

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

NORTHWEST TELEPHONE, INC.

Complainant,

v.

QWEST CORPORATION

Respondents.

Docket No. UT-053081

QWEST'S ANSWER TO COMPLAINT  
FOR PAYMENT OF INTERCONNECTION  
FACILITIES COSTS

**I. INTRODUCTION**

1 Qwest Corporation, (“Qwest”), hereby answers and responds to the Complaint of Northwest Telephone, Inc., (“NTI”), for Payment of Interconnection Facilities Costs (“Complaint”). On this same date, Qwest is also filing a Motion to Dismiss.

**II. PARTIES**

2 Answering paragraphs 1 and 2 of the Complaint, Qwest admits the allegations contained therein, except that to the extent that paragraph 2 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 3, Qwest admits that the cited provisions provide a basis under which a  
complaint may be filed, but denies that this complaint states grounds for relief under those or  
other provisions of the law. Qwest further denies that the Commission has jurisdiction to order  
the relief requested herein, which would require Qwest to alter its FCC tariffed rates for  
private line services.

### IV. BACKGROUND

4 Answering paragraph 4 of the Complaint, Qwest admits that NTI and Qwest are parties to an  
interconnection agreement approved by the Commission on June 13, 2001 in Docket No. UT-  
013046.

5 Answering paragraph 5 of the Complaint, Qwest denies that the current interconnection  
agreement contains a Section (C)2.3, and further denies that the quoted language in paragraph  
5 is contained in the current interconnection agreement. Qwest states that the governing  
interconnection agreement contains terms and conditions related to interconnection in  
Section 7, attached hereto as Exhibit A. Qwest denies that there is any provision in Section 7  
which requires Qwest to share in the compensation for the facilities purchased by NTI from  
Qwest's FCC tariff.

6 Answering paragraph 6 of the Complaint, Qwest admits that NTI obtains private line transport  
facilities from Qwest. Those facilities are, in general, purchased from Qwest's FCC tariff.  
Qwest charges NTI the tariffed rates for those facilities, in accordance with the requirements  
of the tariff and federal law. Qwest admits that NTI asked Qwest to unlawfully rebate certain  
portions of those tariffed rates, and that Qwest refused, and continues to refuse, to do so.

7 Answering paragraph 7 of the Complaint, Qwest admits that it refuses to discount the tariffed

rates for private line (special access) circuits, regardless of how they are used. Qwest denies that it is required to do so. Qwest denies that “the source of those facilities or how the Parties provision them is irrelevant” as stated in the Complaint. The nature of the facilities governs whether the cost must be shared or not, and the cost of federally tariffed private line facilities is not required to be shared under the parties’ interconnection agreement, even if they are used for local interconnection service. Circuits purchased out of the FCC tariff are not subject to the proportional cost allocation in the interconnection agreement. Section 7.3.1.1.2 of the interconnection agreement states that “[i]f CLEC chooses to use an existing facility purchased as Private Line Transport Service from the state or FCC Access Tariffs, the rates from those Tariffs will apply.” The Commission has confirmed, in decisions in the Qwest 271 proceeding and the Qwest/AT&T arbitration proceeding, that Qwest’s FCC tariff prohibits proportional cost allocation and that the Commission is without jurisdiction to order otherwise.<sup>1</sup>

8 Answering the allegations in paragraph 8 of the Complaint, Qwest states that it refuses to pay for a shared portion of the private line costs for the reasons stated above, regardless of the type of traffic that is delivered over them. However, for any facilities for which cost sharing would otherwise apply, i.e., LIS services using LIS facilities, not private line facilities, Qwest contends that it is not required to share the costs for traffic delivered to an ISP customer of NTI where the ISP’s server or modem is not physically located in the same local calling area as the Qwest customers who are placing the call. Further, the parties’ interconnection agreement specifically excludes any ISP traffic from the calculation of the relative use factor. Sections 7.3.1.1.3.1 and 7.3.1.2.2. All of the traffic to NTI is ISP traffic, and NTI’s switch is located in Wenatchee. Calls from Qwest customers are delivered to NTI’s customer in Wenatchee, and NTI does not dispute the fact that no traffic is delivered back to the originating local calling area. There are no local calling areas in Qwest serving territory in

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<sup>1</sup> See, Qwest’s Motion to Dismiss, filed concurrently.

