

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

TEL WEST COMMUNICATIONS,)	
LLC,)	DOCKET NO. UT-013097
)	
Petitioner,)	NINTH SUPPLEMENTAL
)	ORDER: DISMISSING CLAIMS
v.)	WITH PREJUDICE
)	
QWEST CORPORATION,)	
)	
Respondent.)	
.....)	

I. SYNOPSIS

1 *The Commission accepts the result of a proposed settlement, grants the request of the parties that all remaining claims presented by this docket be dismissed with prejudice, affirms that the protective order enter in this proceeding continues to govern the conduct of the parties after the proceeding is closed, and agrees that an amendment to the parties’ interconnection agreement be contemporaneously reviewed and approved in a separate proceeding.*

II. MEMORANDUM

2 **Nature of Proceedings.** This is a proceeding for enforcement of an interconnection agreement between Tel West Communications, LLP (“Tel West”) and Qwest Corporation (“Qwest”) pursuant to WAC 480-09-530.

3 **Parties.** Brooks Harlow and David Rice, attorneys, Miller Nash LLP, Seattle, Washington, represent Tel West. Adam Sherr and Lisa Anderl, corporate counsel, Seattle, Washington, represent Qwest.

4 **Commission:** The Commission neither approves nor adopts the Stipulation of Settlement and Settlement Agreement (collectively referred to as the “Settlement Agreement” or “Agreement”) filed by the parties as a full and final resolution of the existing claims in Docket No. UT-013097. Consistent with the parties’ request, the Commission dismisses pending claims regarding “provisioning

parity” with prejudice, clarifies that the protective order entered by the Commission continues to govern the parties’ conduct after this proceeding is closed, and agrees that an amendment to the parties’ interconnection agreement should be contemporaneously reviewed and approved in Docket No. UT-013086. Neither the Settlement Agreement nor this Order changes the Commission’s Final Order in Part A of this proceeding.

5 **Background and Procedural History.** The parties are both telecommunications companies authorized to conduct business in the state of Washington and registered with the Commission. Tel West provides local exchange service using Qwest facilities. It serves customers who may not qualify for service by the incumbent local exchange company (“ILEC”) by virtue of credit history or other problems. It uses Qwest facilities and provides services as a competitive local exchange company (“CLEC”). Tel West first entered an agreement for service resale with Qwest in 1998. The parties filed in Docket No. UT-013086 an interconnection agreement for the Commission’s approval as required by Section 252 of the Federal Telecommunications Act of 1996 (“Telecom Act”). The Commission approved the agreement at an open public meeting on October 31, 2001.¹

6 On October 31, 2001, Tel West filed a complaint pursuant to WAC 480-09-530, which establishes procedures for resolving disputes related to enforcement of interconnection agreements approved by the Commission pursuant to the Telecom Act.

7 On January 31, 2002, the Commission entered an order bifurcating the litigation into two sub-proceedings, referred to as “Part A” and “Part B.” Part A involved consideration of Tel West’s claims regarding access to OS/DA and billing disputes. On April 25, 2002, an initial order was entered. On May 23, 2002, the Commission entered a Part A Final Order and affirming in part and rejecting in part the initial order interpreting provisions in an interconnection agreement between the parties. On June 3, 2002, Tel West filed a petition for reconsideration; Qwest answered that petition on June 18, 2002. On July 2, 2002, the Commission entered an order denying Tel West’s petition.

¹ The parties subsequently filed an amended agreement that was approved by the Commission on June 14, 2002.

8 Tel West also claimed that Qwest violated the interconnection agreement by failing to provide Tel West telecommunications services for resale that are at least equal in quality, and in substantially the same time and manner, that Qwest provides those services to itself, its subsidiaries, its affiliates, other resellers, and Qwest's retail end users.² Part B hearings on provisioning parity issues were originally scheduled to begin on May 6, 2002. During discovery, the parties requested and were granted several continuances. Later, the Commission suspended the Part B procedural schedule to allow the parties an opportunity to engage in settlement discussions.

9 **Settlement Agreement.** On November 22, 2002, Tel West and Qwest filed a proposed settlement that would resolve the parties' remaining disputes. The settlement has several parts: a Stipulation of Settlement; a Settlement Agreement ("Settlement Agreement" or "Agreement"), including two confidential attachments; and an Amendment to the Interconnection Agreement between the parties ("Amendment").

10 On December 5, 2002, the Commission convened a hearing before Administrative Law Judge Lawrence Berg to consider the proposed stipulation. The parties waive entry of an Initial Order in this matter, and jointly request that the Commission order that the provisioning parity claims be dismissed with prejudice, clarify that the protective order previously entered in this case remains in effect after the close of proceedings, and approve the Amendment.³

III. DISCUSSION AND DECISION

11 The federal Telecom Act requires state commissions to approve interconnection agreements that result from negotiation or arbitration. Interconnection agreements establish contractual rights and obligations between carriers. The Washington State legislature authorized the Commission to take actions, conduct proceedings, and enter orders as permitted or contemplated under the Telecom Act. *RCW 80.36.610*. Accordingly, the Commission adopted WAC 480-09-530 to provide specific procedures for carriers who have entered interconnection agreements to secure enforcement of those agreements.

² These issues are referred to collectively as "provisioning parity."

³ TR at 519-522.

