

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

In the Matter of)	DOCKET UT-073042
)	
TSS DIGITAL SERVICES, INC.,)	ORDER 02
)	
Petition for Enforcement of its)	
Interconnection Agreement with Qwest)	INITIAL ORDER APPROVING
Corporation (f/k/a US WEST)	AND ADOPTING SETTLEMENT
COMMUNICATIONS, INC.) Pursuant)	AGREEMENT; DISMISSING
to WAC 480-07-650.)	COMPLAINT WITH PREJUDICE
)	
.....)	

1 ***Synopsis:** This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This Order would approve and adopt the parties’ Settlement Agreement in full resolution of the issues pending in this billing dispute, and dismiss the complaint.*

MEMORANDUM

2 **PROCEEDINGS:** Docket UT-073042 involves a petition by TSS Digital Services, Inc. (TSS Digital) for enforcement of its interconnection agreement with Qwest Corporation (Qwest) under WAC 480-07-650. Specifically, TSS Digital seeks enforcement of provisions of the agreement that address billing disputes and that require Qwest to work with TSS Digital to identify facilities in non-impaired wire centers that would be converted to tariffed offerings.

3 The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington, on August 23, 2007, before Administrative Law Judge Ann E. Rendahl. The Commission, at the parties’ request, appointed Administrative Law Judge Dennis J. Moss as a mediator to assist the parties in their settlement negotiations.

4 The parties filed preliminary statements expressing their perspectives on the disputed matters on September 17, 2007, and participated in mediated negotiations on September 24, 2007. The parties filed a Settlement Agreement on January 18, 2008.

They simultaneously filed their Joint Settlement Narrative and their Joint Motion asking the Commission to approve the settlement in full resolution of the issues pending in this proceeding and dismiss the complaint with prejudice.

5 **APPEARANCES.** Judith A. Endejan, Graham & Dunn, PC, Seattle, Washington, represents TSS Digital. Lisa A. Anderl, Associate General Counsel, Seattle, Washington, represents Qwest. The Commission’s regulatory staff did not participate in this proceeding.

6 **SETTLEMENT AGREEMENT:** This case is fundamentally about money. It is a billing dispute between private parties. Under the terms of their proposed Settlement Agreement, Qwest agrees to credit a confidential sum of money to TSS Digital and TSS Digital agrees to pay a portion of the disputed amounts. The parties agree to release each other from all claims, whether known or unknown, related to or arising out of their billing dispute.

7 **DISCUSSION AND DETERMINATION:** The parties’ Settlement Agreement, attached to and made part of this Initial Order by this reference, would fully resolve the issues pending in this docket.¹ The issues are limited to intercarrier disputes that are specific to the parties and do not directly impact consumers or other carriers. Early resolution of the parties’ dispute conserves valuable party and Commission resources that would otherwise be devoted to litigating TSS Digital’s and Qwest’s dispute. The Settlement Agreement, if approved, should restore these competitors to a state of repose in connection with their commercial relationship and allow TSS Digital and Qwest to devote their resources to the important business of providing telecommunications services to the public.

8 Consistent with WAC 480-07-750, the Commission accordingly finds that its approval and adoption of the Settlement Agreement is in the public interest, that the Settlement Agreement is supported by an appropriate record, and that approving the

¹ The Settlement Agreement includes terms as to which the parties assert confidentiality, thus a redacted version of the agreement is attached to this Order. Although the Commission disfavors assertions of confidentiality in the context of settlements, RCW 80.04.095 allows parties to designate and have protected from disclosure under the Public Records Act information that is “valuable commercial information.” The Commission expresses no opinion concerning the propriety of the parties’ designation of such information in their Settlement Agreement and Release in this proceeding.

agreement is lawful. The Commission concludes that it should approve and adopt the Settlement Agreement as its resolution of the issues pending in this proceeding.

- 9 All issues in TSS Digital's complaint are resolved in the Settlement Agreement. As TSS Digital and Qwest have fully resolved these issues, it is appropriate to grant the parties' joint motion to dismiss the complaint with prejudice.

ORDER

THE COMMISSION ORDERS:

- 10 (1) The parties' Settlement Agreement, attached to and made a part of this Initial Order, is approved and adopted in full resolution of the issues in this proceeding.
- 11 (2) The parties' Joint Motion to Approve Settlement Agreement and Dismiss Complaint with Prejudice is granted.
- 12 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington and effective January 24, 2008.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN RENDAHL
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order, any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such an answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

On copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and (8) copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

ATTACHMENT