

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

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| WASHINGTON UTILITIES AND |) | |
| TRANSPORTATION COMMISSION, |) | DOCKET NO. UT-033011 |
| |) | |
| Complainant, |) | ORDER NO. 01 |
| |) | |
| v. |) | PREHEARING CONFERENCE |
| |) | ORDER; NOTICE OF |
| ADVANCED TELECOM GROUP, INC; |) | PREHEARING CONFERENCE; |
| ALLEGIANCE TELECOM, INC.; AT&T |) | (Set for February 10, 2004) |
| CORP; COVAD COMMUNICATIONS |) | |
| COMPANY; ELECTRIC LIGHTWAVE, |) | |
| INC.; ESCHELON TELECOM, INC. f/k/a |) | |
| 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 **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 other telecommunications companies alleging that the companies entered into certain interconnection agreements identified in Exhibit A to the Amended Complaint,¹ 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

¹ The Commission issued a Complaint against the parties on August 14, 2003, and issued an Amended Complaint on August 15, 2003 to include Exhibits A and B to the Complaint.

agreements to resolve disputes, but that the agreements 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.

- 2 **Prehearing Conference:** The Commission convened a prehearing conference in this docket at Olympia, Washington on September 8, 2003, before Administrative Law Judge Ann E. Rendahl. The purpose of the prehearing conference was to take appearances of the parties, consider petitions for intervention, determine the current status of the proceeding, determine whether it is possible to narrow the issues or consider stipulations of facts or issues, identify the issues in the proceeding, and establish a procedural schedule for the proceeding.

- 3 **Appearances.** Shannon Smith, Assistant Attorney General, Olympia, WA, represents Commission Staff. Brooks E. Harlow and William R. Connors, attorneys, Seattle, WA, Victor A. Allums, attorney, Atlanta, GA, and Brad E. Mutschelknaus, attorney, Washington, D.C., represent Advanced TelCom Group Inc. Brooks E. Harlow and William R. Connors, attorneys, Seattle, WA, represent Covad Communications Company. Daniel Waggoner and Mary Steele, attorneys, Seattle, WA, represent AT&T Corporation. Charles L. Best, attorney, Vancouver, WA, represents Electric Lightwave, Inc. Judith A. Endejan and Richard J. Busch, attorneys, Seattle, WA, and Dennis J. Ahlers, attorney, Minneapolis, MN, represent Eschelon Telecom, Inc. Richard A. Finnigan and Seth Bailey, attorneys, Olympia, WA, represent Fairpoint Communications Solutions, Inc., Integra TelCom, Inc., and SBC Telecom. Mark Trincherro, attorney, Portland, OR, represents Global Crossing Local Services, Inc. David Conn, attorney, Cedar Rapids, IA, represents McLeodUSA, Inc. Arthur A. Butler, attorney, Seattle, WA, and Michel Singer Nelson, attorney, Denver, CO, represent MCI/WorldCom, Inc. Lisa A. Anderl and Adam Sherr, attorneys, Seattle, WA, Todd Lundy, attorney, Denver, CO, Peter S. Spivak and Martha L. Russo, attorneys, Washington, D.C., and Cynthia Mitchell, attorney, Boulder, CO, represent Qwest Corporation. Arthur A. Butler, attorney, Seattle, WA, represents Time Warner Telecom of Washington, LLC. Greg Kopta, attorney, Seattle, WA, represents XO Communications, Inc. Robert Cromwell, Assistant Attorney General, Seattle, WA, represents Public Counsel. Contact information for the parties' representatives is attached as Appendix A to this order.

