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July 10, 2006

Filing Center
Public Utility Commission of Oregon
550 Capitol Street N.E., Suite 215
Salem, OR 97308-2148

Re: UM 1232

Dear Filing Clerk:

Enclosed for filing in the above-referenced docket, please find the following documents:

1. Petition of AT&T Communications of the Pacific Northwest, Inc. and TCG Oregon for Rehearing and Reconsideration of Order No. 06-230

2. Certificate of Service.

Thank you for your assistance. Please contact our office with any questions or problems.

Very truly yours,

Davis Wright Tremaine LLP

Leslie A. Thompson
Assistant to Sarah K. Wallace

Enclosures

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1232

<table>
<tr><td>AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., AND TCG OREGON; TIME WARNER TELECOM OF OREGON, LLC; AND INTEGRA TELECOM OF OREGON, INC.

Complainants,

v.

QWEST CORPORATION,

Respondent.</td><td>)
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)</td><td>PETITION OF AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., AND TCG OREGON FOR REHEARING AND RECONSIDERATION OF ORDER NO. 06-230</td></tr>
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I. INTRODUCTION

Pursuant to ORS 756.561, AT&T Communications of the Pacific Northwest, Inc., and TCG Oregon (collectively "AT&T") respectfully submit the following petition for rehearing and reconsideration of Commission Order No. 06-230, entered May 11, 2006 ("Order"), granting Qwest Corporation's ("Qwest") motion to dismiss AT&T's amended complaint. In support of its petition, AT&T states as follows:

II. BACKGROUND

On November 10, 2005, AT&T filed its initial complaint with the Public Utility Commission of Oregon ("Commission"). The Complainants filed an amended four-count complaint on January 13, 2006. The operative amended complaint alleges claims for (i) violation of federal law, (ii) violation of ORS § 759.260, (iii) violation of ORS § 759.275, and (iv) breach of contract. AT&T alleges that Qwest has violated state and federal law, as well as specific provisions in the parties' interconnection agreements, by failing to provide certain

products and services on rates, terms, and conditions that are just, reasonable, and non-discriminatory. In support of these allegations, AT&T further alleges that Qwest unlawfully provided preferential rates, terms, and conditions to certain carriers (Eschelon and McLeodUSA) and did so in interconnection agreements that were not filed with the Commission and made available to other carriers, including AT&T, as was required under the terms of the parties' agreements and under state and federal law.

On February 2, 2006, Qwest filed a motion to dismiss the amended complaint. The parties briefed the motion, and on May 11, 2006, the Commission granted Qwest's motion to dismiss AT&T's amended complaint. *Order Granting Motion to Dismiss*, Order No. 06-230, OPUC Docket No. UM 1232 (May 11, 2006) ("Order").

In its decision, the Commission first explained that "no independent violations under federal law are asserted as grounds for relief in this docket." Order at 3. On that basis, the Commission undertook no analysis of the first count in the amended complaint. The Commission next addressed the alleged violations of state statutory law, ORS sections 759.260 and 759.275. The Commission dismissed those claims for lack of jurisdiction. Order at 4-5.

Finally, the Commission turned to the breach of contract claims. As the Commission noted, those claims allege breaches of the terms of existing interconnection agreements between AT&T and Qwest. Order at 5. Despite AT&T's reliance on specific negotiated provisions in the interconnection agreements, the Commission declined to view the complaints as stating claims under the state law of contracts for statute of limitations purposes. The Commission stated that "although Complainants attempt to posit their claims as breach of contract claims, the violations they assert are actually of federal law." *Id.* at 6. The Commission further observed that "[t]he interconnection agreements are required under the Telecommunications Act, 47 U.S.C. § 252.

and the provisions cited by Complainants directly implicate federal law." *Id.* Accordingly, the Commission applied the two-year statute of limitations under the federal Communications Act of 1934 ("1934 Act"), 47 U.S.C. § 415, to the Complainants' claims. *Id.*

The Commission found support for its characterization of AT&T's breach of contract claims from federal case law—in particular, cases involving federal tariffs that carriers are required to file with the Federal Communications Commission under provisions of the 1934 Act. Order at 6. The Commission then determined that "[b]ased on Complainants' awareness of unfiled contracts in other states, they had 'reason to know of the harm' that provided the basis of their claims beginning in March 2002." *Id.* at 7. Finally, the Commission rejected AT&T's tolling argument on the ground that AT&T did not preserve its right to pursue a private cause of action because, *inter alia*, it failed to "file a placeholder complaint." *Id.* at 7-8.

