

December 6, 2004

**VIA UPS OVERNIGHT DELIVERY AND EMAIL**

Ms. Carol J. Washburn  
Executive Secretary  
Washington Utilities and  
Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
Olympia, WA 98504-7250

Re: WUTC v. Advanced Telecom Group, Inc., et al.  
Docket No. UT-033011  
Time Warner Telecom of Washington, LLC's Opposition to Proposed  
Settlement Between Qwest, Staff, and Public Counsel

Dear Ms. Washburn:

By agreement at the November 29, 2004, hearing in the above-referenced matter, enclosed for inclusion in the record are Qwest's responses to Time Warner Telecom of Washington's Data Request Nos. 2 through 11.

If you have any questions, please feel free to contact our office.

Sincerely,

ATER WYNNE LLP



Arthur A. Butler

cc: Ann E. Rendahl, ALJ (via E-Mail)  
Parties of Record (via method(s) indicated)

## CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of December, 2004, served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC, via the method(s) noted below, properly addressed as follows:

Carole Washburn  
Executive Secretary  
Washington Utilities and Transportation  
Commission  
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I hereby certify that I have this 6th day of December, 2004, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 6th day of December, 2004, at Seattle, Washington.

  
\_\_\_\_\_

QWEST CORPORATION

STATE: Washington  
DOCKET NO: UT-033011  
CASE DESCRIPTION: WUTC v. Advanced Telecom Group, Inc., et al.  
INTERVENOR: Time Warner Telecom of Washington, LLC ("TWTC")  
REQUEST NO: TWTC 02-002

REQUEST:

Given the stipulation in the McLeodUSA Settlement Agreement, at page 4, that Agreements 44A and 45A constitute Interconnection Agreements under current FCC and WUTC rules and orders, and given the prefiled testimony of Mr. Stephen Gray, at page 16, that the implementation of Agreements 44A and 45A had the net effect of modifying the rates McLeodUSA paid under its existing interconnection agreement, and his testimony at pages 16-17 that McLeodUSA had an oral agreement with Qwest that entitled McLeodUSA to a volume discount of between 6.5% and 10% on the products it purchased from Qwest and Agreements 44A and 45A were the mechanism proposed by Qwest through which the benefit of the oral discount agreement would be at least partially realized, please explain why Agreements 44A and 45A were excluded from the list of agreements that the settling parties agreed were Interconnection Agreements that should have been filed under federal and state law.

RESPONSE:

Without disclosing information subject to ER 408, Qwest responds that Agreements 44A and 45A were excluded from the list of agreements found in paragraph 4 of the settlement agreement as a result of a compromise of the settling parties' litigation positions. In the settlement agreement, the settling parties neither conclude that agreements 44A and 45A are interconnection agreements, nor do they conclude that they are not interconnection agreements.

In Qwest's view, neither Agreement 44A nor 45A falls within the FCC's definition of an "interconnection agreement" that is to be filed under section 252. The FCC's Declaratory Ruling issued October 4, 2002 defines an "interconnection agreement" as an agreement that creates an ongoing obligation pertaining to Section 251(b) and (c) services. Exhibits 44A and 45A on their face are volume purchase obligations; they do not affect or create any terms for the provisioning of section 251 services. Furthermore, the settlement agreement acknowledges and references the allegations of agreements affecting rates of services purchased by Eschelon and McLeod in paragraph 5.

Respondent: Legal



QWEST CORPORATION

STATE: Washington  
DOCKET NO: UT-033011  
CASE DESCRIPTION: WUTC v. Advanced Telecom Group, Inc., et al.  
INTERVENOR: Time Warner Telecom of Washington, LLC ("TWTC")  
REQUEST NO: TWTC 02-003

REQUEST:

With reference to paragraph 15 of the proposed Settlement Agreement, please state

a. Whether it would be "consistent with the statements and admissions set forth in paragraphs 4 and 5" if the Commission were to make findings of fact and conclusions of law to the effect that the agreements listed in paragraphs 12 (Eschelon) and 13 (McLeodUSA) of Order No. 12 are Interconnection Agreements that should have been filed by Qwest and that Qwest willfully and intentionally violated Sec. 252, RCW 80.36.170, .180, and .186 by not filing, in a timely manner, its transactions with Eschelon and McLeodUSA relating to discounts off rates for Section 251(b) and (c) services.

b. Whether the oral discount agreement referred to by Mr. Stephen Gray at pages 16-17 of his prefiled testimony is included within the agreements listed in paragraph 13 of Order No. 12.

RESPONSE:

a. Yes, with the exception of Agreements 44A and 45A. See Qwest's response to DR No. 2.

b. No.

