

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
CASE NO.: UT-033011
REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

QWEST DATA REQUEST TO STAFF NO. 5:

Please identify any Washington statutes, regulations or other authorities that create any obligation by telecommunications carriers to file with the Washington State Utilities and Transportation Commission ("Commission") a broader range of agreements than the definition of "interconnection agreement" contained in the FCC Order.

RESPONSE:

Objection. The question calls for a legal conclusion.

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QWEST DATA REQUEST TO STAFF NO. 6:

Please identify any Washington statutes, regulations or other authorities that create any obligation by telecommunications carriers to file inter-carrier settlement agreements with the Commission.

RESPONSE:

Objection. The question calls for a legal conclusion.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
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QWEST DATA REQUEST TO STAFF NO. 7:

Please identify any federal statutes, regulations or other authorities that create any obligation by telecommunications carriers to file inter-carrier settlement agreements with the Commission.

RESPONSE:

Objection. The question calls for a legal conclusion.

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QWEST DATA REQUEST TO STAFF NO. 8:

Please identify any Washington statutes, regulations or other authorities that create any obligation by telecommunications carriers to publish or otherwise make inter-carrier settlement agreements available for public inspection, review, comment, approval or opt-in.

RESPONSE:

Objection. The question calls for a legal conclusion.

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QWEST DATA REQUEST TO STAFF NO. 9:

Please identify any federal statutes, regulations or other authorities that create any obligation by telecommunications carriers to publish or otherwise make inter-carrier settlement agreements available for public inspection, review, comment, approval or opt-in.

RESPONSE:

Objection. The question calls for a legal conclusion.

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QWEST DATA REQUEST TO STAFF NO. 10:

Please admit that Qwest was not required by any statute, regulation or other authority to file the agreements listed in Exhibit B to Commission Order No. 05 with the Commission for approval. If your response is anything other than an unqualified admission, please identify each statute, regulation or other authority supporting your answer.

RESPONSE:

Objection. The questions call for a legal conclusion rather than an admission of fact.

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QWEST DATA REQUEST TO STAFF NO. 11:

Please admit that Qwest is not required to file settlement agreements containing only “backward looking” terms with the Commission for approval.

RESPONSE:

Objection. The question calls for a legal conclusion rather than an admission of fact.

Without waiving objection, Staff contends that if the agreement contains ongoing obligations pertaining to §251(b) or (c), including directly or indirectly, or by any special rate, rebate, drawback or other device or method an ongoing rate effect pertaining to §251(b) or (c), then it should be filed with the Commission under §252(e).

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QWEST DATA REQUEST TO STAFF NO. 12:

If your response to Qwest Data Request No. 11 is anything other than an unqualified admission, please explain why and under what circumstances Qwest is required to file settlement agreements containing only “backward looking” terms with the Commission for approval and identify all authorities on which the Staff relies for that position.

RESPONSE:

Objection. Please see response to Qwest Data Request No. 11.

Without waiving objection, Staff contends that if the agreement contains ongoing obligations pertaining to §251(b) or (c), including directly or indirectly, or by any special rate, rebate, drawback or other device or method an ongoing rate effect pertaining to §251(b) or (c), then it should be filed with the Commission under §252(e).

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QWEST DATA REQUEST TO STAFF NO. 15:

Please admit that CLECs that wish to opt into approved interconnection agreement provisions pursuant to 47 U.S.C. § 251(i) must satisfy all reasonably related terms and conditions of the agreement or provision they wish to opt into. If your response is anything other than an unqualified admission, please identify each statute, regulation or other authority supporting your answer.

RESPONSE:

Objection. Calls for a legal conclusion rather than a factual admission.

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QWEST DATA REQUEST TO STAFF NO. 16:

Please admit that a CLEC that is unwilling or unable to satisfy all reasonably related terms and conditions of an agreement or provision it wishes to opt into may not then opt into that agreement or provision.

RESPONSE:

Objection. Calls for a legal conclusion rather than a factual admission.

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QWEST DATA REQUEST TO STAFF NO. 17:

If your response to Qwest Data Request No. 16 is anything other than an unqualified admission, please explain why the Staff does not agree with that statement and identify all authorities on which the Staff relies in support of its position.

RESPONSE:

Objection. Calls for a legal conclusion.

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QWEST DATA REQUEST TO STAFF NO. 18:

Please admit that CLECs may not opt into interconnection agreement provisions pursuant to 47 U.S.C. § 251(i) unless those provisions have been approved by the Commission.

