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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In The Matter Of
TEL WEST COMMUNICATIONS, LLC
Petition For Enforcement Of Its Interconnection
Agreement With Qwest Communications Pursuant
To WAC 480-09-530

Docket No. UT-013097
TEL WEST'S FIRST AMENDED
PETITION FOR ENFORCEMENT

Tel West Communications, LLC ("Tel West") is filing this amended Petition for Enforcement of its Interconnection Agreement with Qwest Communications ("Petition").¹ Tel West seeks relief for Qwest's violations of the interconnection agreements between the parties. Qwest has violated these agreements by: (1) not provisioning services for Tel West in the same time as it provisions service to itself, (2) not provisioning services for Tel West in the same manner as it provisions service to itself, (3) forcing Tel West to purchase operator service ("OS") and directory assistance service ("DA") even though Tel West never requested them, and (4) providing resale services to Tel West that are inferior in quality to those it provides to itself.

In support of its Petition, Tel West states as follows:

¹ Tel West may amend its petition to conform to the evidence presented in this proceeding, in the discretion of the presiding officer. WAC 480-09-530(3). It is appropriate to permit amendment in this case.

1 **I. PETITIONING PARTY**

2 1. Tel West is a telecommunications company that provides residential and business
3 service throughout the state of Washington. The Commission granted Tel West competitive
4 status in Docket UT-981258 on October 28, 1998. Tel West's headquarters are located at
5 3701 S. Norfolk Street, Suite 300, Seattle, Washington 98118.

6 2. In 1998, Tel West entered into a resale agreement ("First Agreement") with Qwest
7 in Washington. The First Agreement expired on August 1, 2001 but remained in effect pending
8 the approval of a new agreement. Qwest and Tel West entered a new interconnection and resale
9 agreement ("Current Agreement") that was approved on October 31st, 2001 in Docket
10 UT-013086. The First and Current Agreements are referred to collectively as the "Agreements."
11 Relevant section of the Agreements are attached as Exhibit A. Tel West has ordered residential
12 service for resale under the Agreements from Qwest since 1998.

13 **II. STATUTES AND RULES AT ISSUE**

14 3. Tel West files this amended Petition pursuant to WAC 480-09-530, "Petitions for
15 Enforcement of Interconnection Agreements." Tel West seeks discovery pursuant to WAC
16 480-09-480.

17 **III. SUMMARY OF TEL WEST'S EFFORTS TO RESOLVE THIS DISPUTE**

18 4. Tel West has experienced problems with Qwest's service since 1999. Tel West
19 has engaged in good faith negotiations with Qwest to resolve its complaints, without resolution.
20 These negotiations have involved considerable time and energy over many months.²

21 5. Tel West's first formal meeting with Qwest upper management to discuss these
22 problems was on January 17, 2000. At that meeting, Tel West representatives met via telephone
23 conference with Qwest representatives Christie Doherty (Vice President), Ken Beck (Executive
24 Director), and Terry Simmons (Senior Service Manager). Tel West outlined its complaints, but

25 _____
26 ² The Declaration of Jeff Swickard, President of Tel West, declaring personal knowledge of the facts in
this Petition, is attached as Exhibit B.

1 Qwest's only proposed solution was the assignment of a Service Delivery Coordinator ("SDC")
2 for a limited period of time. The SDC was intended to be a single point of contact for Tel West.
3 The SDC however did not alleviate the basic problem of Qwest's failure to provide service in
4 compliance with its contractual obligations to Tel West.

5 6. On July 27, 2001, Tel West sent an informal letter of complaint to Glenn
6 Blackmon of the WUTC staff and copied Qwest at the same time. *See* Exhibit C. The letter
7 identified the Qwest service problems discussed in this Petition. In response, Sue Gwin of
8 Qwest talked briefly with Tel West management on one occasion in August 2001, but offered no
9 resolution.

10 7. On September 21st, nearly two full months after delivery of the complaint letter to
11 Qwest, Mr. Beck sent Qwest's response to Tel West. *See* Exhibit D. In his response, Mr. Beck
12 denied all of Tel West's claims and contended that Qwest was providing service accordance with
13 its obligations.

14 8. Tel West sent a Notice to Qwest on October 10, 2001 describing Qwest's repeated
15 violations of its Agreements with Tel West. *See* Exhibit E. The Notice also informed Qwest that
16 Tel West intended to file a Complaint and Petition for Enforcement with this Commission
17 pursuant to WAC 480-09-530 within ten days if Qwest did not resolve Tel West's concerns.

