

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
CASE NO.: UT-033011
REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

QWEST DATA REQUEST TO STAFF NO. 58:

Please provide the following information with respect to the agreement attached as Exhibit A, Agreement No. 1 to Commission Order No. 05:

- a. Please state the basis for the Staff's belief that this agreement constitutes an "interconnection agreement" under the definition set forth in the FCC Order.
- b. Please state the date by which the Staff contends that Qwest should have filed this agreement with the Commission.
- c. Please state whether the Staff contends that the Commission would have approved this agreement had Qwest filed it in what the Staff would consider a timely manner.
- d. If your response to subpart c above is anything other than an unqualified "yes," please state the reasons why the Staff contends that the Commission would not have approved this agreement and the authorities supporting that position.
- e. Please explain the bases for Mr. Wilson's calculation, in Exhibit TW-72 to his testimony, of the number of days the Staff deems Qwest to have been in violation of 47 U.S.C. § 252(e), 47 U.S.C. § 252(i), RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186.
- f. Please identify all Washington-certificated CLECs that the Staff knows or believes would have sought to opt into any provision of this agreement had it been filed in what the Staff would consider a timely manner.
- g. For each CLEC identified in your response to subpart f above, please identify all bases for the Staff's knowledge or belief that the CLEC would have sought to opt into any provision of this agreement had it been filed in what the Staff would consider a timely manner.
- h. For each CLEC identified in your response to subpart f above, please identify the provision(s) that the Staff knows or believes that CLEC would have sought to opt into had the agreement been filed in what the Staff would consider a timely manner.
- i. For each CLEC identified in your response to subpart f above, please identify all facts and produce all documents in the Staff's possession, custody or control demonstrating that the CLEC

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
CASE NO.: UT-033011
REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

could have satisfied all terms legitimately related to those the Staff knows or believes the CLEC would have sought to opt into.

j. For each CLEC identified in your response to subpart f above, please identify all facts and produce copies of all documents in the Staff's possession, custody or control as of the date of these Requests identifying, defining or quantifying or attempting to identify, define or quantify any harm the CLEC suffered or may have suffered as a result of Qwest's alleged failure to file this agreement in what the Staff would consider a timely manner.

k. For each CLEC identified in your response to subpart f above, please identify all facts and produce copies of all documents in the Staff's possession, custody or control as of the date of these Requests that in any way suggest that the CLEC could have or would have changed its business model or modified its business behavior in any way had Qwest filed this agreement in what the Staff would consider a timely manner.

RESPONSE:

- a. Please see Exhibit No. ___(TLW-70) and Mr. Wilson's analysis of the secret interconnection agreements under the Second Cause of Action beginning in his testimony on page 16 of Exhibit No. ___(TLW-T-1), wherein Mr. Wilson provides his analysis of whether each agreement constitutes an interconnection agreement.
- b. Please see Exhibit No. ___(TLW-71), Column E, which provides the due date by which each secret interconnection agreement should have been filed with the Commission. Also please see Mr. Wilson's discussion and analysis of the Timeliness issue in Exhibit No. ___(TLW-T-1) beginning at page 55.
- c. Objection, speculative, insufficient information provided to answer the question and calls for legal conclusion.
- d. Objection, speculative, insufficient information provided to answer the question and calls for legal conclusion.
- e. Please see Exhibit No. ___(TLW_T-1), page 56, lines 8-17 for an explanation of how Mr. Wilson calculated the number of days the Staff deems Qwest to have been in violation of 47 U.S.C. § 252(e), 47 U.S.C. § 252(i). Regarding secret interconnection agreements in

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
CASE NO.: UT-033011
REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

Exhibit A, the calculation of the number of days Staff deems Qwest to have been in violation of RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186 is the same as for violations of 47 U.S.C. § 252(e), 47 U.S.C. § 252(i). Regarding secret agreements in Exhibit B, the calculation of the number of days Staff deems Qwest to have been in violation of RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186 is simply the number of days since the agreement was signed until June 1, 2004.