RESPONSE:

Objection. Calls for a legal conclusion rather than a factual admission.

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QWEST DATA REQUEST TO STAFF NO. 19:

Please admit that CLECs suffer no harm from the inability to opt into interconnection agreement provisions that would not have been approved by the Commission had they been filed in a timely manner.

RESPONSE:

Objection. The question is vague, ambiguous, and confusing and assumes facts not in evidence about a hypothetical situation where Staff is being asked to determine that there has not been any harm. Staff has no way to know if harm is suffered or not under the hypothetical scenario vaguely described.

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QWEST DATA REQUEST TO STAFF NO. 20:

If your response to Qwest Data Request No. 19 is anything other than an unqualified admission, please explain why the Staff does not agree with that statement and identify all authorities on which the Staff relies in support of its position.

RESPONSE:

Objection. Calls for a legal conclusion. See also response to Qwest Data Request to Staff No. 19.

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QWEST DATA REQUEST TO STAFF NO. 21:

Please admit that CLECs suffer no harm from the inability to opt into interconnection agreement provisions for which they would have been unable or unwilling to satisfy all reasonably related terms.

RESPONSE:

See response to Qwest Data Requests to Staff No. 19.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
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QWEST DATA REQUEST TO STAFF NO. 22:

If your response to Qwest Data Request No. 21 is anything other than an unqualified admission, please explain why the Staff does not agree with that statement and identify all authorities on which the Staff relies in support of its position.

RESPONSE:

Objection. Calls for legal conclusion. See also response to Qwest Data Request to Staff No. 21.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
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WITNESS: Thomas L. Wilson
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QWEST DATA REQUEST TO STAFF NO. 23:

Please explain why settlements of backward-looking disputes between two carriers must, in the Staff's view, be made available for public inspection, review, comment, approval or opt-in.

RESPONSE:

Objection. Mischaracterizes Staff's view.

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QWEST DATA REQUEST TO STAFF NO. 25:

Please explain how, in the Staff's view, carriers who were not parties to the agreements listed in Exhibit B to Commission Order No. 05 would have or should have become aware of those agreements and their terms under the procedures that the Staff believes Qwest should have followed.

RESPONSE:

Objection, the question mischaracterizes Staff's view.

Without waiving the objection, Staff contends that Qwest should make sure the way in which its agreements are entered into does not violate various anti-discrimination statutes as discussed in detail in Staff's testimony concerning the fifth, sixth and seventh causes of action in the Complaint. Staff believes that its Qwest's decision to determine whether it will make particular terms available to all carriers and provide the carriers the opportunity to adopt those terms or not enter into agreements with those terms because do so requires Qwest to make the terms available to all carriers.

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QWEST DATA REQUEST TO STAFF NO. 27:

Please state whether it is the Staff's position that the settlement agreement described in this hypothetical must be filed with the Commission.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

Without waiving the objection, Staff answers that it depends on the specific terms of the agreement and whether it was meant to resolve a one time billing dispute.

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QWEST DATA REQUEST TO STAFF NO. 28:

If your answer to Qwest Data Request No. 27 is anything other than an unqualified “no,” please explain the reason(s) why the Staff contends that this hypothetical settlement agreement should be filed with the Commission, the authorities on which the Staff relies in support of that contention, and the procedures the Staff contends that Qwest should follow in complying with that obligation.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion. See also answer to data request number 27.

Without waiving the objection, Staff answers as follows: Please see response to Qwest Data Request No. 27. Any agreement that has ongoing obligations pertaining to §§251(b) and (c) has to be filed for approval under the act. An agreement on price of usage under an interconnection agreement is an ongoing obligation pertaining to §§251(b) and (c). The procedures for filing and approval of interconnection agreements, and amendments to interconnection agreements are set forth in Commission rule, heretofore policy statements, pursuant to the Act.

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QWEST DATA REQUEST TO STAFF NO. 29:

If your answer to Qwest Data Request No. 27 is anything other than an unqualified “no,” please explain whether the Commission would, in the Staff’s view, have the obligation or authority to approve, disapprove or modify this hypothetical settlement agreement and, if so, the authorities conferring that authority or obligation.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

Without waiving the objection, Staff answers as follows: Yes, the Commission has authority to approve interconnection agreements pursuant to the Act.