Washington from which a call to Wenatchee is a local call. Thus, Qwest believes that NTI is using VNXX numbers for all of the traffic generated by Qwest customers, and no call is delivered by NTI to its customer in the local calling area from which the same call originated. The interconnection agreement does not permit this type of call over LIS facilities, and VNXX calls are not properly treated as eligible for section 251 interconnection.

- 9 Answering the allegations in paragraph 9 of the complaint, Qwest admits that NTI has refused payment for services that Qwest has provided, and that some disputed amounts are currently held in escrow.

## V. CAUSES OF ACTION

- 10 Answering paragraph 10 of the Complaint, Qwest denies that the cited provisions apply to this dispute, and denies that Section 7 of the current interconnection agreement contains any provisions that require Qwest to compensate NTI for proportionate usage of private line facilities. The current interconnection agreement, and applicable Commission rulings, state that private line facilities shall be charged in accordance with the applicable tariff, and that no proportional pricing shall apply to federally tariffed services. Qwest therefore denies that it is in breach of the interconnection agreement.

- 11 Answering paragraph 11 of the Complaint, Qwest states that the cited provisions of federal law speak for themselves. Qwest states that it has interconnected with NTI on rates, terms, and conditions that are just, reasonable, and non-discriminatory, pursuant to an approved interconnection agreement and in accordance with federal law. Qwest therefore denies that it is in violation of federal law. Qwest further states that FCC Rule 51.709 applies to the transport and termination of local telecommunications traffic and does not apply in this case. This rule applies to setting rates for TELRIC-rated interconnection facilities, not facilities

purchased from federal tariffs which are not subject to TELRIC prices.<sup>2</sup> Further, the traffic at issue is neither local nor is it telecommunications traffic – rather, it is ISP traffic, which, according to the FCC, is an information service, not a telecommunications service, and is jurisdictionally not compensable under section 251(b)(5).

12 Answering paragraph 12 of the Complaint, Qwest denies that it is in violation of Washington law, and denies that it has subjected NTI to any prejudice or disadvantage whatsoever. Qwest is not obligated to discount its federally tariffed private line services for any reason, and is not in violation of state law for refusing to do so.

## **VI. QWEST'S AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**

13 The complaint fails to state a claim upon which relief may be granted.

14 The Commission lacks jurisdiction to grant NTI the relief it has requested with regard to federally tariffed services.

15 The parties' interconnection agreement, and the Telecommunications Act of 1996, prohibits NTI from obtaining interconnection solely for the purpose of terminating its interexchange traffic. NTI is in violation of those requirements, as NTI neither originates nor terminates any local telecommunications traffic to or from Qwest's customers. NTI is therefore not entitled to LIS facilities solely for collection of its non-local traffic.

## **VII. PRAYER FOR RELIEF**

16 Wherefore, Qwest asks the Commission to dismiss NTI's complaint, or, in the alternative, to deny it in its entirety. Qwest further asks the Commission, consistent with its prayer for relief

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<sup>2</sup> This is evident from 47 C.F.R. § 51.709(a), which states: "In state proceedings, a state commission shall establish rates for the transport and termination of telecommunications . . ." in accordance with the FCC's TELRIC rules. For federally-tariffed services, such as PLTS, the state commission does not establish the rates.

in Pac-West (Docket No. UT-053036) and Level 3 (Docket No. UT-053039) to enter an order prohibiting NTI from using VNXX numbers.

DATED this 27th day of September, 2005.

QWEST

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