BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

TEL WEST COMMUNICATIONS, LLC Petitioner v. QWEST CORPORATION, INC. Respondent.	Docket No. UT-013097 QWEST CORPORATION'S COMMENTS REGARDING RECOMMENDED DECISION RE OS/DA AND BILLING DISPUTE ISSUES

Pursuant to the Commission's Recommended Decision re OS/DA and Billing Dispute Issues ("Recommended Decision") and WAC 480-09-530(6), Qwest hereby provides its written comments regarding the Recommended Decision. Qwest will not restate in its entirety its advocacy and the facts[1] as set forth in its prehearing brief, pre- and post-hearing motions, testimony and exhibits. Instead, Qwest will focus these Comments on those very few, but critically important, points of disagreement with the Recommended Decision.

I. INTRODUCTION/RELIEF REQUESTED

A. Introduction.

Tel West commenced this proceeding under WAC 480-09-530 in November 2001 and amended its petition in January 2002. Thereafter, the Administrative Law Judge bifurcated the proceeding into two phases. The Recommended Decision concerns the first phase, Part A.

Part A involves Tel West's complaint that Qwest is not complying with the terms of the

[1] Qwest refers the Commission to review section II of Qwest's prehearing brief, at pages 6 through 14. That section includes a detailed, annotated summary of the facts relevant to Part A.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

parties' current interconnection agreement by (a) not providing Tel West basic local exchange lines free of access to operator services ("OS") and directory assistance ("DA") without charging Tel West for available blocking products, and (b) failing to expeditiously investigate and respond to Tel West's numerous monthly billing disputes. Tel West asked the Commission to re-write the parties' negotiated interconnection agreement by (a) "[d]irecting Qwest to permit Tel West to order residential service without OS and DA, and without requiring Tel West to order blocking services" and (b) "ordering that all billing disputes that Qwest has not resolved within thirty days after Tel West presents them to Qwest shall be deemed resolved in Tel West's favor, unless Tel West is responsible for the delay." Qwest strenuously disagrees that it is in breach of the parties' interconnection agreement or that the relief sought by Tel West is appropriate. On April 25, 2002, the ALJ issued the Recommended Decision, which agrees with Qwest's position as to both claims raised by Tel West and the rejects all relief requested by Tel West.

B. Relief Requested.

Qwest requests that the Commission adopt all portions of the Recommended Decision except for the following findings, conclusions and orders:

1. The 251(c)(1) findings. The Commission should reverse the findings, conclusions and ordering language set forth in paragraphs 101-118, 165, 176 and 182 of the Recommended Decision (the "251(c)(1) findings") concerning Qwest's alleged failure to negotiate the Tel West interconnection agreement in good faith.

2. Qwest's Petition to Reopen. The Commission should reverse the denial of Qwest's petition to reopen the Part A record to include a May 29, 2001 email which bears directly on the 251(c)(1) findings. That denial is set forth in paragraph 34 of the Recommended Decision.

3. Narrowing the Relief Ordered. To the extent the Commission upholds any relief recommended against Qwest, such relief should be modified to ensure that Qwest is not penalized by Tel West's conscious and continuing conduct with regard to the use of the Dial Lock[2]

[2] Two of Qwest's retail products – Dial Lock and CustomNet – are discussed throughout the Recommended Decision and these Comments. These products are described in the testimony of David Teitzel and Kathryn Malone.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

product as a means of restricting its customers' access to pay-per-use services.

II. DISCUSSION

A. The primary conclusions reached in the Recommended Decision should be adopted by the Commission as they correctly dispose of Tel West's articulated causes of action.

Qwest supports the main conclusions reached by the ALJ in the Recommended Decision. The ALJ rejected both of Tel West's causes of action and found that Qwest is not in breach of its interconnection agreement with Tel West.

1. The ALJ correctly concluded that Qwest is not obligated to provide Tel West for resale a basic local exchange line free of access to OS/DA.