- 4 **Petition for Intervention.** On September 8, 2003, Time Warner Telecom of Washington, LLC filed with the Commission a Petition to Intervene in the proceeding. No party objected to the petition for intervention. Time Warner's petition was granted.
- 5 **Motion to Dismiss.** On September 4, 2003, Commission Staff filed with the Commission a Motion to Dismiss Allegations against Allegiance Telecom, Inc. (Allegiance) and Motion to Amend Exhibit B. Commission Staff asserts that upon further investigation of the allegations against Allegiance, Staff has discovered that the agreement between Allegiance and Qwest is not an interconnection agreement subject to the filing requirement of 47 U.S.C. § 252(a) or the state commission approval requirement of 47 U.S.C. § 252(e). Staff requests that the agreement be moved to the list of agreements in Exhibit B for which separate allegations are made against Qwest.
- 6 No party opposed the motion, and the motion was granted. Allegiance is dismissed from the complaint, and the agreement between Allegiance and Qwest will be moved to Exhibit B to the Amended Complaint.
- 7 **Correction of or Further Amendment of the Complaint.** Several parties raised concerns that party names were misspelled or that the telecommunications company listed in the Amended Complaint was the national parent company, not the competitive local exchange company (CLEC) registered in Washington state. Commission Staff will work with the parties to correct the names of the companies listed in the Amended Complaint by requesting that the Commission correct the caption or further amend the complaint. Commission Staff will file such a request with the Commission by September 18, 2003.
- 8 **Protective order.** The parties asked the Commission to enter a protective order in this docket pursuant to RCW 34.05.446 and RCW 80.04.095, to protect the confidentiality of proprietary information. The request was granted and a protective order will be entered.
- 9 **Discovery.** Parties desire to engage in discovery of information in the proceeding. The proceeding qualifies under WAC 480-09-480 as a proceeding in which inquiries may be made to the extent provided in the rule. The discovery rule is invoked.

10 **Dispositive Motions.** The parties agreed to narrow the issues in this proceeding through filing dispositive motions, including summary disposition under WAC 480-09-426. Following resolution of the dispositive motions, the Commission will establish a further procedural schedule in the proceeding. The following schedule will govern dispositive motions:

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| Dispositive Motions | Friday, November 7, 2003 |
| Answers to Motions | Friday, December 5, 2003 |
| Replies to Answers | Friday, December 19, 2003 |

11 **Notice of Prehearing Conference.** The Commission convenes a prehearing conference in this matter to determine the current status of the proceeding, identify the remaining issues in the proceeding, determine whether it is possible to narrow the issues or consider stipulations of facts or issues, and establish a procedural schedule for the proceeding. The conference will be held in Room 206, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington **at 9:30 a.m., on Tuesday, February 10, 2004.** Persons who cannot attend in person may participate via the Commission's teleconference bridge line **360-664-3846.** Persons desiring to participate via the bridge line must make advance reservations by calling Kippi Walker at 360-664-1139, no later than Thursday, February 5, 2004.

12 **Document preparation and process issues.** Parties must file 12 copies of each document filed with the Commission. Appendix B states relevant Commission rules and other directions for the preparation and submission of evidence and for other process in this docket. Parties will be expected to comply with these provisions.

13 **Alternate dispute resolution.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at 360-664-1142.

Dated at Olympia, Washington, and effective this 10th day of September 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.

APPENDIX A

| <u>PARTIES REPRESENTATIVES</u> | | | | |
|---------------------------------------|--|------------------------------|------------------------------|--|
| DOCKET NO. UT-033011 | | | | |
| Updated 9/8/03 | | | | |
| COMPANY | REPRESENTATIVE AND ADDRESS | PHONE NUMBER | FAX NUMBER | E-MAIL ADDRESS |
| Commission Staff | SHANNON SMITH Asst. Attorney General 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0128 | 360-664-1192 | 360-586-5522 | ssmith@wutc.wa.gov |
| Advanced TelCom Group, Inc. | BROOKS E. HARLOW (E) WILLIAM R. CONNORS Miller Nash LLP 4400 Two Union Square 601 Union Street Seattle, WA 98101 | 206-622-8484 206-777-7515 | 206-622-7485 (Same) | brooks.harlow@millernash.com bill.Connors@millernash.com |
| | (E-mail only) VICTOR A. ALLUMS General Counsel GE Business Productivity Solutions, Inc. 6540 Powers Ferry Rd., Atlanta, GA 30339 | 770-644-7606 | 770-644-7752 | vic.alums@ge.com |
| | (E-mail only) BRAD E. MUTSCHELKNAUS Kelley Drye & Warren, LLP 1200 19 th Street, NW Suite 500 Washington, DC 20036-2423 | 202-955-9765 | 202-955-9792 | Bmutschelknaus@kelleydrye.com |
| AT&T Corporation | DANIEL WAGGONER MARY STEELE (E-mail) Davis Wright Tremaine LLP 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688 | 206-628-7707 206-903-3957 | 206-628-7699 206-628-7699 | danwaggoner@dwt.com marysteele@dwt.com |
| Covad Communications Company | BROOKS E. HARLOW (E) WILLIAM R. CONNORS Miller Nash LLP 4400 Two Union Square 601 Union Street Seattle, WA 98101 | 206-622-8484 206-777-7515 | 206-622-7485 (Same) | brooks.Harlow@millernash.com bill.connors@millernash.com |

