoint in the Complaint and Amended Complaint in this proceeding.
- 56 (4) Within 15 days of the service date of this Order, FairPoint Carrier Services, Inc. f/k/a FairPoint Communications Solutions Corp. must pay a penalty of \$1000 to the Commission, payable to the Public Service Revolving Fund.

Dated at Olympia, Washington, and effective this 2nd day of June, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner