

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,  
Complainant,

v.

QWEST CORPORATION,  
Respondent.

Docket No. UT-032162

ANSWER OF QWEST CORPORATION

With respect to the allegations contained in the separately numbered paragraphs of the Complaint, Qwest Corporation (“QC”) responds as follows:

*1* As paragraph 1 of the Complaint contains no legal or factual allegations, no answer is required.

**I. INTRODUCTION**

*2* As to the allegations set forth in paragraph 2 of the Complaint, QC admits that it is not a competitively-classified company in Washington, although many of its services have been competitively-classified by the Commission. QC further asserts that the statutes and rules cited by Staff speak for themselves and do not contain any standard for determining whether

reports are materially “accurate” or “inaccurate.” As the remainder of paragraph 2 of the Complaint exclusively contains legal allegations, no further answer is required.

3 As paragraph 3 of the Complaint exclusively contains legal allegations, no answer is required. QC further asserts that the rules cited by Staff speak for themselves and do not contain any standard for determining whether reports are materially “accurate” or “inaccurate.”

## **II. PARTIES**

4 As to the allegations set forth in paragraph 4 of the Complaint, QC admits that the Commission is a state agency. As the remainder of paragraph 4 of the Complaint exclusively contains legal allegations, no further answer is required. QC further asserts that the provisions of Title 80 RCW speak for themselves.

5 As to the allegations set forth in paragraph 5 of the Complaint, QC admits that it is a telecommunications company. As the remainder of paragraph 5 of the Complaint exclusively contains legal allegations, no further answer is required. QC further asserts that the statute cited by Staff speaks for itself.

## **III. JURISDICTION**

6 As paragraph 6 of the Complaint exclusively contains legal allegations, no answer is required. QC further asserts that the statutes cited by Staff speak for themselves.

## **IV. FACTUAL ALLEGATIONS**

7 As to the allegations set forth in paragraph 7 of the Complaint, QC admits the same. QC further asserts that it is the indirect subsidiary of Qwest Communications International Inc. (“QCII”). QCII, the ultimate parent of QC, is not a public service company and is not regulated by the Commission.

- 8 As paragraph 8 of the Complaint exclusively contains legal allegations, no answer is required. QC further asserts that the provisions of Title 80 RCW speak for themselves.
- 9 As to the allegations set forth in paragraph 9 of the Complaint, the allegations are vague and unclear as they fail to identify any specific inaccuracies in the QC financial statements and fail to allege a basis upon which to conclude that such alleged inaccuracies were in any way material. QC admits that in its Annual Report on Securities and Exchange Commission (“SEC”) Form 10-K for fiscal year 2002 it restated certain information contained in its 2000 and 2001 financial statements. This was done in conjunction with QCII’s much larger restatement process.
- 10 As to the allegations set forth in paragraph 10 of the Complaint, QC admits that it petitioned the Commission for an extension of the time to file its 2002 annual report.
- 11 As to the allegations set forth in paragraph 11 of the Complaint, QC admits the same.
- 12 As to the allegations set forth in paragraph 12 of the Complaint, QC admits the same.
- 13 As to the allegations set forth in paragraph 13 of the Complaint, QC admits the same and further asserts that the Commission was the only utilities commission, state or federal, covering QC’s serving territory to deny QC’s request for extension. QC also asserts that the Commission rejected QC’s offer to provide un-restated financial reports by August 1, 2003 and September 1, 2003. QC further asserts that the Order cited by Staff speaks for itself.
- 14 As to the allegations set forth in paragraph 14 of the Complaint, QC admits that QC did not file the identified financial reports until the dates specified in paragraph 14, except as follows: (1) QC filed its 2002 affiliated interest report, except for Attachment B and Confidential Attachment D, on June 2, 2003; (2) QC filed Attachment B to its 2002 affiliated interest report on December 22, 2003; and (3) QC filed its 4Q 2002 report on

December 22, 2003. QC reiterates that it had timely requested an extension, which was denied by the Commission. QC further asserts that the Commission was the only utilities commission, state or federal, covering QC's serving territory to deny QC's request for extension. QC also asserts that the Commission rejected QC's offer to provide un-restated financial reports by August 1, 2003 and September 1, 2003.