18 9. On October 18th and October 24th, Tel West and Qwest met via conference call to
19 discuss the issues raised in Tel West's letter to Mr. Blackmon. These discussions did not resolve
20 Qwest's service problems, and Tel West therefore filed a Complaint and Petition for
21 Enforcement with this Commission on October 29th. The filing requested relief for Qwest's
22 violations of its Agreements with Tel West. Tel West had previously identified these violations
23 in its complaint letter, the October 10th Notice, and during its meetings with Qwest.

24 10. Tel West and Qwest met again on November 28th and December 17th to discuss
25 Tel West's concerns outlined in the October 29th complaint. They did not reach a resolution.
26

1 11. In addition to these formal meetings, Tel West also attempts on a nearly daily
2 basis to resolve its concerns through appeals to the Qwest Account Team, Billing Department,
3 ISC, and Escalation Center. This has been time consuming and not always successful.

4 12. These facts demonstrate that Tel West has worked diligently with Qwest to
5 resolve its complaints, but Qwest has refused to fully address them. Tel West's only recourse is
6 to file this Petition requesting changes in Qwest's policies. Any future efforts by Tel West would
7 be futile in the absence of this Petition.

8 **IV. QWEST HAS FAILED TO COMPLY WITH ITS**
9 **INTERCONNECTION AGREEMENTS WITH TEL WEST**

10 **A. QWEST HAS NOT PROVISIONED SERVICES FOR TEL WEST IN THE SAME TIME**
11 **AS IT PROVISIONS SERVICE TO ITSELF**

12 13. The Current Agreement requires Qwest to provide Tel West with
13 "Telecommunications Services for resale . . . in *substantially the same time* . . . that Qwest
14 provides these services to itself, its subsidiaries, its affiliates, other resellers and Qwest's retail
15 end users." Current Agreement at § 6.2.3 (*emphasis added*). Similarly, the First Agreement
16 required Qwest to provide Tel West with services "within provisioning time intervals that are
17 substantially equal to the intervals [Qwest] provides these services to others, including end
18 users," which includes its own retail end users. First Agreement at § IV.B.2. Qwest has
19 repeatedly failed to meet this standard, even according to its own data. The following chart is
20 compiled from Chart OP-4C of Qwest's Performance Results for Tel West covering the period
21 from December 2000 to November 2001. See Exhibit F. It shows the Qwest and Tel West
22 installation intervals for new residential service where no dispatch of a technician is required,
23 which accounts for over **[Confidential Information No. 1]** of Tel West's local service requests
24 ("LSR"). According to the chart, **[Confidential Information No. 2]**. This data shows that
25 Qwest takes **[Confidential Information No. 3]** longer to provision Tel West's service.

26 14. This disparity means that for the past year Qwest has not provided service to
Tel West in "substantially the same time" as it provides service to itself as required. Current

1 Agreement at §6.2.3; *see* First Agreement at §IV.B.2. To the contrary, Qwest clearly provides
2 itself a competitive advantage over Tel West by more than half a day in terms of the average
3 installation interval.

4 15. Tel West has confirmed that the provisioning disparities are not due to its own
5 practices or to its own facilities or equipment. Tel West has extensively examined its order entry
6 procedures and ensured that its employees are properly trained to use Qwest's systems
7 efficiently. In addition, on December 13, 2001, Tel West processed several test orders with
8 Qwest and on the basis of these tests verified that Tel West facilities and equipment are
9 functioning properly and are not contributing to the service installation delays.

10 16. Tel West has suffered severe financial losses due to Qwest's failure to process
11 Tel West's service orders at parity. For example, the delays have increased the volume of
12 inquiries to Tel West's service center. Tel West's experience is that, two days after the order
13 date, customers call at least once per day to check the status of their orders. Tel West calculates
14 that each customer inquiry to its service center costs \$3.67. The increase in the number of callers
15 adds up to a considerable amount of money, given the thousands of orders Tel West passes to
16 Qwest each year and the number of inquiries made by customers seeking information about the
17 status of their orders.