III. SUMMARY OF POSITION PURSUANT TO OAR 860-014-0095(2)

In this petition, AT&T seeks rehearing and reconsideration only of the Commission's disposition of the breach of contract claims asserted in Count IV of the amended complaint.[1] As explained in detail below, AT&T respectfully submits that rehearing or reconsideration is proper under OAR 860-014-0095(3)(c) and (d), because the Commission committed an "error of law or fact in the order which is essential to the decision" and there is "[g]ood cause for further examination of a matter essential to the decision." In particular, the Commission's Order incorrectly concluded that the two-year federal statute of limitations set forth in 47 U.S.C. § 415 applies to the breach of contract claims asserted in Count IV. As a result of that error, the

[1] Although AT&T disagrees with the Commission's conclusion that AT&T's claims accrued "beginning in March 2002" (Order at 7), reconsideration of that issue is unnecessary to the proper disposition of this case because the breach of contract claims alleged in Count IV are timely under the applicable six-year limitations period prescribed by ORS § 12.080.

Commission dismissed AT&T's breach of contract claims as time barred under that two-year statute of limitations.

The Commission's decision is inconsistent with federal and state court precedent. The finding that alleged violations of specific contract provisions were nothing more than "[t]hinly veiled claims of violations of federal law" renders the contractual provisions meaningless and unenforceable. It is well settled that this Commission has the authority to interpret and enforce interconnection agreements.[2] Based on the record currently before the Commission, there is simply no basis for the Commission's decision to render the provisions of a valid interconnection agreement meaningless. Furthermore, referencing federal law in an interconnection agreement does not thereby incorporate a federal statute of limitations or render the interpretation of the contract a question of federal law. As the U.S. Supreme Court recently held, a dispute about the meaning of terms in a federal health insurance contract that sets forth the details of a federal health insurance program created by federal statute and covering federal employees is *not* a claim for violation of federal law within the federal courts' original federal question jurisdiction. *Empire HealthChoice Assurance, Inc. v. McVeigh*, 126 S. Ct. 2121, 2127, 2137 (2006). Accordingly, the Commission should vacate the portion of its Order dismissing AT&T's breach of contract claim, find that the claim falls within the six-year statute of limitations set forth in ORS section 12.080, and reinstate the claim for further proceedings on the merits.

IV. ARGUMENT

The Commission's legal error has its roots in the Commission's decision to reformulate AT&T's breach of contract claims (Count IV of the amended complaint) as claims alleging violations of federal law. *See* Order at 6. In recasting those claims, the Commission erred in

[2] See, *e.g., MCI Communications Corp. v. Illinois Bell Telephone Co.*, 222 F.3d 323, 338 (7th Cir. 2000); *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 804 (8th Cir., 1997), *aff'd in part and rev'd in part on other grounds AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S.Ct. 721 (1999).

disregarding (i) the actual allegations set forth in the amended complaint, (ii) the nature of the interconnection agreement regime under the federal Telecommunications Act of 1996 ("1996 Act"), and (iii) the body of case law holding that matters concerning the construction or interpretation of interconnection agreements entered into pursuant to Section 252 of the 1996 Act present issues of state contract law. Under a correct reading of the complaint and the pertinent statutes and case law, the allegations of Count IV of the amended complaint raise straightforward issues of state law contract interpretation and should be subject to the six-year statute of limitations period for actions on contracts under state law.

