

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

TSS DIGITAL SERVICES, INC.,

Petition For Enforcement of its
Interconnection Agreement with Qwest
Corporation (f/k/a U S WEST
Communications, Inc.) Pursuant to
WAC 480-07-650

Docket No. UT-073042

ANSWER OF QWEST CORPORATION TO
TSS PETITION FOR ENFORCEMENT OF
INTERCONNECTION AGREEMENT

I. INTRODUCTION

- 1 Pursuant to WAC 480-07-650, Qwest Corporation (“Qwest”) hereby files its Answer to the
Petition for Enforcement of its Interconnection Agreement (“Petition”) filed by TSS Digital
Services, Inc. (“TSS”).
- 2 Qwest denies that it has violated the interconnection agreement (“ICA”) between the parties.
Qwest has fulfilled all of the requirements of the ICA regarding notification to TSS of
facilities that were affected by TRO/TRRO Amendments to the ICA. TSS was timely notified
by Qwest that TSS was purchasing facilities that would be subject to re-pricing and back
billing under the ICA. TSS chose to take no action with regard to those facilities and is
therefore liable to pay the scheduled retail charges for the facilities and services that Qwest
provided.
- 3 Counsel for Qwest Corporation is: Lisa A. Anderl, WSBA#13236
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II. ANSWER

- 4 Qwest will respond to the allegations in the Petition by reference to the paragraph numbers contained in the pleading. The factual information contained in this Answer is supported by the attached Declarations of Amanda Evans and William R. Easton. In addition to answering TSS's claim, Qwest asks the Commission to order TSS to pay its unpaid and past due balances, as described in the Declaration of William R. Easton.
- 5 Answering the allegations contained in paragraph 3, Qwest agrees that Qwest and TSS are parties to an ICA as set forth in this paragraph.
- 6 Answering the allegations contained in paragraph 4, Qwest states that the cited provisions in the ICA speak for themselves and denies any allegations inconsistent with those provisions. In particular, Qwest denies that it had a unilateral obligation to work with TSS in connection with facilities in non-impaired wire centers. The cited ICA provisions specifically provide that Qwest and TSS must "work together" to identify impacted circuits. Qwest fulfilled its obligations under these provisions by e-mailing TSS and attempting to set up meetings with TSS, but TSS failed to respond to e-mails and meeting requests.
- 7 Answering paragraph 5, Qwest states that there are/were two SS7 circuits impacted by the TRO/TRRO amendment. Qwest denies that it failed to identify these circuits to TSS and states that on November 16, 2005, Qwest sent an e-mail to Linda Farr at TSS stating:

"TSS Digital recently signed the TRO amendment which withdraws your ability to continue with UNE SS7 effective 11/16/05. I need to schedule a call with TSS to discuss the transition. You have a set of A links in WA that will need to be converted to tariff with the above effective date. Let me know what day and time works for you."

Qwest did not receive a response from TSS to that e-mail. Qwest admits that it back billed TSS for these circuits in accordance with the provisions of Section 5.1.3.2 of the Amendment

and that the back billed amount is \$10,398.34. The total due to date is \$14,704.04.

8 Answering paragraph 6, Qwest states that the DS1 facilities referenced in this paragraph are the facilities over which the above-referenced SS7 services are provided. TSS was notified via e-mail on both November 16 and 17, 2005 that it had circuits that were impacted by the TRO/TRRO Amendment. [Attachment 1]. TSS failed to follow up with Qwest to schedule a call to discuss the transition for those circuits. The DS1 circuits between Olympia and Seattle were properly back billed in accordance with the provisions of Section 3.1.3 of the Amendment. The back billed amount is \$14,853.98, and the total due to date is \$20,969.31.

