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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, CHAIRMAN
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission
DOCKETED
APR 19 2005
DOCKETED BY

IN THE MATTER OF THE STAFF'S REQUEST FOR APPROVAL OF COMMERCIAL LINE SHARING AGREEMENT BETWEEN QWEST CORPORATION AND COVAD COMMUNICATIONS COMPANY

DOCKET NO. T-03632A-04-0603
T-01051B-04-0603

NOTICE OF FILING OF SUPPLEMENTAL AUTHORITY

Qwest Corporation ("Qwest") hereby files the attached Washington State Utilities and Transportation Commission Final Order Dismissing Petition as supplemental authority in this Docket.

RESPECTFULLY SUBMITTED April 19, 2005.

QWEST CORPORATION

By _____

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[Service Date April 19, 2005]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	
	)	DOCKET NO. UT-053005
MULTIBAND COMMUNICATIONS,	)	
LLC	)	ORDER NO. 02:
	)	
For Approval of Line Sharing Agreement	)	DISMISSING PETITION
With Qwest Corporation Pursuant to	)	
Section 252 of the Telecommunications	)	
Act of 1996	)	
. . . . .	)	

Synopsis: *The Commission concludes as a matter of law that an agreement between Qwest Corporation and Multiband Communications, LLC, which provides that Qwest will provide line sharing in response to orders placed by Multiband after October 1, 2004, does not require Commission approval under section 252 of the Telecommunications Act of 1996. The Commission determines that Qwest must continue to file its commercial agreements with competitive local exchange carriers for examination by the Commission.*

1 **PROCEEDINGS:** On September 30, 2004, Qwest Corporation entered into a Commercial Line Sharing Arrangement (LSA) with Multiband Communications, LLC. The agreement is effective for a three-year term that commenced on October 2, 2004.[1]

2 Qwest filed the LSA "for the Commission's information" on October 26, 2004. Qwest asserted that the agreement does not need to be filed for the Commission's approval pursuant to section 252 of the Telecommunications Act of 1996 (Act). On January 18, 2005, however, in response to a request from the

[1] The filed document is entitled "Terms and Conditions for Commercial Line Sharing Arrangements provided by Qwest Corporation to Multiband Communications, LLC."

Commission's regulatory staff (Commission Staff or Staff) Multiband filed with the Commission a petition for approval of the LSA.[2]

3 The matter came before the Commission at its regularly scheduled Open Meeting on February 23, 2005. Staff recommended that the Commission approve the LSA under sections 251 and 252 of the Act. Qwest and Multiband argued that the LSA does not require Commission approval and that the matter should be held over for further process.

4 The Commission set the disputed question for hearing, and conducted a prehearing conference before Administrative Law Judge Dennis J. Moss on March 10, 2005. Qwest and Staff filed Initial Briefs on March 24, 2005, and Reply Briefs on March 31, 2005. Commission Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, Commissioner Philip B. Jones, and Administrative Law Judge Moss heard oral argument from all parties on April 4, 2005.

5 **PARTY REPRESENTATIVES:** C. Douglas Jarrett, Keller and Heckman LLP, Washington, D.C., represents Multiband. Lisa Anderl, Qwest Corporation, Seattle, Washington, represents Qwest. Shannon Smith, Assistant Attorney General, Olympia, Washington, represents Commission Staff.

6 **COMMISSION DETERMINATIONS:** The Commission determines that the LSA does not require Commission approval under sections 251 and 252 of the Act. The Commission concludes as a matter of law that Multiband's petition should be dismissed. The Commission also determines that Qwest must continue to file its commercial agreements with competitive local exchange carriers for examination by the Commission.

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[2] Multiband's counsel, at prehearing, described the company's position as being between the proverbial rock and hard place. Multiband did not file a brief in this proceeding.

MEMORANDUM

I. Background and Procedural History.

7 The subject of this proceeding is an agreement between Qwest and Multiband, the exclusive purpose of which is to give Multiband access to the high frequency portion of the "loops" Qwest owns and maintains to connect end use customers' premises to a central office "switch."[3] This is called "line sharing" because Qwest uses the low frequency portion of the loop to provide voice communication to the customer while Multiband uses the high frequency portion to provide the customer with a high-speed broadband connection to the Internet. The service Multiband provides is known as digital subscriber line (DSL) service.[4]

8 The issue before the Commission in this proceeding is whether the agreement between Qwest and Multiband is an "interconnection agreement" subject to approval by the Commission under subsection 252(e)(1) of the Federal Telecommunications Act of 1996.[5] Subsection 252(e)(1) provides that:

> Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement

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[3] The loop, often referred to as the "telephone line," is most commonly a pair of copper wires that runs from the customer's home or business to the central switch. The switch is a computer that provides dial tone, typically to several thousand end use customers through a like number of individual loops. The switch routes a customer's call to its intended destination through "interoffice facilities," which are connections that link Qwest's switches together and that connect Qwest's network to the networks of other telecommunications companies.