- 12 WAC 480-09-530 also provides parties an expedited process and the benefit of the Commission's expertise as an alternative to civil litigation to resolve disputes arising from an interconnection agreement. In this part of the proceeding, the parties present the Commission with an issue of first impression, in particular, how the Commission should respond to a proposed settlement of all remaining claims that has been negotiated and stipulated to by the parties.
- 13 Regulatory forums that adjudicate claims between parties in quasi-judicial administrative proceedings are inherently different from judicial courts. Administrative agencies such as the Commission derive their authority solely from enabling legislation. The fundamental principle guiding the Commission is that it regulate in the public interest.⁴ The courts, on the other hand, have no similar duty in reviewing settlements between private parties.
- 14 Qwest and Tel West expressly state that they do not request that the Commission adopt or approve the entirety of their proposed settlement agreement.⁵ According to the parties, the Commission's affirmative approval of only three provisions of their agreement is essential: dismissal of the litigation with prejudice (Section 6 of the Settlement Agreement); the protective order is to remain in effect indefinitely (Section 1); and approval of the proposed amendment to the parties' interconnection agreement (Section 2 of the Agreement).⁶ The parties contend that the Commission can simply take no action regarding the rest of the Settlement Agreement.
- 15 Under the Telecommunications Act of 1996, interconnection agreements relate to the provision of regulated service but are part of a process that is designed to rely more on principles of competition and less on principles of regulation. In undertaking this review, we are conscious of the underlying purposes and principles of the Telecom Act. We conclude that we need not approve and adopt this settlement agreement in the same manner as we might in a fully regulated setting. We will enter an order, consistent with the parties' request, sufficient to resolve matters that require a Commission order for implementation. It is essential in this kind of situation, however, that parties provide access to their

⁴ RCW 80.01.040(2) and (3) require the Commission to regulate in the public interest, consistent with the public service laws.

⁵ TR at 521

⁶ TR at 504-505.

entire agreement so that we may review it for elements that might be unlawful or improper.⁷

- 16 Under the circumstances of this case, the Commission finds that the parties' request for limited commission approval is appropriate and consistent with the public interest. The claims to be dismissed with prejudice arise out of contractual obligations unique to these parties.
- 17 We need not order continuing effect of the protective order. As between the parties, the protective order entered in this proceeding continues to govern their conduct after the proceeding is closed. Confidential documents in the custody of the Commission remain confidential after proceedings are closed, and they are retained subject to the provisions of Chapter 42.17 RCW and RCW 80.04.095.
- 18 For administrative purposes, the Commission notes that it routinely reviews proposed amendments to interconnection agreements in the dockets in which the initial agreements were originally filed. Therefore, we review – and approve – the parties' proposed amendment in a companion order in Docket No. UT-013086.
- 19 Parties to proceedings before the Commission must fully disclose their agreements proposing to resolve pending issues in order for the Commission to fulfill its statutory obligations. We accept the parties' proposed settlement agreement for filing in this docket, but apart from the rulings we specifically make in this order we neither approve nor disapprove any of its provisions. As with other aspects of their contractual relationship, parties may if needed seek resolution of disputes by the Commission. We are confident that we will have the opportunity to evolve our approach to interconnection agreement disputes and settlements as we continue to gain experience in such matters.

IV. FINDINGS OF FACT

- 20 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with authority to regulate telecommunications companies offering service to the public for compensation, and with authority to enter orders as contemplated for a

⁷ See, e.g., Docket Nos. UT-003022/003040 (“271/SGAT proceeding”), *Thirty-Ninth Supplemental Order* (July 1, 2002), at para. 228-232.

state commission under the federal Telecommunications Act of 1996, P.L. 104-104 (110 Stat. 56).

- 21 (2) The Telecom Act contemplates that state commissions will approve and enforce interconnection agreements between carriers.
- 22 (3) Tel West Communications, LLC, and Qwest Corporation are engaged in providing telecommunications services for hire to the public within the state of Washington, and are parties to an interconnection agreement approved by Commission in Docket No. UT-013086.
- 23 (4) On October 31, 2001, Tel West filed a complaint against Qwest pursuant to WAC 480-09-530, for enforcement of the interconnection agreement between the parties.
- 24 (5) On May 23, 2002, the Commission entered a Final Order resolving some of the disputed issues between the parties in Part A of this proceeding.
- 25 (6) On November 22, 2002, Tel West and Qwest filed a proposed settlement in Part B of this proceeding that would resolve the remaining claims in their entirety.
- 26 (7) The protective order entered in this proceeding continues to govern the parties' conduct after the proceeding is closed. Further, confidential documents in the custody of the Commission remain confidential after proceedings are closed, and they are retained consistent with Chapter 42.17 RCW and RCW 80.04.095.

V. CONCLUSIONS OF LAW

- 27 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of this proceeding. *Chapters 80.04 and 80.36 RCW.*
- 28 (2) Dismissal of parties' claims with prejudice is lawful, and the proposed result is appropriate and consistent with the public interest. The remaining disputed claims should be dismissed with prejudice.

- 29 (3) The Commission should review the proposed amendment to the parties' interconnection agreement in Docket No. UT-013086.
- 30 (4) The Commission should retain jurisdiction over the subject matter of and the parties to this proceeding to effectuate the provisions of this Order.

VI. ORDER

THE COMMISSION ORDERS That:

- 31 (1) The remaining claims between the parties are dismissed with prejudice.
- 32 (2) The protective order entered in this proceeding continues to govern the parties' conduct after the proceeding is closed. Documents in the custody of the Commission that are designated as confidential pursuant to a protective order remain confidential after proceedings are closed, and their release is obtained pursuant to the provisions of Chapter 42.17 RCW and RCW 80.04.095.

33 THE COMMISSION FURTHER ORDERS That it retains jurisdiction over the subject matter and the parties to effectuate the provisions of this Order.

Dated at Olympia, Washington and effective this ____ day of December, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).