

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

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION)	
)	
Petitioners,)	DOCKET NO. UT-033011
)	
v.)	
)	
ADVANCED TELECOM GROUP, INC.)	
et al.,)	
)	
Respondents.)	

**DIRECT TESTIMONY OF
MICHAEL HYDOCK
ON BEHALF OF
AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.
AND
TCG SEATTLE/OREGON**

June 7, 2004

INTRODUCTION

Q. PLEASE STATE YOUR FULL NAME AND BUSINESS ADDRESS FOR THE RECORD.

A. My name is Michael Hydock.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by AT&T as District Manager, ICA Negotiations.

Q. WHAT ARE YOUR PRIMARY RESPONSIBILITIES IN YOUR JOB?

A. I am responsible for negotiating interconnection contracts between AT&T (and its subsidiary, TCG) and Qwest. My work includes formulating policy and business positions, negotiating with Qwest and supporting the arbitration process in front of state commissions on disputed issues. Additionally, I provide contract interpretation support for AT&T organizations and work with those organizations to develop amendments as needed to improve contracts.

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL EXPERIENCE.

A. I graduated from Rutgers University in 1975 with a Bachelor of Arts degree in Economics. I received a Masters of Economics from the graduate school at Georgetown University in 1977, and have completed my Ph.D. coursework and comprehensive examinations. I have also completed various training seminars offered by MCI and AT&T in marketing, telecommunications, network, and costing methods in the telecommunications field.

BACKGROUND & PURPOSE OF TESTIMONY

Q. WHAT IS AN INTERCONNECTION AGREEMENT FOR PURPOSES OF LOCAL TELECOMMUNICATIONS IN THIS DOCKET?

A. Under the Telecommunications Act of 1996, only incumbent local exchange carriers (“ILECs”) have an obligation to make unbundled network elements and other types of access to local customers available to the CLECs -- ILECs do this in part via interconnection agreements (“ICAs”).¹ On October 4, 2002, the Federal Communications Commission (“FCC”) released its Memorandum Opinion and Order in response to a Qwest petition seeking a declaratory ruling of Qwest’s filing obligations under § 252(e) of the Act.² The FCC determined that an ICA which creates an *ongoing* obligation, pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation, is an interconnection agreement that must be filed pursuant to § 252(a)(1).

Q. ARE YOU FAMILIAR WITH THE TWO AT&T/QWEST (FORMERLY U S WEST) AGREEMENTS AT ISSUE IN THIS CASE?

A. Yes. Those agreements are: (1) the “Agreement Between AT&T, U S WEST and Qwest” dated April 24, 2000 (hereinafter “*Merger Settlement*”) and (2) the “Confidential Billing Settlement Agreement and Release” dated March 13, 2000 (hereinafter “*Billing Settlement*”).

¹ 47 U.S.C. § 251(c) (describing the duties of incumbents); 47 U.S.C. § 252 (describing the filing requirements for ICAs entered into between ILECs and CLECs).

² *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)1*, WC Docket No. 02-89 Memorandum Opinion and Order, FCC 02-0276 (rel Oct 4, 2002) (“Declaratory Order”).

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony addresses both the agreements I just identified and discusses why these two agreements do not constitute ICA's under federal or State law such that they required filing with the Washington Commission for approval under 47 U.S.C. § 252(e).

ICA FILING REQUIREMENTS

Q. ARE YOU FAMILIAR WITH THE ICA FILING REQUIREMENTS UNDER THE TELECOMMUNICATIONS ACT OF 1996?

A. Yes. Briefly, under 47 U.S.C. § 252(e), interconnection agreements must be approved by the appropriate state commission. And under 47 U.S.C. § 252(h), agreements that have been approved must be filed and made available for public inspection. Additionally, under § 252(i), the incumbent is obligated to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." The filing and public inspection requirements, together with the so-called "pick and choose" provisions of § 252(i), are all intended to facilitate the enforcement of the nondiscrimination requirements of 47 U.S.C. § 251(c)(2)(C) and (D).

Q. HAS THE FCC MADE ANY PRONOUNCEMENTS REGARDING THE FILING REQUIREMENTS?

A. Yes, the one I noted above.

Q. ARE THERE ANY STATE REQUIREMENTS REGARDING FILING?

A. Yes, the current Commission rule, WAC 480-07-640, describes the filing and approval process of interconnection agreements developed under the 1996 Act. In short, the rule states that “the parties” to these agreements must file them with the Commission for approval. This rule, however, was enacted *after* the two AT&T/Qwest agreements at issue here; that is, the rule went into effect in January 2004, and the AT&T/Qwest agreements were executed in 2000.

Q. AS A PRACTICAL MATTER WHO HAD THE OBLIGATION TO FILE ANY ICAs IN 2000 WHEN THE CONTRACTS UNDER CONSIDERATION HERE WERE ENTERED INTO BETWEEN THE PARTIES?

A. AT&T always has relied upon Qwest to file the interconnection agreements for Commission approval. The general process is as follows. For negotiated agreements that need no arbitration, the parties agree upon the full text of the contract and any attachments, and Qwest files the contract with the relevant state utility commission. The ICA is then reviewed by the utility commission and is either explicitly or implicitly approved within 90 days of filing. If the contract has been arbitrated, then AT&T and Qwest work together to implement the arbitration order from the appropriate authority and Qwest takes the final document and files it with the state commission for final approval.

Q. HOW DOES AT&T DETERMINE WHICH CONTRACTS REQUIRE FILING WITH THE STATE COMMISSIONS AND WHICH CONTRACTS DO NOT?

A. All contracts that determine the basic terms and conditions of the requirements of 251 and 252 should be filed with the commissions.

