

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

WASHINGTON UTILITIES AND	)	DOCKET NO. UT-033011
TRANSPORTATION COMMISSION,)	
	)	ORDER NO. 13
Complainant,)	
	)	ORDER APPROVING AND
v.	)	ADOPTING SETTLEMENT
	)	AGREEMENT BETWEEN
ADVANCED TELECOM GROUP,	)	COMMISSION STAFF AND
INC., et al.	)	AT&T; NOTICE OF
	)	PREHEARING CONFERENCE
Respondents.	)	(Set for Tuesday, September 21,
.....	)	2004, at 9:30 a.m.)

SYNOPSIS

1 *In this Order, the Commission approves a settlement agreement between Commission Staff and AT&T as consistent with the law and the public interest. The Commission also schedules a prehearing conference to establish the remaining procedural schedule in the proceeding.*

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 September 2, 2004, Commission Staff filed with the Commission a settlement agreement and accompanying narrative statement between Staff and AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon on behalf of Teleport Communications Group, Inc., and AT&T Corporation (AT&T), requesting an order approving the settlement agreement. For purposes of this Order, the agreement and narrative between Staff and AT&T will be referred to as the AT&T Settlement and AT&T Narrative.

MEMORANDUM

5 The AT&T Settlement addresses two agreements between Qwest and AT&T, a March 13, 2000, agreement referred to as Agreement No. 26A, and a April 24,

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.*

2000, agreement referred to as Agreement No. 11B. *AT&T Settlement*, ¶ 4. In the settlement agreement, AT&T accepts and agrees to be bound by the terms of Order No. 05, and admits that Agreement No. 26A is an interconnection agreement. *Id.*, ¶¶ 6, 7. Staff admits that Agreement No. 11B is not an interconnection agreement. *Id.* ¶ 7.

6 AT&T asserts that at the time the agreement was executed, AT&T believed that the Agreement No. 26A was not required to be filed with the Commission, but admits that it has a current legal obligation to file and seek Commission approval for all interconnection agreements. *AT&T Narrative*, ¶¶ 3,4; *AT&T Settlement*, ¶ 8. AT&T agrees to pay a penalty of \$1000. *AT&T Settlement*, ¶ 12.

7 AT&T agrees to file any future interconnection agreements within 30 days of execution, and file any interconnection agreement not yet filed with the Commission within 45 days of approval of the settlement agreement. *Id.*, ¶¶ 9, 10. If approved, the settlement agreement will resolve all disputed issues raised against AT&T in the Complaint and Amended Complaint issued by the Commission. *Id.*, ¶ 15.

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.*, ¶ 17. The parties assert that the settlement agreement is consistent with the law and the public interest, as AT&T accepts the terms of Order No. 05, agrees to a penalty for not filing Agreement No. 26A with the Commission, and understands and agrees to comply with its Section 252 filing obligations in the future. *AT&T Narrative*, ¶¶ 5, 6. The parties assert that the penalty amount of \$1000 may be “small in proportion to the overall harm that may have been caused by Qwest and others in the Complaint and Amended Complaint,” but assert that AT&T 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.** Based on the information provided in the AT&T Settlement 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 agreement. The ultimate determination to be made by the Commission in this proceeding is whether approving the settlement agreement 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).
- 10 The AT&T Settlement is consistent with Section 252 and the Commission’s finding concerning Section 252 filing obligations in Order No. 05. AT&T 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 the parties an efficient way to effect future compliance and acknowledge their Section 252 filing obligations through specific terms and appropriate penalties.
- 11 The information provided in the settlement agreement, accompanying narrative statement, and the record in this proceeding support the agreement reached in the settlement 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 and in the narrative statement.

- 12 Based on the record developed in this proceeding, we find the issues pending against AT&T in this complaint proceeding are adequately addressed and resolved by the terms of the settlement. Under these circumstances, we are satisfied that the settlement agreement is lawful, appropriate, and consistent with the public interest. We approve and adopt the AT&T Settlement as the full and final resolution of all issues pending against AT&T in Docket No. UT-033011.
- 13 **Notice of Prehearing Conference.** The Commission convenes a prehearing conference in this matter to establish the remaining procedural schedule in this proceeding, including whether to establish a discovery cut-off date. **The conference will be held at 9:30 a.m., on Tuesday, September 21, 2004, in the Commission's Main Hearing Room, Room 206, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** Persons who cannot attend the conference 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 Noon on Monday, September 20, 2004.**

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) AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon on behalf of Teleport Communications Group, Inc., and AT&T Corporation, 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 agreement between Commission Staff and AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon on behalf of Teleport Communications Group, Inc., and AT&T Corporation, 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:

- 21 (1) The Settlement Agreement between AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon on behalf of Teleport Communications Group, Inc., and AT&T Corporation, and Commission Staff is approved and adopted as a complete resolution of the issues pending against AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon on behalf of Teleport Communications Group, Inc., and AT&T Corporation, in the Complaint and Amended Complaint in this Proceeding.

- 22 (2) Within 15 days of the service day of this Order, AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon on behalf of Teleport Communications Group, Inc., and AT&T Corporation, must pay a penalty of \$1000 to the Commission, payable to the Public Service Revolving Fund.

Dated at Olympia, Washington, and effective this 9th day of September, 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).