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QWEST DATA REQUEST TO STAFF NO. 30:

If your answer to Qwest Data Request No. 27 is anything other than an unqualified "no," please explain the standard(s) the Commission would be authorized or obliged, in the Staff's view, to apply in deciding whether to approve, reject or modify this hypothetical settlement agreement.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

Without waiving the objection, Staff answers as follows: The Commission would implement review pursuant to the Act and its own rules and/or policy statements.

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QWEST DATA REQUEST TO STAFF NO. 31:

If the Staff contends that the Commission has the authority to approve the hypothetical settlement agreement, please identify the right(s), terms and/or provisions other carriers could adopt or opt into upon approval and explain how those other carriers would do so.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

Without waiving the objection, Staff answers that §252(i) would be the primary authority, and adoption would be pursuant to the usual rules and processes.

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QWEST DATA REQUEST TO STAFF NO. 32:

If the Staff contends that the Commission has the authority to reject the hypothetical settlement agreement, please explain whether Qwest and CLEC A would then be precluded from resolving their dispute on those terms.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

Without knowing why the hypothetical interconnection agreement was rejected, Staff would not be able to speculate upon the hypothetical resolution of the dispute. A good solution would be to provide accurate billing records and have a set process for billing dispute resolution which is available for adoption, thereby ensuring that discrimination does not occur with resulting loss of opportunity for other CLECs who are substantially similarly situated.

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QWEST DATA REQUEST TO STAFF NO. 33:

If the Staff contends that the Commission has the authority to modify the hypothetical settlement agreement, please explain whether Qwest and CLEC A would then be required to resolve their dispute on the modified terms.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

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QWEST DATA REQUEST TO STAFF NO. 34:

Please state whether it is the Staff's position that the settlement agreement described in this hypothetical must be published or otherwise made available to other carriers for inspection, review, approval or opt-in.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

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QWEST DATA REQUEST TO STAFF NO. 35:

If your answer to Qwest Data Request No. 34 is anything other than an unqualified “no,” please explain the reason(s) why the Staff contends that this hypothetical settlement agreement must be published or otherwise made available to other carriers for inspection, review, approval or opt-in, the authorities on which the Staff relies in support of that contention, and the procedures the Staff contends that Qwest should follow in complying with that obligation.

RESPONSE:

See answer to DR No. 34.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
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QWEST DATA REQUEST TO STAFF NO. 36:

If the Staff contends that Qwest is obliged to publish this hypothetical settlement agreement or otherwise make it available to other carriers for inspection, review, approval or opt-in, please identify the right(s), terms and/or provisions other carriers could adopt or opt into upon approval and explain how those other carriers would do so.

RESPONSE:

See answer to DR No. 34.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
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QWEST DATA REQUEST TO STAFF NO. 37:

If the Staff contends that Qwest is obliged to publish this hypothetical settlement agreement or otherwise make it available to other carriers for inspection, review, approval or opt-in, please explain whether other carriers' right to adopt or opt into the right(s), terms and/or provisions of this hypothetical settlement agreement would change, affect or define Qwest's rights in connection with disputes it has with other carriers relating to matters other than minutes of usage.

RESPONSE:

See answer to DR No. 34.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
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QWEST DATA REQUEST TO STAFF NO. 38:

Please explain whether, in the Staff's view, Commission approval or other publication of this hypothetical settlement agreement would require Qwest to resolve all disputes with all CLECs relating to minutes of usage.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

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QWEST DATA REQUEST TO STAFF NO. 39:

If your response to Qwest Data Request No. 38 is anything other than an unqualified “no,” please explain the terms on which Commission approval or other publication of this hypothetical settlement agreement would require Qwest to resolve all disputes with all CLECs relating to minutes of usage.

RESPONSE:

See answer to DR No. 38.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
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QWEST DATA REQUEST TO STAFF NO. 40:

If your response to Qwest Data Request No. 38 is anything other than an unqualified "no," please explain whether the publication or approval of this hypothetical settlement agreement would require Qwest to settle some or all future disputes with CLEC A relating to minutes of usage, whatever the facts or circumstances of the particular dispute.

RESPONSE:

See answer to DR No. 38.

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QWEST DATA REQUEST TO STAFF NO. 41:

If your response to Qwest Data Request No. 38 is anything other than an unqualified "no," please explain whether the publication or approval of this hypothetical settlement agreement would require Qwest to settle some or all future disputes with other carriers relating to minutes of usage, whatever the facts or circumstances of the particular dispute.