15 As to the allegations set forth in paragraph 15 of the Complaint, QC admits that it filed the identified financial reports on the dates specified in paragraph 15.

## **V. FIRST CAUSE OF ACTION**

16 As to the allegations set forth in paragraph 16 of the Complaint, QC incorporates by reference and realleges, as though fully stated herein, its responses to the allegations contained in paragraphs 2-15 of the Complaint.

17 As paragraph 17 of the Complaint exclusively contains legal allegations, no answer is required. QC further asserts that the statute cited by Staff speaks for itself.

18 As to the allegations set forth in paragraph 18 of the Complaint, QC admits that it received an extension and that it filed the identified financial report on the date specified in paragraph 18. QC reiterates that it had timely requested an extension, which was denied by the Commission. QC further asserts that the Commission was the only utilities commission, state or federal, covering QC's serving territory to deny QC's request for extension. QC also asserts that the Commission rejected QC's offer to provide un-restated financial reports by August 1, 2003. As the remainder of paragraph 18 of the Complaint exclusively contains legal allegations, no further answer is required. QC further asserts that the rule cited by Staff speaks for itself.

19 As paragraph 19 of the Complaint exclusively contains legal allegations and conclusions, no

answer is required. QC further asserts that the statute, rule and Order cited by Staff speak for themselves.

20 As paragraph 20 of the Complaint exclusively contains legal allegations and conclusions, no answer is required. QC further asserts that the statute, rule and Order cited by Staff speak for themselves.

## **VI. SECOND CAUSE OF ACTION**

21 As to the allegations set forth in paragraph 21 of the Complaint, QC incorporates by reference and realleges, as though fully stated herein, its responses to the allegations contained in paragraphs 2-15 of the Complaint.

22 As paragraph 22 of the Complaint exclusively contains legal allegations, no answer is required. QC further asserts that the statute cited by Staff speaks for itself.

23 As to the allegations set forth in paragraph 23 of the Complaint, QC admits that it received an extension and that it filed its 1Q 2003 report on the date specified in paragraph 23. However, QC filed its 4Q 2002 report on December 22, 2003. QC reiterates that it had timely requested an extension, which was denied by the Commission. QC further asserts that the Commission was the only utilities commission, state or federal, covering QC's serving territory to deny QC's request for extension. QC also asserts that the Commission rejected QC's offer to provide un-restated financial reports by August 1, 2003. As the remainder of paragraph 23 of the Complaint exclusively contains legal allegations, no further answer is required. QC further asserts that the rule cited by Staff speaks for itself.

24 As to the allegations set forth in paragraph 24 of the Complaint, QC denies that it filed its 4Q 2002 report on December 30, 2003. QC filed that report on December 22, 2003. As the remainder of paragraph 24 exclusively contains legal allegations and conclusions, no answer

is required. QC further asserts that the statute, rule and Order cited by Staff speak for themselves.

25 As paragraph 25 of the Complaint exclusively contains legal allegations and conclusions, no answer is required. QC further asserts that the statute, rule and Order cited by Staff speak for themselves.

### **VII. THIRD CAUSE OF ACTION**

26 As to the allegations set forth in paragraph 26 of the Complaint, QC incorporates by reference and realleges, as though fully stated herein, its responses to the allegations contained in paragraphs 2-15 of the Complaint.

27 As to the factual allegation set forth in paragraph 27 of the Complaint, QC admits that it filed the identified reports on the date specified in paragraph 27. As the remainder of paragraph 27 exclusively contains legal allegations, no further answer is required. QC further asserts that the rule cited by Staff speaks for itself.

28 As paragraph 28 of the Complaint exclusively contains legal allegations and conclusions, no answer is required. QC further asserts that the statute and rule cited by Staff speak for themselves.

29 As paragraph 29 of the Complaint exclusively contains legal allegations and conclusions, no answer is required. QC further asserts that the statutes and rules cited by Staff speak for themselves.

### **VIII. FOURTH CAUSE OF ACTION**

30 As to the allegations set forth in paragraph 30 of the Complaint, QC incorporates by reference and realleges, as though fully stated herein, its responses to the allegations contained in paragraphs 2-15 of the Complaint.