The ALJ rejected Tel West's allegation that the interconnection agreement obligates Qwest to provide Tel West for resale a basic local exchange line free of access to OS and DA without requiring Tel West to order appropriate retail blocking products. *Recommended Decision, at ¶¶ 98, 164, 175, 181.* The ALJ agreed with Qwest that access to OS and DA are integral components of Qwest's retail basic local exchange line and that, as a result, Tel West had no right to demand for resale a product that Qwest does not provide at retail. *Id., at ¶¶ 157-158.* The ALJ also agreed with Qwest that Section 6.2.9 of the interconnection agreement does not, when viewed in context, obligate Qwest to provide Tel West the unique type of service Tel West demands. *Id., at ¶¶ 158, 175, 181.*

2. The ALJ correctly rejected Tel West's request that the Commission re-write the billing disputes provision of the interconnection agreement to impose on Qwest a self-executing, hard-and-fast deadline for resolving billing disputes.

The ALJ also rejected Tel West's demand that the Commission modify Section 5.4.4 of the interconnection agreement. *Id., at ¶¶ 138-139, 148.* Tel West had requested that a unilateral, self-executing mechanism be imposed creating a fixed 30-day deadline for Qwest to resolve all of Tel West's monthly billing disputes, regardless of the number of billing disputes submitted by Tel West. *Id., at 134.*[3] The ALJ rejected Tel West's demand and agreed with Qwest that there is no basis for

---

See Exhibits 41 (pages 7-9), 43 (pages 4-14), 47 (pages 4-7), 48 and 49.

[3] In its prehearing brief, Tel West suggested an alternative form of relief that would impose a fixed deadline equal to 1.5 times the number of days it took Tel West to identify all its billing disputes to Qwest. *Id., at ¶ 104.*

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

adding such a mechanism to the agreement. *Id., at ¶¶ 138-139, 148.* The ALJ also admonished Tel West for not auditing its own records before disputing charges with Qwest. Specifically, the ALJ held that Tel West is required to check that it actually had ordered blocking services on a line before disputing any OS and DA charge incurred by its customer. *Id., at ¶¶ 144-145, 169.* The ALJ agreed with Qwest that Qwest's dispute resolution process is more complex than Tel West's dispute identification process and that the concept of "expedited" investigation required by Section 5.4.4 is relative and not susceptible to hard-and-fast deadlines. *Id., at ¶¶ 146-148, 170-171.* Lastly, the ALJ ordered that Qwest must credit Tel West for OS and DA services which are incurred despite Tel West's ordering of a blocking service and must notify Tel West within 30 days of receiving Tel West's billing disputes regarding how long it will take for Qwest to process the billing disputes. *Id., at ¶¶ 128, 149.*

For purposes of minimizing the number of issues presented to the Commission, Qwest is willing to provide Tel West the 30 day notice[4] and, with one caveat, is willing to continue its practice of crediting Tel West for OS and DA services that have been incurred despite Tel West's ordering of a blocking service. That caveat is discussed in section II.B.3. below and relates to circumstances when Tel West is responsible for allowing the pay-per-use charges to be incurred.

B. <u>The Commission should make only a few modifications to the Recommended Decision.</u>

1. The Commission should reverse the ALJ's finding that Qwest failed to negotiate the Tel West interconnection agreement in good faith and should dissolve the relief ordered.

As stated above, Qwest agrees with the vast majority of the conclusions reached in the Recommended Decision and believes that Tel West's causes of action, as it alleged and attempted to support them, were properly disposed of in the Recommended Decision. However, Qwest is

[4] In agreeing to not challenge the 30-day notice requirement, Qwest wants to make clear that it reserves the right to pursue appropriate rights and remedies if Tel West persists in its practice, contrary to the Recommended Decision, of issuing blanket disputes of all OS and DA charges without first auditing its own records to ensure that it is not disputing charges for lines on which no appropriate blocking service has been ordered. *See Recommended Decision, at ¶¶ 144-145.*

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

quite concerned with the finding that Qwest violated Section 251(c)(1) of the Telecommunications Act by failing "to identify available alternative products [to Dial Lock as a means of restricting access to OS and DA services]." *Id., at ¶ 102*. As a matter of law, fact and public policy, the Commission should reverse this conclusion and the related findings and relief suggested.

a) As a matter of law, the Recommended Decision's finding that Qwest violated Section 251(c)(1) is incorrect.

