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STATE OF WASH.  
UTILITY AND TRANSPORTATION  
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Petitioners,

v.

ADVANCED TELECOM GROUP, INC.,  
et al,

Respondents.

DOCKET NO. UT-033011

NARRATIVE (XO SETTLEMENT  
AGREEMENT)

**Parties to the Settlement Agreement**

1           The Parties to this Settlement Agreement are Commission Staff ("Staff"), and  
XO Washington, Inc., f/k/a NEXTLINK Washington, Inc. ("XO") (collectively  
"Parties" or individually "Party").

**Scope of the Underlying Dispute**

2           On August 13, 2003, and August 15, 2003, respectively, the Washington  
Utilities and Transportation Commission ("Commission") issued a complaint and  
an amended complaint against XO and several other telecommunication  
companies. The Commission alleged that XO failed to file and seek Commission

approval for four agreements (“Agreements”) between XO and Qwest Corporation (“Qwest”), an incumbent local exchange carrier, on the basis that the Agreements are Interconnection Agreements that must be filed with, and approved by, the Commission as required by 47 U.S.C. § 252(a)(1), (e), and RCW 80.36.150. The allegations with respect to two of those Agreements were subsequently dismissed.

### **Scope of the Settlement and its Principal Aspects**

3           For purposes of this Settlement Agreement only and in the interests of settling the disputes between the Parties, XO admits that the remaining two Agreements constitute Interconnection Agreements under current law. XO, however, emphasizes that at the time it entered into each Agreement, XO believed, based on law in existence at the time, that the Agreements did not constitute Interconnection Agreements and that Qwest was the only party obligated to file Interconnection Agreements.

4           In order to ensure an understanding of any future obligations with regard to Interconnection Agreements, XO admits it currently has a legal obligation to file and seek Commission approval for all Interconnection Agreements, agrees to file and seek Commission approval for all future Interconnection Agreements within thirty days of execution, and agrees to be bound by the obligations of the Settlement Agreement or future obligations imposed by statute or rule, whichever are stricter. XO also agrees to file any unfiled Interconnection Agreements.

## **The Settlement Serves the Interests of the Parties and the Public Interest**

5           Order Number 05 in this docket fairly lays out the obligations of both Qwest and competitive local exchange carriers regarding the filing of Interconnection Agreements for approval by the Commission. In this Settlement Agreement, XO accepts the terms of Order Number 05 and agrees to be bound by strict obligations with regard to filing Interconnection Agreements for approval with Commission.

6           The terms of the Settlement Agreement serve the public interest, the interests of Commission Staff, and the interests of XO by providing a mechanism by which all parties understand future obligations under the law. Although the payment provided is 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, the settlement is in the interest of all parties and the public considering the willingness of XO to own up to its obligation, the culpability of XO in failing to recognize its duty to file, the strong deterrent effect of the payment when it is coupled with the other terms of the Settlement Agreement, XO's bargaining position in relation to Qwest, and the fact that two Agreements are at issue.

7           XO has played a relatively small part of the larger picture of known unfiled Interconnection Agreements in the State of Washington. See Exhibit A to Order No. 05. This Settlement Agreement recognizes that while XO may have simply

*misunderstood* its obligation to file Interconnection Agreements, the broad consequences of XO and other companies' failure to file agreements may have damaged the telecommunications marketplace in Washington and frustrated the purposes of the Telecommunications Act of 1996. The Settlement Agreement also recognizes that competitive local exchange carriers like XO are at a disadvantage when negotiating agreements with an incumbent local exchange carrier with the market share, power and resources of Qwest, and that such competitive local exchange carriers' culpability is commensurately lower. The scope of XO's obligations under the Settlement Agreement coupled with the payment ensures that any future agreements will be filed in compliance with the law.

### **Legal Points**

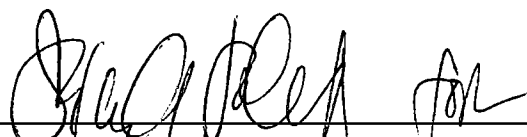
8 Pursuant to Order Number 05, the only issue remaining to be litigated with regard to XO is the second cause of action to the Amended Complaint in which the Commission alleges that 47 U.S.C. § 252(e) requires state commission approval of agreements between incumbent local exchange carriers and other telecommunications companies for interconnection, services, or network elements. In the second cause of action the Commission also alleges that 47 U.S.C. § 252(e) requires that such agreements be filed in a timely manner. Under RCW 80.04.380 the Commission may issue penalties of up to one thousand dollars (\$1000) per violation of 47 U.S.C. § 252(e) with each day of a continuing violation constituting a

separate and distinct offense. Rather than litigate this matter, the parties agree to the Settlement Agreement for the reasons discussed above.

DATED this 30<sup>th</sup> day of July, 2004.

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DATED this 30<sup>th</sup> day of July, 2004.

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