Respondent: Legal

QWEST CORPORATION  
STATE: Washington  
DOCKET NO: UT-033011  
CASE DESCRIPTION: WUTC v. Advanced Telecom Group, Inc., et al.  
INTERVENOR: Time Warner Telecom of Washington, LLC ("TWTC")  
REQUEST NO: TWTC 02-004

REQUEST:

With reference to paragraphs 15 and 19 of the proposed Settlement Agreement, please state whether a Settling Party would have the right to withdraw from the Settlement Agreement and seek reconsideration of the Commission's order if the Commission were to make findings of fact and conclusions of law to the effect that:

- a. The agreements listed in paragraphs 12 (Eschelon) and 13 (McLeodUSA) of Order No. 12 are Interconnection Agreements that should have been filed by Qwest;
- b. Qwest willfully and intentionally violated Sec. 252, RCW 80.36.170, .180, and .186 by not filing, in a timely manner, its transactions with Eschelon and McLeodUSA relating to discounts off rates for Section 251(b) and (c) services;
- c. CLECs other than Eschelon and McLeodUSA were harmed by Qwest's failure to file the Eschelon and McLeodUSA transactions; and
- d. Consumers were harmed by Qwest's failure to file the Eschelon and McLeodUSA transactions.

RESPONSE:

- a. Yes, Qwest believes that such a finding would be inconsistent with paragraphs 4, 5, and 8 of the settlement agreement and would allow a party to withdraw from the settlement.
- b. No.
- c. Yes, Qwest believes that such a finding is inconsistent with the settlement agreement and also would constitute a material revision, thereby allowing a party to withdraw from the settlement agreement.
- d. Yes, Qwest believes that such a finding is inconsistent with the settlement agreement and also would constitute a material revision, thereby allowing and would allow a party to withdraw from the settlement agreement.

Respondent: Legal

QWEST CORPORATION

STATE: Washington  
DOCKET NO: UT-033011  
CASE DESCRIPTION: WUTC v. Advanced Telecom Group, Inc., et al.  
INTERVENOR: Time Warner Telecom of Washington, LLC ("TWTC")  
REQUEST NO: TWTC 02-005

REQUEST:

With reference to paragraph 19 of the proposed Settlement Agreement, if the Commission were to approve the Settlement Agreement but also make the findings of fact and conclusions of law referred to in TWTC Data Request No. 4 above, would it be a violation of the Settlement Agreement and the Commission's order if a TWTC or another carrier that was not party to the Settlement Agreement were to cite as precedent in another proceeding, including one before the Commission, the commission of an other state, the state courts of Washington or of any other state, the federal courts of the United States of America, or the FCC, any of those findings of fact and conclusions of law referred to in TWTC Data Request No. 4 above?

RESPONSE:

If the Commission were to make the findings of fact and conclusions of law referred to in TWTC Data Request No. 4 above, Qwest believes that it would have the right to withdraw from the settlement agreement. If Qwest were to do so, the agreement would be void and of no effect. Thus, there would not be a Commission order "approving" the settlement agreement as described in this data request. As such, it is doubtful that the premise upon which this question is based would ever exist. If, however, such events did come to pass, Qwest does not believe that a non-party to the settlement can violate the settlement agreement. It is unclear at this time whether TWTC would be in violation of the Commission order approving the settlement, because it is not possible to predict exactly what the Commission order would say, and thus no conclusions about whether particular conduct violates the order can be drawn.

QWEST CORPORATION

STATE: Washington  
DOCKET NO: UT-033011  
CASE DESCRIPTION: WUTC v. Advanced Telecom Group, Inc., et al.  
INTERVENOR: Time Warner Telecom of Washington, LLC ("TWTC")  
REQUEST NO: TWTC 02-006

REQUEST:

With reference to the last sentence of paragraph 25 of the proposed Settlement Agreement and to Order No. 12, including paragraph 17 (which recites that Eschelon and McLeodUSA will remain parties to the proceeding, sponsor and provide responsive testimony and exhibits, and make a witness available for direct and cross-examination at the hearing), will the portions of the pre-filed testimony of Messrs. Smith and Gray that have not been stricken be available for consideration by the Commission of the proposed Settlement Agreement and will they be available for direct and cross-examination at any hearing on the proposed Settlement Agreement?

RESPONSE:

With reference to the last sentence of paragraph 25 of the proposed Settlement Agreement and to Order No. 12, including paragraph 17 (which recites that Eschelon and McLeodUSA will remain parties to the proceeding, sponsor and provide responsive testimony and exhibits, and make a witness available for direct and cross-examination at the hearing), will the portions of the pre-filed testimony of Messrs. Smith and Gray that have not been stricken be available for consideration by the Commission of the proposed Settlement Agreement and will they be available for direct and cross-examination at any hearing on the proposed Settlement Agreement?

Qwest believes that to the extent any prefiled testimony is admitted, the Commission may consider that testimony in reviewing any issue properly before the Commission. Qwest is not in a position to say whether Messrs. Smith and Gray will be available to testify at any further hearings in this matter. Qwest does not believe that further hearings are necessary. However, if the Commission makes that determination, Qwest believes that the Commission will also make a determination about which witnesses must appear and testify.