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| Electric Lightwave, Inc. | CHARLES L. BEST Electric Lightwave, Inc. 4400 NE 77 th Avenue Vancouver, WA 98662 | 360-816-3311 | 360-816-0999 | charles_best@eli.net |
| Eschelon Telecom, Inc. | JUDITH A. ENDEJAN RICHARD J. BUSCH (<i>E</i>) Graham & Dunn PC Pier 70 2801 Alaskan Way – Suite 300 Seattle, WA 98121-1128 (<i>E-mail only</i>) DENNIS D. AHLERS Senior Attorney Eschelon Telecom Inc. 730 Second Avenue South, Suite 1200 Minneapolis, MN 55402-2456 | 206-340-9694 | 206-340-9599 | jendejan@grahammdunn.com rbusch@grahammdunn.com |
| Fairpoint Communications Solutions, Inc. | RICHARD A FINNIGAN SETH BAILEY (<i>E-mail</i>) Law Office of Richard A. Finnigan 2405 Evergreen Park Drive SW Suite B-1 Olympia, WA 98502 | 360-956-7001 360-956-7211 | 360-753-6862 (Same) | rickfinn@ywave.com sbailey@ywave.com |
| Global Crossing Local Services, Inc. | MARK TRINCHERO Davis Wright Tremaine LLP Suite 2300 First Interstate Tower 1300 SW Fifth Avenue Portland, OR 97201 | 503-778-5318 | 503-778-5299 | marktrincher@dwt.com |
| Integra TelCom, Inc. | RICHARD A. FINNIGAN SETH BAILEY (<i>E-mail</i>) Law Office of Richard A. Finnigan 2405 Evergreen Park Drive SW Suite B-1 Olympia, WA 98502 | 360-956-7001 360-956-7211 | 360-753-6862 (Same) | rickfinn@ywave.com sbailey@ywave.com |
| McLeodUSA Inc. | DAVID CONN Deputy General Counsel McLeodUSA, Inc. 6400 C Street SW Cedar Rapids, IA 52406 | 319-790-7055 | 319-790-7901 | dconn@mcleodusa.com |

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| <p>MCI/WorldCom, Inc.</p> | <p>ARTHUR A. BUTLER Ater Wynne LLP 601 Union Street Suite 5450 Seattle, WA 98191-2327 <i>(E-mail only)</i> MICHEL SINGER NELSON WorldCom Inc. 707-17th Street Suite 4200 Denver, CO 80202</p> | <p>206-623-4711 303-390-6106</p> | <p> 303-390-6333</p> | <p>aab@aterwynne.com michel.singer_nelson@mci.com</p> |
| <p>Qwest Corporation</p> | <p>LISA A. ANDERL ADAM SHERR <i>(E-mail)</i> Qwest Corporation 1600-7th Avenue, Room 3206 Seattle, WA 98091 <i>(E-mail only)</i> TODD LUNDY Qwest Corporation 1801 California Street Suite 4700 Denver, CO 80202 <i>(E-mail only)</i> PETER S. SPIVACK MARTHA RUSSO Hogan and Hartson 555 Thirteenth Street, NW Washington, DC 20004 <i>(E-mail only)</i> CYNTHIA MITCHELL Hogan and Hartson 1470 Walnut Street, Suite 200 Boulder, CO 80302</p> | <p>206-345-1574 303-896-1446 202-637-5600 720-406-5300</p> | <p>206-343-4040</p> | <p>Lisa.Anderl@qwest.com Todd.lundy@qwest.com psspivack@hhlaw.com mlrusso@hhlaw.com cmitchell@hhlaw.com</p> |
| <p>SBC Telecom</p> | <p>RICHARD A. FINNIGAN SETH BAILEY <i>(E-mail)</i> Law Office of Richard A. Finnigan 2405 Evergreen Park Drive SW Suite B-1 Olympia, WA 98502</p> | <p>306-956-7001 360-956-7211</p> | <p>360-753-6862 (Same)</p> | <p>rickfinn@ywave.com sbailey@ywave.com</p> |
| <p>Time Warner Telecom of Washington, LLC</p> | <p>ARTHUR A. BUTLER Ater Wynne LLP 601 Union Street Suite 5450 Seattle, WA 98101-2327</p> | <p>206-623-4711</p> | <p>206-467-8406</p> | <p>aab@aterwynne.com</p> |