The Commission purported to find support for its "characterization of Complainants' breach of contract claims" (Order at 6) as simply claims for violations of federal law in *Marcus v. AT&T*, 138 F.3d 46, 54 (2d Cir. 1998), and *MFS International, Inc. v. International Telecom Ltd.*, 50 F. Supp. 2d 517, 520 (E.D. Va. 1999). But unlike the privately negotiated interconnection agreements on which AT&T's claims here are based, the tariffs that formed the basis for the obligations at issue in *Marcus* and *MFS* were unilateral, carrier-made documents filed with the Federal Communications Commission that have the force of federal law. *Marcus*, 138 F.3d at 56 (quoting *MCI Telecommunications Corp. v. Garden State Inv. Corp.*, 981 F.2d 385, 387 (8th Cir. 1992) ("federal tariffs are the law, not mere contracts"); see also *Cahnmann v. Sprint Corp.*, 133 F.3d 484, 488 (7th Cir. 1998) ("A tariff filed with a federal agency is the equivalent of a federal regulation"). Because federal tariffs are not the product of private negotiation and are the equivalent of federal laws, the Second Circuit in *Marcus* had no difficulty finding that a claim that arises out of a federal tariff "necessarily raises a substantial federal question over which federal courts may properly exercise jurisdiction." *Marcus*, 138 F.3d at 56. Similarly, in *MFS*, the court found that a lawsuit to enforce obligations that rest on an

"underlying [federal] tariff, which has the force of law," must arise under federal law and thus is subject to the two-year statute of limitations in Section 415 of the 1934 Act. *MFS*, 50 F. Supp. 2d at 520-21. In short, because "there is no space between the contract and the tariff * * * there is no room for a state law claim of breach of contract." *Cahnmann*, 133 F.3d at 489.

Here, by contrast, the claims articulated in Count IV of the amended complaint do not arise under federal tariffs that are akin to federal laws. Instead, they reference specific, negotiated terms of the parties' interconnection agreements (see Amended Complaint ¶¶ 11, 23-24) – the private contracts that Congress has designated as the vehicles for implementing its new regime for local telecommunications competition between incumbent carriers (like Qwest) and new entrants (like AT&T) under the 1996 Act. *See* 47 U.S.C. § 252. Section 252(a)(1) of the 1996 Act expressly states that "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*." 47 U.S.C. § 252(a)(1) (emphasis added); *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 372 (1999). The right conferred in Section 252(a)(1) to conclude an agreement that does "not conform to all the detailed, specific requirements of § 251" reflects the Act's "clear preference" for "negotiated agreements" and "bestows a benefit to those carriers able to resolve issues through negotiation and compromise." *Bell Atlantic-Pennsylvania*, 271 F.3d at 500; see also *AT&T Corp.*, 525 U.S. at 405 (Thomas, J., concurring in part and dissenting in part) ("[s]ection 252 sets up a preference for negotiated interconnection agreements"); *Verizon North, Inc. v. Strand*, 309 F.3d 935, 940 (6th Cir. 2002) ("'private negotiation * * * is the centerpiece of the Act'"); *Bell Atlantic-Delaware v. McMahon*, 80 F. Supp. 2d 218, 224 (D. Del. 2000) ("Congress chose to rely primarily on private negotiations to implement the duties imposed by § 251"). This "preference"

for voluntary agreements reflects Congress's stated goal of establishing a "deregulatory national policy framework" for telecommunications competition. H.R. Conf. Rep. No. 104-458, at 113 (1996); see also Pub. L. No. 104-104, 110 Stat. 56 (1996) (preamble of the Act) (noting Congress's desire to "reduce regulation"). In short – and in sharp contrast to the claims at issue in *Marcus, MFS*, and *Cahnmann* – the claims here turn on a construction of the terms of negotiated contracts, not federal tariffs.

In view of Congress' objective in the 1996 Act "to replace a state regulated system with a market-driven system that is self-regulated by binding interconnection agreements," it should not be surprising that the courts have held that it is not federal law, but "'the agreements themselves and state law principles'" that "'govern the questions of interpretation of the contracts and enforcement of their provisions.'" *Pacific Bell v. Pac-West Telecomm., Inc.*, 325 F.3d 1114, 1128 (9th Cir. 2003) (quoting *Southwestern Bell v. Pub. Util. Comm'n*, 208 F.3d 475, 485 (5th Cir. 2000)). While the 1996 Act provides federal court jurisdiction over claims that an "agency's decision departs from federal law," a decision "'interpreting' an [interconnection] agreement contrary to its terms creates a different kind of problem – one under the law of contracts, and therefore one for which a state forum can supply a remedy." *Illinois Bell Tel. Co. v. WorldCom Technologies, Inc.*, 179 F.3d 566, 574 (7th Cir. 1999); see also *Southwestern Bell*, 208 F.3d at 485 (declining "to determine the contractual issues as a facet of federal law").