RESPONSE:

See answer to DR No. 38.

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QWEST DATA REQUEST TO STAFF NO. 42:

Please explain whether, in the Staff's view, Commission approval or other publication of this hypothetical settlement agreement would require Qwest to resolve any dispute with any other CLEC relating to matters other than minutes of usage.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

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QWEST DATA REQUEST TO STAFF NO. 43:

If your response to Qwest Data Request No. 42 is anything other than an unqualified “no,” please identify the authorities on which the Staff relies for its contention that Commission approval or other publication of this hypothetical settlement agreement in any way alters or defines Qwest’s right or ability to resolve disputes relating to matters other than minutes of usage.

RESPONSE:

See answer to DR No. 42.

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QWEST DATA REQUEST TO STAFF NO. 44:

If your response to Qwest Data Request No. 42 is anything other than an unqualified “no,” please explain how Commission approval or other publication of this hypothetical settlement agreement alters or defines Qwest’s right or ability to resolve disputes relating to matters other than minutes of usage.

RESPONSE:

See answer to DR No. 42.

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QWEST DATA REQUEST TO STAFF NO. 45:

Please explain whether, and if so how, failure by Qwest or CLEC A to file or publish this hypothetical settlement agreement would or could harm other carriers with existing disputes relating to minutes of usage.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

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QWEST DATA REQUEST TO STAFF NO. 46:

Please explain whether, and if so how, failure by Qwest or CLEC A to file or publish this hypothetical settlement agreement would or could harm other carriers that have existing disputes with Qwest relating to issues other than minutes of usage (assume that these other carriers do not also have a minutes of usage dispute).

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

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QWEST DATA REQUEST TO STAFF NO. 47:

Please explain whether, and if so how, failure by Qwest or CLEC A to file or publish this hypothetical settlement agreement would or could harm other carriers that have no existing disputes with Qwest.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

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QWEST DATA REQUEST TO STAFF NO. 49:

Please state whether, in the Staff's view, actual prejudice or disadvantage is necessary before the failure to file an interconnection agreement constitutes "undue or unreasonable prejudice or disadvantage" for purposes of RCW 80.36.170, .180 and .186.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

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WEST DATA REQUEST TO STAFF NO. 50:

Please state whether, in the Staff's view, any hypothetical prejudice or disadvantage that could occur from a failure to file an interconnection agreement constitutes "undue or unreasonable prejudice or disadvantage" for purposes of RCW 80.36.170, .180 and .186, even if such prejudice or disadvantage has not yet occurred.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question, calls for legal conclusion, and improperly phrased question: question answers itself.

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RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
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REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

QWEST DATA REQUEST TO STAFF NO. 51:

Please state whether it is the Staff's position that any actual prejudice or disadvantage relating to a failure to file an interconnection agreement constitutes "undue or unreasonable prejudice or disadvantage" for purposes of RCW 80.36.170, .180 and .186.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question and calls for legal conclusion.

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RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
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REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

QWEST DATA REQUEST TO STAFF NO. 52:

If your answer to Qwest Data Request No. 51 is anything other than an unqualified “yes,” please explain the standard that the Staff would apply in analyzing whether actual prejudice or disadvantage relating to a failure to file an interconnection agreement constitutes “undue or unreasonable prejudice or disadvantage” for purposes of RCW 80.36.170, .180 and .186, and identify all authorities on which the Staff relies to support that position.

RESPONSE:

See answer to DR 51.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
CASE NO.: UT-033011
REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

QWEST DATA REQUEST TO STAFF NO. 53:

If your answer to Qwest Data Request No. 51 is anything other than an unqualified "yes," please explain the standard that the Commission would apply in analyzing whether actual prejudice or disadvantage relating to a failure to file an interconnection agreement constitutes "undue or unreasonable prejudice or disadvantage" for purposes of RCW 80.36.170, .180 and .186, and identify all authorities on which the Staff relies to support that position.

RESPONSE:

See answer to DR 51.

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RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
CASE NO.: UT-033011
REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

QWEST DATA REQUEST TO STAFF NO. 54:

Please state whether the Staff considers Qwest's decision to remove these calls from the customer's bill to be discrimination by that carrier against other retail customers and, if so, please identify the authorities on which the Staff relies in support of its position.

RESPONSE:

Objection. Speculative, insufficient information provided to answer the question, question vague as to which authority Qwest is referring to and calls for legal conclusion.