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| XO Communications, Inc. | GREG KOPTA Davis Wright Tremaine LLP 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688 | 206-628-7692 | 206-628-7699 | gregkopta@dwt.com |
| Public Counsel | ROBERT CROMWELL Assistant Attorney General Public Counsel Section 900-4 th Avenue, Suite 2000 Seattle, WA 98164-1012 | 202-464-6595 | 206-389-2058 | RobertC1@atg.wa.gov |
| Presiding Administrative Law Judge | ANN E. RENDAHL 1300 S. Evergreen Park Drive SW PO Box 47250 Olympia, WA 98504-7250 | 360-664-1144 | 360-664-2654 (ALD fax only – do not use to file) | arendahl@wutc.wa.gov |

Appendix B

I. Requirements for ALL paper copies of testimony, exhibits, and briefs

The following requirements are restated from and clarify the Commission's rules relating to adjudications.

A. All paper copies of briefs, prefiled testimony, and original text in exhibits must be

- On 8-1/2x11 paper, punched for insertion in a 3-ring binder,
- Punched with OVERSIZED HOLES to allow easy handling.
- Double-spaced
- 12-point or larger text and footnotes, Times New Roman or equivalent serif font.
- Minimum one-inch margins from all edges.

Other exhibit materials need not be double-spaced or 12-point type, but must be printed or copied for optimum legibility.

B. All electronic and paper copies must be

- SEQUENTIALLY NUMBERED (all pages). **THIS INCLUDES EXHIBITS.** It is not reasonable to expect other counsel or the bench to keep track of where we are among several hundred (or sometimes even just several) unnumbered pages.
- DATED ON THE FIRST PAGE OF EACH ITEM and on the label of every diskette. If the item is a revision of a document previously submitted, it must be clearly labeled (REVISED), with the same title, and with the date it is filed clearly shown. Electronic files must be designated R for revision, when applicable, with an ordinal number showing the revision number.

II. Identifying exhibit numbers; Exhibits on cross examination.

A. **Identifying exhibits.** It is essential to mark documents so you, opposing counsel, and the Commission can find them. We ask you to comply with this clarification of prior practice, based on recent experience:

- **Use the witness's initials and add an ordinal number for each exhibit.** Identify testimony with a T and confidential exhibits with a C. Example: Witness Jane Quintessentia Public. Her original testimony would be JQP-1T or JQP-1TC, her first attached exhibit would be JQP-2, etc. NEVER identify the attachments merely with a single ordinal number, as that will provide the maximum confusion to everyone, including your witness.

B. Prepare a list of your exhibits with their title and (JQP) designation in digital form and in a format specified by the Commission. Send it to the presiding officer before the appropriate prehearing conference. That will simplify identification and ease administrative burdens.

NOTE: Be prepared to submit all of your possible exhibits on cross examination several days prior to the hearing. We will attempt to schedule a prehearing conference to deal with the exhibits as close as possible to the hearing itself, but we have administrative needs that require prefiling.