[4] DSL requires the installation of a frequency splitter at each end of the loop so that it can be used simultaneously for voice communication and high-speed connection to the Internet. The DSL equipment separates the low frequency portion of the loop (LFPL) from the high frequency portion (HFPL) and directs the LFPL to the public switched telephone network and the HFPL to the Internet.

[5] Pub. L. 104-104, 110 Stat. 56.

> is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

Qwest provided a copy of the LSA to the Commission on October 26, 2004, for informational purposes. Qwest described in a cover letter to its submission why it did not believe the arrangement constituted an interconnection agreement under section 252.[6] Staff did not pursue the question of Commission jurisdiction at the time. Later, Staff asked Multiband to file the LSA for approval. Multiband filed the agreement with the Commission on January 18, 2005, as requested. Multiband, however, agrees with Qwest that state approval under section 252 is not required.

9 The matter was docketed and scheduled for the Commission's Open Meeting on February 23, 2005. Commission Staff recommended in an Open Meeting Memorandum that the Commission approve the LSA under section 252. Qwest and Multiband both argued at the Open Meeting that the matter should be deferred for further consideration. Qwest also presented argument on the merits, recommending that the Commission either take no action, or affirmatively declare that the agreement is not subject to filing and approval requirements under the Act. The Commission requested briefing on the issues.

10 Qwest and Staff filed Initial Briefs on March 24, 2005, and Reply Briefs on March 31, 2005. The Commission heard oral argument from all parties on April 4, 2005.

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[6] The LSA at issue here is a form of agreement Qwest has entered into with other competitive local exchange carriers (CLECs), including Covad, in Washington and other states. Qwest states that it has provided the LSA to all 14 of the commissions in the states where it operates. Minnesota and New Mexico have considered the LSA and have determined that it is not a section 252 agreement. Montana determined to the contrary. Qwest has appealed the Montana decision in Federal District Court. In addition, the Staff of the Colorado Commission has requested that Qwest file the Commercial Agreement for approval, and Arizona has opened a docket to consider the issue. Other states have simply taken no action on the Commercial Agreement.

II. Discussion and Decision

A. Introduction

11 By passing the Telecommunications Act of 1996, Congress meant to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[7] DSL, which both Qwest and Multiband offer in Washington, is one such technology.

12 Congress acted in an environment in which a limited number of companies, the so-called regional Bell operating companies (RBOCs), dominated the industry.[8] These RBOCs, each of which was the largest incumbent local exchange carrier (ILEC) in its respective legacy states, owned and controlled much of the local exchange infrastructure by which telecommunications services were provided to individual customers throughout the United States. To promote the early development of local exchange competition in this environment, Congress established requirements for carriers to interconnect their networks and for ILECs, like Qwest, to offer services at wholesale rates for resale by competitors. Congress also required ILECs to lease individual components of their networks (*i.e.*, network elements) to competitive local exchange carriers (CLECs), a significant number of which emerged in the wake of the Act.[9] The network

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[7] H.R. Conf. Rep. No. 104-458, 104th Cong. 2d Sess. 113 (1996).
[8] The AT&T Bell System, long recognized as a "natural monopoly," lost that status in 1984. The Bell System was broken up into eight regional companies that would provide local exchange service in their respective service territories, and one long distance company AT&T. Pacific Northwest Bell, which became U S WEST Communications, and later Qwest, is one of the legacy companies that survive today. Qwest operates in a 14 state region,.including Washington, where it is the largest incumbent local exchange carrier.
[9] 47 U.S.C. § 251(c)(3).

elements that ILECs are obligated to provide are referred to in the Act as "unbundled network elements."[10]

13 The Act requires the FCC to determine what network elements ILECs are required to provide on an unbundled basis pursuant to section 251 of the Act.[11] The FCC makes its determination under the "necessary and impair," or simply "impairment," standard, asking whether a competitor's access to a given proprietary network element is necessary, and whether the competitor's ability to compete with ILECs would be impaired without access to the element.

