

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	DOCKET NO. UT-033011
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	
v.)	
)	
ADVANCED TELECOM GROUP, INC;)	
ALLEGIANCE TELECOM, INC.; AT&T)	COMPLAINT AND
CORP; COVAD COMMUNICATIONS)	NOTICE OF PREHEARING
COMPANY; ELECTRIC LIGHTWAVE,)	CONFERENCE
INC.; ESCHELON TELECOM, INC. f/k/a)	(SEPTEMBER 8, 2003)
ADVANCED)	
TELECOMMUNICATIONS, INC.;)	
FAIRPOINT COMMUNICATIONS)	
SOLUTIONS, INC.; GLOBAL CROSSING)	
LOCAL SERVICES, INC.; INTEGRA)	
TELECOM, INC.; MCI WORLDCOM,)	
INC.; McLEODUSA, INC.; SBC)	
TELECOM, INC.; QWEST)	
CORPORATION; XO)	
COMMUNICATIONS, INC. f/k/a)	
NEXTLINK COMMUNICATIONS, INC.,)	
)	
Respondents.)	
.....)	

1 The Washington Utilities and Transportation Commission (Commission) on its own motion, and through its Staff, alleges as follows:

I. INTRODUCTION

2 Under the Telecommunications Act of 1996, 47 U.S.C. §§ 151 et seq., incumbent telecommunications companies (ILECs), such as respondent Qwest Corporation

(Qwest)¹ are required to enter into interconnection agreements with other telecommunications carriers requesting access to Qwest's network. 47 U.S.C. §§ 251-252. The carriers may negotiate agreements without the involvement of state commissions and without regard to the obligations set forth in subsections 251(b) and (c) of the Act. 47 U.S.C. § 252(a). If the carriers are unable to reach agreement through negotiation, one of the carriers may request the state commission to arbitrate any open issues. *Id.* § 252(b).

3 All agreements, whether reached through negotiation or arbitration, are subject to state commission approval. 47 U.S.C. § 252(e). All agreements must be filed with the state commission, and the state commission must make all final agreements available for public inspection. *Id.* § 252(h). The Commission has established procedures for the filing and approval of interconnection agreements.²

4 In response to a petition for a declaratory ruling from Qwest Communications International, Inc., the Federal Communications Commission (FCC) held that an agreement creating “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 section 252(a)(1).”³

5 The federal Act requires local exchange carriers, such as Qwest and the competitive local exchange carrier respondents (CLEC Respondents),⁴ to make

¹ All references to Qwest Corporation include its predecessor, US West Communications, Inc.

² See *In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996*, Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act, Docket No. UT-960269 (June 28, 1996).

³ *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum Opinion and Order, FCC 02-276, 17 FCC Rcd. 19,337, ¶ 8 (Oct. 4, 2002).

⁴ All of the respondents to this complaint, except Qwest, are collectively referred to as “CLEC Respondents.”

available any interconnection, service, or network element provided under an approved interconnection agreement to any other requesting carrier at the same terms and conditions as those provided in interconnection agreements. *47 U.S.C. § 252(i)*. The Commission has put all telecommunications companies on notice that interconnection agreements and amendments thereto must be made available for public review, and adoption by other carriers pursuant Section 252(i).⁵

- 6 Washington law prohibits telecommunications companies that provide noncompetitive services from prejudicing or granting preferences to other telecommunications companies in the provision of those services. *RCW 80.36.186*.
- 7 Like the federal Telecommunications Act, Washington law also requires telecommunications companies to file with the Commission all contracts for telecommunications services with other telecommunications carriers. If noncompetitive services are provided by such contracts, the providing company must make the services available to other companies at the same or substantially the same rates, terms, and conditions. *RCW 80.36.150*.
- 8 As alleged below, Qwest and the CLEC Respondents entered into agreements regarding the parties' on-going obligations pertaining to such matters including, but not limited to, resale, number portability, reciprocal compensation, interconnection, unbundled network elements, or collocation. The agreements are identified in Exhibit A. Qwest and the CLEC Respondents failed to file the majority of the agreements with the Commission, and the agreements were not approved. Qwest filed the agreements marked with an asterisk in an untimely manner, and the Commission approved those agreements.
- 9 Qwest also entered into numerous agreements with other telecommunications companies to resolve disputes, which were largely billing related disputes. In consideration for payments from Qwest, the other companies, in general, agreed to forego their litigation positions in various proceedings, agreed not to oppose

⁵ See *In the Matter of the Implementation of Section 252(i) of the Telecommunications Act of 1996*, First Revised Interpretive and Policy Statement, Docket No. UT-990355 (April 12, 2000).