For five reasons, the 251(c)(1) findings should be reversed by the Commission. Each will be discussed in turn.

Lack of Notice and Opportunity to Litigate. Qwest finds itself in the untenable position of responding to the 251(c)(1) issue *for the first time* on administrative review to the Commission. Tel West did not allege Qwest violated section 251(c)(1) in its Amended Petition, in its prefiled testimony, in its prehearing brief, during the evidentiary hearing or in its closing oral argument. The Recommended Decision includes, literally, the first mention of such a theory of liability in this case. As such, Qwest had no opportunity to brief the issue or present a factual response to such an allegation. As a mater of basic fairness and due process, the 251(c)(1) findings should be reversed. Qwest is not aware of any previous Commission proceeding in which the ALJ or the Commission, *sua sponte,* held that a telecommunications company violated Section 251(c)(1) despite the fact that neither party to the litigation pleaded, testified about, briefed or otherwise litigated the issue.

The Narrow Scope of a Section 530 Adjudication. Even had Tel West pleaded the 251(c)(1) issue, it would have been beyond the narrow scope of a proceeding commenced under WAC 480-09-530 (a "Section 530 Adjudication").[5] Whether Qwest negotiated the interconnection agreement in good faith is not the proper subject matter for this type of proceeding. This reality was recognized by the ALJ in the Second Supplemental Order (dated January 31, 2002) in this docket. At paragraph 10 of that order, the ALJ found:

[5] Rather than reciting for the third time the litany of authorities defining the narrow scope of a Section 530 Adjudication, Qwest respectfully refers the Commissioners to review pages 14-16 of Qwest's prehearing brief.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

> Qwest's concerns regarding the application of WAC 480-09-530 for the enforcement of obligations under agreements that have been amended or superseded are justified. The Section 530 Adjudication process anticipates that parties will require expedited resolution of *disputes arising under their current agreements*. (emphasis added)

Thus, even had Tel West alleged and attempted to support a claim against Qwest based on Section 251(c)(1), any such claim would have been extraneous to a Section 530 Adjudication. Tel West intentionally availed itself of the expedited and resource-intensive process provided by Section 530. The limitation that coincides with its tactical decision is that the proceeding is limited to relief for violation of the interconnection agreement itself. The ALJ found no such violation. As a result, any inquiry into Qwest's compliance with its Section 251(c)(1) obligations falls outside the scope of this proceeding.

Does Not Meet the Standard for Finding Violation of Section 251(c)(1). A finding that a company has violated Section 251(c)(1) is very serious, impacting and rare. It requires proof of intentional conduct to thwart negotiations or to extract unlawful remuneration or conditions from the negotiating partner. This is evident from the FCC's rule interpreting and expounding upon Section 251(c)(1). That regulation, 47 CFR § 51.301, identifies eight examples of misconduct by an ILEC or CLEC which would amount to a violation of the obligation to negotiate in good faith. Each example involves intentional misconduct in the form of *demanding* execution of certain documents, *refusing* to include certain provisions, *intentionally misleading* or *coercing* another party into reaching agreement, *refusing* to designate a representative with authority to bind the company or *refusing* to provide information necessary to reach agreement. *47 CFR § 51.301(c).*[6] The Recommended Decision does not accuse Qwest of intentional misconduct. It finds a "failure" by Qwest to identify alternative products; it does not find a "refusal" or other intentional conduct.

[6] Qwest's and the FCC's interpretation of Section 251(e)(1) is consistent with the general definition of "bad faith." It is defined as the "opposite of good faith,' generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. Term 'bad faith" is not simply bad judgment or negligence, but rather it implies purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will. *Black's Law Dictionary 139 (6th ed. 1990).*

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Recommended Decision, at ¶ 102. The ALJ in fact repeatedly states that Qwest did not engage in willful or intentional misconduct under the terms of the agreement. *Id., at ¶¶ 100, 103.* Given no finding of willful misconduct by Qwest, there is no legal basis for finding Qwest violated Section 251(c)(1). As discussed in greater detail in section II.B.1.b. below, even had the Recommended Decision found willful misconduct by Qwest, the Part A record is bereft of evidence to support such a finding. Under this basis as well, the 251(c)(1) findings should be reversed.

