

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF
THE PACIFIC NORTHWEST, INC.,
TCG SEATTLE, AND TCG OREGON;
AND TIME WARNER TELECOM OF
WASHINGTON, LLC,

Complainants,

v.

QWEST CORPORATION,

Respondent.

Docket No. UT-051682

QWEST'S ANSWER TO COMPLAINT

I. INTRODUCTION

1 Qwest Corporation (“Qwest”) hereby files its answer to the Complaint filed by AT&T
Communications of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon (collectively
“AT&T”) and Time Warner Telecom of Washington, LLC (“TWTC”) (collectively,
“Complainants”). On this same date Qwest is filing a Motion for Summary Determination
pursuant to WAC 480-07-380.

II. PARTIES

2 Answering paragraphs 1 through 4 of the Complaint, Qwest admits the allegations contained

therein, except that to the extent that paragraph 4 alleges that Qwest provides services “throughout” the state of Washington, Qwest denies that it does so in a manner inconsistent with its tariffs, price lists, and contracts on file with the Commission.

III. JURISDICTION

3 Answering paragraph 5, Qwest denies that this complaint states grounds for relief under the cited provisions or other provisions of the law. Qwest further denies that the Commission has jurisdiction to order the relief requested herein.

IV. FACTS

4 Answering paragraph 6, Qwest admits that it entered into certain agreements with Eschelon Telecom (“Eschelon”). Without further identification of the agreements identified in this allegation, Qwest can neither admit nor deny whether those agreements were interconnection agreements, or what rates, terms, and conditions are the subject of these allegations, and Qwest therefore denies all allegations in this paragraph. Qwest further states that all agreements with Eschelon have been provided to the Commission and the parties herein and states that the agreements speak for themselves. Qwest denies the remainder of the allegations in this paragraph.

5 Answering paragraph 7, Qwest admits that it entered into certain agreements with McLeodUSA Telecommunications Services, Inc. (“McLeod”). Without further identification of the agreements identified in this allegation, Qwest can neither admit nor deny whether those agreements were interconnection agreements, or what rates, terms, and conditions are the subject of these allegations, and Qwest therefore denies all allegations in this paragraph. Qwest further states that all agreements with McLeod have been provided to the Commission and the parties herein and states that the agreements speak for themselves. Qwest denies the remainder of the allegations in this paragraph.

6 Answering paragraph 8, Qwest denies that Complainants obtained telecommunications facilities and services from Qwest that were the same as, or comparable to, the telecommunications facilities and services that Qwest provided, or agreed to provide, to Eschelon or McLeod during the time frame in which those agreements were in effect.

7 Answering paragraph 9, Qwest denies that complainants would have been able to adopt the rates and reasonably related and legitimate terms and conditions in the Eschelon and/or McLeod agreements.

8 Answering paragraph 10, Qwest denies that it overcharged the Complainants. Complainants cannot establish that they would have been eligible to opt in to any Eschelon or McLeod terms, and cannot establish that they were at any relevant time similarly situated to Eschelon or McLeod. The amounts that Complainants paid Qwest for telecommunications facilities and services during the time period in which the Eschelon and McLeod agreements were in effect were in accordance with the Commission-approved rates on file in the interconnection agreements between Qwest and AT&T and Qwest and Time Warner. Those rates were lawful, and no overcharges resulted from the assessment of those rates.

V. CLAIMS FOR RELIEF

A. Federal Law

9 Answering paragraph 11, Qwest restates and incorporates by reference the answers to paragraphs 1-10 above as if fully set forth herein.

10 Answering paragraph 12, Qwest states that the provisions of 47 U.S.C. § 251(b) and (c) speak for themselves, and denies that it violated the requirement to provide to Complainants access to, and interconnection with, its network “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”

- 11 Answering paragraph 13, Qwest states that the provisions of 47 U.S.C. § 251(e) and (i) speak for themselves. Qwest denies that Complainants would have been able to “opt in” to any agreements Qwest had with Eschelon or McLeod.
- 12 Answering paragraph 14, Qwest states that paragraph 96 of Order No. 21 in Docket No. UT-033011 speaks for itself. However, Qwest denies that paragraph 96 provides a basis for the relief sought by Complainants in this case. More relevant to this matter is the Commission’s finding, at paragraph 62 of that same order, that “[t]he record does not quantify the benefit to Qwest or harm to competitors or consumers [from the unfiled agreements], and thus there is no guidance on this issue.” See also, paragraph 83. Thus, there is no support in Order No. 21 for any finding or conclusion of harm to Complainants.
- 13 Answering paragraph 15, Qwest denies the allegations in this paragraph.