18 17. Tel West has also lost business due to provisioning delays, which give customers
19 the perception that Tel West offers inferior customer service relative to Qwest. In one case, a
20 Tel West business customer required PIC changes on its lines for transfer to another long
21 distance carrier's service. Tel West asked Qwest repeatedly for this change, but Qwest would not
22 agree to process the request in less than five days. Qwest, however, contacted the customer and
23 assured them that it could complete the changes in only two days, if the customer were their
24 direct retail customer. Tel West lost this customer with a subsequent revenue loss of about
25 \$15,000 per month, or \$180,000 per year. Of course, there is no incentive for Qwest to improve
26 provisioning, because Tel West bears all the financial and customer relations costs.

1 B. QWEST HAS NOT PROVISIONED SERVICES FOR TEL WEST IN THE SAME
2 MANNER AS IT PROVISIONS SERVICE TO ITSELF

3 18. The Current Agreement requires Qwest to provide Tel West with
4 "Telecommunications Services for resale . . . in *substantially the same . . . manner* that Qwest
5 provides these services to itself, its subsidiaries, its affiliates, other resellers and Qwest's retail
6 end users." Current Agreement at § 6.2.3 (*emphasis added*). Similarly, the First Agreement
7 required Qwest to provide service to Tel West "subject to the same conditions" as those
8 applicable to itself. First Agreement at §IV.B.2. Yet Qwest provides services to Tel West in a
9 completely different manner and under different conditions from the way it provides service to
10 itself. This is the result of many advantages Qwest has built into the provisioning process.
11 These special advantages cause many of the provisioning delays identified in the preceding
12 section.

13 19. For example, Qwest gives itself, but not Tel West, nonstandard provisioning
14 intervals. Under current procedures, Qwest enters customer information using SONAR ordering
15 software. This SONAR software permits Qwest to request intervals of less than three days. In
16 contrast, Tel West customer representatives must prepare LSRs using Qwest's internet-based
17 Interconnect Mediated Access ("IMA") system. The customer representative can fill in the
18 appropriate ordering information for the customer, but the electronic interface will not accept a
19 due date that is less than three business days from the date of the LSR. Tel West does not have
20 access to the SONAR system, so cannot request nonstandard provisioning intervals. This gives
21 Qwest has a provisioning advantage it can use to win customers.

22 20. In addition, Qwest's SONAR system is faster to use. It automatically fills in all
23 the fields of customer information whenever the customer's name, address or phone number is
24 entered, a process called "auto-population." This greatly expedites the ordering process.
25 Tel West representatives must retype all the customer information, which is highly inefficient
26 and gives Qwest retail a significant competitive advantage.

1 21. Qwest's representatives have access to other internal Qwest systems and features
2 that provide information and capabilities not available to wholesale customers like Tel West.
3 These systems allow Qwest's retail ordering to flow information more efficiently through related
4 downstream systems, thereby expediting the installation process. Qwest's retail service
5 representatives also have frequent contact, and establish personal relationships, with Qwest
6 network and installation personnel, and often obtain earlier due dates for their own orders
7 through their personal network contacts. These advantages mean that Qwest provides Tel West
8 with resale services under fundamentally different, unequal, and inferior manners and conditions
9 from the way it provides these services to itself and its end users.

10 **C. QWEST FORCES TEL WEST TO ORDER OPERATOR SERVICE AND DIRECTORY**
11 **SERVICE EVEN THOUGH TEL WEST DOES WANT THEM AND THEY ARE NOT**
12 **REQUIRED**

13 22. When Tel West's customer service representatives pass LSR orders for residential
14 service to Qwest, they do not request directory assistance or operator services. However, Qwest
15 forces Tel West to accept and pay for them. In effect, Qwest treats OS/DA and residential local
16 access line service as a single bundled service.

17 23. Under the Current Agreement, OS and DA are optional, so Qwest cannot require
18 Tel West to order them. This is clear for three reasons. First, the Current Agreement states that
19 Tel West only receives OS and DA if it "accepts" it from Qwest:

20 *[I]f Qwest provides and CLEC accepts Qwest's directory assistance service or*
21 *operator services for CLECs resold local Exchange Service lines, IntraLATA,*
22 *such directory assistance and operator services may be provided with branding as*
23 *provided in the Ancillary Services Section of this Agreement.*

24 Current Agreement at § 6.2.9 (*emphasis added*). There would be no need for Tel West to
25 "accept" the service if it were required by the contract. This provision anticipates that Tel West
26 may want to use an alternative OS and DA provider or no provider at all.