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RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
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REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

QWEST DATA REQUEST TO STAFF NO. 55:

If your response to Qwest Data Request No. 54 is anything other than an unqualified “no,” please explain the circumstances under which, in the Staff’s view, billing adjustments by carriers to retail customers constitute discrimination by that carrier against other retail customers, and identify the authorities on which the Staff relies in support of its position.

RESPONSE:

See answer to DR 54.

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WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

QWEST DATA REQUEST TO STAFF NO. 56:

If your response to Qwest Data Request No. 54 is an unqualified “no,” please explain whether, in the Staff’s view, billing adjustments by carriers to wholesale customers constitute discrimination by that carrier against other wholesale customers, and identify the authorities on which the Staff relies in support of its position.

RESPONSE:

See answer to DR 54.

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REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

QWEST DATA REQUEST TO STAFF NO. 57:

If your responses to Qwest Data Request Nos. 54 and 56 reflect any difference in the Staff's position regarding billing adjustments for retail versus wholesale customers, please explain the bases for any such differences and identify the authorities on which the Staff relies to justify those differences.

RESPONSE:

See answer to DR 54.

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REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

QWEST DATA REQUEST TO STAFF NO. 58:

Please provide the following information with respect to the agreement attached as Exhibit A, Agreement No. 1 to Commission Order No. 05:

- a. Please state the basis for the Staff's belief that this agreement constitutes an "interconnection agreement" under the definition set forth in the FCC Order.
- b. Please state the date by which the Staff contends that Qwest should have filed this agreement with the Commission.
- c. Please state whether the Staff contends that the Commission would have approved this agreement had Qwest filed it in what the Staff would consider a timely manner.
- d. If your response to subpart c above is anything other than an unqualified "yes," please state the reasons why the Staff contends that the Commission would not have approved this agreement and the authorities supporting that position.
- e. Please explain the bases for Mr. Wilson's calculation, in Exhibit TW-72 to his testimony, of the number of days the Staff deems Qwest to have been in violation of 47 U.S.C. § 252(e), 47 U.S.C. § 252(i), RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186.
- f. Please identify all Washington-certificated CLECs that the Staff knows or believes would have sought to opt into any provision of this agreement had it been filed in what the Staff would consider a timely manner.
- g. For each CLEC identified in your response to subpart f above, please identify all bases for the Staff's knowledge or belief that the CLEC would have sought to opt into any provision of this agreement had it been filed in what the Staff would consider a timely manner.
- h. For each CLEC identified in your response to subpart f above, please identify the provision(s) that the Staff knows or believes that CLEC would have sought to opt into had the agreement been filed in what the Staff would consider a timely manner.
- i. For each CLEC identified in your response to subpart f above, please identify all facts and produce all documents in the Staff's possession, custody or control demonstrating that the CLEC

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RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

could have satisfied all terms legitimately related to those the Staff knows or believes the CLEC would have sought to opt into.

j. For each CLEC identified in your response to subpart f above, please identify all facts and produce copies of all documents in the Staff's possession, custody or control as of the date of these Requests identifying, defining or quantifying or attempting to identify, define or quantify any harm the CLEC suffered or may have suffered as a result of Qwest's alleged failure to file this agreement in what the Staff would consider a timely manner.

k. For each CLEC identified in your response to subpart f above, please identify all facts and produce copies of all documents in the Staff's possession, custody or control as of the date of these Requests that in any way suggest that the CLEC could have or would have changed its business model or modified its business behavior in any way had Qwest filed this agreement in what the Staff would consider a timely manner.

RESPONSE:

- a. Please see Exhibit No. ___(TLW-70) and Mr. Wilson's analysis of the secret interconnection agreements under the Second Cause of Action beginning in his testimony on page 16 of Exhibit No. ___(TLW-T-1), wherein Mr. Wilson provides his analysis of whether each agreement constitutes an interconnection agreement.
- b. Please see Exhibit No. ___(TLW-71), Column E, which provides the due date by which each secret interconnection agreement should have been filed with the Commission. Also please see Mr. Wilson's discussion and analysis of the Timeliness issue in Exhibit No. ___(TLW-T-1) beginning at page 55.
- c. Objection, speculative, insufficient information provided to answer the question and calls for legal conclusion.
- d. Objection, speculative, insufficient information provided to answer the question and calls for legal conclusion.
- e. Please see Exhibit No. ___(TLW_T-1), page 56, lines 8-17 for an explanation of how Mr. Wilson calculated the number of days the Staff deems Qwest to have been in violation of 47 U.S.C. § 252(e), 47 U.S.C. § 252(i). Regarding secret interconnection agreements in

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Exhibit A, the calculation of the number of days Staff deems Qwest to have been in violation of RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186 is the same as for violations of 47 U.S.C. § 252(e), 47 U.S.C. § 252(i). Regarding secret agreements in Exhibit B, the calculation of the number of days Staff deems Qwest to have been in violation of RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186 is simply the number of days since the agreement was signed until June 1, 2004.