Qwest positions in various proceedings, or agreed to dismiss complaints they had brought against Qwest. These agreements are listed in Exhibit B.

PARTIES

- 10 The Commission is an agency of the state of Washington, authorized by state law to regulate the rates, practices, accounts, and services of public service companies, including telecommunications companies, under the provisions of Title 80 RCW.
- 11 The respondents are telecommunications companies subject to regulation by the Commission pursuant to RCW 80.01.040(3).

JURISDICTION

- 12 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 80.04.110, RCW 80.36.140, RCW 80.36.150, RCW 80.36.170, RCW 80.36.180, RCW 80.36.186, RCW 80.36.610, 47 U.S.C. § 252(a), 47 U.S.C. § 252(e)(1), 47 U.S.C. § 252(i).

FACTUAL ALLEGATIONS

- 13 The respondents are telecommunications companies authorized to provide telecommunications service in the state of Washington.
- 14 The respondents are subject to regulation under the provisions of Title 80 RCW.
- 15 Beginning at least as early as January 1999, continuing through at least March 2002, Qwest and the CLEC Respondents entered into the agreements identified in Exhibit A for the provision of interconnection, services, or network elements.⁶ Qwest and/or the CLEC Respondents did not seek approval or timely approval of these agreements from the Commission as required by 47 U.S.C. § 252(e)(1). The agreements are identified in Exhibit A, which is attached and incorporated hereto by this reference. The agreements that were not timely filed are marked on Exhibit A with an asterisk; the remaining agreements were not filed.

⁶ Qwest is a party to each of the agreements identified in Exhibit A. The CLEC Respondents are parties only to those agreements that identify them by name.

- 16 With respect to the agreements identified in Exhibit A, neither Qwest nor the CLEC Respondents filed or timely filed the agreements with the Commission as required by 47 U.S.C. § 252(a)(1), (e) and RCW 80.36.150.
- 17 In addition to the agreements identified in Exhibit A, Qwest also entered into numerous agreements with other telecommunications companies whereby Qwest and the other companies agreed to settle outstanding disputes. These agreements generally provide for cash payments made by Qwest in exchange for the other company's agreements to forego certain litigation positions, not to pursue complaints, or not to participate in various proceedings against Qwest, or an agreement not to oppose positions taken by Qwest.

FIRST CAUSE OF ACTION
(Violation of 47 U.S.C. § 252(a))

- 18 The Commission, through its Staff, realleges the allegations contained in paragraphs 2-17 above.
- 19 47 U.S.C. § 252(a) requires submission to the state commission of agreements for interconnection, services, or network elements entered into between ILECs, such as Qwest, with other telecommunications companies, such as the CLEC Respondents.
- 20 Each respondent violated 47 U.S.C. § 252(a) for each agreement to which it was a party by failing to submit the agreements to the Commission. The respondents committed additional violations of 47 U.S.C. § 252(a) by failing to timely file the agreements marked with an asterisk.

SECOND CAUSE OF ACTION
(Violation of 47 U.S.C. § 252(e))

- 21 The Commission, through its Staff, realleges the allegations contained in paragraphs 2-17 above.
- 22 47 U.S.C. § 252(e) requires state commission approval of agreements between incumbent local exchange companies and other telecommunications companies for interconnection, services, or network elements.

23 Each respondent violated 47 U.S.C. § 252(e) for each agreement to which it was a party by entering into numerous agreements that were not approved by the Commission. The respondents committed additional violations of 47 U.S.C. § 252(e) by failing to seek Commission approval in a timely manner regarding the agreements marked with an asterisk.

**THIRD CAUSE OF ACTION
(Violation of 47 U.S.C. § 252(i))**

24 The Commission, through its Staff, realleges the allegations contained in paragraphs 2-17 above.

25 47 U.S.C. § 252(i) requires local exchange carriers to make available any interconnection, service, or network element provided under an approved interconnection agreement to any other requesting carrier at the same terms and conditions as those provided in the agreement. *47 U.S.C. § 252(i)*.

26 By failing to obtain Commission approval of numerous agreements, Qwest committed multiple violations of 47 U.S.C. § 252(i) by failing to make available to other carriers the interconnection, service, or network elements provided under the agreements to any other requesting carrier. Qwest committed additional violations of 47 U.S.C. § 252(i) by failing to make available for other carriers in a timely manner the terms and conditions set forth in the agreements marked with an asterisk.