27 24. Second, the OS and DA ordering procedures are separate from the residential
28 ordering process. The Current Agreement states that "CLEC will order Directory Assistance

1 Service by completing the questionnaire entitled 'Qwest Operator Services/Directory Assistance
2 Questionnaire for Local Service Providers,'" Current Agreement at §10.5.4, and that "CLEC will
3 order Operator Services by completing the 'Qwest Operator Services/Directory Assistance
4 Questionnaire for Local Service Providers.'" Current Agreement at §10.7.4. There would not be
5 separate ordering procedures if the services were required to be bundled.

6 25. Third, nothing in the Current Agreement requires Tel West to purchase OS and
7 DA as part of a bundled package with residential service. Even if Qwest believes that residential
8 service is bundled with OS or DA service under its tariffs, the services are not bundled under the
9 Current Agreement. So, Tel West does not have to order them.

10 26. By requiring Tel West to purchase OS and DA in violation of the Current
11 Agreement, Qwest has unjustly imposed unrecoverable costs on Tel West. This is because
12 Tel West, for practical reasons, cannot recover the OS and DA charges from its customers.
13 Tel West serves the portion of the residential customer market that is unable, for credit or
14 payment reasons, to obtain service directly from Qwest. Due to the nature of this market,
15 Tel West blocks access to features or services that incur additional charges, such as OS and DA.
16 If Tel West does not block these types of services, Tel West is often left with high charges for
17 them but is unable to collect from the customer, who may have disconnected service or cannot
18 pay for them.

19 27. To avoid DA costs, Qwest improperly requires Tel West to order blocking
20 features from Qwest, an example of which is a service called "Dial Lock." *See* Qwest Tariff
21 WN U-40, § 5.4.3. This service costs Tel West \$3.95 per line, per month. Even with the
22 blocking feature, Tel West is forced to pay for the DA services ordered but not paid for by its
23 customers, since Dial Lock is not 100% effective. Also, Qwest refuses to make Dial Lock
24 available with UNE-P services.

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1 D. QWEST DOES NOT PROVIDE RESALE SERVICES TO TEL WEST THAT ARE EQUAL
2 IN QUALITY AS IT PROVIDES TO ITSELF.

3 28. Under § 6.2.3 of the Current Agreement, "Qwest shall provide to CLEC
4 Telecommunication Services for resale that are *at least equal in quality* . . . [to] that Qwest
5 provides" to itself." Current Agreement at § 6.2.3 (*emphasis added*). This is the same as
6 Qwest's duty under the First Agreement to provide Tel West with services that are of "equal
7 quality." First Agreement at § IV.B.2. Qwest provides inferior customer service to Tel West
8 and therefore has failed to meet this standard. The problem is that Qwest provides customer
9 service to wholesale customers through independent contractors rather than Qwest employees.
10 These independent contractors are poorly trained, relatively inexperienced, low-paid and not able
11 to solve Tel West's problems as efficiently as Qwest retail. As a result, they handle most
12 Tel West customer service inquiries by placing the Tel West employee on hold, checking with
13 their supervisor, providing an escalation ticket number, and then forwarding the employee to a
14 Qwest customer service representative in Denver. This process is lengthy, frustrating, expensive,
15 and totally unnecessary. In fact, one of Tel West's greatest expenses is their employees' time
16 spent on the phone, usually on hold, with customer service representatives.

17 29. Qwest handles its own customer service issues more efficiently and productively
18 by working with its own employees, not outside contractors. These employees are more
19 knowledgeable and well-trained and can solve problems for their retail customers quickly.
20 Tel West's experience has shown that only the Qwest experts are sufficiently trained and able to
21 answer most customer service questions. This is confirmed by the fact that the independent
22 contractors call regular Qwest employees when they are unable to resolve a problem.

23 30. Tel West needs the same access to these employees as Qwest has to ensure that it
24 receiving service that is "at least equal in quality" to Qwest's service. Current Agreement at
25 § 6.2.3.
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1 E. QWEST HAS NOT TIMELY HANDLED BILLING DISPUTES

2 31. The Current Agreement requires Qwest to expedite the handling of billing
3 disputes:

4 Should CLEC or Qwest dispute, in good faith, any portion of the monthly billing
5 under this Agreement, the Parties will notify each other in writing within thirty
6 (30) calendar days of the receipt of such billing, identifying the amount, reason
7 and rationale of such dispute. At a minimum, CLEC and Qwest shall pay all
undisputed amounts due. *Both CLEC and Qwest agree to expedite the
investigation of any disputed amounts* in an effort to resolve and settle the dispute
prior to initiating any other rights or remedies.