Improper Award of Damages. The relief recommended in connection with the 251(c)(1) findings constitutes an improper award of damages.[7] This Commission has repeatedly recognized that it lacks the jurisdiction to award damages. RCW 80.04.440 plainly directs persons seeking compensation as a result of a public service company's alleged violation of the law that "[a]n action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction..." While the Commission's statutes, rules and decisions certainly permit the Commission to compel parties to comply with the law and their interconnection agreement obligations, these authorities explicitly reject the power to award compensatory relief of any form. Ordering Qwest to supply Tel West a service without charging Tel West the associated non-recurring charge is an award of damages. In fact, this particular relief amounts to both compensatory and punitive damages as the Recommended Decision emphasizes that the award should be broad enough to provide Qwest sufficient incentive to comply with its 251(c)(1) obligations. *Recommended Decision, at ¶ 117.* Given the narrow scope of a Section 530 Adjudication and given that the ALJ found Qwest is not in breach of the parties' interconnection agreement, the relief should be reversed by the Commission.

Relief is Far Too Broad. Finally, there is no basis for ordering any such relief for resold line to the extent Tel West ordered the line with Dial Lock at any time after February 28, 2002, the date Qwest filed and served its response testimony in Part A. In the testimony of Mr. David Teitzel, Qwest clearly and in detail explained the availability, functionality and cost-effectiveness of

[7] "Damages" are defined as a "pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another." *Black's Law Dictionary 389 (6th ed. 1990).*

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

CustomNet as an alternative to Dial Lock. To the extent Tel West ignored that information and persisted and/or persists in ordering Dial Lock as a tool to restrict its customers' access to pay-per-use services, Qwest should not be penalized for Tel West's conscious choice to do so.

b) As a factual matter, the Part A record does not support a finding that Qwest failed to negotiate the interconnection agreement in good faith.

The evidence admitted in Part A does not support a finding that Qwest violated Section 251(c)(1). In fact, there is such a dearth of testimony from either party as to the actual negotiation of the interconnection agreement that a finder of fact could not have reasonably reached the conclusion that Qwest intentionally and maliciously acted to thwart the parties' negotiations or mislead Tel West. Neither party submitted testimony from its representatives who actually negotiated the interconnection agreement. *Id., at ¶ 22.* Tel West simply submitted meeting notes prepared by its consultant, Donald Taylor, regarding two of his early negotiation sessions with Qwest. *See Exhibit C-19, pages 5-6.* In response to a bench request, Qwest submitted internal records and draft template agreements that were provided to Tel West during the course of the negotiation. *See Exhibits 58-64.* Neither Tel West's nor Qwest's contemporaneous evidence addresses the issue of possible alternatives to Dial Lock. Nor does the evidence reveal Tel West pursued such alternatives.[8] Leaving aside the due process concerns mentioned above, the evidence in the record is not even remotely sufficient to support a conclusion that Qwest negotiated the agreement in bad faith.

The need to reverse the 251(c)(1) findings is further compelled by an email discovered by

---

[8] Tel West has not presented any evidence that it, at any time, has pursued alternatives to Dial Lock as a means of restricting its customers' use of pay-per-use services. Tel West's position since May 10, 2001 has been that it does not want access to OS and DA at all and does not want to be charged for or inconvenienced by having to order blocking services. There is no evidence that Tel West ever asked for any such alternatives, that Qwest ever intentionally withheld such information or that Tel West would have pursued CustomNet or any alternative to Dial Lock had Qwest advised Tel West of its availability. Instead, Tel West has always desired a line free of access to OS and DA in the first instance. The Recommended Decision rejects Tel West's demand.