31 As paragraph 31 of the Complaint exclusively contains legal allegations, no answer is required. QC further asserts that the statute cited by Staff speaks for itself.

32 As to the allegations set forth in paragraph 32 of the Complaint, QC admits that it received an extension, but denies that it filed its 2002 affiliated interest report on December 29, 2003. QC filed its 2002 affiliated interest report, except for Attachment B and Confidential Attachment D, on June 2, 2003. QC filed Attachment B to its 2002 affiliated interest report on December 22, 2003 and Confidential Attachment D on December 29, 2003. QC reiterates that it had timely requested an extension, which was denied by the Commission. QC further asserts that the Commission was the only utilities commission, state or federal, covering QC's serving territory to deny QC's request for extension. QC also asserts that the Commission rejected QC's offer to provide an un-restated affiliated interest report by September 1, 2003. As the remainder of paragraph 32 exclusively contains legal allegations, no further answer is required. QC further asserts that the rule cited by Staff speaks for itself.

33 As paragraph 33 of the Complaint exclusively contains legal allegations and conclusions, no answer is required. QC further asserts that the statute, rule and Order cited by Staff speak for themselves.

34 As paragraph 34 of the Complaint exclusively contains legal allegations and conclusions, no answer is required. QC further asserts that the statute, rule and Order cited by Staff speak for themselves.

#### **IX. FIFTH CAUSE OF ACTION**

35 As to the allegations set forth in paragraph 35 of the Complaint, QC incorporates by reference and realleges, as though fully stated herein, its responses to the allegations contained in paragraphs 2-15 of the Complaint.

36 As paragraph 36 of the Complaint exclusively contains legal allegations, no answer is required. QC further asserts that the statute cited by Staff speaks for itself.

37 As to the allegations set forth in paragraph 37 of the Complaint, the first sentence exclusively contains legal allegations and conclusions, to which no answer is required. QC further asserts that the statute cited by Staff speaks for itself and does not contain any standard for determining whether reports are materially “accurate” or “inaccurate.” As to the remaining allegations set forth in paragraph 37 of the Complaint, the allegations are vague and unclear as they fail to identify any specific inaccuracies in the QC financial statements and fail to allege a basis upon which to conclude that such alleged inaccuracies were in any way material. QC admits that in its Annual Report on SEC Form 10-K for fiscal year 2002 it restated certain information contained in its 2000 and 2001 financial statements. This was done in conjunction with QCII’s much larger restatement process.<sup>1</sup>

38 Further, QC admits that the identified reports were filed and filed as revised on the dates specified in paragraph 39, except as follows: (1) QC filed its 1Q and 2Q 2000 reports on October 17, 2000; (2) QC filed the July portion of its 3Q 2000 report on November 21, 2000 and the August and September portions of its 3Q 2000 report on February 21, 2001; (3) QC filed the October and November portions of its 4Q 2000 report on March 14, 2001 and the December portion of its 4Q 2000 report on April 9, 2001; (4) QC filed its revised December and year end 2000 reports on November 5, 2001; (5) QC filed the restated 2000 reports on December 22, 2003; (6) QC filed its 1Q 2001 report on July 26, 2001 and revised said report on November 5, 2001; (7) QC filed its 2Q 2001 report on November 5, 2001 and revised the May portion of said report on April 12, 2002; (8) QC filed its 3Q 2002 report on May 22, 2002; (9) QC filed the restated 2001 reports on December 22, 2003; and (10) QC filed its

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<sup>1</sup> QC also asserts that subparagraph (k) appears to include an erroneous reference to June 1, 2000. QC believes Staff intended to refer to June 1, 2001.



restated 2000 and 2001 annual reports on December 22, 2003.

39 As paragraph 38 of the Complaint exclusively contains legal allegations and conclusions, no answer is required. QC further asserts that the statute and rules cited by Staff speak for themselves and do not contain any standard for determining whether reports are materially “accurate” or “inaccurate.”

40 As paragraph 39 of the Complaint exclusively contains legal allegations and conclusions, no answer is required. QC further asserts that the statutes and rules cited by Staff speak for themselves.

#### **X. SIXTH CAUSE OF ACTION**

41 As to the allegations set forth in paragraph 40 of the Complaint, QC incorporates by reference and realleges, as though fully stated herein, its responses to the allegations contained in paragraphs 2-15 of the Complaint.