Contrary to Qwest's contentions, the fact that the interconnection agreements here reference federal law does not make them federal contracts – even for purposes of jurisdiction, much less for statute of limitations purposes. For example, the Seventh Circuit determined that the interpretation of provisions of interconnection agreements that "precisely track the Act" presented a question of state contract law cognizable only in state courts, not a federal claim

under the 1996 Act. *Illinois Bell Tel. Co. v. WorldCom Technologies, Inc.*, 179 F.3d 566, 573-74 (7th Cir. 1999). And within the past month, the Supreme Court of the United States has held that a dispute about the meaning of terms in a federal health insurance contract that sets forth the details of a federal health insurance program created by federal statute and covering 8 million federal employees is not a claim for violation of federal law within the federal courts' original federal question jurisdiction. *Empire HealthChoice Assurance, Inc. v. McVeigh*, 126 S. Ct. 2121, 2127, 2137 (2006).

Because the claims asserted in Count IV of the amended complaint turn on interpretation and application of the terms of the parties' interconnection agreements, those claims arise under state contract law.[3] Accordingly, the Commission should apply the six-year Oregon limitations period for actions based on contracts set forth in O.R.S. § 12.080. In addressing a similar breach of contract claim against Qwest by some of the same parties to this action, the Washington State Utilities and Transportation Commission stated that it would "look to the generally applicable limitation period set by state statutes," pursuant to which "[a]ctions on a written contract must be filed within six years after they accrue." *AT&T Communications of the Pacific Northwest, Inc. v. Qwest Corp.*, Order 04, Interlocutory Order Reversing Initial Order; Denying Motion for Summary Determination or Dismissal, Docket UT-051682, ¶ 28, slip op. at 7 (Wash. UTC Jun. 7, 2006) (attached as Exhibit A). And, here, as in Washington, because "[n]one of the proposed accrual dates predate the filing of the complaint by more than six years * * * the complaint should not be dismissed." *Id.* ¶ 29.

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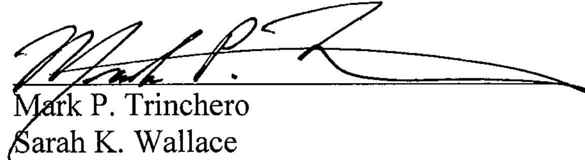
[3] Qwest's reliance on *Pavlak v. Church*, 727 F.2d 1425 (9th Cir. 1984), is misplaced. In that case, the court applied the two-year limitations period under Section 415 of the 1934 Act to a *federal* civil rights claim because that claim was a *federal* claim "arising from the same facts" as another *federal* claim under the 1934 Act. *Id.* at 1427. Here, there is no basis for even considering whether to borrow a federal limitations period, because the cause of action at issue arises under state contract law and state law provides a directly applicable limitations period.

V. CONCLUSION

For the reasons stated above, AT&T respectfully requests that the Commission grant the petition for rehearing and reconsideration, find that the six-year statute of limitations for contract actions under ORS 12.080 applies to the claims asserted in Count IV of AT&T's amended complaint, vacate and withdraw the portion of its May 11, 2006 Order dismissing Count IV of the amended complaint, and reinstate Count IV to the Commission's docket for further proceedings on the merits.

RESPECTFULLY SUBMITTED this 10th day of July, 2006.

DAVIS WRIGHT TREMAINE LLP
Attorneys for AT&T Communications of the Pacific Northwest, Inc., and TCG Oregon, Time Warner Telecom of Oregon, LLC, and Integra Telecom of Oregon, Inc.