Based on the Part A record, it is equally possible that Tel West favors using Dial Lock on its resold lines, and if it had won the OS/DA issue, it may have continued to order it since it provides Tel West the functionality of instantly restricting all use of a resold line. Given Tel West's self-described marketing focus on persons with credit troubles, Dial Lock may indeed provide Tel West a quick and simple way to "suspend" its customers when such customers become delinquent. While this is admittedly conjecture by Qwest, the Part A record equally supports a finding that Tel West prefers Dial Lock and would not and did not seek any alternative products.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Qwest's counsel after the close of the Part A hearing. On March 22, 2002, Qwest filed a petition to reopen the record to include this email. That petition is discussed at paragraphs 29 through 34 of the Recommended Decision. Qwest, in the course of researching its records in response to Bench Request No. 3 (discussed at paragraphs 14 through 28 of the Recommended Decision), came across an email communication from its lead negotiator, Nancy Donahue, to her supervisor regarding the then-ongoing negotiation of the Tel West interconnection agreement. That email was dated May 29, 2001. The May 29 email evidences that Tel West, months prior to executing the interconnection agreement, understood that Qwest could not and would not provide Tel West for resale a basic local exchange line free of access to OS and DA without requiring Tel West to order and pay for blocking services, *and believed it had alternative means available to resolve its OS/DA issues. Petition to Reopen, at 2.*

The Recommended Decision denies Qwest's petition to reopen because "[t]he additional evidence that Qwest seeks to admit to the record, as described in the company's motion, is akin to evidence that has already been admitted or submitted in response to BR-3." *Recommended Decision, at ¶ 34.*[9] Thus, the ALJ found that the May 29 email is not essential and thus should not be admitted pursuant to WAC 480-09-820.[10] Given the ALJ's thorough and thoughtful analysis of the evidence and finding that Tel West is not entitled to a basic local exchange line free of access to OS and DA, Qwest would agree that the May 29 email is not essential for that purpose. However, it is essential to demonstrating that Qwest did not breach its duty to negotiate the agreement in good faith. Since Tel West, more than two months before the agreement was executed, had represented to Qwest's lead negotiator that it was abandoning its demand for a resold line free of access to OS and

---

[9] Importantly, the Recommended Decision does not find that Qwest failed to act with due diligence by not uncovering the May 29 email prior to the Part A hearing. In fact, the ALJ recognizes that "the expedited schedule which has been established in this case may warrant a more liberal exercise of discretion when considering petitions under WAC 480-09-820 than in other cases." *Recommended Decision, at ¶ 34.*

[10] WAC 480-09-820(2) provides, in relevant part, that any party to an adjudication may file a petition for reopening with the commission at any time after the closing of the record and before entry of the final order, and that in contested proceedings, the commission may grant such a petition to permit receipt of evidence which is essential to a decision and which was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

DA and, more importantly, that it was aware of alternative means of avoiding those charges, Qwest certainly cannot be deemed to have acted improperly or with sinister intent by not further pursuing alternative means of resolving the issue for Tel West at that time.[11]

c) As a matter of policy, the Commission should reverse the 251(c)(1) findings.

The 251(c)(1) findings include the following discussion:

> It is not reasonable that Tel West, as a purchaser of Qwest's wholesale services, should be responsible for being familiar with all of Qwest's services that are made available in tariffs, especially when the Agreement makes no mention of those services. Qwest has a duty to make alternative less costly products/services known to its customers. Qwest deprived Tel West from making an informed decision regarding its options to screen or block OS/DA services by not fully disclosing the alternative services that were available.

Recommended Decision, at ¶ 111 (referring to the above as "bad faith conduct"). This language imposes on Qwest the impossible duty of affirmatively analyzing its wholesale customers' needs and advising its customers as to how to run their businesses. Read literally, this language completely absolves Tel West, itself a registered telecommunications company, from any responsibility to know its business, its needs and the products and services of its wholesale provider, Qwest. It also negates Tel West's duty to affirmatively communicate such needs to Qwest. The language imposes all such burdens and risks on to Qwest. Such an imbalance of responsibility does not promote good public policy and provides improper incentives for competitive companies to shift all due diligence to Qwest.

