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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION,

Complainant,

vs.

ADVANCED TELECOM GROUP, INC.; et al.,

Respondents.

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) Docket No.
) UT-033011
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DEPOSITION OF THOMAS L. WILSON, VOLUME
July 21, 2004
Olympia, Washington

1 conclusion, I will offer recommendations regarding
2 penalty."

3 A Oh, sorry. I missed the period there. Yes, I see that.
4 Thank you.

5 Q And if you could turn to Page 127 of your testimony. Do
6 you see the final section there that reads, "Staff
7 recommendation for penalties"?

8 A Yes, ma'am.

9 Q Okay. Now I'm a little confused by the passage there
10 because on Page 3 you said you offer recommendations
11 regarding penalties, but on Line 9 of Page 27 you are
12 saying essentially Staff ultimately leaves the issue up
13 to the Commission.

14 So are you or are you not making a recommendation
15 regarding penalties against Eschelon and other parties in
16 this case?

17 A Staff is making recommendations about penalties. Our
18 recommendation is how many days late, or how many days
19 the violation occurred, and then we are leaving it up to
20 the Commission to determine the actual dollar value to
21 assign to each penalty because this is something of new
22 ground for us and we didn't have a past experience to go
23 on.

24 Q So if I were Commissioner Showalter sitting in a hearing
25 and I turn to you and say, "Mr. Wilson, what do you think

1 we should do to penalize the parties who failed to file
2 interconnection agreements?" What would you say to her?

3 A I would say to her that I would recommend that she count
4 the number of violations for each party and apply a
5 thousand dollars per violation.

6 Q For each agreement? It doesn't matter whether it's a
7 letter or a full-blown settlement agreement?

8 A For every one of the agreements the Staff has complained
9 about in this case, yes, each one.

10 Q Let me try to understand something, Mr. Wilson. Is
11 Staff's purpose here to obtain compliance with the newly
12 understood filing obligation with respect to the filing
13 of ICAs, or is it to penalize CLECs for past conduct in
14 failing to file?

15 MR. SWANSON: Objection. I believe
16 that calls for attorney/client privileged information.

17 MS. ENDEJAN: Well --

18 MR. SWANSON: Maybe you could restate
19 your question.

20 Q (By Ms. Endejan) Let's go to some foundational questions
21 then. Mr. Wilson, when were you first tasked with being
22 the Staff witness in this docket?

23 A Well, I began working on the case in late in 2002 and
24 once the docket number -- once the complaint was issued
25 and the docket number assigned, I was assigned lead

1 MS. ENDEJAN: We can go off the
2 record.

3 (Discussion off the record.)

4 (Recess.)

5

6 Q (By Ms. Endejan) Mr. Wilson, let me ask you a different
7 question because I was a little confused about your
8 testimony regarding penalties, you used the term per
9 violation. What do you mean by that?

10 A Let me try to explain just by speaking from Exhibit 71.
11 Here on Row 4 you find at -- let me use Row 6, Mr.
12 Kopta's client today, AT&T, is summarized there where we
13 find there is one agreement that didn't get filed.

14 And I counted the number of days late as described
15 in my counting methodology in my testimony, and I found
16 that that agreement was 270 days late. And so that's 270
17 violations, one violation per day for not filing.

18 Q Okay. I wanted to get that clarified. You mean per
19 violation each day?

20 A Yes, ma'am.

21 Q And leaving aside FairPoint and ELI, looking at all of
22 the carriers identified on Exhibit TLW-71, is it your
23 testimony that each of those carriers should be fined the
24 same amount per violation?

25 A Yes, it is. \$1,000 per day would be the recommendation I

1 would make if, you know, you walked me out on that limb.
2 Staff did not recommend a dollar value in its testimony.

3 Q Do you intend to do so before the Commission when you
4 testify?

5 A If I'm asked for an opinion, I will say \$1,000, but
6 really I think that is something the Commission needs to
7 determine.

8 Q Are you aware of any other factors that the Commission
9 needs to take into account when it makes a decision on a
10 penalty?

11 A Well, it's been four years since I was a policy advisor
12 and sat in the commission chambers when they were making
13 decisions like that. I have always considered they have
14 great discretion and authority on their own and I don't
15 presume to do their thinking for them. Never did and
16 never will.

17 Q Are you familiar with the penalty criteria that the
18 Commission laid out in the MCI Metro Access Transmission
19 Services case? Does that ring a bell?

20 A No, ma'am. I'm not familiar with any of the penalty
21 cases involving violations of 252(e).

22 Q But are you familiar with penalty cases involving other
23 violations?

24 A Just vaguely.

25 Q Okay.

1 the filed agreements.

2 Q Well, is it possible, even in the chronology that you
3 have assembled, for there to be a document that settled
4 past disputes in the context of an ongoing business
5 relationship?

6 A Oh, yes. Almost any of these secret interconnection
7 agreements makes specific reference to the fact that the
8 parties are involved in an interconnection agreement
9 arrangement already that's ongoing, so it takes explicit
10 attention of that fact.