14 The FCC initially identified line sharing as an unbundled network element under section 251.[12] Qwest and other ILECs appealed that determination. Pending the outcome of the appeal, Qwest began providing line sharing to CLECs via interconnection agreements that were approved by various state authorities, including the Commission.

15 On appeal, the D.C. Circuit found that the FCC had failed to properly apply the Act's impairment standard for line sharing.[13] The Court vacated and remanded the *Line Sharing Order*. The FCC consolidated the remand of the *Line Sharing*

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[10] The term "network element" is defined at 47 U.S.C. 153(29). The subset of required network elements referred to in 47 U.S.C. § 251(c)(3) as "unbundled network elements" is established by the FCC pursuant to 47 U.S.C. § 251(d)(2), which is sometimes referred to as the "impairment standard."

[11] 47 U.S.C. § 251(d)(2).

[12] The FCC ruled that line sharing is a UNE under section 251(c)(3) in 1999. *Third Report and Order, In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

[13] *United States Telecom Ass'n v. FCC,* 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*"). The court concluded that the FCC had "completely failed to consider the relevance of competition in broadband services coming from cable (and to a lesser extent satellite)." *Id.* at 429.

Order into the agency's Triennial Review docket.[14] The FCC issued its Triennial Review Order (*TRO)* in August 2003.[15]

16 In the *TRO,* the FCC applied the principles of *USTA I* and concluded that there was no impairment for line sharing. Given the lack of impairment, the FCC ruled—subject to a transition period—that ILECs are not required to provide line sharing as an unbundled network element under subsection 251(c)(3).[16]

17 The FCC rules implementing this determination provide in relevant part that "[b]eginning on the effective date of the [*TRO*], the high frequency portion of a copper loop [*i.e.*, line sharing] shall no longer be required to be provided as an unbundled network element, subject to . . . transitional line sharing conditions. . . ."[17] The FCC transition rules "grand father" line sharing provided to customers that were signed up prior to October 2, 2003 (*i.e.*, the effective date of the *TRO,* meaning that line sharing must continue to be provided at the prices set by state commissions until the grand fathered end user "cancels or otherwise discontinues its subscription to the digital subscriber line service. . . ."[18] For new line sharing orders made from October 2, 2003, through October 1, 2004, ILECs are required to provide line sharing as a UNE, but at prices that escalate over a three-year period.[19] Finally, for new orders placed after October 1, 2004, ILECs are relieved from their prior obligation to provide line sharing as an unbundled network element pursuant to section 251 of the Act.

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[14] The Triennial Review docket was created to determine whether UNEs that the FCC previously required ILECs to provide still met the impairment standard. The FCC, in the Triennial Review docket, considered the issues remanded from the Line Sharing Order.

[15] *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* 18 FCC Rcd 16978 (2003); In *United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), the Court vacated and remanded the TRO in part, but expressly upheld the FCC's non-impairment decision on line sharing. *Id.* at 585.

[16] *TRO* ¶ 255, *et seq.*

[17] 47 C.F.R. § 51.319 (a)(1)(i).

[18] *Id.* § 51.319 (a)(1)(i)(A).

[19] *Id.* § 51.319 (a)(1)(i)(B).

18 The agreement at issue here pertains only to new line sharing orders placed by Multiband after October 1, 2004.

B. Argument

1. Plain Meaning

19 Staff argues that its "position that the LSA should be submitted to the Commission for its approval is consistent with the plain language of the federal Act."[20] Qwest argues that "a simple analysis of the interplay between sections 251 and 252 demonstrates that there is no statutory basis to conclude that the [LSA] must be filed."[21] Thus, although the parties would have us reach opposite results, they agree that the familiar rules of statutory interpretation require us, among other things, to first consider the plain meaning of the statute.[22]

20 Subsection 252(a)(1) of the Act states:

> Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be

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[20] Staff Initial Brief at ¶ 24.
[21] Qwest Opening Brief at ¶ 47.
[22] *Waste Management of Seattle, Inc., v. Utilities and Transp. Comm'n*, 123 Wn.2d 621, 869 P.2d 1034 (1994); *State Dep't of Transp. v. State Employees' Ins. Bd.*, 97 Wn.2d 454, 645 P.2d 1076 (1982).

