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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Complaint and Petition for
Enforcement of Tel West Communications, LLC
Against

QWEST CORPORATION, INC.

For Failure to Comply with Provisions of its
Resale Agreement with Tel West; and,

Provision of Inferior Wholesale Services

Docket No. UT-013097

QWEST CORPORATION'S
ANSWER TO COMPLAINT AND
PETITION FOR ENFORCEMENT

Pursuant to RCW 80.04.110, and WAC 480-09-420 and WAC 480-09-530, Qwest Corporation ("Qwest") answers the complaint in this matter as follows. Qwest denies all allegations of the complaint not expressly admitted herein.

ANSWER TO "INTRODUCTION AND BACKGROUND"

1. As to the allegations set forth in the first paragraph of this section (beginning "Tel West Communications, LLC"), Qwest admits that Tel West Communications, LLC ("Tel West") is a registered CLEC and a reseller of Qwest services in Washington. Qwest further admits that it and Tel West entered into an Agreement for Service Resale ("1998 Resale Agreement") in 1998, that the original term of that said agreement terminated on August 1, 2001 and that a new interconnection agreement ("2001 Interconnection Agreement") has been negotiated and executed by Tel West and Qwest. Qwest

1 denies that the 2001 Interconnection Agreement is still pending Commission approval (as Commission
2 approval was received on October 31, 2001) and denies that the terms of the 1998 Resale Agreement
3 remain in effect.

4 2. As to the allegations set forth in the second paragraph of this section (beginning “Tel
5 West’s complaints against Qwest”), Qwest is not required to respond to the rule under which Tel West
6 intended to file the complaint. Qwest does deny that WAC 480-09-530 is applicable since the
7 allegations in the complaint relate to a lapsed and superseded interconnection agreement (the 1998 Resale
8 Agreement) and since the complaint contains allegations Tel West admits are unrelated to any
9 interconnection agreement between Tel West and Qwest. Qwest admits that it received Tel West’s 10-
10 day notice, a copy of which was appended to the complaint as Exhibit H.

11 **ANSWER TO “SUMMARY OF COMPLAINTS”**

12 3. As to the allegations set forth in the first paragraph of this section (beginning “Qwest has
13 consistently”), Qwest denies all allegations set forth in that paragraph. Qwest will address Tel West’s
14 individual allegations in the paragraphs below.

15 4. As to the allegations set forth in the second paragraph of this section (beginning “Tel
16 West also has additional”), no answer is required of Qwest. Qwest will address Tel West’s individual
17 allegations in the paragraphs below.

18 **ANSWER TO “CONTRACT VIOLATIONS BY QWEST”**

19 5. As to the allegations set forth in the first paragraph of this section (summary of four
20 specific allegations), Qwest generally denies that it has “consistently violated its contract obligations with
21 Tel West” in the four areas described in that paragraph. Qwest will address each issue individually in
22 more detail in the paragraphs below.

23 **Lack of service installation due date parity**

24 6. As to the allegations set forth in the second paragraph of this section (beginning “Tel
25 West’s Resale Agreement”), Qwest responds that the 1998 Resale Agreement speaks for itself. No
26 further answer by Qwest as to these allegations is required.

27 7. As to the allegations set forth in the third paragraph of this section

1 (beginning “Despite this clear contractual requirement”), Qwest denies the same. Tel West’s
2 interpretation of performance metric OP-4C – specifically that the annual (September 2000 through
3 August 2001) aggregate installation interval for Tel West’s end users was 2.42 days, while it was 1.91
4 days for Qwest’s end users -- is misleading¹ as Tel West selectively points to only a subset of the relevant
5 data to support its conclusion. Measure OP-4C takes into account only those installations not requiring a
6 technician dispatch. Tel West fails to point the Commission to the results of OP-4A and OP-4B, which
7 detail the average interval for installations requiring a technician dispatch, both within (OP-4A) and
8 outside (OP-4B) Metropolitan Statistical Areas. When the September through August data is aggregated
9 for OP-4A, OP-4B and OP-4C, the installation interval differential is only .23 days.² *See Confidential*
10 *Exhibit 1*. Couple that result with the fact that Qwest met virtually the same percentage of residential
11 installation commitments for Tel West customers (98.43%) as it did for its retail customers (99.05%)
12 between September 2000 and August 2001 and Tel West’s conclusory allegation that Qwest “clearly
13 provides itself a competitive advantage over Tel West” is demonstrably wrong. *See Confidential*
14 *Exhibit 1*.