The language also undermines the traditional view that a public service company's

---

[11] Qwest perceives from reading the 251(c)(1) discussion in the Recommended Decision that the ALJ shares some of Tel West's frustration that, between the time the interconnection agreement was executed in August 2001 and the time this proceeding was initiated in November 2001, Qwest did not work more effectively with Tel West to find alternatives to Dial Lock as a means of restricting OS and DA services. While Qwest would, looking back, greatly have preferred that Tel West's issues would have been resolved prior to it pursuing litigation with the Commission, this universal sense of frustration does not, on its own, translate to a Qwest violation of Section 251(c)(1). Since there is no evidence supporting any improper or discriminatory conduct by Qwest prior to Mr. Swickard's execution of the interconnection agreement on behalf of Tel West, the Commission should reverse the findings in the Recommended Decision that Qwest *negotiated* the agreement in bad faith.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

published tariffs provide notice to the public of the company's services and the terms and conditions of those services. *See In the Matter of Unimat, Inc. v. MCI, 14 FCC Rcd 7829, at 7836 (*"Unimat had actual or constructive notice of, and was legally bound by, the terms of that tariff when Unimat took service under the tariff."). As a matter of public policy, the 251(c)(1) findings, especially paragraph 111 of the Recommended Decision, should be explicitly reversed by the Commission upon review.

2. The Commission should also reverse the denial of Qwest's petition to reopen the Part A record.

As discussed at length above, the May 29 email that was the subject of Qwest's petition to reopen would provide essential evidence that contradicts the 251(c)(1) findings. Again, Tel West's representations to Qwest's lead negotiator that Tel West had identified alternative means to mitigate or minimize the existence of access to OS and DA on its resold lines is a critical fact. That Qwest did not thereafter research and communicate alternatives to Dial Lock in no way constitutes a lack of good faith negotiation on Qwest's part. It reflects the reality that Tel West had abandoned the issue as a negotiating point. Based on WAC 480-09-820(2)(b), the Commission should reverse the denial of Qwest's petition to reopen and should consider the May 29 email as it reviews the Part A record, and the 251(c)(1) findings more particularly.

3. Qwest should not be required to credit Tel West for OS and DA charges incurred when Tel West de-activates Dial Lock or permits its customers to control its use.

At paragraph 183 of the Recommended Decision, it is ordered that "[i]f Tel West orders blocking or screening services to avoid incurring OS/DA charges, then Qwest must either remove those charges from Tel West's account or not bill them in the first instance." As explained in detail in the testimony of Larry Brotherson, it is already Qwest's practice to credit Tel West for pay-per-use charges if they were incurred due to an error by Qwest. *See Exhibit 39, at page 7, lines 22-26.* What concerns Qwest about the unlimited scope of the quoted ordering section from paragraph 183 is that, in some cases, Tel West is at fault for pay-per-use charges being incurred by its customers despite having ordered Dial Lock. As explained in Mr. Teitzel's testimony, Dial Lock is a service

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

that is controlled by the end user. As such, the end user (whether that be Tel West or its customer) has the ability to de-activate the service entirely. *See Exhibit 47, at page 5, line 22 – page 6, line 19.* If that is done, there is no reason that Qwest should be held responsible for pay-per-use charges that are incurred by Tel West's customer. The Recommended Decision states that "Tel West has no technical control over network facilities and operations that are essential to block and screen usage-based calls, and is totally reliant on Qwest." *Recommended Decision, at ¶ 166.* That finding appears to be the basis for the unlimited nature of the ordered relief. However, as Mr. Teitzel's uncontradicted testimony explains, Tel West does exercise control over the actual functionality of Dial Lock. As such, Qwest suggests that the Commission modify the above-quoted language from paragraph 183 by adding the following language after the words "in the first instance": "unless Tel West is responsible for de-activating Dial Lock or otherwise permitting the service to become inoperable, ineffective or under the control of a third party."

\\\

\\\

\\\

\\\

\\\

\\\

\\\

\\\

\\\

III. CONCLUSION

For the reasons stated above, Qwest supports the primary conclusions of the Recommended Decision, but requests that the Commission reverse the 251(c)(1) findings and the denial of Qwest's petition to reopen and add appropriate caveats to certain relief suggested in the Recommended Decision.

RESPECTFULLY SUBMITTED this _____ day of May, 2002.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

QWEST

_____

Lisa Anderl, WSBA #13236
Adam Sherr, WSBA #25291
Qwest
1600 7th Avenue, Room 3206
Seattle, WA 98191
Phone: (206) 398-2500
Attorneys for Qwest

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040