- f. Please see opening argument at page 3 of Time Warner's September 8, 2003 petition to intervene:

"In this proceeding, the Amended Complaint alleges that Qwest has entered into a number of agreements that make available interconnection, services, or network elements to certain CLECs that were not filed or not timely filed. TWTC may wish to take advantage of the terms of those agreements. The Amended Complaint also alleges that Qwest has entered into a number of agreements with certain CLECs that contain terms and conditions that create an undue or unreasonable prejudice or disadvantage or undue discrimination. TWTC has an interest in ensuring that it is able to take advantage of contract terms and conditions that are the same or substantially the same as those offered by Qwest to similarly situated telecommunications companies, and that it is not subjected to undue or unreasonable prejudice or disadvantage or undue discrimination in gaining access to or pricing of interconnection, services, or unbundled network elements." (Emphasis Added)

Also, because all of the secret interconnection agreements were kept a secret until they were filed as Exhibits attached to Mr. Wilson's testimony in this docket on June 8, 2004, other CLECs did not have access to any of the secret interconnection agreements until they were either untimely filed for approval or filed by Mr. Wilson in this case. It is Mr. Wilson's belief that because the secret interconnection agreements at issue were secret, there are no other documents that refer to or relate to communications from any other CLECs regarding such carrier's inability to obtain any service, rates, term or condition contained in any of the secret interconnection agreements at issue in this docket.

Please see Exhibit No. ___ (TLW-76) at page 12 (response to 1-2). It is speculative to consider the effects on other CLECs who did not have access to the secret interconnection agreements because other CLECs were not afforded the opportunity to review the secret interconnection agreements to determine whether to opt-in, and therefore they also did not have grounds to try to adopt or opt-in.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
CASE NO.: UT-033011
REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

Please see Exhibit No. ____ (TLW-79), at page 3 (response to 1-3) wherein Worldcom indicates that any secret interconnection agreement providing better pricing of any services, including UNE-P, through discounts or take-or-pay provisions, for example, or shorter intervals for provisioning of services or more attention to the provisioning of service should have been available for adoption. The response continues with the statement that pricing and provisioning are critical to entry into the local market and any improvement in prices and provisioning would have made entry easier for CLECs.

Please also see Exhibit No. ____ (TLW-80) at page 6, response to 1-2: "agreements which provide for discounts, accelerated complaint resolution, special attention, "take or pay" arrangements, "consulting," or other incentives or privileges, or advantages, all would have made entry into the local market [easier] . . ." The secret interconnection agreements with Eschelon include provisions for discounts, accelerated complaint resolution, special attention, consulting and other incentives, privileges and advantages, therefore Staff concludes that CLECs such as AT&T might have possibly attempted to seek to have the agreements made available for adoption. Because they were secret, however, it is speculative to say anything other than apparently AT&T and other CLECs were not able to enjoy the opportunity that the request seems to imagine or presume may have occurred.

On this basis, Staff reasonably assumes that, had the secret interconnection agreements been filed and made available for adoption, it is entirely possible other CLECs would have reviewed and possibly adopted various elements in the hopes of improving pricing and provisioning.

Please see the agreement, which speaks for itself, and is filed as an exhibit attached to Mr. Wilson's pre-filed direct testimony.

- g. Please see response to f.
- h. Please see response to f.
- i. Please see response to f.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
CASE NO.: UT-033011
REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

j. Other than the information provided in its direct pre-filed testimony and exhibits, Staff does not have any documents in its possession which identify, define or quantify or attempt to identify, define or quantify any harm a CLEC suffered or may have suffered as a result of Qwest's alleged failure to file this agreement in what the Staff would consider a timely manner.

k. Other than the information already provided in direct pre-filed testimony and exhibits, Staff does not have any documents that suggest that the CLEC could have or would have changed its business model or modified its business behavior in any way had Qwest filed this agreement in what the Staff would consider a timely manner.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
CASE NO.: UT-033011
REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

QWEST DATA REQUEST TO STAFF NO. 97:

Please provide the following information with respect to the agreement attached as Exhibit B, Agreement No. 1 to Commission Order No. 05:

- a. Please state the basis for the Staff's belief that Qwest was required to publish this agreement or otherwise make this agreement available for inspection, review, approval or opt-in.
- b. Please state the date by which the Staff contends that Qwest should have published this agreement or otherwise made this agreement available for inspection, review, approval or opt-in.
- c. Please state whether the Staff contends that Commission approval would have been necessary for this agreement to take effect and, if so, if the Commission would have approved this agreement had Qwest filed it in what the Staff would consider a timely manner.
- d. If your response to subpart c above is anything other than an unqualified "yes," please state the reasons why the Staff contends that the Commission would not have approved this agreement and the authorities supporting that position.
- e. Please explain the bases for Mr. Wilson's calculation, in Exhibit TW-72 to his testimony, of the number of days the Staff deems Qwest to have been in violation of RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186.
- f. Please identify all Washington-certificated CLECs that the Staff knows or believes would have sought to adopt or opt into any provision of this agreement had it been filed in what the Staff would consider a timely manner.
- g. For each CLEC identified in your response to subpart f above, please identify all bases for the Staff's knowledge or belief that the CLEC would have sought to adopt or opt into any provision of this agreement had it been filed in what the Staff would consider a timely manner.
- h. For each CLEC identified in your response to subpart f above, please identify the provision(s) that the Staff knows or believes that CLEC would have sought adopt or to opt into had the agreement been filed in what the Staff would consider a timely manner.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
CASE NO.: UT-033011
REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

i. For each CLEC identified in your response to subpart f above, please identify all facts and produce copies of all documents in the Staff's possession, custody or control identifying, defining or quantifying or attempting to identify, define or quantify any harm the CLEC suffered or may have suffered as a result of Qwest's alleged failure to file this agreement in what the Staff would consider a timely manner.

j. For each CLEC identified in your response to subpart f above, please identify all facts and produce copies of all documents in the Staff's possession, custody or control that in any way suggest that the CLEC could have or would have changed its business model or modified its business behavior in any way had Qwest filed this agreement in what the Staff would consider a timely manner.

RESPONSE:

a. Objection, mischaracterizes Staff's position and calls for legal conclusion.

b. Objection, mischaracterizes Staff's position and calls for legal conclusion.

c. Objection, speculative, insufficient information provided to answer the question and calls for legal conclusion.

d. Objection, speculative, insufficient information provided to answer the question and calls for legal conclusion.

e. Regarding secret interconnection agreements in Exhibit A, the calculation of the number of days Staff deems Qwest to have been in violation of RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186 is the same as for violations of 47 U.S.C. § 252(e), 47 U.S.C. § 252(i). Please see Exhibit No. ___ (TLW_T-1), page 56, lines 8-17 for an explanation of how Mr. Wilson calculated the number of days the Staff deems Qwest to have been in violation of 47 U.S.C. § 252(e), 47 U.S.C. § 252(i). Regarding secret agreements in Exhibit B, the calculation of the number of days Staff deems Qwest to have been in violation of RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186 is simply the number of days since the agreement was signed until June 1, 2004.

f. Staff does not claim in its complaint or testimony that Exhibit B agreements should have been filed in a timely manner or that they are subject to §252(e) or §252(i). Staff is unaware of

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: July 12, 2004
CASE NO.: UT-033011
REQUESTER: Qwest

WITNESS: Thomas L. Wilson
RESPONDER: Thomas L. Wilson
TELEPHONE: (360) 664-1282

any Washington-certificated CLECs that would have sought to adopt or opt into any provision of this agreement.

g. Staff did not identify any CLECs in question f, because Staff does not claim in its complaint and testimony that Exhibit B agreements should have been filed in a timely manner or that they are subject to §252(e) or §252(i). Staff has no bases for a belief that any Washington-certificated CLECs that would have sought to adopt or opt into any provision of this agreement.

h. Staff did not identify any CLECs in question f, because Staff does not claim in its complaint or testimony that Exhibit B agreements should have been filed in a timely manner or that they are subject to §252(e) or §252(i). Staff is unaware of any Washington-certificated CLECs that would have sought to adopt or opt into any provision of this agreement and therefore cannot identify specific provisions as requested.

i. Staff did not identify any CLECs in question f, and so Staff does not have the requested documents.

j. Staff did not identify any CLECs in question f, and so Staff does not have the requested documents.