42 As paragraph 41 of the Complaint exclusively contains legal allegations, no answer is required. QC further asserts that the statute and rules cited by Staff speak for themselves.

43 As to the allegations set forth in paragraph 42 of the Complaint, the allegations are vague and unclear as they fail to identify any specific inaccuracies in the QC financial statements and fail to allege a basis upon which to conclude that such alleged inaccuracies were in any way material. QC admits that in its Annual Report on SEC Form 10-K for fiscal year 2002 it restated certain information contained in its 2000 and 2001 financial statements. This was done in conjunction with QCII’s much larger restatement process. QC further asserts that the statutes and rules relied upon by Staff in the Complaint do not provide a standard for determining whether the accounts are materially “accurate” or “inaccurate.”

44 As paragraph 43 of the Complaint exclusively contains legal allegations and conclusions, no

answer is required. QC further asserts that the statutes and rules cited by Staff speak for themselves and do not contain any standard for determining whether accounts are materially “accurate” or “inaccurate.”

45 As to the allegations and relief requested in paragraphs 44 through 47 of the Complaint, QC denies that it is liable for any penalty or other form of remedy whatsoever.<sup>2</sup>

46 QC denies any allegation in the Complaint not expressly admitted above.

### **AFFIRMATIVE DEFENSES**

QC asserts the following affirmative defenses:

47 The Complaint fails to state a claim upon which relief may be granted.

48 The Complaint is barred by the doctrine of laches.

49 In the absence of any articulated standard for the filing of “accurate” financial reports, QC’s later-revised filings cannot be considered “inaccurate.”

50 In the absence of any articulated standard for the keeping of “accurate” accounts, QC’s later-revised internal accounts cannot be considered “inaccurate.”

51 The timing of QC’s filing of financial reports with the Commission did not cause harm to any Washington ratepayer.

52 The alleged inaccuracy of QC’s financial reports or accounts did not cause any harm to any Washington ratepayer.

53 The Complaint impermissibly multiplies alleged violations. *See Blockburger v. United States*, 284 U.S. 299, 304 (1932). In particular, the Complaint seeks penalties for both

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<sup>2</sup> QC also asserts that paragraph 44 appears to include an erroneous reference to Chapter 480-09, WAC. QC believes that Staff intended to refer to Chapter 480-07, WAC.

allegedly-inaccurate quarterly reports and annual reports for the same years. The First and Second Causes of Action in the Complaint are duplicative. As are parts of the Fifth Cause of Action (i.e., subparagraphs (a)-(d) are duplicative of subparagraph (i); subparagraphs (e)-(h) are duplicative of subparagraph (j)). As are the Fifth and Sixth Causes of Action.

- 54 Any imposition of penalties based on the filing of “inaccurate” financial reports when no clear accuracy standard existed would violate the fair notice doctrine and QC’s due process rights.
- 55 Any imposition of penalties based on the keeping of “inaccurate” accounts when no clear accuracy standard existed would violate the fair notice doctrine and QC’s due process rights.
- 56 Any penalty must be proportional to the alleged offense. *See United States v. Bajakajian*, 524 U.S. 321, 326 (1998) (“The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.”).
- 57 Any penalty assessment must be based on conduct and harm occurring to or impacting ratepayers in the state of Washington. The Commission is not a state surrogate for the Securities and Exchange Commission, and must tie any enforcement activity to the lawful scope of its regulatory authority.
- 58 Any remedy cannot conflict with state and federal law prohibiting discrimination.
- 59 None of the statutes, rules or Commission orders at issue states clearly either that they create a continuous duty or that a failure to comply gives rise to a penalty based on the length of time that the breach exists. As a result, penalties cannot be assessed on a daily basis. *See United States v. Trident Seafoods Corp.*, 60 F.3d 556, 557 (9<sup>th</sup> Cir. 1995).

DATED this 7th day of September, 2004.

QWEST

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Lisa A. Anderl, WSBA #13236  
Adam Sherr, WSBA #25291  
1600 7<sup>th</sup> Avenue, Room 3206  
Seattle, WA 98191  
Phone: (206) 398-2500