

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NO. UT-032162
)	
Complainant,)	ORDER NO. 03
)	
v.)	
)	
QWEST CORPORATION,)	ORDER ADOPTING PROPOSED
)	SETTLEMENT AGREEMENT;
Respondent.)	ASSESSING PENALTIES
.....)	

1 **Synopsis:** *The Commission adopts the proposed settlement of a Commission complaint against Qwest Corporation alleging failure to file accurate information with the Commission and failure to file certain reports in a timely manner, requiring payment of penalties totaling \$48,000.*

A. Procedural Background.

2 This is a complaint by the Commission against Qwest Corporation that alleges violations of laws and rules requiring telecommunications companies, including Qwest Corporation (Qwest), that are not competitively classified.

3 The Complaint was served on August 10, 2004. The Commission convened a prehearing conference on August 24, 2004, pursuant to due and proper notice to all parties at Olympia, Washington, before Administrative Law Judge C. Robert Wallis.

4 In this matter, the Staff of the Washington Utilities and Transportation
Commission, prosecutor of the complaint, is represented by Lisa Watson,
Assistant Attorney General, Olympia. Respondent Qwest is represented by Lisa
A. Anderl, attorney, Seattle.

5 At the conference, the parties agreed upon a proposed procedural schedule and
indicated that they would negotiate in good faith with the goal of achieving
settlement.

6 On November 9, 2004, the parties filed a proposed settlement agreement and a
joint motion that it be adopted. In this order, the Commission considers and
adopts the proposed agreement as the appropriate resolution of the issues raised
by the complaint.

B. The Complaint.

7 On August 10, 2004, the Commission issued a complaint alleging that Qwest had
filed late and inaccurate reports with the Commission and had maintained
inaccurate accounts.¹ The Complaint alleged that the following reports were
filed late: the fourth quarter 2002 report, the first quarter 2003 report, the second
quarter 2003 report, the third quarter 2003 report, the 2002 annual report, and the
2002 affiliated interest report.² The Complaint alleged that Qwest filed 12 reports
that were revised following Qwest's extensive restatement process. Those
reports were the four quarterly reports from 2000, the four quarterly reports from
2001, the annual reports from 2000 and 2001, and the affiliated interest reports
from 2000 and 2001.³ Finally, the Complaint alleged that Qwest failed to
maintain accounts pursuant to the Uniform System of Accounts (USOA).⁴

¹ *WUTC v. Qwest Corporation*, Docket No. UT-032162, Complaint and Notice of Prehearing
Conference (August 10, 2004) (Complaint).

² *Id.* at ¶¶ 16-34 (First thru Fourth Causes of Action).

³ *Id.* at ¶¶ 35-39 (Fifth Cause of Action).

⁴ *Id.* at ¶¶ 40-43 (Sixth Cause of Action).

8 The complaint identified the alleged violations and identified the number of days that each violation allegedly continued. It then commenced an adjudication to constitute “a full and complete investigation into the matters alleged . . . for the following purposes: (1) To determine whether Qwest has violated the statutes and rules set forth in the allegations above; (2) To determine whether the Commission should impose penalties against Qwest in an amount to be proved at hearing; and (3) To make such other determinations and enter such orders as may be just and reasonable.”⁵

C. Settlement Proposal.

9 On November 9, 2004, the parties submitted a proposed settlement agreement for Commission consideration pursuant to WAC 480-07-740. The agreement would resolve all issues in the proceeding.

10 The proposal reflects Qwest’s admission of some of the violations that were alleged, and calls for Qwest to pay a penalty of \$48,000 for the violations incurred, representing 480 inferred violations (or days’ continuation of continuing violations). “The Parties agree that this amount, in combination with Qwest’s admissions of violations . . . fairly and fully resolves the Complaint and is in the public interest.”⁶ The parties⁷ “agree that, going forward Qwest will comply with all applicable Commission rules and statutes.”

11 The parties also note that, while the statutes and laws require accurate financial records and reporting, not all matters requiring correction are intentional or

⁵ Complaint, paragraphs 44-47, page 9.

⁶ Joint motion for approval of settlement agreement, paragraph 9, p. 4.

⁷ *Id.*

extraordinary, as corrections to reports are anticipated and even required by law.⁸

- 12 The motion and the settlement agreement, taken together, provide a sufficient basis for the proposed result, so presentation or hearing pursuant to WAC 480-07-740(1)(d). The settlement provides an admission of violation by Qwest without the need for hearing, resulting in administrative efficiencies, and sets a penalty amount that is commensurate with the nature and context of the violations. There is no indication that Qwest committed prior violations of the same type. We are concerned about the potential of the violations to cause harm to the regulatory process, and expect that a future violation would be treated sternly. The settlement does “avoid further expense, inconvenience, uncertainty, and delay of litigation.”⁹ On balance, the penalty is appropriate for the violations and allows all of those affected to move on.
- 13 The Commission accepts the proposed settlement agreement and in this order adopts it as the Commission’s resolution of the complaint. It satisfies the purposes of the complaint identified in paragraph (10), above, by determining that violations did occur, by determining the proper level of penalties to be assessed, and by entering an appropriate order.

⁸ The settlement agreement notes, at pages 7-8, paragraph 3.7:

The Parties acknowledge and agree that while neither RCW 80.04.090 nor WAC 480-120-302 explicitly imposes an accuracy requirement or defines standards for determining whether a report or account is “accurate” or “inaccurate” or whether any “inaccuracy” is material, reports filed with the Commission and accounts maintained by a public service company should be accurate in all material respects. Nonetheless, every restatement of an account or correction of a report is not *per se* a violation, as it is generally understood that even when companies act in good faith they will make errors. Accounting standards allow for, and in some cases even require, such restatements. When material inaccuracies are discovered, they should be promptly corrected.

⁹ Settlement agreement, page 8, paragraph 4.3.

FINDINGS OF FACT

- 14 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington charged by law with the regulation of telecommunications companies, including local exchange companies.
- 15 (2) Qwest Corporation (Qwest) is a local exchange telecommunications company, operating within the state of Washington.
- 16 (3) Qwest Corporation violated the terms of laws and rules as set out in Cause Nos. one through four of the complaint, as detailed in the proposed settlement agreement, attached to this order as Appendix A and by this reference made a part hereof.
- 17 (4) A penalty of \$48,000 is appropriate for the violations Qwest committed and, in the context of this order and the terms of the settlement adopted herein, is consistent with the public interest.

CONCLUSIONS OF LAW

- 18 (1) Commission has jurisdiction over this matter and the parties to this proceeding.
- 19 (2) The Commission should grant the parties' motion to adopt the proposed settlement.
- 20 (3) Qwest must pay a penalty of \$48,000 within fifteen days following entry of this order.

ORDER

- 21 The Commission adopts the parties' proposed settlement as its own, incorporating its terms into this order.
- 22 In doing so, the Commission assesses penalties on Qwest Corporation in the amount of \$48,000 and requires Qwest to provide full payment of the penalty within fifteen days following the entry of this order.

DATED at Olympia, Washington, and effective this 15th day of December, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.