**FOURTH CAUSE OF ACTION
(Violation of RCW 80.36.150)**

27 The Commission, through its Staff, realleges the allegations contained in paragraphs 2-17 above.

28 RCW 80.36.150 requires telecommunications companies to file agreements, arrangements, or contracts for services with the Commission. RCW 80.36.150 requires telecommunications companies providing noncompetitive services through contracts to make those services available to all purchasers under the same or substantially the same circumstances under the same rate, terms, and conditions set forth in the contract.

- 29 Each respondent violated RCW 80.36.150 for each agreement to which it was a party by failing to file the agreements set forth in Exhibit A. The respondents committed additional violations of RCW 80.36.150 by failing to file the agreements marked with an asterisk in a timely manner.
- 30 Qwest further violated RCW 80.36.150 by failing to file the agreements identified in Exhibit B with the Commission or failing to file the agreements in a timely manner; by failing to demonstrate that the agreements identified in Exhibits A and B are in the public interest; and/or by failing to make the rates, terms, and conditions of the agreements identified in Exhibits A and B available to companies similarly situated to the customers receiving agreement terms.
- 31 Pursuant to RCW 80.04.380, each day any of the contracts were in effect without filing with the Commission constitutes a separate violation of RCW 80.36.150.

FIFTH CAUSE OF ACTION
(Violation of RCW 80.36.170)

- 32 The Commission, through its staff, realleges the allegations contained in paragraphs 2-17 above.
- 33 RCW 80.36.170 prohibits a telecommunications company from making or giving an undue or unreasonable preference or advantage to any customer or by subjecting any customer to undue or unreasonable prejudice or disadvantage whatsoever.
- 34 Qwest committed numerous violations of RCW 80.36.170 by giving those companies to which it offered the terms and conditions in the contracts set forth in Exhibit A an undue or unreasonable preference or advantage in the access to or pricing of the interconnection, services, or network elements provided in the contracts while subjecting the companies that were not offered such contract provisions to undue or unreasonable prejudice or disadvantage.
- 35 With respect to the contracts listed in Exhibit B, Qwest committed numerous violations of RCW 80.36.170 by giving the companies to which it offered settlements an undue or unreasonable preference or advantage in resolving disputes while subjecting the companies that were not offered such agreements to undue or unreasonable prejudice or disadvantage.

36 Pursuant to RCW 80.04.380, each day Qwest violated RCW 80.36.170 constitutes a separate violation.

**SIXTH CAUSE OF ACTION
(Violation of RCW 80.36.180)**

37 The Commission, through its Staff, realleges the allegations contained in paragraphs 2-17 above.

38 RCW 80.36.180 prohibits a telecommunications company from engaging in rate discrimination, either by special rates or rebates provided by the company to one customer or class of customers that it does not provide to all other similarly situated customers.

39 Qwest committed numerous violations of RCW 80.36.180 by providing interconnection, services, or network elements through the contracts listed in Exhibit A, and by offering settlement agreements as demonstrated in Exhibit B, to certain and not to all other similarly situated companies, thereby discriminating against those companies who were not offered the same contract terms.

40 Pursuant to RCW 80.04.380, each day Qwest violated RCW 80.36.180 constitutes a separate violation.

**SEVENTH CAUSE OF ACTION
(Violation of RCW 80.36.186)**

41 The Commission, through its staff, realleges the allegations contained in paragraphs 2-17 above.

42 RCW 80.36.186 prohibits a telecommunications company from granting an undue or unreasonable preference or advantage to another telecommunications company or from subjecting another telecommunications company to an undue or unreasonable prejudice or competitive disadvantage as to the pricing or access to noncompetitive services.

43 Qwest committed numerous violations of RCW 80.36.186 by giving those companies offered the terms and conditions in the contracts set forth in Exhibit A

an undue or unreasonable preference or advantage in the pricing of or access to noncompetitive services. Such conduct also subjected those companies that were not offered the same terms and conditions as in the contracts to an undue or unreasonable prejudice or competitive disadvantage.

44 By entering into the contracts set forth in Exhibit B, Qwest agreed to resolve disputes with certain carriers in exchange for certain consideration such as an agreement not to pursue litigation or take positions against Qwest. Such conduct subjected companies that were not offered such agreements, that were unwilling to make such agreements, or that could not make such agreements to an undue or unreasonable prejudice or disadvantage.

