

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

WASHINGTON UTILITIES AND)	DOCKET NO. UT-033011
TRANSPORTATION COMMISSION,)	
)	ORDER NO. 10
Complainant,)	
)	ORDER APPROVING AND
v.)	ADOPTING COVAD, GLOBAL
)	CROSSING, AND XO
ADVANCED TELECOM GROUP,)	SETTLEMENT AGREEMENTS
INC., et al.)	
)	
Respondents.)	
.....)	

SYNOPSIS

1 *In this Order, the Commission approves separate settlement agreements between Commission Staff and Covad, Global Crossing, and XO as consistent with the law and the public interest.*

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.¹ 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)² 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 30, 2004, Commission Staff filed with the Commission two settlement agreements and narratives, one between Staff and Covad Communications Company (Covad) and another between Staff and XO Washington, Inc., f/k/a NEXTLINK Washington, Inc. (XO), requesting orders approving the settlement agreements. For purposes of this Order, the agreement and narrative between Staff and Covad will be referred to as the Covad Settlement and Covad Narrative. Likewise, the agreement and narrative between Staff and XO will be referred to as the XO Settlement and XO Narrative.

5 On August 3, 2004, Commission Staff filed with the Commission a settlement agreement and accompanying narrative statement between Staff and Global Crossing Local Services, Inc. (Global Crossing), requesting an order approving the settlement agreement. For purposes of this Order, the agreement and narrative between Staff and Global Crossing will be referred to as the Global Crossing Settlement and Global Crossing Narrative.

¹ 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.

² Pub. L. No. 104-104, 100 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.*

MEMORANDUM

- 6 The Covad Settlement addresses two agreements between Qwest and Covad, an April 19, 2000, agreement referred to as Agreement No. 7A, and a January 3, 2002, agreement referred to as Agreement No. 16A. *Covad Settlement*, ¶ 4. The Global Crossing Settlement addresses two agreements between Qwest and Global Crossing, a July 17, 2001, agreement referred to as Agreement No. 47A, and a September 18, 2000, agreement referred to as Agreement No. 52A. The XO Settlement addresses two agreements between Qwest and XO, a May 12, 2000, agreement referred to as Agreement No. 36A, and a December 31, 2001, agreement referred to as Agreement No. 40A. *XO Agreement*, ¶ 4.
- 7 In their settlement agreements, Covad, Global Crossing, and XO accept and agree to be bound by the terms of Order No. 05, and admit that Agreement Nos. 7A, 16A, 36A, 40A, 47A, and 52A are interconnection agreements. *Covad Settlement*, ¶¶ 6, 7; *Global Crossing Settlement*, ¶¶ 6, 7; *XO Settlement*, ¶¶ 6, 7. Covad and XO each agree to pay a penalty of \$2000. *Covad Settlement*, ¶ 12; *XO Settlement*, ¶ 12. Covad, Global Crossing, and XO assert that at the time the agreements were executed, they believed the obligation to file the agreements with state commissions rested solely with Qwest, but admit that they have a legal obligation to file and seek Commission approval for all interconnection agreements. *Covad Settlement*, ¶¶ 7, 8; *Global Crossing Settlement*, ¶¶ 7, 8; *XO Settlement*, ¶¶ 7, 8.
- 8 Covad, Global Crossing, and XO agree to file any future interconnection agreements within 30 days of execution, and Covad agrees to file any interconnection agreement not yet filed with the Commission within 30 days of approval of the settlement agreement, while Global Crossing and XO agree to file any such agreements within 45 days of approval of the settlement agreement. *Covad Settlement*, ¶¶ 9, 10; *Global Crossing Settlement*, ¶¶ 9, 10; *XO Settlement*, ¶¶ 9,

10. If approved, the settlement agreements will resolve all issues raised against Covad, Global Crossing, and XO in the Complaint and Amended Complaint issued by the Commission. *Covad Settlement*, ¶ 18; *Global Crossing Settlement*, ¶ 18; *XO Settlement*, ¶ 18.

