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April 28, 2000

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Ms. Carole J. WashburnDennis J. Moss,
Administrative Law Judge
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia WA 98504-7250

Re: U S WEST/Qwest Merger, Docket No. UT-991358

Dear Judge Moss:

Pursuant to the Commission's April 27, 2000, Notice of Opportunity to Respond in the above-referenced docket, Advanced TelCom Group, Inc. ("ATG") and NEXTLINK Washington, Inc. ("NEXTLINK") provide the following response to Commission Staff's Request for Continuance of Briefing Schedule and Motion for Issuance of Bench Request dated April 26, 2000. ATG and NEXTLINK agree that the filing date of initial briefs should be postponed for one week, until May 5, 2000, and that settlement agreements resolving disputed issues in this proceeding should be filed with, or provided to, the Commission, but ATG and NEXTLINK otherwise oppose staff's Request and Motion.



ATG and NEXTLINK each have been in negotiations with U S WEST Communications, Inc. ("U S WEST") to resolve a variety of issues between the companies in multiple states, and many of those issues arise from business disputes that bear no relationship to the competitive concerns raised in this docket. ATG has reached an agreement in principle with U S WEST resolving only such business disputes, while NEXTLINK continues to negotiate both merger and non-merger issues.

ATG and NEXTLINK agree that additional time would facilitate a final settlement between these parties and U S WEST, and the Applicants have stated that they do not oppose a one week extension of the deadline for filing initial briefs. To the extent that either ATG or NEXTLINK reaches an agreement that would require amendment to their interconnection agreements with U S WEST, they will make the appropriate filing with the Commission for approval of that amendment. If NEXTLINK is able to resolve competitive issues related to the proposed merger, the parties will file that agreement with the Commission in this docket. ATG and NEXTLINK, however, object to any requirement that any party be required to file or otherwise provide to the Commission in this

docket, any confidential settlement agreement that is not related to the proposed merger and does not seek or require any Commission action or approval.

Disputes often arise between companies that do business with each other, particularly competing telecommunications companies. Accordingly, contracts – specifically Commission-approved interconnection agreements – generally include provisions governing resolution of such disputes. Those provisions require that the parties initially negotiate and, if necessary, seek formal resolution of their disputes. Parties frequently memorialize negotiated resolutions, but do not file those resolutions with the Commission unless they require an amendment to the parties' interconnection agreement. Many of those memorialized resolutions are confidential because the parties agree to keep their compromises private and/or because the agreements involve or include customer or company-specific data or practices that the parties have agreed are proprietary and competitively sensitive, again pursuant to applicable provisions in their interconnection or other governing agreements.

The agreement in principle that ATG has reached with U S WEST and some of the issues NEXTLINK is negotiating with U S WEST do not relate to the merger, but rather address business disputes and are proprietary and highly confidential. Any requirement that parties file or provide the Commission with any and all settlement agreements, without regard to their relationship to the issues raised in this proceeding, would severely hamper the parties' ability to finalize their current settlement agreements and would discourage future negotiated agreements, undermining the Commission's consistent efforts to encourage settlement.

ATG and NEXTLINK understand and share Staff's concern that the Commission be presented with sufficient information to determine whether the proposed merger is consistent with the public interest in Washington. These parties agree that if a party is able to negotiate a resolution of issues it has raised in this proceeding, the agreement reflecting that resolution should be provided to the Commission, as Rhythms Links has done. The Commission, however, should not require that parties file confidential settlement agreements resolving issues that are unrelated to the merger, even if those agreements also require the CLEC to withdraw from this proceeding. Disclosure of those agreements will not aid the Commission's evaluation of the proposed merger and threatens substantial harm to the public, as well as individual parties', interest.

ATG and NEXTLINK also urge the Commission not to construe any party's decision to withdraw from this proceeding or otherwise take a neutral stance on the proposed merger because of such a confidential settlement agreement as an abandonment of the competitive issues they raised in this case. Rather, the Commission should construe that decision as an agreement to pursue these issues through further negotiation or, if necessary, as part of other Commission proceedings.

Accordingly, ATG and NEXTLINK recommend that the Commission grant Staff's Request for Continuance of Briefing Schedule to the extent of providing parties with an additional week to file initial briefs. ATG and NEXTLINK further recommend that the Commission deny Staff's Motion for Issuance of Bench Requests to the extent that any such bench requests would require parties to file confidential settlement agreements that do not resolve disputed issues in this proceeding.

Very truly yours,

Davis Wright Tremaine LLP

Gregory J. Kopta

Dennis J. Moss

April 28, 2000

Page 3

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