B. RCW 80.36.170 (Unreasonable Preference Prohibited)

- 14 Answering paragraph 16, Qwest restates and incorporates by reference the answers to paragraphs 1-10 above as if fully set forth herein.
- 15 Answering paragraph 17, Qwest states that the provisions of RCW 80.36.170 speak for themselves.
- 16 Answering paragraph 18, Qwest states that paragraph 96 of Order No. 21 in Docket No. UT-033011 speaks for itself. However, Qwest denies that paragraph 96 provides a basis for the relief sought by Complainants in this case. More relevant to this matter is the Commission’s finding, at paragraph 62 of that same order, that “[t]he record does not quantify the benefit to Qwest or harm to competitors or consumers [from the unfiled agreements], and thus there is no guidance on this issue.” See also, paragraph 83. Thus, there is no support in Order No. 21 for any finding or conclusion of harm to Complainants.

17 Answering paragraph 19, Qwest denies that Complainants would have been eligible to receive the rates offered under any Eschelon or McLeod agreement, and therefore denies that it subjected Complainants to any undue prejudice or disadvantage in violation of RCW 80.36.170.

C. RCW 80.36.180 (Rate Discrimination Prohibited)

18 Answering paragraph 20, Qwest restates and incorporates by reference the answers to paragraphs 1-10 above as if fully set forth herein.

19 Answering paragraph 21, Qwest states that the provisions of RCW 80.36.180 speak for themselves.

20 Answering paragraph 22, Qwest states that paragraph 96 of Order No. 21 in Docket No. UT-033011 speaks for itself. However, Qwest denies that paragraph 96 provides a basis for the relief sought by Complainants in this case. More relevant to this matter is the Commission's finding, at paragraph 62 of that same order, that "[t]he record does not quantify the benefit to Qwest or harm to competitors or consumers [from the unfiled agreements], and thus there is no guidance on this issue." See also, paragraph 83. Thus, there is no support in Order No. 21 for any finding or conclusion of harm to Complainants.

21 Answering paragraph 23, Qwest denies that Complainants would have been eligible to receive the rates offered under any Eschelon or McLeod agreement, and therefore denies that it violated RCW 80.36.180 in such a way as to harm Complainants, or give rise to a cause of action.

D. RCW 80.36.186 (Pricing of or Access to Noncompetitive Services)

22 Answering paragraph 24, Qwest restates and incorporates by reference the answers to paragraphs 1-10 above as if fully set forth herein.

- 23 Answering paragraph 25, Qwest states that the provisions of RCW 80.36.186 speak for themselves.
- 24 Answering paragraph 26, Qwest states that paragraph 96 of Order No. 21 in Docket No. UT-033011 speaks for itself. However, Qwest denies that paragraph 96 provides a basis for the relief sought by Complainants in this case. More relevant to this matter is the Commission's finding, at paragraph 62 of that same order, that "[t]he record does not quantify the benefit to Qwest or harm to competitors or consumers [from the unfiled agreements], and thus there is no guidance on this issue." See also, paragraph 83. Thus, there is no support in Order No. 21 for any finding or conclusion of harm to Complainants.
- 25 Answering paragraph 27, Qwest denies that Complainants would have been eligible to receive the rates offered under any Eschelon or McLeod agreement, and therefore denies that it subjected Complainants to any undue prejudice or disadvantage in violation of RCW 80.36.186.

VI. AFFIRMATIVE DEFENSES

- 26 Complainants' complaint fails to state a claim upon which relief can be granted.
- 27 Qwest provides services in accordance with its lawful interconnection tariffs, which are on file with the Commission, and in accordance with the interconnection agreements it has with each of the Complainants. Qwest's effective tariffs have the force and effect of law, and Qwest is not and was not obligated to provision service contrary to the requirements and obligations set forth in the tariffs.
- 28 Complainants' claims are barred by the statute of limitations, as set forth in Qwest's Motion for Summary Determination.

- 29 Complainants' claims are barred by the doctrine of laches.
- 30 AT&T's claims are barred by the doctrine of unclean hands.
- 31 Under Section 252(i) and Commission rules, Qwest alleges that Complainants are not and were not, at any relevant time, eligible to opt in to any relevant interconnection agreements that Qwest may have had with Eschelon or McLeod.

VII. PRAYER FOR RELIEF

WHEREFORE, Qwest asks the Commission to:

- A. Enter an order in this case dismissing the Complaint with prejudice as barred by the statute of limitations.
- B. Denying Complainants' request for reimbursement for "overcharges" for intrastate telecommunications services and facilities, including interest.

DATED this 28th day of November, 2005.

QWEST

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