9 The parties entered into the settlement agreements to avoid the additional expense, uncertainty and delay involved in litigation of the issues in this docket. *Covad Settlement*, ¶ 17; *Global Crossing Settlement*, ¶ 17; *XO Settlement*, ¶ 17. The parties assert that the settlement agreements are consistent with the law and the public interest, as Covad, Global Crossing, and XO accept the terms of Order No. 05, agree to penalties for not filing Agreement Nos. 7A, 16A, 36A, 40A, 47A, and 52A with the Commission, and understand and agree to comply with their Section 252 filing obligations in the future. *Covad Narrative*, ¶¶ 5, 6; *Global Crossing Narrative*, ¶¶ 5, 6; *XO Narrative*, ¶¶ 5, 6. The parties assert that the penalty amounts, \$2000 per company, 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 Covad, Global Crossing, and XO have played a “relatively small part” in the overall history of unfiled agreements in the state of Washington. *Covad Narrative*, ¶¶ 6, 7; *Global Crossing Narrative*, ¶¶ 6, 7; *XO Narrative*, ¶¶ 6, 7.

10 **Discussion and Decision.** Based on the information provided in the Covad , Global Crossing, and XO Settlements and accompanying narratives, 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 agreements. The ultimate determination to be made by the Commission in this proceeding is whether approving the settlement agreements 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 Covad, Global Crossing, and XO Settlements are consistent with Section 252 and the Commission's finding concerning Section 252 filing obligations in Order No. 05. Covad, Global Crossing, and XO agree 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 30 days of approval of the Covad Settlement and within 45 days of approval of the Global Crossing and XO Settlements. The settlement agreements are in the public interest, as they reduce the expense, uncertainty and delay of litigation. The settlement agreements allow parties an efficient way to effect future compliance and acknowledge their Section 252 filing obligations through specific terms and appropriate penalties.
- 12 The information provided in the settlement agreements, accompanying narrative statements, and the record in this proceeding support the agreements reached in the settlements as well as the Commission's approval of the settlement agreements. The parties expressed the basis and justification for the settlements in the settlement agreements themselves and in the narrative statements.
- 13 Based on the record developed in this proceeding, we find the issues pending against Covad, Global Crossing, and XO in this complaint proceeding are adequately addressed and resolved by the terms of the Covad, Global Crossing, and XO Settlements. Under these circumstances, we are satisfied that the settlement agreements are lawful, appropriate, and consistent with the public interest. We approve and adopt the Covad, Global Crossing, and XO Settlements as the full and final resolution of all issues pending against Covad, Global Crossing, and XO 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) Covad Communications Company, Global Crossing Local Services, Inc., and XO Washington, Inc., f/k/a NEXTLINK Washington, Inc., are local exchange carriers 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 are 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.

CONCLUSIONS OF LAW

18 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.

19 (1) The Commission has jurisdiction over the subject matter of this
proceeding and the parties to the proceeding.

20 (2) The settlement agreements between Commission Staff and Covad
Communications Company, Global Crossing Local Services, Inc., and XO
Washington, Inc., f/k/a NEXTLINK Washington, Inc., are consistent with
Section 252 and the Commission's finding concerning Section 252 filing
obligations in Order No. 05. The settlement agreements are in the public
interest, as they reduce the expense, uncertainty and delay of litigation.

ORDER

THE COMMISSION ORDERS:

21 (1) The Settlement Agreement between Covad Communications Company
and Commission Staff is approved and adopted as a complete resolution
of the issues pending against Covad Communications Company in the
Complaint and Amended Complaint in this Proceeding.

22 (2) The Settlement Agreement between XO Washington, Inc., f/k/a
NEXTLINK Washington, Inc., and Commission Staff is approved and
adopted as a complete resolution of the issues pending against XO

Washington, Inc., f/k/a NEXTLINK Washington, Inc., in the Complaint and Amended Complaint in this Proceeding.

- 23 (3) The Settlement Agreement between Global Crossing Local Services, Inc., and Commission Staff is approved and adopted as a complete resolution of the issues pending against Global Crossing Local Services, Inc., in the Complaint and Amended Complaint in this Proceeding.
- 24 (3) Within 15 days of the service day of this Order, Covad Communications Company, Global Crossing Local Services, Inc., and XO Washington, Inc., f/k/a NEXTLINK Washington, Inc., must each pay a penalty of \$2000 to the Commission, payable to the Public Service Revolving Fund.

Dated at Olympia, Washington, and effective this 10th day of August, 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).