8 Current Agreement at §5.4.4 (*emphasis added*). The First Agreement did not require expediting,
9 but did state that all billing disputes must be "processed and jointly resolved." First Agreement
10 at § VII.C.2. Qwest has failed to expedite or process many of Tel West's billing disputes, some
11 of which date from April 2001. The following chart shows the disputed amounts by month:
12 **[Confidential Information No. 4]** These disputed amounts include improper charges for toll
13 calls; directory assistance; pay-for-use services such as *69, repeat dial, call trace and three-way
14 calling; collect calls; double charges for features or lines; USOCs billed at the incorrect amount;
15 lines where the disconnection order was placed but Tel West is still being charged; customers not
16 assigned to Tel West's platform; and repairs. Qwest's failure to resolve disputes that are as much
17 as nine months old shows that it has not expedited processing.

18 V. DISCOVERY IS NECESSARY TO UNCOVER ALL RELEVANT FACTS

19 32. In petition for enforcement proceedings, the WAC permits discovery regarding
20 matters directly at issue in the ALJ's discretion where it is "essential to the requesting party."
21 WAC 480-09-530(4)(c). Here, discovery is essential for Tel West to gather facts regarding
22 Qwest's procedures and practices. This is the only way that Tel West can ensure that it is
23 receiving service at parity.

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VI. RELIEF REQUESTED

33. Based on the foregoing, Tel West requests the following relief:

(a) Commencement of a proceeding pursuant to the expedited procedures contained in WAC 480-09-530.

(b) Entry of a prehearing conference order entitling the parties to conduct discovery pursuant to the procedures contained in WAC 480-09-480, and entry of a standard protective order.

(c) Conduct of a hearing for presentation of testimony and exhibits and cross examination of witnesses.

(d) Tel West requests entry of initial and final orders that contain the following findings regarding remedies:

(1) Entry of findings and conclusions that Qwest has violated the terms and conditions of the Agreements, as set forth above, and ordering that Tel West's Petition for Enforcement should be granted.

(2) Finding that Qwest's violations constituted "willful or intentional misconduct" under Section 5.8.4 of the Current Agreement and "intentional, malicious misconduct" under Section VIII.H of the First Agreement.

(3) To ensure that Qwest provisions service to Tel West in the same time as Qwest retail, directing Qwest to consistently provision services at parity within 60 days of the date of the initial order.

(4) To provide sufficient financial incentives to ensure that Qwest provisions service to Tel West in the same time as Qwest retail and to compensate Tel West for provisioning delays, lost business, wasted Tel West employee time, and attorney fees, directing Qwest to issue such credits, or make such payments to Tel West or to pay such fines, as are within the jurisdiction of the Commission and supported by the evidence presented in this proceeding.

1 (5) To ensure that Qwest provides ordering, preordering,
2 repair, and billing functions to Tel West in the same manner as it provisions
3 Qwest retail, directing Qwest as follows:

4 (i) Qwest must give Tel West direct access to the
5 SONAR electronic ordering system and other systems that Qwest retail uses
6 to the extent necessary for Tel West to have the same capabilities and the
7 same ease of use as Qwest retail.

8 (ii) If Qwest is unwilling or unable to give Tel West
9 direct access to its systems, then Qwest retail must use only the systems that
10 are equally available to CLECs, such as IMA GUI or IMA EDI.

11 (6) Directing Qwest to permit Tel West to order residential
12 service without OS and DA, and without requiring Tel West to order blocking
13 services.

14 (7) Directing Qwest to credit or refund to Tel West all charges
15 Qwest has imposed for blocking OS and DA plus all charges billed to Tel West
16 for Qwest's OS and DA services, except to the extent Qwest can demonstrate that
17 such services were expressly ordered and authorized by Tel West (as opposed to
18 end users).

19 (8) Directing Qwest to give Tel West has the same access to
20 Qwest customer service representatives as Qwest has, when resolving service
21 complaints and issues, and not to require Tel West to use independent contractors
22 except to the extent that Qwest uses them for its own customer service inquiries;
23 i.e., the statistical probability that Tel West's call would be answered by an
24 independent contractor should be the same as the statistical probability that a
25 retail customer's call would be answered by an independent contractor.
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