> submitted to the State commission under subsection (e) of this section.[23]

Subsection 252(e)(1) states:

> Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.[24]

21 Staff's argument is grounded in the clause in the first sentence of subsection 252(a)(1) that states ILECs and CLECs "may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers *without regard to the standards set forth in subsections (b) and (c) of section 251.*" Staff contends that the emphasized language means any negotiated agreement that provides for a network element—whether or not it is a required network element under subsection 251(c)(3)—is within the scope of subsection 252(a)(1). In other words, Staff argues subsection 252(a)(1) permits parties to negotiate voluntary agreements "for unbundled network elements that ILECs are not compelled to provide."[25] Staff states that line sharing is one such unbundled network element.[26] It follows, according to Staff, that the LSA is an interconnection agreement adopted by negotiation that must be submitted for approval under subsection 252(e)(1).

22 Qwest argues that Staff's analysis ignores important qualifying language in Subsection 252(a)(1). Specifically, Qwest argues, Staff does not acknowledge that the negotiated agreements described in subsection 252(a)(1) are "expressly

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[23] 47 U.S.C. § 252(a)(1).
[24] 47 U.S.C. § 252(e)(1).
[25] Staff Initial Brief at ¶ 16.
[26] *Id.* at ¶ 17.

premised on the agreement being for services or elements provided 'pursuant to section 251.'"[27] That is, Staff ignores that the threshold event that triggers the requirements of subsection 252(a)(1) is a "request for interconnection, services, or network elements *pursuant to section 251.*" Qwest contends that the only network elements that can be said to be "pursuant to section 251" are required network elements under subsection 251(c)(3). Line sharing is no longer a required network element pursuant to the FCC's clear determination on remand in the *TRO*. It follows, Qwest argues, that it need not file the LSA for approval.

23 Staff does not discuss the qualifying phrase "pursuant to section 251" in its Initial Brief. Qwest's argument in its Opening Brief focuses directly on the interplay between sections 251 and 252 to demonstrate that there is no statutory reason to file the line sharing agreement for approval. Nevertheless, Staff's Reply Brief does not address Qwest's argument on this point.[28] Staff did not resolve on oral argument the tension between Staff's reading of subsection 252(a)(1) to include all network elements and the provision's limiting language "network elements pursuant to section 251." In sum, Staff offers no persuasive rebuttal to Qwest's argument concerning the meaning and significance of the quoted phrase in the context of section 252. It appears that Qwest is correct in asserting, "Staff's reading of the statute would eliminate the modifying clause 'pursuant to section

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[27] Qwest Opening Brief at ¶ 48.

[28] About the closest Staff comes is its argument that:

> Under the negotiation method, ILECs and CLECs may voluntarily enter into an agreement for network elements outside of the standards set forth in Section 251(b) or (c). Thus, the parties could agree that the ILEC would provide a CLEC with access to network elements that the ILEC is not compelled to provide pursuant to Section 251(c).

Staff Reply Brief at ¶ 4. Again, however, Staff ignores the point that the "negotiation method" to which it refers (*i.e.*, negotiation under sections 251 and 252) occurs only following a request by a CLEC for "a network element pursuant to section 251." No such request is present under the facts before us.

251′ and require filing of agreements for de-listed elements that an ILEC is not otherwise obligated to provide."[29]

24 It is fundamental, however, that when reading statutes we must neither add to, nor subtract from, the language by which the legislators expressed their intent.[30] We must give meaning to all the words in the statute. Accordingly, we must consider carefully the important qualifying language in subsection 252(a)(1).

25 The requirements for provisioning network elements pursuant to section 251 are set out in subsection 251(c)(3), which describes "unbundled network elements." Subsection 251(d)(1), in turn, requires the FCC to implement subsection 251(c)(3) using the impairment standard to identify what network elements fall within the definition of unbundled network elements. It follows that "a request for . . . network elements pursuant to section 251" is a request for unbundled network elements—network elements that ILECs are required to provide under subsection 251(c)(3).[31]

26 Line sharing is no longer an unbundled network element within the meaning of subsection 251(c)(3). Indeed, it is undisputed that Qwest need not offer line sharing at all.[32] Where, as here, the only network element a CLEC requests from an ILEC is one that the FCC has removed from the list of required elements

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[29] Qwest Reply Brief at ¶¶ 13, 14.

[30] *Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 80 P.3d 598 (2003); *Department of Licensing v. Cannon*, 147 Wn.2d 41, 50 P.3d 627 (2002); *Mckay v. Department of Labor and Industries*, 180 Wash. 191 39 P.2d 997 (1934).