9 In addition to the e-mails referenced above, Qwest sent general notices in February and April 2006, advising CLECs of new processes associated with TRO/TRRO conversions. TSS was copied on those notices as well. [Attachment 2] Qwest again contacted TSS beginning in August 2006 to obtain the necessary forms from TSS to finalize the conversion of the SS7 services and DS1 facilities to tariffed rates. E-mail correspondence with Mr. Ellis continued through December 2006 as Qwest attempted to obtain the information necessary to convert and bill the services under tariff. [Attachment 3]

10 Answering paragraph 7, Qwest denies that TSS did not know that circuits would be converted to tariffed rates and the timeline on which that conversion would happen. That information is clear in the TRO/TRRO Amendment and in the e-mail to TSS on November 16, 2005. TSS was given the opportunity to further explore with Qwest which specific circuits were impacted by the TRO/TRRO Amendment. In addition, TSS has not converted the circuits even after the back billing, suggesting that TSS did not and still does not wish to seek other service arrangements.

11 Answering paragraph 8, Qwest admits the allegations contained therein.

12 Answering paragraph 9 a., Qwest denies the allegations in that paragraph. Qwest and TSS have discussed this collocation dispute in the past and TSS is aware that Qwest disagrees with

TSS's characterization of the settlement agreement. In fact the parties did have a collocation dispute in which the disputed amount was compromised by both parties. Qwest reduced the disputed collocation amount by \$5,840, and TSS agreed to pay \$7,916. Although TSS specifically agreed to pay that amount in settlement of the dispute, TSS has paid only \$2,076. TSS has not paid the amount agreed to (\$7,916), and cannot prove that it did so. Thus, TSS has not fulfilled the terms of the settlement, and its claim for \$5,840 is without merit.

13 Answering paragraph 9 b., Qwest denies the allegations in that paragraph to the extent they are inconsistent with Qwest's discussion in this answer. Qwest agrees that TSS did order dark fiber in 2004. That order was cancelled by Qwest in error, but the facilities were re-installed upon TSS's request. Qwest did not charge TSS installation charges on the initial order. Qwest charged an installation fee per the ICA for the subsequent installation, which TSS is obligated to pay. Installation on the dark fiber was charged only once, not twice.

14 Answering paragraph 9 c., Qwest admits the allegations in that paragraph, except that Qwest does not know, and cannot admit or deny, what TSS's belief was in connection with the \$7,300 deposit. Qwest agrees that it is holding another \$900 deposit, and that it has not refunded that deposit, but rather is holding it to apply to one of the TSS accounts that is currently in arrears. TSS has been given the option to designate the account to which it would be applied, but has not responded to Qwest's request for that information. [Attachment 4]

15 Answering paragraph 10, Qwest denies that the dispute should be submitted to arbitration. The Commission can resolve these issues by determining that there is no legitimate dispute and that Qwest has fulfilled its obligations under the TRO/TRRO Amendment. Further, the relief requested by TSS – a reduction of the billing rate on the disputed circuits – is not supported by the ICA. The new rates that Qwest charged TSS are lawful and appropriate under the contract. The fact that TSS retained the SS7 circuits and the DS1s even after the rate change indicates that TSS was not damaged and likely would not have sought alternative

services even if the billing conversion had happened earlier. Finally, Qwest gave TSS adequate notice of the affected facilities in 2005 – TSS has not met its responsibility under the ICA to work with Qwest regarding the conversion of those facilities.

16 Answering paragraph 11, Qwest denies that it has improperly denied TSS electronic billing. Electronic billing is available to TSS after TSS begins the process to convert its accounts to electronic billing. Qwest's records reflect that sometime near the end of March or the beginning of April of 2007 a Qwest billing representative left a voice message for Mr. Ellis, asking Mr. Ellis to call to discuss setting up electronic billing. TSS can do so at any time, though Qwest has not heard back from TSS on this issue outside of the allegations in the petition. Qwest has separately advised TSS of who it should contact within Qwest to set up electronic billing on those accounts for which electronic billing is desired.

III. CONCLUSION

17 The Commission should deny and dismiss TSS's petition for enforcement, and order TSS to pay the unpaid balances on its accounts, as set forth in the attached Declaration.

DATED this 14th day of August, 2007.

QWEST

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