45 Pursuant to RCW 80.04.380, each day Qwest violated RCW 80.36.186 constitutes a separate violation of RCW 80.36.186.

46 THEREFORE, the Commission enters into a full and complete investigation into the matters alleged and will commence an adjudicative proceeding pursuant to chapter 34.05 RCW and chapter 480-09 WAC for the following purposes:

47 (1) To determine whether the respondents or each of them have violated the statutes set forth in the allegations above;

48 (2) To determine whether the Commission should impose monetary penalties against the respondents or each of them in an amount to be proved at hearing; and

49 (3) To make such other determinations and enter such orders as may be just and reasonable.

NOTICE OF PREHEARING CONFERENCE

50 Hearing in this matter is being held pursuant to Part IV of chapter 34.05 RCW pertaining to adjudicative proceedings and RCW 80.04.110 and RCW 80.04.120. The Commission has jurisdiction over this matter under Title 80 RCW, having legal authority to regulate the rates, practices, and services of telecommunications companies. Statutes involved include but are not limited to 47 U.S.C. § 252, particularly 47 U.S.C. § 252(a), (e) and (i), and those statutes within chapter 80.04 RCW and chapter 80.36 RCW, particularly RCW 80.04.010,

RCW 80.04.110, RCW 80.04.380, RCW 80.04.405, RCW 80.36.130, RCW 80.36.140, RCW 80.36.150, RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186. Rules involved include but are not limited to those within chapter 480-09 WAC. The ultimate issues are as stated in the above complaint.

51 **NOTICE IS HEREBY GIVEN** That a prehearing conference in this matter will be held at 9:30 a.m. on September 8, 2003, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The purpose of the prehearing conference is to consider formulating the issues in the proceeding, and to determine other matters to aid in its disposition, as specified in WAC 480-09-460. Petitions to intervene should be made in writing prior to that date or made orally at that time. Appearances will be taken.

52 If any party or witness needs an interpreter or other assistance, please fill out the form attached to this notice and return it to the Commission.

53 NOTICE IS FURTHER GIVEN THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET HEREIN, OR OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH THE TERMS OF RCW 34.05.440. THE PARTIES ARE FURTHER ADVISED THAT THE SANCTION PROVISIONS OF WAC 480-09-700(4) ARE SPECIFICALLY INVOKED.

54 Ann E. Rendahl has been appointed as the Administrative Law Judge from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250 and will preside at the prehearing conference.

55 The names and mailing addresses of all parties and their known representatives are as follows:

Complainant: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Shannon E. Smith
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P. O. Box 40128
Olympia, WA 98504-0128
(360) 664-1192

Respondent: Advanced Telecom Group, Inc.

Representative: Unknown

Respondent: Advanced Telecom Group, Inc.

Representative: Unknown

Respondent: Allegiance Telecom, Inc.

Representative: Unknown

Respondent: AT&T Corp

Representative: Unknown

Respondent: Covad Communications Company

Representative: Unknown

Respondent: Electric Lightwave, Inc.

Representative: Unknown

Respondent: Eschelon Telecom, Inc.

Representative: Unknown

Respondent: Fairpoint Communications Solutions, Inc.

Representative: Unknown

Respondent: Global Crossing Local Services, Inc.

Representative: Unknown

Respondent: Integra Telecom, Inc.

Representative: Unknown

Respondent: McLeodUSA Inc.

Representative: Unknown

Respondent: MCI Worldcom, Inc.

Representative: Unknown

Respondent: Qwest Corporation
1600 Seventh Avenue
Seattle, WA 98191

Representative: Lisa A. Anderl
Attorney at Law
1600 Seventh Avenue, Room 3206
Seattle, WA 98191
(206) 345-1574

Respondent: SBC Telecom, Inc.

Representative: Unknown

Respondent: XO Communications, Inc.

Representative: Unknown

56 Notice of any other procedural phase will be given in writing or on the record as the Commission may deem appropriate during the course of this proceeding.

DATED at Olympia, Washington, and effective this 13th day of August 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

Inquiries may be addressed to:

Executive Secretary
Washington Utilities and
Transportation Commission
Chandler Plaza Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

[Service Date August 14, 2003]

NOTICE

PLEASE BE ADVISED that the hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and that if limited English-speaking or hearing impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be designated below and returned to:

Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250.

(SUPPLY ALL REQUESTED INFORMATION)

Docket No.: **UT-033011**

Case Name: **WUTC v. Advanced Telecom Group, Inc., et al**

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired (Yes) (No)

Do you need a certified sign language interpreter: (Yes) (No)

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____) _____