By: 
Mark P. Trinchero
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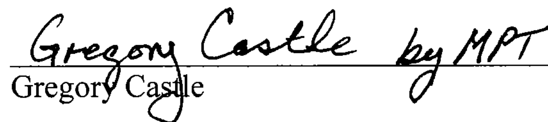
AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., AND TCG OREGON

By: 
Gregory Castle

[Service Date June 8, 2006]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., TCG SEATTLE, AND TCG OREGON; AND TIME WARNER TELECOM OF WASHINGTON, LLC,	)	DOCKET UT-051682
	)	ORDER 04
Complainants,	)	INTERLOCUTORY ORDER REVERSING INITIAL ORDER; DENYING MOTION FOR SUMMARY DETERMINATION OR DISMISSAL
v.	)	
QWEST CORPORATION,	)	
Respondent.	)	
. . . .	)	

1 ***Synopsis:*** *This order reverses an initial order dismissing this action for failure of complainants to file their complaint within the applicable limitation period. We find that the dispute falls within the six-year statute of limitation for contracts, RCW 4.16.040(1), and that all possible pertinent accrual dates are within the limitation period. We return the docket to the administrative law judge for further proceedings.*

I. INTRODUCTION

2 **Nature of proceeding.** This docket involves a complaint filed by competitive local exchange carriers (CLECs) AT&T Communications of the Pacific Northwest, Inc., TCG Seattle and TCG Oregon (collectively, AT&T) and Time Warner Telecom of Washington, LLC (Time Warner or TWTC) against Qwest Corporation (Qwest).

3 The complaint alleges that Qwest charged the complainants more for certain facilities and services than Qwest charged other CLECs under unfiled agreements with those CLECs. Complainants contend that this practice violated federal and state laws and their own contracts with Qwest, and that they are entitled to compensation for the difference between the actual charges and the lower, unfiled rates.

4 **Motion for summary determination and dismissal.** Qwest moved for dismissal and summary determination under WAC 480-07-380(1) and (2), arguing that the pertinent statute of limitation bars the complaint. Complainants oppose the motion.

5 **Appearances.** Lisa A. Anderl and Adam Sherr, attorneys, Seattle, represent Qwest. Gregory J. Kopta, attorney, Seattle, represents AT&T and Time Warner.

6 **Initial order.** The initial order, by Administrative Law Judge Theodora Mace, would grant the motion and dismiss the complaint. The order ruled that the action accrued on September 8, 2004, with the release by Commission Staff (Staff) of unfiled agreements. Finding that the six-month limitation period in RCW 80.04.240 applied, the judge held the complaint, filed November 4, 2005, was barred.

7 **Petition for administrative review.** Both parties seek administrative review of the initial order. Complainants challenge the result of the order and the application of the six-month limitation statute; Qwest challenges the order's determination of the date the cause of action accrued.

8 **Decision on review.** We reverse the initial order and return the matter to the administrative law judge for further proceedings.

II. BACKGROUND

9 Under section 251 of the Telecommunications Act of 1996, competitive local exchange carriers ("CLECs," such as the complainants) may enter interconnection agreements with incumbent local exchange companies (such as the respondent) to receive services from the incumbents that enable them to serve their own customers. Qwest and carriers entering interconnection agreements with Qwest regarding service provided in Washington must file the agreements with this Commission. Filed agreements are subject to approval, and other competitive carriers may "opt into" terms of filed, approved agreements.

A. The unfiled agreements.

10 The unfiled interconnection agreements at the center of this dispute were for services in Washington between Qwest and Eschelon Telecom (Eschelon)[1] and between Qwest and McLeodUSA Telecommunications Services, Inc. (McLeodUSA).[2] Among the terms of these agreements was a provision granting a 10% discount on certain intrastate telephone services. These agreements were among a number of such agreements that initially were not filed with any state regulatory commission and were not publicly disclosed.

11 A complaint was filed against Qwest in Minnesota in February 2002, alleging that Qwest violated the law by entering and failing to file the agreements. AT&T urged this Commission to pursue the matter in the then-pending "271 docket"[3], which we declined to do on July 15, 2002.[4] In the unfiled agreements case, Docket UT-033011, we addressed regulatory violations involved in the agreements but declined to pursue claims on behalf of carriers. We ultimately approved a settlement in that docket which found Qwest to have committed serious violations and assessed penalties of nearly $8 million against it.[5]

B. The complaint.

12 Complainants are CLECs also operating under interconnection agreements with Qwest. They contend that federal law, state law and their interconnection agreements with Qwest entitle them to the rate or rates for comparable services that Qwest offers to their competitors under unfiled agreements. Complainants seek compensation for

