

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

AT&T COMMUNICATIONS OF THE	)	DOCKET UT-051682
PACIFIC NORTHWEST, INC., TCG	)	
SEATTLE, AND TCG OREGON;	)	
	)	ORDER 09
Complainants,	)	
	)	
v.	)	
	)	INITIAL ORDER APPROVING
QWEST CORPORATION,	)	AND ADOPTING SETTLEMENT
	)	AGREEMENT AND RELEASE
Respondent.	)	
.....	)	

1 *Synopsis: This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This order would approve and adopt the parties’ Settlement Agreement and Release in full resolution of the issues pending in this proceeding.*

**MEMORANDUM**

2 **PROCEEDINGS:** This docket involves a complaint originally filed by competitive local exchange carriers AT&T Communications of the Pacific Northwest, Inc., TCG Seattle and TCG Oregon (collectively, AT&T) and Time Warner Telecom of Washington, LLC (Time Warner or TWTC) against Qwest Corporation (Qwest).<sup>1</sup> The complaint and subsequent amended complaints all allege that Qwest charged the complainants more for certain facilities and services than Qwest charged other competitive local exchange carriers (CLECs) under agreements with them that were not filed with state jurisdictional authorities or the Federal Communication Commission (FCC), that this practice violated federal and state laws and that the complainants are entitled to compensation for the difference between the actual charges and the lower rates in the unfiled agreements.

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<sup>1</sup> Time Warner was a party to the original complaint that was dismissed by Commission Order No. 04. Time Warner is not a party to the amended complaint that is currently pending in this docket and is not a party to the settlement agreement.

3 **PARTY REPRESENTATIVES:** Gregory J. Kopta, attorney, Seattle, Washington, represents complainants AT&T and Time Warner. Lisa A. Anderl and Adam Sherr, attorneys, Seattle, Washington, represent Qwest. Neither Commission Staff nor Public Counsel appeared as parties.

4 **SETTLEMENT:** The parties filed a Settlement Agreement and Release on November 29, 2007. They simultaneously filed their Joint Settlement Narrative and their Joint Motion asking the Washington Utilities and Transportation Commission (Commission) to approve the settlement in full resolution of the issues pending in this proceeding.

5 AT&T filed its original Complaint in this proceeding in early November 2005. The procedural history of this docket through December 2006 is set forth in the Commission's Order 06, which affirmed an earlier Commission order allowing AT&T to file an amended complaint and denying Qwest's second Motion for Summary Determination and Dismissal.<sup>2</sup>

6 Since December 2006, there has been significant additional process in this docket, including several continuances granted at the parties' joint request. Most recently, on September 26, 2007, AT&T filed its Motion For Leave To File Amended Complaint And Submit Revised Direct Testimony. Qwest answered AT&T's motion on October 22, 2007, and filed on that same day its third Motion for Summary Determination or To Dismiss.

7 On November 16, 2007, the parties requested that the Commission suspend the procedural schedule to permit them an opportunity to focus on their efforts to settle their disputes and to file a settlement agreement. The Commission suspended the procedural schedule by notice issued on November 20, 2007.

8 On November 29, 2007, the parties filed their Settlement Agreement and Release, their Joint Narrative in Support of Settlement Agreement, and their Joint Motion To Approve Settlement Agreement. They ask, among other things, for expedited consideration.

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<sup>2</sup> The Initial Order, entered on February 10, 2006, would have granted Qwest's first Motion for Summary Determination if approved by the Commission on review. However, the Commission, in Order 04, reversed the Initial Order and allowed AT&T to file an amended complaint. Order 06 affirmed the results announced in Order 04.

- 9 **DISCUSSION AND DETERMINATION:** This docket concerns disputes between AT&T and Qwest concerning certain agreements that Qwest entered into with other CLECs, and AT&T's allegations that those agreements were not made available to it under the provisions of 47 U.S.C. 252(i). Qwest denies the allegations in the original and two amended complaints and has filed a Motion for Summary Determination or To Dismiss on various grounds in response to each complaint. Qwest's most recent motion is pending, and the procedural schedule is currently suspended at the parties' request.
- 10 AT&T and Qwest have agreed to settle and compromise their disputes in this, and eight other jurisdictions by entering into a Settlement Agreement and Release. The settlement, if approved, would resolve all of the pending issues in Washington. The settlement terms also settle claims that Qwest has brought against AT&T in several states.<sup>3</sup>
- 11 Under the terms of the Settlement Agreement, Qwest agrees to pay a confidential sum in monetary compensation to AT&T. Both parties agree to release certain claims against each other, including the claims that AT&T raised in its complaints in this proceeding. The Settlement Agreement also includes provisions that address and resolve claims that were not raised or otherwise presented to this Commission for resolution.
- 12 The parties' Settlement Agreement and Release, attached to and made part of this Initial Order by this reference, would fully resolve the issues pending in this docket.<sup>4</sup> The issues are limited to intercarrier disputes that are specific to the parties and do not directly impact consumers or other carriers. Early resolution of the parties' dispute conserves limited party and Commission resources that would otherwise be devoted to litigating AT&T's claims. The Commission finds that its approval and adoption of the Settlement Agreement and Release is in the public interest. The Commission

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<sup>3</sup> The Settlement Agreement resolves claims between the parties in multiple jurisdictions but by its terms does not become effective until it has been approved by this Commission and the Idaho commission.

<sup>4</sup> The Settlement Agreement includes terms as to which the parties assert confidentiality. Although the Commission disfavors assertions of confidentiality in the context of settlements, RCW 80.04.095 allows parties to designate and have protected from disclosure under the Public Records law information that is "valuable commercial information." The Commission expresses no opinion concerning the propriety of the parties' designation of such information in their Settlement Agreement and Release in this proceeding.

concludes that it should approve and adopt the Settlement Agreement and Release as its resolution of the issues pending in this proceeding.

**ORDER**

**THE COMMISSION ORDERS:**

- 13 (1) The parties' Settlement Agreement and Release, attached to and made a part of this Order, is approved and adopted in full resolution of the issues in this proceeding.
- 14 (2) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington and effective December 5, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS  
Administrative Law Judge

## NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order, any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such an answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

On copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and (8) copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250