

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

WASHINGTON UTILITIES AND	)	DOCKET NO. UT-033011
TRANSPORTATION COMMISSION,	)	
	)	ORDER NO. 09
Complainant,	)	
	)	ORDER GRANTING MOTION
v.	)	TO DISMISS ALLEGATIONS
	)	RELATING TO NOVEMBER 18,
ADVANCED TELECOM GROUP,	)	1999, AGREEMENT;
INC., et al.	)	APPROVING AND ADOPTING
	)	SETTLEMENT AGREEMENT
Respondents.	)	BETWEEN STAFF AND MCI
.....	)	

**SYNOPSIS**

1 *In this Order, the Commission approves the settlement agreement between MCI and Commission Staff as consistent with the law and the public interest, and dismisses all allegations against MCI and Qwest relating to a November 18, 1999, 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 July 26, 2004, Commission Staff filed with the Commission a Motion to Dismiss Allegations Relating to November 18, 1999, Agreement between MCI WorldCom, Inc., and Qwest, a settlement agreement captioned MCI Settlement Agreement (Settlement Agreement), and a narrative of the settlement agreement (Narrative), requesting an order approving the settlement.

### MEMORANDUM

5 Staff's motion requests that the Commission dismiss all allegations in this complaint proceeding against MCI WorldCom, Inc., (MCI) and Qwest relating to a November 18, 1999, agreement between MCI and U S WEST, now known as Qwest, referred to as Agreement No. 31 in Exhibit A to the Amended Complaint, or Agreement No. 31A. After investigating the allegations relating to this agreement, Staff has discovered that Agreement No. 31A is not an

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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.*

interconnection agreement under Section 252. Staff reports that the agreement is a one-time settlement of disputes under U S WEST's interstate tariff FCC No. 05, and that no local interconnection services were involved. Staff also reports that "none of the interstate services obligated U S WEST under section 251 of the Act to provide access to unbundled network elements or other obligations under section 251 of the Act." *Staff's Motion at 2.*

6 The Settlement Agreement between Staff and MCI addresses five agreements between Qwest and MCI, a November 18, 1999, agreement referred to as Agreement No. 31A, a December 1, 2000, agreement referred to as Agreement No. 32A, two agreements dated June 29, 2001, referred to as Agreement Nos. 33A and 34A, and a December 27, 2001, agreement referred to as Agreement No. 35A. *Settlement Agreement, ¶ 4.* Staff and MCI agree that Agreement No. 31 is not an interconnection agreement under Section 252 and Staff moves to dismiss allegations relating to that agreement. *Id. ¶ 7.*

7 In the Settlement Agreement, MCI "accepts and agrees to be bound by the terms of" Order No. 05, and admits that Agreement Nos. 32A, 33A, 34A and 35A are interconnection agreements. *Settlement, ¶¶ 6, 8.* MCI agrees to pay a penalty of \$6000. *Id., ¶ 13.* MCI asserts that at the time the agreements were executed, MCI 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., ¶¶ 8, 9.* MCI 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., ¶¶ 10, 11.* If approved, the Settlement Agreement will resolve all issues raised against MCI in the Complaint and Amended Complaint issued by the Commission. *Id., ¶ 19.*

- 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.*, ¶ 18. The parties assert that the Settlement Agreement is consistent with the law and the public interest, as MCI accepts the terms of Order No. 05, agrees to a penalty for not filing Agreement Nos. 32A, 33A, 34A, and 35A 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, \$6000, 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 MCI has played a “relatively small part” in the overall history of unfiled 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 MCI have determined that Agreement No. 31A is not such an agreement, Staff’s motion to dismiss should be granted and all allegations against MCI 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 [whether] 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. MCI 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 MCI 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 MCI 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) MCI WorldCom, Inc., 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 is 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 November 18, 1999, agreement between MCI WorldCom, Inc., and U S WEST, referred to as Agreement No. 31 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 MCI WorldCom, Inc., 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 November 18, 1999, Agreement between MCI WorldCom, Inc., and U S WEST is granted.

23 (2) The Settlement Agreement between MCI WorldCom, Inc., and Commission Staff is approved and adopted as a complete resolution of the issues pending against MCI WorldCom, Inc., in the Complaint and Amended Complaint in this Proceeding.

- 24 (3) Within 15 days of the service day of this Order, MCI WorldCom, Inc., must pay a penalty of \$6000 to the Commission, payable to the Public Service Revolving Fund.

Dated at Olympia, Washington, and effective this 30th day of July, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. 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).**