15 8. As to the allegations set forth in the fourth paragraph of this section (beginning “However,
16 Tel West’s records”), Qwest has had no opportunity to review the data and assumptions underlying Tel
17 West’s summary calculations and therefore denies all allegations set forth in that paragraph.

18 9. As to the allegations set forth in the fifth paragraph of this section (beginning “Tel West
19 has suffered severe financial losses”), Qwest has had no opportunity to review the data and assumptions
20 underlying Tel West’s summary calculations and therefore denies all allegations set forth in that paragraph.

21 10. As to the allegations set forth in the sixth paragraph of this section (beginning “Another
22

23 ¹ It is also inaccurate. Tel West failed to properly weight its aggregation of the data; it apparently simply added
24 up the twelve (monthly) “CLEC results” and divided by twelve, rather than dividing the sum of the twelve CLEC
numerators by the sum of the twelve CLEC denominators. If properly aggregated for that time period, the annualized
average intervals under OP-4C were 2.37 days for Tel West’s end users and 1.90 days for Qwest’s retail end users, a
difference of .47 days, not .51 days.

25 ² Furthermore, Qwest suspects that when the underlying data is closely examined, it will reveal that Tel West’s
26 customers have experienced equal or shorter installation intervals than Qwest’s retail customers for similar product
offerings. This is because OP-4 tracks all inward orders (with specified exceptions), not all of which have the same
standard installation interval.

1 example of significant financial harm”), Qwest is unaware of the specific events described in that
2 paragraph and therefore denies all allegations set forth in that paragraph.

3 **Failure to provide Tel West service credits and/or payments for installation delays**

4 11. As to the allegations set forth in this section (beginning Qwest’s “Service Guarantee
5 Program”), Qwest denies the same. Qwest has agreed to provide Tel West with applicable service
6 credits in accordance with the Commission’s 15th Supplemental Order in Docket Nos. UT-
7 003022/003040.³ Qwest discussed with Tel West the provisions of this Commission Order in October,
8 and Qwest agreed to begin providing the credits on a going forward basis. Additionally, Qwest offered
9 to compensate Tel West for past missed commitments or delays. Qwest would apply the wholesale-
10 discounted service credits or payments to any eligible Tel West orders from the effective date of the 15th
11 Supplemental Order until the present. Qwest has asked Tel West for specific order information sufficient
12 for Qwest to determine the orders for which credits or payments would apply, but to date Tel West has
13 not provided that information.

14 12. The 2001 Interconnection Agreement contains provisions consistent with the
15 Commission’s 15th Supplemental Order, at Section 6.2.3 (and subsections thereunder). Thus, there is no
16 need for the Commission to take any action on this issue.

17 **Providing inefficient and time-consuming customer service to**
18 **Tel West during calls to the Qwest Interconnect Service Centers (ISCs)**

19
20 13. As to the allegations set forth in this section (beginning “Every business day, Tel West
21 employees spend several hours on the telephone”), Qwest has had no opportunity to review the data and
22 assumptions underlying Tel West’s allegations and therefore denies all allegations set forth in that
23 paragraph. Qwest specifically denies that Tel West receives poor customer service from Qwest. Tel
24 West has received repeated instructions from Qwest with regard to the proper procedures for resolution

25 ³ Docket Nos. UT-003022/003040, 15th Supplemental Order dated August 17, 2001. Paragraphs 91 and 165 (17)
26 contain the Commission’s decision regarding service credits. The Commission held that Qwest must pay service
27 credits to resellers if such credits are applicable under Qwest’s tariffs, but that Qwest may apply the wholesale
discount to those credits.

