

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,  <p style="text-align: center;">Complainants,</p> v.  QWEST CORPORATION,  <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">Docket No. UT-051682</p> <p style="text-align: center;">SECOND AMENDED COMPLAINT</p>
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Pursuant to RCW 80.04.110 and WAC 480-07-305, AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) and TCG Seattle and TCG Oregon (collectively “TCG”) bring the following Second Amended Complaint against Qwest Corporation (“Qwest”).

In support of their Second Amended Complaint, AT&T and TCG allege as follows:

1. The names, addresses, and telephone numbers of the persons to whom communications for AT&T and TCG should be addressed are:

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## **PARTIES**

2. Complainant AT&T. AT&T is registered and classified by the Commission as a competitive telecommunications company. AT&T is authorized to provide switched and non-switched local exchange and long distance services in Washington.

3. Complainant TCG. TCG is registered and classified by the Commission as a competitive telecommunications company. TCG is authorized to provide switched and non-switched local exchange and long distance services in Washington.

4. Respondent. Qwest is an incumbent local exchange company (“ILEC”), as defined in 47 U.S.C. § 251(h) and provides local exchange and other telecommunications services throughout the State of Washington.

## **JURISDICTION**

5. Commission Jurisdiction. The Commission has jurisdiction over this Amended Complaint and Respondent Qwest pursuant to RCW 80.01.040, RCW 80.04.110, RCW 80.36.610, 47 U.S.C. § 252(a), 47 U.S.C. § 252(e)(1), and 47 U.S.C. § 252(i).

## **FACTS**

6. The Telecommunications Act of 1996. Pursuant to the federal Telecommunications Act, all interconnection agreements must be filed with the Washington Utilities and Transportation Commission for approval. 47 U.S.C. § 252(a), (e). Once an interconnection agreement is approved, the incumbent carrier must make available any interconnection, service, or network element provided under the agreement to any other requesting carrier *at the same rates* and on the same terms and conditions as those provided in

the approved interconnection agreement. 47 U.S.C. § 252(i).

7. Eschelon Agreements. Beginning in or about February 2000, Qwest entered into a series of interconnection agreements with Eschelon Telecom (“Eschelon”). Those agreements established rates, terms and conditions for telecommunications services and facilities that Qwest provided, or agreed to provide, to Eschelon, including rates, terms, and conditions that were not contained in any agreement with any other similarly situated company (“Eschelon Agreements”). Qwest did not file these agreements with the Commission. The Eschelon Agreements were not publicly available, and Qwest did not provide AT&T or TCG with a copy of these agreements or otherwise notify AT&T or TCG of the existence or contents of these agreements.

8. McLeodUSA Agreements. Beginning in or about April 2000, Qwest entered into a series of interconnection agreements with McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”). Those agreements established rates, terms and conditions for telecommunications services and facilities that Qwest provided, or agreed to provide, to McLeodUSA, including rates, terms, and conditions that were not contained in any agreement with any other similarly situated company (“McLeodUSA Agreements”). Qwest did not file these agreements with the Commission. The McLeodUSA Agreements were not publicly available, and Qwest did not provide AT&T or TCG with a copy of these agreements or otherwise notify AT&T or TCG of the existence or contents of these agreements.

9. Same or Comparable Services. AT&T and TCG each 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 under the Eschelon Agreements during the time frame in which those agreements were in effect. AT&T and TCG each 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 McLeodUSA under the McLeodUSA Agreements during the time frame in which those agreements were in effect.

10. Terms of AT&T and TCG Interconnection Agreements with Qwest. These same or comparable services were obtained pursuant to interconnection agreements between the parties. During the period while Qwest's secret agreements with Eschelon and McLeodUSA were in place, Qwest was also a party to interconnection agreements with AT&T and TCG. The interconnection agreement between Qwest and AT&T in effect in 2000 and thereafter in Washington ("AT&T Agreement") required Qwest to abide by the terms of the 1996 Act. In particular, the parties agreed to "act in good faith and consistently with the intent of the 1996 Act." Comp. Ex. 1, Scope of Agreement, Section B. Also, the AT&T Agreement and the interconnection agreement between Qwest and TCG that was in effect in 2000 and thereafter in Washington ("TCG Agreement) required Qwest to make available to AT&T and TCG the rates, terms and conditions of other interconnection agreements to which Qwest was a party. See Comp. Ex. 1, General Terms and Conditions Section 2.1; Comp. Ex. 2, Article XXVIII.

11. Adoption. AT&T and TCG each would have adopted, or otherwise would have availed themselves of, the rates and reasonably related and legitimate terms and conditions in the Eschelon and/or McLeodUSA Agreements if AT&T and TCG had known of the existence of those agreements or the rates and reasonably related and legitimate terms and conditions contained in those agreements.

12. Qwest Overcharges. The amounts that AT&T and TCG each paid Qwest for telecommunications facilities and services during the time period in which the Eschelon and McLeodUSA Agreements were in effect were significantly higher than the amounts that

Eschelon and McLeodUSA paid, or agreed to pay, Qwest for the same or comparable telecommunications facilities and services. Qwest concealed the existence of the Eschelon and McLeodUSA Agreements and the rates and reasonably related and legitimate terms and conditions in those agreements and did not make available to AT&T or TCG the rates and reasonably related and legitimate terms and conditions contained in those agreements. Qwest, therefore, overcharged AT&T and TCG the difference between the amounts that AT&T and TCG each paid to Qwest and the amounts that AT&T and TCG each would have paid had AT&T and TCG adopted or otherwise accepted the rates and reasonably related and legitimate terms and conditions in the Eschelon and/or McLeodUSA Agreements.

### **COUNT I**

#### **BREACH OF CONTRACT**

13. The allegations of paragraphs 1 through 12 are repeated and realleged as paragraph 13 of Count I.

14. Qwest's conduct as alleged above breached Qwest's obligations under the AT&T Agreement and the TCG Agreement, including Qwest's obligations under both Agreements to make available to AT&T and Qwest the rates, terms and conditions of other interconnection agreements to which Qwest was a party and Section B in the Scope of Agreement portion of the AT&T Agreement (providing that the parties would "act in good faith and consistently with the intent of the 1996 Act").

15. Qwest's breaches of its contracts with AT&T and TCG damaged plaintiffs in amounts equal to at least the aggregate amount of the price differential between what they paid Qwest and what they would have paid Qwest if they had been permitted to avail themselves of the discounts in the Eschelon and McLeodUSA Agreements.

**PRAYER FOR RELIEF**

WHEREFORE, AT&T and TCG pray for the following relief:

A. An order from the Commission requiring Qwest to reimburse AT&T and TCG for overcharges for intrastate and interstate telecommunications services and facilities purchased in Washington, specifically the difference between the amounts that AT&T and TCG each paid to Qwest and the amounts that AT&T and TCG each would have paid had Qwest charged AT&T and TCG the rates and applied the discounts in the Eschelon and/or McLeodUSA Agreements while those agreements were in effect, plus interest; and

B. Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

DATED this \_\_\_\_\_ day of September, 2007.

DAVIS WRIGHT TREMAINE LLP  
Attorneys for AT&T Communications of the Pacific  
Northwest, Inc., TCG Seattle, and TCG Oregon

By \_\_\_\_\_  
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