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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

TEL WEST COMMUNICATIONS, LLC
Petitioner
v.
QWEST CORPORATION, INC.
Respondent.

Docket No. UT-013097
QWEST CORPORATION'S PETITION
TO REOPEN THE PART A RECORD

Qwest hereby petitions the Commission to reopen the evidentiary record in Part A of this docket to include consideration of the e-mail communication attached hereto as Exhibit A and the declaration attached as Exhibit B.

I. INTRODUCTION

An evidentiary hearing and oral argument were conducted by the parties in Part A of this docket on March 11 and 12, 2002. On March 13, 2002, the Administrative Law Judge issued Bench Request No. 3, requiring the parties to “[p]roduce a copy of the Qwest SGAT template agreement that Qwest submitted to Tel West prior to May 10, 2001 which is referred to at Exhibit 2, page 1, third paragraph... [and] include all documents (cover letter, exhibits, etc.) that accompanied the submission.” Exhibit 2 is a May 10, 2001 letter from Tel West’s consultant, Donald Taylor, to Nancy Donahue of Qwest.

In response to the bench request, Qwest’s undersigned counsel contacted, for the first time in connection with this docket, Ms. Donahue, a Qwest employee in Denver, Colorado who negotiated on behalf of Qwest Tel West’s current interconnection agreement with Mr. Taylor, on behalf of Tel West.

1 Qwest's counsel had not previously contacted Ms. Donahue as time did not permit due to the extremely
2 tight procedural schedule and the parties' focus on discovery preparation, discovery response
3 development and discovery dispute resolution.

4 In response to counsel's inquiry, Ms. Donahue provided the undersigned a series of e-mail
5 communications dating from the period when the current interconnection agreement was being negotiated
6 by the parties. One e-mail in particular – dated May 29, 2001 – is essential to this case as it evidences
7 that Tel West, months prior to executing the interconnection agreement, understood that Qwest could not
8 and would not provide Tel West for resale a basic local exchange line free of access to OS and DA
9 without requiring Tel West to order and pay for blocking services.¹ A copy of that e-mail is attached
10 hereto as Confidential Exhibit A. A declaration from Ms. Donahue attesting to the authenticity of that e-
11 mail and explaining the context of the e-mail is attached hereto as Exhibit B.

12 **II. DISCUSSION**

13 Any party to an adjudication may file a petition for reopening at any time after the close of the
14 record and before entry of the final order. *WAC 480-09-820(2)*. A petition to reopen in a disputed
15 proceeding may be granted if the receipt of the evidence is essential to a decision and was unavailable and
16 not reasonably discoverable with due diligence at the time of the hearing or for any other good and
17 sufficient cause. *WAC 480-09-820(2)(b)*.

18 This evidence is obviously of significant importance to the issues in dispute in Part A of the
19 docket. Mr. Swickard testified at hearing that he delegated the negotiations of the interconnection
20 agreement to Mr. Taylor, his outside consultant. Thus, Mr. Taylor's state of mind is critical as the
21 Commission attempts to ascertain the parties' intentions and understanding at the time the contract was
22 executed in August 2001. Ms. Donahue's May 29, 2001 e-mail – which was a status report to her boss,
23 Larry Christensen² – clearly indicates that Mr. Taylor was aware that Qwest would not capitulate to Tel

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25 ¹ The subject e-mail was internal to Qwest. By introducing it now, Qwest does not seek to imply that Mr. Swickard
was aware of its existence or contents. It is not being offered to impeach Mr. Swickard's credibility, but instead to
evidence the parties' mutual understanding at the time the interconnection agreement was being negotiated.

26 ² Qwest notes that this e-mail was also addressed and transmitted to several additional Qwest employees, including
27 James Gallegos, an attorney for the company. Should the Commission agree to reopen the record to include this e-mail,
Qwest would be willing to waive – for this document and this purpose only – attorney-client privilege. This should not

1 West's demand of a line for resale free of access to OS and DA and that Tel West believed it could
2 resolve this issue in other ways.

3 As for the unavailability of this document before hearing, Qwest fully admits that the document did
4 exist prior to the hearing. However, because of the incredible time constraints and the exhaustive and
5 contested nature of the parties' discovery, Qwest simply did not have the opportunity to pursue this line
6 of internal investigation. As hopefully was evident by its pre-filed testimony, prehearing brief and
7 presentation at hearing, Qwest prepared its case as diligently as it possibly could have under these
8 extraordinary circumstances. Its lack of time to investigate every avenue of inquiry exemplifies the
9 difficulties parties and the Commission face in attempting to litigate complex issues under the constraints of
10 a Section 530 adjudication. Good cause clearly exists for the Commission to reopen the evidentiary
11 record to include the documents attached as Exhibits A and B.

12 RESPECTFULLY SUBMITTED this _____ day of March, 2002.

13 QWEST

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15 _____
16 Lisa Anderl, WSBA #13236
17 Adam Sherr, WSBA #25291
18 Qwest
19 1600 7th Avenue, Room 3206
20 Seattle, WA 98191
21 Phone: (206) 398-2500
22 *Attorneys for Qwest*

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be construed in any manner as a waiver of privilege as to any other documents.