

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, Washington 98512
Fax (360) 753-6862

Richard A. Finnigan
(360) 956-7001
rickfinn@localaccess.com

Kathy McCrary, Paralegal
(360) 753-7012
kathym@localaccess.com

May 14, 2007

VIA ELECTRONIC MAIL AND HAND DELIVERY

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

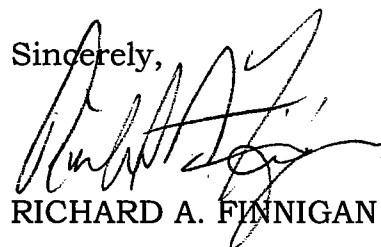
RECEIVED
RECORDS MANAGEMENT
07 MAY 14 PM 4:17
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

Re: Docket No. UT-063038 – Motion to Compel Broadwing
Communications, LLC to Respond to Bench Request No. 2

Dear Ms. Washburn:

Enclosed are the original and three copies of a Motion to Compel Broadwing
Communications, LLC to Respond to Bench Request No. 2 and Certificate of
Service.

Sincerely,



RICHARD A. FINNIGAN

RAF/km
Enclosures

cc: Service List (via e-mail and U.S. mail, or as otherwise specified)
Terrence Stapleton (via e-mail)
ALJ Mace (via e-mail and hand delivery)

RECEIVED
RECORDS MANAGEMENT

07 MAY 14 PM 4:17

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

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

QWEST CORPORATION,

Complainants,

v.

LEVEL 3 COMMUNICATIONS, LLC,
PAC-WEST TELECOMM, INC.,
NORTHWEST TELEPHONE INC., TCG
SEATTLE, ELECTRIC LIGHTWAVE, INC.,
ADVANCED TELCOM, INC. D/B/A
ESCHELON TELECOM, INC., FOCAL
COMMUNICATIONS CORPORATION,
GLOBAL CROSSING LOCAL SERVICES
INC., AND, MCI WORLDCOM
COMMUNICATIONS, INC.,

Respondents.

DOCKET NO. UT-063038

MOTION TO COMPEL BROADWING
COMMUNICATIONS, LLC TO RESPOND
TO BENCH REQUEST NO. 2

This Motion is brought by the Washington Independent Telephone Association ("WITA") to compel Broadwing Communications, LLC ("Broadwing") to respond properly to Bench Request No. 2.

MOTION TO COMPEL BROADWING
COMMUNICATIONS, LLC TO RESPOND TO
BENCH REQUEST NO. 2 – Page 1

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

1 **BASIS OF MOTION**

2 WITA earlier objected to the response to Bench Request No. 2 filed by Broadwing, pointing
3 out that Broadwing had chosen to answer a question that was different than the question was
4 propounded and constituted Bench Request No. 2. Broadwing focused its response narrowly on a
5 particular billing dispute with Qwest. In fact, the question that was asked of Broadwing was a
6 general question predicated upon Broadwing’s statement that they assessed the WECA access rate
7 element as a universal service fund access rate element to all interexchange carriers in Washington.
8 The question then asked that the Broadwing accept, subject to check, that Broadwing and its
9 predecessor corporation, Focal Communications, had never remitted funds that it collected under
10 the “WECA USF rate element” to the Washington Exchange Carrier Association (“WECA”).¹

11
12 Counsel for WITA placed telephone calls to both Mr. Strumberger and Mr. Rogers as
13 counsel for Broadwing. Neither attorney returned the telephone call.² Thus, Broadwing appears to
14 be attempting to avoid responding to the question that was actually asked.
15

16 Given that the opening briefs in this matter are due June 1, 2007, Broadwing should be
17 compelled to provide a response to the actual request that constitutes Bench Request No. 2 no later
18 than this Friday, May 18, 2007. If Broadwing fails to respond completely to that request, then the
19 attached Declaration of Mr. Craig Phillips, Administrator of the Washington Exchange Carrier
20 Association, should be accepted as a late-filed exhibit. See Exhibit 2. As Mr. Phillips clearly
21
22

23
24 ¹ See, Transcript at 715-717, attached as Exhibit 1.

25 ² At least neither attorney left a voice mail message to indicate that they had returned the telephone call.

1 states, Broadwing and its predecessor corporation have never remitted any funds to WECA.

2
3 **PRAYER FOR RELIEF**

4 WITA respectfully requests that the Commission issue an order compelling Broadwing to
5 respond to the bench request that was promulgated, not to Broadwing's mischaracterization of that
6 bench request. The question that is to be answered is as follows: "Would you accept, subject to
7 check, that those amounts that are collected by Focal, now Broadwing, have not been remitted to the
8 Washington Exchange Carrier Association?"³

9
10 Dated this 14th day of May, 2007.