- f. Please see opening argument at page 3 of Time Warner's September 8, 2003 petition to intervene:

“In this proceeding, the Amended Complaint alleges that Qwest has entered into a number of agreements that make available interconnection, services, or network elements to certain CLECs that were not filed or not timely filed. TWTC may wish to take advantage of the terms of those agreements. The Amended Complaint also alleges that Qwest has entered into a number of agreements with certain CLECs that contain terms and conditions that create an undue or unreasonable prejudice or disadvantage or undue discrimination. TWTC has an interest in ensuring that it is able to take advantage of contract terms and conditions that are the same or substantially the same as those offered by Qwest to similarly situated telecommunications companies, and that it is not subjected to undue or unreasonable prejudice or disadvantage or undue discrimination in gaining access to or pricing of interconnection, services, or unbundled network elements.” (Emphasis Added)

Also, because all of the secret interconnection agreements were kept a secret until they were filed as Exhibits attached to Mr. Wilson's testimony in this docket on June 8, 2004, other CLECs did not have access to any of the secret interconnection agreements until they were either untimely filed for approval or filed by Mr. Wilson in this case. It is Mr. Wilson's belief that because the secret interconnection agreements at issue were secret, there are no other documents that refer to or relate to communications from any other CLECs regarding such carrier's inability to obtain any service, rates, term or condition contained in any of the secret interconnection agreements at issue in this docket.

Please see Exhibit No. ____ (TLW-76) at page 12 (response to 1-2). It is speculative to consider the effects on other CLECs who did not have access to the secret interconnection agreements because other CLECs were not afforded the opportunity to review the secret interconnection agreements to determine whether to opt-in, and therefore they also did not have grounds to try to adopt or opt-in.

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Please see Exhibit No. ____ (TLW-79), at page 3 (response to 1-3) wherein Worldcom indicates that any secret interconnection agreement providing better pricing of any services, including UNE-P, through discounts or take-or-pay provisions, for example, or shorter intervals for provisioning of services or more attention to the provisioning of service should have been available for adoption. The response continues with the statement that pricing and provisioning are critical to entry into the local market and any improvement in prices and provisioning would have made entry easier for CLECs.

Please also see Exhibit No. ____ (TLW-80) at page 6, response to 1-2: “agreements which provide for discounts, accelerated complaint resolution, special attention, “take or pay” arrangements, “consulting,” or other incentives or privileges, or advantages, all would have made entry into the local market [easier] . . .” The secret interconnection agreements with Eschelon include provisions for discounts, accelerated complaint resolution, special attention, consulting and other incentives, privileges and advantages, therefore Staff concludes that CLECs such as AT&T might have possibly attempted to seek to have the agreements made available for adoption. Because they were secret, however, it is speculative to say anything other than apparently AT&T and other CLECs were not able to enjoy the opportunity that the request seems to imagine or presume may have occurred.

On this basis, Staff reasonably assumes that, had the secret interconnection agreements been filed and made available for adoption, it is entirely possible other CLECs would have reviewed and possibly adopted various elements in the hopes of improving pricing and provisioning.

Please see the agreement, which speaks for itself, and is filed as an exhibit attached to Mr. Wilson’s pre-filed direct testimony.

- g. Please see response to f.
- h. Please see response to f.
- i. Please see response to f.

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j. Other than the information provided in its direct pre-filed testimony and exhibits, Staff does not have any documents in its possession which identify, define or quantify or attempt to identify, define or quantify any harm a CLEC suffered or may have suffered as a result of Qwest's alleged failure to file this agreement in what the Staff would consider a timely manner.

k. Other than the information already provided in direct pre-filed testimony and exhibits, Staff does not have any documents that suggest that the CLEC could have or would have changed its business model or modified its business behavior in any way had Qwest filed this agreement in what the Staff would consider a timely manner.