1 of service and/or installation issues, and has received instructions regarding the process for escalations.
2 Last year, Qwest provided Tel West with a contact in the Service Delivery Center and asked Tel West to
3 call that person if Tel West was having difficulty getting issues resolved. To the best of Qwest's
4 knowledge, Tel West has not made any such contacts since sometime in 2000.

5 14. Tel West's discussion regarding restoral of service for Tel West versus restoral of service
6 for a resold line proves nothing other than that Tel West is willing to intentionally and willfully withhold
7 payment on an undisputed account due without any basis for doing so. Qwest's decisions regarding
8 disconnection of its own customers for nonpayment are different from and independent of the decisions
9 that Tel West must make, as a carrier, regarding disconnection of its end users. Absent nonpayment by
10 Tel West, Qwest does not disconnect Tel West resold lines unless and until Tel West orders those lines
11 disconnected. Tel West may allow its own customers to go into arrears, or may require prompt payment
12 each month – that is not Qwest's concern. So long as Tel West keeps its account as a reseller current
13 with Qwest, Tel West can do as it wishes with its own customers. However, once Tel West issues an
14 LSR (Local Service Request – the form used by a reseller to submit orders to Qwest regarding resold
15 services, including disconnection of those services) Qwest will act on that order and disconnect the
16 service. Once it is disconnected, service can be reconnected only after Tel West submits an LSR
17 requesting service. Qwest treats its own end users in generally the same manner, requiring the end user to
18 contact Qwest to reinstate service once it has been disconnected. The standard interval for such orders is
19 the same for an end user as for a reseller, provided that the orders are the same type of order.

20 **Requiring Tel West to pay full nonrecurring charges up-front while**
21 **allowing Qwest end users to spread payment over 120 days**

22 15. As to the allegations set forth in this section (beginning “Qwest requires full payment of
23 nonrecurring charges from Tel West”), Qwest admits that it requires Tel West to pay full nonrecurring
24 charges “up-front” and that it occasionally makes payment arrangements with its end-users to allow
25 payment of nonrecurring charges over a period of time. This conduct is not in violation of any
26 requirement of law, and is consistent with the 1998 Resale Agreement. Billing and payment for services
27 under said agreement is covered directly by Sections VII. B. and C., which provide that all accounts

1 payable under the Agreement are due and payable within 30 days after the bill date.

2 16. The ability to pay a nonrecurring charge over time is not a “term or condition” of the
3 service and is not contained in Qwest’s tariffs. The payment arrangements that Qwest may be willing to
4 make with its end users on a case by case basis, as a business decision, are not something to which Tel
5 West is independently entitled. Qwest would note that this does not prevent Tel West from making
6 payment arrangements with its end user if it desires to do so. Tel West and Qwest are similarly situated in
7 this case – as telecommunications companies, each incurs the nonrecurring costs to install new service up-
8 front, but may choose to allow an end user to pay over time.

9 17. Finally, the 2001 Interconnection Agreement contains payment provisions in Section 5.4.
10 Those provisions clearly require payment of charges after 30 days, and do not contemplate payment of
11 nonrecurring charges over time. Tel West signed that Agreement in August 2001, after it complained of
12 this issue in an informal letter to the Commission. Tel West had an opportunity to negotiate that issue with
13 Qwest prior to signing the 2001 Interconnection Agreement, but to Qwest’s knowledge Tel West never
14 asked to negotiate that issue, and Tel West clearly did not request arbitration of that issue.