11
12 

13 RICHARD A. FINNIGAN, WSB #6443
14 Attorney for the Washington Independent
15 Telephone Association

16
17
18
19
20
21
22
23
24
25 ³ See, Transcript at 716, l. 8-11.

EXHIBIT 1

1 Finnigan begins, I'd just like to clarify one point.
2 Ms. McNeil was here basically because of the
3 counterclaim between Qwest and Broadwing, and so her
4 expertise and her testimony is very narrow on the
5 issue of just billing.

6 If Mr. Finnigan wanted to ask some questions
7 about just the narrow line of general how we bill
8 things, that would be okay, but anything else, I
9 believe, would be beyond the scope of Ms. McNeil's
10 testimony.

11 JUDGE MACE: Well, let's see what his
12 questions are.

13 MR. FINNIGAN: Thank you. And my questions
14 are related to billing.

15 THE WITNESS: Hi.

16
17 C R O S S - E X A M I N A T I O N

18 BY MR. FINNIGAN:

19 Q. Good afternoon. For your information, my
20 name is Rick Finnigan, and I represent the Washington
21 Independent Telephone Association.

22 A. Great.

23 Q. In your discussion with Ms. Anderl, I heard
24 you mention the WECA rate element on access charges?

25 A. Yes, sir.

CONTINENTAL REPORTING SERVICE, INC.
SEATTLE, WASHINGTON
(800) 308 - 3377

1 Q. And that WECA rate element is a Universal
2 Service Fund rate element; is that correct?

3 A. I believe so.

4 Q. Does Focal, now Broadwing, assess that
5 access element to all interexchange carriers for
6 which it originates or terminates access minutes?

7 A. I believe in the Washington State area.

8 Q. Would you accept, subject to check, that
9 those amounts that are collected by Focal, now
10 Broadwing, have not been remitted to the Washington
11 Exchange Carrier Association?

12 A. I would not know about that.

13 Q. Okay. In asking you to accept it subject to
14 check, that's something you could go to your accounts
15 payable department and see if those funds have been
16 remitted?

17 MR. STRUMBERGER: Your Honor, this is,
18 again, outside the scope of Ms. McNeil's testimony.

19 JUDGE MACE: Well, she is talking about
20 billing and this seems to have to do with the billing
21 issues, so I can't understand why she wouldn't be
22 able to check on this. It seems like it's her
23 bailiwick.

24 MR. STRUMBERGER: The intake of that money
25 would be. What happens after that point would be out

1 of the scope of her knowledge.

2 JUDGE MACE: Who could check on that, then?

3 MR. STRUMBERGER: I would have to find out.

4 I don't know that answer off the top of my head.

5 It's -- my understanding is that would be something

6 completely different than what, really, the scope of

7 this proceeding is, if we're talking about USF

8 payments to rural carriers.

9 MR. FINNIGAN: It still seems to be a fairly

10 simple question to check with the internal company

11 documents, but if counsel would prefer, I can defer

12 that one question to Mr. Melendez. I'm sorry, I

13 mispronounced that.

14 JUDGE MACE: Meldazis.

15 MR. FINNIGAN: Meldazis, and see if he feels
16 more comfortable.

17 JUDGE MACE: I'm going to ask -- I'll make
18 it a bench request, actually. I'd like to have the
19 company check on whether or not those amounts have
20 been remitted to WECA. That will be Bench Request
21 Two. I guess that's not exactly a Bench Request;
22 it's a Bench Exhibit, but in any event, Bench Request
23 Two.

24 MR. FINNIGAN: Thank you, Your Honor. That
25 completes my cross.

EXHIBIT 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

QWEST CORPORATION,

Complainants,

v.

LEVEL 3 COMMUNICATIONS, LLC,
PAC-WEST TELECOMM, INC.,
NORTHWEST TELEPHONE INC., TCG
SEATTLE, ELECTRIC LIGHTWAVE, INC.,
ADVANCED TELCOM, INC. D/B/A
ESCHELON TELECOM, INC., FOCAL
COMMUNICATIONS CORPORATION,
GLOBAL CROSSING LOCAL SERVICES
INC., AND, MCI WORLD COM
COMMUNICATIONS, INC.,

Respondents.

DOCKET NO. UT-063038

DECLARATION OF CRAIG J. PHILLIPS

I, Craig J. Phillips, hereby declare under penalty of perjury under the laws of the state of Washington that the following statements are true and correct:

1. I am the Administrator for the Washington Exchange Carrier Association, also known as WECA, and make this Declaration in that capacity.
2. I have held the position of Administrator of WECA since 1987.

DECLARATION OF CRAIG J. PHILLIPS - 1

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