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REQUESTER:	Qwest	TELEPHONE:	(360) 664-1282

QWEST DATA REQUEST TO STAFF NO. 97:

Please provide the following information with respect to the agreement attached as Exhibit B, Agreement No. 1 to Commission Order No. 05:

- a. Please state the basis for the Staff's belief that Qwest was required to publish this agreement or otherwise make this agreement available for inspection, review, approval or opt-in.
- b. Please state the date by which the Staff contends that Qwest should have published this agreement or otherwise made this agreement available for inspection, review, approval or opt-in.
- c. Please state whether the Staff contends that Commission approval would have been necessary for this agreement to take effect and, if so, if the Commission would have approved this agreement had Qwest filed it in what the Staff would consider a timely manner.
- d. If your response to subpart c above is anything other than an unqualified "yes," please state the reasons why the Staff contends that the Commission would not have approved this agreement and the authorities supporting that position.
- e. Please explain the bases for Mr. Wilson's calculation, in Exhibit TW-72 to his testimony, of the number of days the Staff deems Qwest to have been in violation of RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186.
- f. Please identify all Washington-certificated CLECs that the Staff knows or believes would have sought to adopt or opt into any provision of this agreement had it been filed in what the Staff would consider a timely manner.
- g. For each CLEC identified in your response to subpart f above, please identify all bases for the Staff's knowledge or belief that the CLEC would have sought to adopt or opt into any provision of this agreement had it been filed in what the Staff would consider a timely manner.
- h. For each CLEC identified in your response to subpart f above, please identify the provision(s) that the Staff knows or believes that CLEC would have sought adopt or to opt into had the agreement been filed in what the Staff would consider a timely manner.

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TELEPHONE: (360) 664-1282

i. For each CLEC identified in your response to subpart f above, please identify all facts and produce copies of all documents in the Staff's possession, custody or control identifying, defining or quantifying or attempting to identify, define or quantify any harm the CLEC suffered or may have suffered as a result of Qwest's alleged failure to file this agreement in what the Staff would consider a timely manner.

j. For each CLEC identified in your response to subpart f above, please identify all facts and produce copies of all documents in the Staff's possession, custody or control that in any way suggest that the CLEC could have or would have changed its business model or modified its business behavior in any way had Qwest filed this agreement in what the Staff would consider a timely manner.

RESPONSE:

a. Objection, mischaracterizes Staff's position and calls for legal conclusion.

b. Objection, mischaracterizes Staff's position and calls for legal conclusion.

c. Objection, speculative, insufficient information provided to answer the question and calls for legal conclusion.

d. Objection, speculative, insufficient information provided to answer the question and calls for legal conclusion.

e. Regarding secret interconnection agreements in Exhibit A, the calculation of the number of days Staff deems Qwest to have been in violation of RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186 is the same as for violations of 47 U.S.C. § 252(e), 47 U.S.C. § 252(i). Please see Exhibit No. ___(TLW_T-1), page 56, lines 8-17 for an explanation of how Mr. Wilson calculated the number of days the Staff deems Qwest to have been in violation of 47 U.S.C. § 252(e), 47 U.S.C. § 252(i). Regarding secret agreements in Exhibit B, the calculation of the number of days Staff deems Qwest to have been in violation of RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186 is simply the number of days since the agreement was signed until June 1, 2004.

f. Staff does not claim in its complaint or testimony that Exhibit B agreements should have been filed in a timely manner or that they are subject to §252(e) or §252(i). Staff is unaware of

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any Washington-certificated CLECs that would have sought to adopt or opt into any provision of this agreement.

g. Staff did not identify any CLECs in question f, because Staff does not claim in its complaint and testimony that Exhibit B agreements should have been filed in a timely manner or that they are subject to §252(e) or §252(i). Staff has no bases for a belief that any Washington-certificated CLECs that would have sought to adopt or opt into any provision of this agreement.

h. Staff did not identify any CLECs in question f, because Staff does not claim in its complaint or testimony that Exhibit B agreements should have been filed in a timely manner or that they are subject to §252(e) or §252(i). Staff is unaware of any Washington-certificated CLECs that would have sought to adopt or opt into any provision of this agreement and therefore cannot identify specific provisions as requested.

i. Staff did not identify any CLECs in question f, and so Staff does not have the requested documents.

j. Staff did not identify any CLECs in question f, and so Staff does not have the requested documents.