Respondent: Legal

QWEST CORPORATION  
STATE: Washington  
DOCKET NO: UT-033011  
CASE DESCRIPTION: WUTC v. Advanced Telecom Group, Inc., et al.  
INTERVENOR: Time Warner Telecom of Washington, LLC ("TWTC")  
REQUEST NO: TWTC 02-007

REQUEST:

With reference to the first sentence of paragraph 5 of the proposed Settlement Agreement, given the fact that the Eschelon and McLeodUSA agreements referred to provide that Qwest would provide Eschelon and McLeod with discounts on the aggregate billed charges for all services, including interstate, purchased by Eschelon and McLeodUSA from Qwest, please explain why the Eschelon and McLeodUSA agreements are characterized as only providing discounts for intrastate services.

RESPONSE:

Without agreeing with the assumptions underlying this data request, Qwest believes that the reference to "intrastate wholesale services" in paragraph 5 of the settlement agreement is appropriate given that the Commission regulates the provision of intrastate services, not interstate services. Also, excluding interstate services complies with paragraphs 109 and 110 of Order No. 5, which noted the exclusion of agreements pertaining to interstate services from any Section 252 filing obligations.

Respondent: Legal

QWEST CORPORATION  
STATE: Washington  
DOCKET NO: UT-033011  
CASE DESCRIPTION: WUTC v. Advanced Telecom Group, Inc., et al.  
INTERVENOR: Time Warner Telecom of Washington, LLC ("TWTC")  
REQUEST NO: TWTC 02-008

REQUEST:

Please provide the dollar amount of all purchases of Section 251(b) and (c) services, including interstate and intrastate access charges, by month, made by TWTC from Qwest in Washington for:

- a. The period of November 15, 2000, through November 15, 2002,
- b. The period of January 1, 2001, through June 30, 2002, and
- c. The period of January 1, 2002, through December 31, 2003.

RESPONSE:

Qwest objects to this data request as overly broad and unduly burdensome and as vague by its reference to interstate Section 251(b) and (c) services. Qwest also objects to this data request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. The dollar amount of purchases by TWTC from Qwest in Washington does not relate in any respect to the sufficiency of the settlement agreement. This data request appears to be seeking data to support a claim for CLEC credits. TWTC's testimony (on page 17) proposes the evaluation of the data sought in this data request to calculate CLEC credits. However, in Order No. 15, the ALJ granted Qwest's motion to strike page 17 and other portions of TWTC's testimony regarding CLEC credits. At paragraph 75 of that Order, the ALJ held, with reference to Mr. Gates' testimony proposing CLEC credits as a remedy, "[t]his portion of the testimony, while responsive to Staff's direct testimony concerning remedies and possible harm, proposes remedies that are not within the scope of the Amended Complaint, and raises claims that have not been properly pleaded or raised in the proceeding." TWTC did not seek reconsideration of Order No. 15, and, in fact, TWTC's opposition to the settlement agreement acknowledges that CLEC credits are no longer an issue in this proceeding. *TWTC Opposition to Proposed Settlement*, ¶ 21. Finally, Qwest objects to this data request on the basis that TWTC has access to the information being sought and need not seek it through the use of a burdensome data request to Qwest.

Respondent: Legal

QWEST CORPORATION  
STATE: Washington  
DOCKET NO: UT-033011  
CASE DESCRIPTION: WUTC v. Advanced Telecom Group, Inc., et al.  
INTERVENOR: Time Warner Telecom of Washington, LLC ("TWTC")  
REQUEST NO: TWTC 02-009

REQUEST:

Please provide a description of the services provided to TWTC that coincide with each of the dollar amounts identified in TWTC Data Request 8 above. By this request, TWTC is asking that Qwest identify each service provided and the total dollar amount for each service, on a month basis for the periods identified in TWTC Data Request 2 above.

RESPONSE:

See Qwest's response to TWTC DR No. 8.

Respondent: Legal

QWEST CORPORATION  
STATE: Washington  
DOCKET NO: UT-033011  
CASE DESCRIPTION: WUTC v. Advanced Telecom Group, Inc., et al.  
INTERVENOR: Time Warner Telecom of Washington, LLC ("TWTC")  
REQUEST NO: TWTC 02-010

REQUEST:

Please provide the dollar amount of all purchases of Section 251(b) and (c) services, including interstate and intrastate access charges, by month, made by all CLECs from Qwest in Washington for:

- a. The period of November 15, 2000, through November 15, 2002,
- b. The period of January 1, 2001, through June 30, 2002, and
- c. The period of January 1, 2002, through December 31, 2003.

RESPONSE:

See Qwest's response to TWTC DR No. 8.

Respondent: Legal



QWEST CORPORATION  
STATE: Washington  
DOCKET NO: UT-033011  
CASE DESCRIPTION: WUTC v. Advanced Telecom Group, Inc., et al.  
INTERVENOR: Time Warner Telecom of Washington, LLC ("TWTC")  
REQUEST NO: TWTC 02-011

REQUEST:

Please provide a description of the services provided to all CLECs that coincide with each of the dollar amounts identified in TWTC Data Request 10 above. By this request, TWTC is asking that Qwest identify each service provided and the total dollar amount for each service, on a month basis for the periods identified in TWTC Data Request 10 above.

RESPONSE:

See Qwest's response to TWTC DR No. 8.

Respondent: Legal