[31] Contrary to Staff's argument, the term "unbundled network element" is a term of art defined by subsection 251(c)(3) of the Act. There is, within the meaning of the Act, no such thing as "unbundled network elements that ILECs are not required to provide." *Supra* ¶ 21 (citing Staff Initial Brief at ¶ 16).

[32] Although we do not reach Staff's policy arguments for purposes of our decision, we note here our belief that the potential for adverse consequences that might result from dampening Qwest's willingness to continue to make line sharing available to its direct competitors in the DSL market is as important a policy concern as the potential for benefits that arguably result from forcing competitive access via opt-in arrangements in the short term.

under subsection 251(c)(3), the CLEC cannot be said to have made a request for a network element "pursuant to section 251." That is, because the agreement at issue concerns only line sharing, it is not an agreement within the meaning of subsection 252(a)(1). Hence, it is not "an interconnection agreement adopted by negotiation" within the meaning of subsection 252(e)(1). Therefore, the line sharing agreement between Qwest and Multiband is not one that requires our approval under the Act.

27 We reach the same result below considering the FCC's declaratory ruling in 2002 concerning the filing requirements under sections 251 and 252.[33] Although not essential to our decision in light of our analysis and conclusion above, some brief discussion of the FCC's interpretation is appropriate in light of the parties' emphasis in their briefs on the *FCC Declaratory Order* and our recognition of the federal agency's primary jurisdiction under the Act.

2. FCC Interpretation

28 Staff contends that the FCC declined "to establish an exhaustive, all-encompassing 'interconnection agreement' standard" in response to Qwest's petition for a declaratory ruling on this subject several years ago.[34] Staff argues the FCC left it to the states to determine which agreements are subject to the state commission filing and approval process under the Act. Staff recognizes, however, that the *FCC Declaratory Order* did give important guidance to the states as they make that determination on a case-by-case basis. Staff refers to paragraph 8 of the *FCC Declaratory Order*, which establishes that an agreement that "creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection,

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[33] *In the Matter of Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum Opinion and Order, 17 FCC Rcd 19337, FCC 04-57 (2002) (*FCC Declaratory Order*).

[34] Staff Initial Brief at ¶ 11.

unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1)."[35] Although Staff does not say so, the FCC clarified in a footnote to this language that "only those agreements that contain an *ongoing obligation relating to section 251(b) or (c)* must be filed under section 252(a)(1)."[36]

29 Staff argues that the LSA "is an on-going agreement pertaining to a network element," and "is a voluntary agreement entered into without regard to the standards set forth in 47 U.S.C. § 251(c)(2) and (3)." It follows, Staff contends, that the LSA is subject to the filing and approval requirements in subsections 252(a)(1) and (e)(1). It is unclear whether Staff's references to an "ongoing *agreement*" rather than an "ongoing *obligation*," and to a "network element" as distinct from an "*unbundled* network element" are intentional. Assuming deliberate word choices, we cannot dispute the veracity of Staff's statement precisely as written, but from these precise premises, Staff's conclusion does not follow.

30 The LSA is an ongoing agreement, but it does not reflect an ongoing obligation; Qwest is not obliged to offer line sharing at all after October 1, 2004. Though the LSA pertains to a network element, it does not pertain to an unbundled network element within the meaning of section 251. The LSA is, indeed, a voluntary agreement entered into without regard to subsections 251(c)(2) and (3); it is an agreement entered into without regard to section 251 at all.

31 As Qwest contends, "the FCC has clearly stated that telecommunications carriers are only required to file 'interconnection agreements' with other carriers that relate to *ongoing obligations for services that ILECs have a duty to provide under sections 251(b) and (c) of the Act.*"[37] Since Qwest does not have a duty to provide

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[35] *Id.* at ¶ 8.
[36] *Id.* at ¶ 8, n.26.
[37] Qwest Reply Brief at ¶ 3

line sharing under subsections 251(b) or (c), Qwest need not file the LSA for approval under subsection 252(e)(1).

C. Commission Determination

32 We need look no further than the language in sections 251 and 252 to determine that the LSA is not an agreement that requires our review and approval under the Act.[38] The LSA pertains only to Multiband's orders for the high frequency portion of Qwest's loops (*i.e.*, line sharing) after October 1, 2004. Multiband's request for an agreement with Qwest to provide for line sharing after that date was not a request made for a network element "pursuant to section 251" because line sharing is no longer an unbundled network element within the meaning of section 251.