15 **ANSWER TO “ADDITIONAL NON-CONTRACTUAL COMPLAINTS AGAINST QWEST”**

16 18. As to the allegations set forth in this section, Qwest is under no obligation to provide an
17 answer under WAC 480-09-530, as these allegations are, by Tel West’s own admission, not related to
18 either of the interconnection agreements between the parties. Qwest responds that these allegations do
19 not state a basis upon which relief can be granted under either state or federal law. Tel West admits that
20 Qwest is not in violation of the 1998 Resale Agreement when Qwest charges Tel West for additional
21 services or features such as call blocking or directory assistance, but contends that Qwest should simply
22 forgo those charges in order to show that it is willing to work with Tel West as a valued wholesale
23 customer. Of course Qwest cannot simply forgo those charges, as Tel West is obligated under the 1998
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1 Resale Agreement and the 2001 Interconnection Agreement to pay for the services it receives.

2 19. As to the allegations in the second paragraph of this section (beginning “Other examples
3 include”), Qwest is without knowledge or information sufficient to form a belief as to the truth of those
4 allegations, and therefore denies the same.
5

6 **AFFIRMATIVE DEFENSES**

7 20. Tel West fails to state a claim upon which relief can be granted.

8 21. Tel West’s claims are barred by the doctrines of estoppel.

9 22. Some or all of Tel West’s claims are barred for lack of jurisdiction.

10 23. Injunctive relief is not available to Tel West and the Commission lacks jurisdiction to
11 award the same.

12 24. At all relevant times, Qwest acted in conformance with its tariffs, applicable Commission
13 Orders, and state and federal law.

14 25. Because a portion of the claims contained in the complaint (by Tel West’s own
15 admission) concern matters unrelated to any interconnection agreement between Tel West and Qwest,
16 this case must either be converted to a generic, non-expedited complaint proceeding or must be
17 bifurcated.

18 26. Tel West’s complaint is non-compliant with WAC 480-09-420 or 480-09-530 and
19 should either be dismissed or returned by the Commission to Tel West for correction pursuant to WAC
20 480-09-420(2).

21 27. Tel West’s complaint, or portions thereof, should be dismissed due to Tel West’s failure
22 to engage in good faith negotiations prior to filing the complaint.

23 28. Tel West’s complaint should be dismissed since its complaints pertain to alleged violations
24 of a lapsed interconnection agreement no longer in effect.

25 29. Tel West’s complaint should be dismissed for failure to properly serve Qwest pursuant to
26 WAC 480-09-530(4)(c).
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WHEREFORE, having answered the complaint, Qwest requests that the complaint be dismissed with prejudice; that petitioner take nothing by its complaint; and that Qwest be awarded such further relief as the Commission may deem proper.

RESPECTFULLY SUBMITTED this _____ day of November, 2001.

QWEST

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Attorneys for Qwest

1 VERIFICATIONS

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4 I, Virginia Sakal, am a Senior Service Manager for Qwest Corporation. I have read the
5 foregoing Answer to Complaint and Petition for Enforcement and I declare, under penalty of perjury
6 under the laws of the State of Washington, that the facts set forth in paragraphs 11-17 thereof are true
7 and correct.

8 DATED November _____, 2001, at Denver, Colorado.

9
10 _____
11 Virginia Sakal
12
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15 I, Mike G. Williams, am a Senior Manager for Legal Issues for Qwest Corporation. I have read
16 the foregoing Answer to Complaint and Petition for Enforcement and I declare, under penalty of perjury
17 under the laws of the State of Washington, that (1) the facts set forth in paragraph 7 thereof are true and
18 correct, (2) the documents attached hereto as Exhibit 1 are true and correct copies of pages excerpted
19 from the August 3, 2001 WEST TEL Communications (Tel West) Washington September 2000 –
20 August 2001 report generated by Qwest in the ordinary course of business and (3) said report accurately
21 reflects the CLEC-specific performance data and Qwest’s retail performance data as of the date of the
22 report.

23 DATED November _____, 2001, at Salt Lake City, Utah.

24
25 _____
26 Mike G. Williams
27