

**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  
AMENDED COMPLAINT

**I. INTRODUCTION**

*I* Qwest Corporation (“Qwest”) hereby files its answer to the Amended Complaint filed by AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon (collectively “AT&T” or “Complainants”).<sup>1</sup>

<sup>1</sup> Aside from naming Time Warner Telecom of Washington, LLC (“Time Warner”) in the caption of the Amended Complaint, Time Warner, which was a party to the initial Complaint, is not otherwise referenced or described in the Amended Complaint. Qwest has consulted with counsel for Complainants and is advised that Time Warner is not seeking relief under the Amended Complaint, though Time Warner will continue to pursue remedies on review of the Commission’s Interlocutory Order No. 04. Accordingly, Qwest does not address the breach of contract claim as it might be asserted by Time Warner.

## II. PARTIES

2 Answering paragraphs 1 through 4 of the Amended 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 Amended 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 states that the this paragraph does not contain factual allegations which require admission or denial, and further states that the Telecommunications Act of 1996 speaks for itself.

5 Answering paragraph 7, 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.

6 Answering paragraph 8, 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.

- 7 Answering paragraph 9, 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.
- 8 Answering paragraph 10, 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. Qwest further states that the terms of the parties' interconnection agreements speak for themselves and denies that Qwest breached any provision therein.
- 9 Answering paragraph 11, 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.
- 10 Answering paragraph 12, 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 it was 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. Those rates were lawful, and no overcharges resulted from the assessment of those rates.

## **V. CLAIMS FOR RELIEF**

- 11* Answering paragraph 13, Qwest restates and incorporates by reference the answers to paragraphs 1-12 above as if fully set forth herein.
- 12* Answering paragraph 14, Qwest states that the provisions of the Telecommunications Act of 1996 and the parties' interconnection agreements speak for themselves and Qwest denies that it breached those agreements or violated any provisions of the Act.
- 13* Answering paragraph 15, Qwest denies that Complainants would have been able to "opt in" to any agreements Qwest had with Eschelon or McLeod and denies that Complainants were entitled to any discounts or that they have suffered any damages.

## **VI. AFFIRMATIVE DEFENSES**

- 14* Complainants' Amended Complaint fails to state a claim upon which relief can be granted.
- 15* 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.
- 16* Complainants' claims are barred by the statute of limitations, as set forth in Qwest's Motion for Summary Determination.
- 17* Complainants' claims are barred by the doctrine of laches.

18 AT&T's claims are barred by the doctrine of unclean hands.

19 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 Amended Complaint with prejudice as barred by the statute of limitations.

DATED this 20th day of July, 2005.

QWEST

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