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[1] The complaint alleges that Qwest "entered into a series of interconnection agreements with Eschelon" beginning on or about February 2000. Qwest states that the only agreement with Eschelon containing a discount or lower rate was signed November 15, 2000.
[2] The complaint alleges that the McLeodUSA agreements were entered into beginning on or about April 2000. The list of agreements attached to the Amended Complaint in Docket UT-033011 includes two McLeodUSA agreements dated April 28, 2000 and October 21, 2000.
[3] *In the Matter of the Investigation Into U S WEST COMMUNICATIONS, INC.'s Compliance with Section 271 of the Telecommunications Act of 1996,* Docket UT-003022. In that docket, Qwest was pursuing its request to provide long distance service under 47 U.S.C. 271.
[4] 40th Supplemental Order, July 15, 2002.
[5] *Washington Utilities and Transportation Commission v. Advanced Telecom Group, Inc., et al.*, Docket UT-033011, Order 21, February 28, 2005.

the difference between the amount they actually paid for service and the amount they would have paid if the unfiled agreements had been filed, and complainants had opted into their relevant terms.

13 The complaint cites RCW 80.04.220 and 80.04.230, which govern overcharges and illegal rates, respectively, as the basis for the remedy sought.

C. The motion to dismiss or for summary determination.

14 Qwest answered the complaint and filed a motion to dismiss or for summary determination. [6]

15 Qwest argued that the complaint was not timely filed. It contends that complainants should have known to file a complaint as early as March 12, 2002, when a regulatory complaint was filed against Qwest before the Minnesota commission. Qwest also argues that complaint should be seen as one for overcharges, arising under RCW 80.04.220, which carries a six-month limitation period. Qwest points out that the rates set out in the interconnection agreement were approved by the Commission and thus were lawful until changed, so the complaint does not seek redress for unlawful rates and the two-year limitation period for a complaint under RCW 80.04.230 would not apply.

16 Complainants argued that the six-year general statute of limitation, RCW 4.16.040(1), should apply because Qwest violated the most favored nation clause in complainants' contracts with Qwest.

D. The initial order.

17 The initial order ruled: 1) The complaint accrued on June 8, 2004, with Staff's release of the unfiled agreements to the public with the amended complaint in Docket UT-033011; 2) The complaint sought reparations for overcharges rather than for the application of an illegal rate; 3) The six-month limitation period applied; 4) The

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[6] The initial order correctly treated the motion as one for summary determination. *WAC 480-07-380(1)(a).*

complaint was therefore barred by the limitation period and should be dismissed, and; 5) The six year limitation statute was inapplicable.

III. ADMINISTRATIVE REVIEW

18 Both parties seek administrative review of the initial order. Complainants contend that the order erred in defining the nature of the complaint and finding the shorter limitation period to apply, and Respondent contends that the order's proposed accrual date for the action is improperly late in the factual scenario underlying the complaint.

A. Decision on the contested issues.

19 We rule that Qwest is correct on the accrual date, and that the initial order erred in finding that the action accrued on June 8, 2004. That is when Commission Staff released the unfiled agreements in a public filing in Docket UT-033011.

20 The test for accrual, as Qwest points out, is not when the aggrieved party actually discovered the injury, but when the aggrieved party *in the exercise of reasonable diligence* should have discovered the injury.[7] That date is July 15, 2002, when the Commission rejected pleas to pursue the asserted violations in the 271 docket. It was then common knowledge that possible violations had occurred; that the violations could have affected complainants; that the Commission refused to take up the matter at that time; and that Commission action of an indefinite nature would occur only at some indefinite point in the future. Complainants knew that Commission action was not imminent, and that a six-month limitation period could potentially bar their actions. A reasonable CLEC at that point would have begun serious inquiries, particularly given the possibility of considerable damages.

21 Complainants argue that the unfiled agreements were confidential documents at that time, and were not in the public domain. It is inconceivable to us that, had complainants asked for documents for the purpose of determining whether they had

[7] One who has notice of facts sufficient to prompt a person of reasonable prudence to inquire is deemed to have notice of all the facts that a reasonable inquiry would disclose. *Enterprise Timber Inc. v. Washington Title Ins. Co.*, 79 Wn.2d 479, 457 P.2d 600 (1969).

been injured, access to the documents would have been denied. We reverse the initial order on this issue.