33 Our reading of the statute is consistent with the FCC's interpretation of the relevant statutory language, and the standard it establishes to guide state determinations concerning whether particular agreements must be filed for approval. The FCC's interpretation, as discussed in the *FCC Declaratory Order*, is consistent with the Act's intent to promote competition by removing unnecessary impediments to commercial agreements between ILECs and CLECs while recognizing certain ongoing obligations for interconnection agreements. We find that the LSA does not create an ongoing obligation pertaining to an unbundled network element under section 251; the LSA contains no ongoing obligation relating to subsection 251(b) or (c).

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[38] We reject Staff's argument that the Commission's analysis in the MCIMetro proceeding late last year "applies to the LSA between Multiband and Qwest." Staff Initial Brief at ¶ 29; See *In the Matter of Request of MCI Metro Access Transmission Services, LLC and Qwest Corporation for Approval of Negotiated Interconnection Agreement, in its Entirety, Under the Telecommunications Act of 1996*, Docket Nos. UT-960310 & UT-043084, Order No. 1 (Oct. 20, 2004). The interdependency between the Thirteenth Amendment to the Qwest/MCIMetro Interconnection Agreement and the Master Service Agreement for the Provision of Qwest Platform Service that was the controlling factor in the *MCIMetro* decision simply is not present here.

34 We conclude as a matter of law that the LSA is not a negotiated interconnection agreement that requires our review and approval under subsection 252(e)(1). Accordingly, we determine that Multiband's petition for approval of the LSA should be dismissed.

35 Having made this determination, we also observe that it was entirely appropriate for this matter to have been brought before us and briefed for decision. The FCC's *Declaratory Order* unambiguously provides that the Commission, in the first instance, should review and determine whether individual agreements between CLECs and ILECs require state approval under the Act.[39] The Commission also has responsibilities under general provisions of state law to review the contracts of telecommunications companies and to prevent a telecommunications company from giving any undue or unreasonable preference or advantage to itself or any other person providing telecommunications service.[40] We can perform these functions only if Qwest and its CLEC counter parties continue to file their agreements that concern the provisioning of network elements that promote deployment of advanced telecommunications and information technologies and services to end use customers in Washington. We require that they continue to do so.

FINDINGS OF FACT

36 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

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[39] *Declaratory Order* at ¶ 10.
[40] *See* RCW 80.36.186.

37 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.

38 (2) Multiband owns, operates, and manages facilities used to provide telecommunications for sale to the general public in Washington. Multiband is engaged in the business of furnishing telecommunications services within Washington State as a competitive local exchange carrier. Multiband conducts business subject to the Commission's regulatory authority.

39 (3) Qwest owns, operates, and manages facilities used to provide telecommunications for sale to the general public in Washington and is engaged in the business of furnishing telecommunications services within Washington State as a public service company and as an incumbent local exchange carrier. Qwest conducts business subject to the Commission's regulatory authority.

40 (4) On September 30, 2004, Qwest entered into a Commercial Line Sharing Arrangement (LSA) with Multiband, effective for a three-year term that commenced on October 2, 2004. The LSA pertains only to new line sharing orders placed by Multiband after October 1, 2004.

41 (5) The LSA is not a negotiated agreement that follows from a request by Multiband asking that Qwest provide a network element pursuant to section 251 of the Telecommunications Act of 1996.

42 (6) The LSA is not an agreement that requires filing and approval pursuant to section 252 of the Telecommunications Act of 1996.

CONCLUSIONS OF LAW

43 Having discussed above in detail all matters material to our 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.

44 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.

45 (2) The LSA between Qwest and Multiband does not require Commission approval under sections 251 and 252 of the Telecommunications Act of 1996.

46 (3) Multiband's petition should be dismissed.

47 (4) The Commission should continue to require that Qwest to file its commercial agreements with CLECs for examination by the Commission so that the Commission can determine its jurisdiction and otherwise carry out its statutory responsibility to regulate telecommunications companies in the public interest.

48 (5) The Commission should retain jurisdiction to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

49 (1) Multiband's petition for approval of its line sharing agreement with Qwest is dismissed, being beyond the Commission's authority to approve pursuant to section 252 of the Telecommunications Act of 1996.

50 (2) Qwest is required to continue to file for review its agreements with CLECs, such as the agreement at issue here, that refer to past, present, or future obligations imposed on ILECs pursuant to the Telecommunications Act of 1996.

51 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective this 19th day of April 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.