

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	DOCKET NO. UT-033011
TRANSPORTATION COMMISSION,	)	
	)	ORDER NO. 08
Complainant,	)	
	)	ORDER GRANTING MOTION
v.	)	TO DISMISS ALLEGATIONS
	)	RELATING TO JULY 19, 2001,
ADVANCED TELECOM GROUP,	)	AGREEMENT; APPROVING
INC; et al.	)	AND ADOPTING ELECTRIC
	)	LIGHTWAVE, LLC
Respondents.	)	SETTLEMENT AGREEMENT
.....	)	

1 **SYNOPSIS.** *In this Order, the Commission approves the settlement agreement between Electric Lightwave, LLC and Commission Staff as consistent with the law and the public interest, and dismisses all allegations against Electric Lightwave, LLC and Qwest Corporation relating to a July 19, 2001, agreement.*

**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. On June 2, 2004, the Commission entered Order No. 07 in this proceeding, affirming the Commission's determination concerning the Section 252 filing requirements of ILECs and CLECs.

4 On June 4, 2004, Commission Staff filed with the Commission a Motion to Dismiss Allegations Relating to a July 19, 2001, Agreement between ELI and Qwest, and an Electric Lightwave, LLC Settlement Agreement (Settlement Agreement) and Narrative , requesting an order approving the settlement.

#### MEMORANDUM

5 Staff's motion requests that the Commission dismiss all allegations in this complaint proceeding against Electric Lightwave, LLC (ELI) and Qwest relating to a July 19, 2001, agreement between ELI and Qwest Communications Corporation (QCC) referred to as Agreement No. 49 in Exhibit A to the Amended Complaint. After investigating the allegations relating to this agreement, Staff discovered that Agreement No. 49 is not an interconnection agreement under Section 252. QCC is a long distance company that has no local network and is not bound under Section 251 to provide access to unbundled network elements or other obligations under Section 251(c) of the Act.

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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.*

- 6 The Settlement Agreement between Staff and ELI addresses four agreements between Qwest and ELI, a December 30, 1999, agreement referred to as Agreement No. 28 in Exhibit A to the Amended Complaint, a June 12, 2000, agreement referred to as Agreement No. 29, and two agreements dated July 19, 2001, referred to as Agreement Nos. 48 and 49. *Settlement Agreement*, ¶ 4. Staff and ELI agree that Agreement No. 49 is not an interconnection agreement under Section 252 and Staff has moved to dismiss allegations relating to that agreement. *Id.* ¶ 7.
- 7 In the Settlement Agreement, ELI “accepts and agrees to be bound by the terms of” Order No. 05, and admits that Agreement Nos. 28, 29, and 48 are interconnection agreements. *Settlement*, ¶¶ 6, 7. ELI agrees to pay a penalty of \$3000. *Id.*, ¶ 12. ELI asserts that at the time the agreements were executed, ELI 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. ELI agrees to file any future interconnection agreements within 30 days of execution, and any interconnection agreement not yet filed with the Commission within 45 days of approval of the Settlement Agreement. *Id.*, ¶¶ 9, 10. If approved, the Settlement Agreement will resolve all issues raised against ELI in the Complaint and Amended Complaint issued by the Commission. *Id.*, ¶ 18.
- 8 The parties entered into the Settlement Agreement to avoid the additional expense, uncertainty and delay involved in litigation of the issues in this docket. *Id.*, ¶ 17. The parties assert that the Settlement Agreement is consistent with the law and the public interest, as ELI accepts the terms of Order No. 05, agrees to a penalty for not filing Agreement Nos. 28, 29, and 48 with the Commission, and understands and agrees to comply with its Section 252 filing obligations in the future. *Narrative*, ¶¶ 5, 6. The parties assert that the penalty amount, \$3000, may be “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,” but assert that ELI has played a “relatively small part” in the overall history of unfilled agreements in the state of Washington. *Id.*, ¶¶ 6, 7.

9 **Discussion and Decision.** The focus of the Commission’s Complaint and Amended Complaint in this proceeding is to address interconnection agreements under Section 252 of the Act. As Staff and ELI have determined that Agreement No. 49 is not such an agreement, Staff’s motion to dismiss should be granted and all allegations against ELI and Qwest should be dismissed as to that agreement.

10 Based on the information provided in 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).

11 The Settlement Agreement is consistent with Section 252 and the Commission’s finding concerning Section 252 filing obligations in Order No. 05. ELI 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 45 days of approval of the Settlement Agreement. The Settlement Agreement is in the public interest, as it reduces the expense, uncertainty and delay of litigation: The Settlement Agreement allows parties an efficient way to effect future compliance and acknowledge their Section 252 filing obligations through specific terms and an appropriate penalty.

12 The information provided in the Settlement Agreement, accompanying narrative statement and the record in this proceeding support the agreements reached in the Settlement Agreement as well as the Commission’s approval of the

Settlement Agreement. The parties expressed the basis and justification for the settlement in the Settlement Agreement itself and the narrative statement.

- 13 Based on the record developed in this proceeding, we find the issues pending against ELI in this complaint proceeding are adequately addressed and resolved by the terms of the Settlement Agreement. Under these circumstances, we are satisfied that the Settlement Agreement is lawful, appropriate, and consistent with the public interest. We approve and adopt the Settlement Agreement as a full and final resolution of all issues pending against ELI in Docket No. UT-033011.

#### **FINDINGS OF FACT**

- 14 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.
- 15 (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.
- 16 (2) Electric Lightwave, LLC, is a local exchange carrier 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.

- 17 (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.
- 18 (4) The July 19, 2001, agreement between Electric Lightwave, LLC and Qwest Communications Corporation, referred to as Agreement No. 49 in Exhibit A to the Amended Complaint, is not an Interconnection Agreement subject to the filing requirements of Section 252 of the Act.

#### CONCLUSIONS OF LAW

- 19 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.
- 20 (1) The Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.
- 21 (2) The Settlement Agreement between Electric Lightwave, LLC and Staff is consistent with Section 252 and the Commission's finding concerning Section 252 filing obligations in Order No. 05. The Settlement Agreement is in the public interest, as it reduces the expense, uncertainty and delay of litigation.

ORDER

**THE COMMISSION ORDERS:**

- 22 (1) Commission Staff's Motion to Dismiss Allegations Relating to July 19,  
2001, Agreement between ELI and Qwest is granted.
- 23 (2) The Settlement Agreement between Electric Lightwave, LLC and  
Commission Staff is approved and adopted as a complete resolution of the  
issues pending against Electric Lightwave, LLC in the Complaint and  
Amended Complaint in this Proceeding.
- 24 (3) Within 15 days of the service day of this Order, Electric Lightwave, LLC  
must pay a penalty of \$3000 to the Commission, payable to the Public  
Service Revolving Fund.

Dated at Olympia, Washington, and effective this 15<sup>th</sup> day of July, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK OSHIE, Commissioner

**NOTICE TO PARTIES:** This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to *WAC 480-07-810(3)*.