Q. ARE THERE ANY DISTINCTIONS BETWEEN ICAS AND SETTLEMENT AGREEMENTS THAT THE COMMISSION SHOULD CONSIDER HERE?

A. In general, an ICA represents a compromise between adequate enough detail to allow the parties to understand the processes and arrangements that must be followed, while allowing some level of detail for arrangements between the parties to be worked out later at an operational level. For example, the contract may provide that parties will use factors to distribute traffic for billing purposes, but the details of the factor development are left to the operational levels of the two companies. If the working levels put together a document setting out the exact procedure of the factor process, that is not viewed as a document that needs to be filed, since it is following the general terms and conditions of the ICA. Likewise, if a settlement agreement is reached that serves to clean up assorted historical issues and provide some agreement on additional processes or arrangements concerning the operational level of the contract, and if that agreement fleshes out the underlying ICA, that settlement agreement need not be filed.

**Q. WHAT ARE THE TWO AT&T/QWEST CONTRACTS AT ISSUE HERE:
ICAS OR SETTLEMENT AGREEMENTS?**

A. They are settlement agreements.

**HISTORY AND PURPOSE OF THE TWO
AT&T/QWEST CONTRACTS AT ISSUE**

**Q. LET’S TURN TO A DISCUSSION OF THE TWO CONTRACTS
BETWEEN AT&T AND QWEST AT ISSUE IN THIS PROCEEDING.
STARTING WITH THE MERGER SETTLEMENT, PLEASE DESCRIBE
THE HISTORY AND PURPOSE OF THIS AGREEMENT.**

A. The agreement was entered into between AT&T and U S WEST during the time that U S WEST was seeking Commission approval of its merger with Qwest. The approximate date of the negotiation and contract was October of 1999.

AT&T intervened in the merger cases across the Qwest/U S WEST 14-state region in an effort to ensure that its interests were protected during and after the merger. At that same time Qwest/U S WEST was threatening to run “open access” or “unbundling” legislation that would require a nascent competitor, AT&T Broadband—and other similarly situated cable companies—to unbundle the cable network. AT&T was just getting started in cable telephony at that time.

**Q. IN YOUR ESTIMATION WERE THE TWO COMPANIES’ ENDEAVORS,
THE MERGER AND THE BROADBAND PHONE ROLL-OUT, OF
GREAT IMPORTANCE TO THE RESPECTIVE COMPANIES?**

A. Yes, both projects were important marketplace initiatives and that is why the companies entered into the settlement agreement. They wanted to address and resolve the issues posed with respect to both those projects.

Q. DID THE WASHINGTON COMMISSION HAVE AN OPPORTUNITY TO EXAMINE THAT AGREEMENT?

A. Yes it did. The agreement was filed with the Commission and the Commission declared it was not confidential.

Q. DID THE COMMISSION EVER REQUEST THAT AT&T FILE THE MERGER AGREEMENT AND SEEK APPROVAL THEREOF AS IF IT WERE AN ICA?

A. No.

Q. LOOKING AT THE SECOND CONTRACT, THAT IS THE “BILLING SETTLEMENT,” PLEASE DESCRIBE THE HISTORY AND PURPOSE OF THIS AGREEMENT.

A. Overall the Billing Settlement agreement was designed to clean up operational and largely historical problems that cropped up during the effective period of the TCG contract. As discussed above, the ICA set the general responsibilities for both parties in the contractual relationship, but was silent on some of the underlying details. As the parties worked under this first interconnection agreement, issues arose at the operational level, primarily in the measurement and billing for traffic, that resulted in certain disagreements between the parties on the process underlying the contract. During late 1999 and early 2000, US WEST and AT&T employees identified these issues, discussed solutions to these problems, and came up with a compromise solution to settle the historical disagreements. In essence, because of the unforeseen difficulty in measuring the traffic between the parties at the granularity that was required, the parties adopted factors and

assumptions to properly compensate each other according to the specified requirements of the overall ICA. Since these were merely working level arrangements to operationalize the TCG contract, any party that opted into the TCG contract would have had similar operational discussions with US WEST as to how their two companies could measure traffic. Any other company with historical traffic volumes also would have had to work out how to apply factors to past volumes and each company would have had a unique settlement.

Q. DIDN'T THE AGREEMENT ALSO DISCUSS RECIPROCAL COMPENSATION ISSUES?

A. Yes, it did, but not as to Washington State because of the mandate of "bill and keep" that was in place in Washington State.

Q. DID AT&T CONSIDER ASKING QWEST TO FILE THE "BILLING SETTLEMENT" CONTRACT?

A. No. We did not see the Settlement as being an ICA that needed to be generally available to other carriers. Qwest also did not suggest it needed to be filed.

CONCLUSION

Q. SO IN YOUR OPINION, DOES AT&T HAVE AN OBLIGATION TO FILE EITHER THE MERGER SETTLEMENT OR THE BILLING SETTLEMENT WITH THIS COMMISSION FOR APPROVAL AS THOUGH THE AGREEMENTS WERE ICAS?

A. First, it is our position that Qwest is the party with the obligation to file any ICA. As to the specific contracts at issue, the principle of ensuring nondiscrimination by availability of ICAs was not violated. In the case of the merger settlement, the issues

dealt with issues specific to only AT&T and Qwest, and no party would have been able to opt-into that agreement. With respect to the billing settlement, that agreement reflected operational details of the overriding contract, and any party opting into the TCG agreement would have required discussions with Qwest and reached an agreement on working level issues between themselves and Qwest.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.