

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Petitioners,

v.

ADVANCED TELECOM GROUP, INC.,
et al,

Respondents.

DOCKET NO. UT-033011

NARRATIVE (ELI SETTLEMENT
AGREEMENT)

Parties to the Settlement Agreement

1 The Parties to this Settlement Agreement are Commission Staff (Staff), and
Electric Lightwave, LLC. (ELI), a competitive local exchange carrier (CLEC).

Scope of the Underlying Dispute

2 On August 13, 2003, and August 15, 2003, respectively, the Commission
issued a complaint and an amended complaint against Electric Lightwave, LLC
(ELI) and several other telecommunication companies. The Commission alleged
that ELI failed to file and seek Commission approval for four agreements (hereafter
referred to as the "Agreements") between ELI and Qwest Corporation, an

incumbent local exchange carrier, as required by 47 U.S.C. § 252(a)(1), (e), and RCW 80.36.150.

Scope of the Settlement and its Principal Aspects

3 ELI admits that three of the agreements are Interconnection Agreements
under current FCC and Washington Utilities and Transportation Commission
(WUTC) orders. However, ELI emphasizes that at the time it entered into each
Agreement it believed, based on law in existence at the time, that the Agreements
did not constitute interconnection agreements.

4 In order to ensure an understanding of any future obligations with regard to
Interconnection Agreements, ELI admits it has a legal obligation to file and seek
Commission approval for all Interconnection Agreements, agrees to file and seek
Commission approval for all future Interconnection Agreements within thirty days
of execution, and agrees to be bound by the obligations of the Settlement
Agreement or future obligations imposed by statute or rule. ELI also agrees to
disclose any unfiled agreements which have not yet been uncovered.

The Settlement Serves the Interests of the Parties and the Public Interest

5 Order Number 05 in this docket fairly lays out the obligations of both Qwest
and competitive local exchange carriers regarding the filing of Interconnection
Agreements for approval by the Commission. In this Settlement Agreement, ELI

accepts the terms of Order Number 05 and agrees to be bound by strict obligations with regard to filing Interconnection Agreements for approval with Commission.

6 The terms of the Settlement Agreement serve the public interest, the interests of Commission Staff, and the interests of ELI by providing a mechanism by which all parties understand future obligations under the law. Although the penalty provided is small in proportion to the overall harm that may have been caused by Qwest and all the competitive local exchange carriers identified in the Complaint and Amended Complaint, the settlement is in the interest of all parties and the public considering the willingness of ELI to own up to its obligation, the culpability of ELI in failing to recognize its duty to file, the strong deterrent effect of the penalty when it is coupled with the other terms of the Settlement Agreement, ELI's bargaining position in relation to Qwest, and the fact that three agreements are at issue.

7 ELI has played a relatively small part of the larger picture of known unfiled Interconnection Agreements in the State of Washington. *See* Exhibit A to Order No. 5. This Settlement Agreement recognizes that while ELI may have simply *misunderstood* its obligation to file Interconnection Agreements, the broad consequences of ELI and other companies' failure to file agreements may have damaged the telecommunications marketplace in Washington and frustrated the purposes of the Telecommunication Act of 1996. The Settlement Agreement also

recognizes that competitive local exchange carriers like ELI are at a disadvantage when negotiating agreements with an incumbent local exchange carrier with the market share, power and resources of Qwest, and that such competitive local exchange carriers' culpability is commensurately lower. The scope of ELI's obligations under the Settlement Agreement coupled with the penalty ensures that any future agreements will be filed in compliance with the law.

Legal Points

8 Pursuant to Order Number 05, the only issue remaining to be litigated with regard to ELI is the second cause of action to the Amended Complaint in which the Commission alleges that 47 U.S.C. § 252(e) requires state commission approval of agreements between incumbent local exchange companies and other telecommunications companies for interconnection, services, or network elements. In the second cause of action the Commission also alleges that 47 U.S.C. § 252(e) requires that such agreements be filed in a timely manner. Under RCW 80.04.380 the Commission may issue penalties of up to one thousand dollars (\$1000) per violation of 47 U.S.C. § 252(e) with each day of a continuing violation constituting a

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separate and distinct offense. Rather than litigate this matter, the parties agree to the Settlement Agreement for the reasons discussed above.

DATED this 30th day of April, 2004.

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