11 Q But I don't believe you quite answered my question, Mr.
12 Wilson.

13 A I'm sorry.

14 Q The question was: In the context of an ongoing business
15 relationship, it's possible for the parties to have
16 disputes, would you agree?

17 A Yes, it is.

18 Q And would you also not agree that those disputes can be
19 settled?

20 A Absolutely.

21 Q To address past billing errors or, you know, disputes --
22 errors that occurred prior to the date of the agreement?

23 A They can, but I think that they are always settled.
24 Nevertheless, the parties are not operating in a vacuum
25 in time. They know they are going to be talking to each

1 other again tomorrow about their business relationships
2 and ongoing transactions.

3 And so it's very difficult to separate what some
4 would call a one time or backward looking matter from the
5 ongoing matters at hand.

6 Q Would the parties almost have to sever their business
7 relationship for you to conclude that the agreement dealt
8 with backward looking issues as opposed to forward
9 looking issues?

10 A You know, hypothetically I think that might be the only
11 way to sever the issue.

12 I was thinking, if I might for a second in the
13 context of myself and my neighbor in residential service
14 provided by a phone company. And if I have an ongoing
15 relationship with the company and I settled my disputes
16 with them in that context, it may be that I'm getting
17 better treatment than my neighbor who doesn't.

18 Q So really in your view, what is more important is an
19 ongoing relationship as opposed to an ongoing obligation?

20 MR. SWANSON: I am going to object to
21 the form of the question. I just would ask counsel to --
22 I believe that your questions are more in the scope of
23 cross-examination questions rather than direct questions,
24 and I believe that's the form that should be used.

25 I just would ask that you ask your questions in that

1 relative harm that came about from the failure to file --

2 A Okay.

3 Q -- your conclusion was that you couldn't really discern a
4 way to distinguish among these agreements in terms of the
5 type or extent of harm the failure to file caused?

6 A No, I really couldn't. And that's because, first of all,
7 taking Exhibit 70 where I list all the SGAT taxonomy and
8 different services that are available, and you look down
9 that list and ask yourself, okay, is collocation more
10 important to a CLEC than direct end office trunking, or
11 is it more important to them than favorable reciprocal
12 compensation, et cetera.

13 And it's just impossible for me to say that one is
14 more important than the other. Particularly because my
15 understanding of the CLEC industry is that there is more
16 than 31 flavors of CLECs, and it's been made clear to me
17 many times that, you know, one CLEC has a different
18 business plan from another, and so CLEC "X" might find
19 collocation to be incredibly important, and CLEC "Y"
20 might think that features are where it's at for them.

21 So that's something that was not possible for a
22 staffer to determine. And really that's something that
23 should have been determined by the CLECs themselves,
24 collecting the opportunity to opt in or out of things.
25 They know best what their business is.

1 well.

2 And the Commission said, no, that's not it. They
3 made it pretty clear that when you opt in to something
4 you have the related terms and conditions that go along
5 with it, but that's it.

6 Q So prior to a week and a half ago, your understanding was
7 that if a CLEC wanted to opt in to something that had
8 been made available, the CLEC would have to agree to
9 accept the terms related to the provision that they
10 wanted to opt in to right?

11 A Yes.

12 Q And there could be some dispute about what the range of
13 related terms was?

14 A That's right. That's why our rules and policies have
15 included the provision that when a CLEC tries to opt in
16 to an agreement, they have to notify the ILEC that they
17 want to opt in to it, and then the ILEC has 15 days to
18 object to it and bring it down here for a decision to
19 implement that kind of issue.

20 Q So it is not correct to say that a CLEC can just cherry
21 pick individual terms out of agreements without
22 considering what related terms and conditions may go
23 along with those terms, right?

24 A I will go along with that generally speaking. You know,
25 I mean, we have to be careful, but like you just said

1 there might be a dispute about what is related, but
2 generally speaking I would agree with you.

3 Q And in fact you can't get a whole lot more specific than
4 the level we just discussed without actually looking at
5 an agreement and seeing the provision at issue and what
6 else is in that agreement, correct?

7 A Right.

8 Q And in fact in listening to your answers to questions
9 from Eschelon earlier today, it seemed to me what you
10 were saying is you don't even just look at the one
11 agreement in certain context, but in fact you may have to
12 look at a series of agreements, right?

13 A That's entirely possible. You have to take them in
14 context. And I was looking at the series that were all
15 signed the same day in Minneapolis. I envision a group
16 of people sitting around the table and doing that. You
17 know, I just envision a lot of winking going along
18 perhaps.

19 Q But putting aside whatever winking happened or didn't, if
20 the series of agreements signed in November plus or minus
21 2000, between Qwest and Eschelon had been filed and
22 approved, now we are in the realm of a hypothetical, but
23 as I understand what you were saying earlier today and
24 what you are saying now, that whole series of agreements
25 would have to be considered collectively in order to