22 We also rule that the six-month statute is appropriate to the theory on which the complaint was pleaded. The rates in complainants' interconnection agreements were not made unlawful by Qwest's entry into agreements that granted others more favorable rates—rates that were themselves later found to be unlawful. Complainants' challenge to the initial order on this point is denied.

B. The six-year statute of limitation.

23 Complainants argue that the six-year statute of limitations should apply, based on a cause of action under contract. They did not clearly explain the basis of this cause to the administrative law judge. The initial order rejected Complainants' argument.[8]

24 Complainants argue that their interconnection agreements contain "most favored nation" provisions that entitle them to any more-favorable provisions that Qwest may grant to other carriers in comparable conditions. We disagree with the initial order's statement that this is "a pure breach of contract action . . . outside the scope of an interconnection agreement enforcement action."

25 RCW 80.36.610 grants the Commission jurisdiction over disputes for which the Telecommunications Act of 1996 ("the Act") permits or contemplates state action.[9] Interconnection disputes are matters for which the Act provides for state action.[10] Complainants cite RCW 80.36.610.

26 The statute allows the Commission to take action to enforce the terms of interconnection agreements. WAC 480-07-380[11] implements the statutory authority, although it is not the exclusive means of seeking enforcement.[12]

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[8] Paragraph 36, page 13.
[9] RCW 80.36.610(1) reads in relevant part as follows: "The commission is authorized to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the federal telecommunications act of 1996 . . .".
[10] 47 U.S.C. Sec. 252.
[11] "A telecommunications company that is party to an interconnection agreement with another telecommunications company may petition under this rule for enforcement of the agreement." WAC 480-07-380(1).

27 Complainants seek to enforce the most favored nation provision in their interconnection agreements (contracts) by achieving the benefit of the bargain for which they contracted. This is an action within the terms of RCW 80.36.610. Enforcement of interconnection agreements is a specific remedy afforded by statute and rule in limited circumstances involving telecommunications act matters. To the extent it might be inconsistent with the compensation remedies provided in RCW 80.04.220 and -.230, the specific statutory remedy takes precedence over the general[13] and the more recent over the earlier.[14] Complainants may pursue enforcement of their interconnection agreement as a contract claim.

28 RCW 80.04.240 sets out limitation periods for the causes of action specified in RCW 80.04.220 and -.230. It does not speak to actions seeking to enforce interconnection agreement contracts. The *Glick* decision,[15] as the initial order correctly notes, demonstrates that the Commission will look to the generally applicable limitation period set by state statutes when there is no specific limitation period established for matters within our jurisdiction. Therefore, we look to the limitation period for actions based on contract, RCW 4.16.040(1). Actions on a written contract must be filed within six years after they accrue.[16]

29 None of the proposed accrual dates predate the filing of the complaint by more than six years. Therefore, the complaint should not be dismissed.

30 **Further process.** Complainants asked, and we grant, the opportunity to amend the complaint to reflect decisions in this order. We return the matter to the administrative law judge for further proceedings consistent with the result of this order.

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[12] The rule by its terms ("may petition") contemplates enforcement by other process.
[13] *In re Estate of Black*, 153 Wn.2d 152, 101 P.3d 796 (2004).
[14] *Tunstall v. Bergeson*, 141 Wn.2d 201, 5 P.3d 691 (2000), cert. den. 532 U.S. 920.
[15] *Glick v. Verizon*, Docket UT-040535, Order 03, January 28, 2005.
[16] "The following actions shall be commenced within six years: (1) An action upon a contract in writing, or liability express or implied arising out of a written agreement." *RCW 4.16.040.*

IV. ORDER

31 The Commission reverses the initial order, denies the motion for summary determination, and returns the matter to the administrative law judge for further proceedings consistent with the terms of this order.

Dated at Olympia, Washington, and effective June 7, 2006.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to *WAC 480-07-810.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Petition of AT&T Communications of the Pacific Northwest, Inc., and TCG Oregon for Rehearing and Reconsideration of Order No. 06-230 was served via electronic mail and U.S. Mail (unless otherwise specified below) on the following parties on July 10, 2006:

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