

1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION  
3   TEL WEST COMMUNICATIONS, LLC, ) Docket No. UT-013097  
                                          )  
4                   Petitioner,        ) Volume VI  
                                          ) Pages 446 to 494  
5                   vs.                    )  
                                          )  
6   QWEST CORPORATION,                )  
                                          )  
7                   Respondent.        )  
                                          )  
\_\_\_\_\_ )

8  
9

10                   A hearing in the above matter was held on  
11   May 8, 2002, at 10:15 a.m., at 1300 South Evergreen Park  
12   Drive Southwest, Room 206, Olympia, Washington, before  
13   Administrative Law Judge ROBERT WALLIS and Chairwoman  
14   MARILYN SHOWALTER and Commissioner RICHARD HEMSTAD and  
15   Commissioner PATRICK J. OSHIE  
16

                  The parties were present as follows:  
17                   QWEST CORPORATION, by ADAM SHERR and LISA  
18   ANDERL, Attorneys at Law, 1600 Seventh Avenue, Suite  
19   3206, Seattle, Washington 98191, Telephone (206)  
                  345-1574, Fax (206) 343-4040, E-mail landerl@qwest.com.

                  TEL WEST COMMUNICATIONS, LLC, by BROOKS E.  
20   HARLOW, Attorney at Law, Miller Nash LLP, 601 Union  
21   Street, Suite 4400, Seattle, Washington 98101, Telephone  
                  (206) 777-7406, Fax (206) 622-7485, E-mail  
                  harlow@millernash.com.

22  
23  
24

25   Joan E. Kinn, CCR, RPR  
          Court Reporter

EXHIBIT   A

00478

1 MR. SHERR: I'm not sure that I understood  
2 Mr. Harlow to argue that.

3 CHAIRWOMAN SHOWALTER: I think he was saying  
4 an inference to be drawn should we grant Qwest's request  
5 would be that by not giving relief under 530, we would  
6 be saying that once the agreement is signed, that's it,  
7 there's no more possible remedy. So I think the  
8 question is, what's your view of whether there is or  
9 isn't --

10 COMMISSIONER HEMSTAD: Is there a remedy?

11 CHAIRWOMAN SHOWALTER: -- a possible remedy  
12 for bad faith negotiations once the agreement is signed.

13 MR. SHERR: Well, I was trying not to take a  
14 position on that, but, you know, what I would say is  
15 that's not -- that's not at all our comments here. Our  
16 comments are we didn't know it was a claim so that's not  
17 what we're talking about, and even if it were a claim  
18 and let's just assume, for the sake of the record I'm  
19 assuming, that it is -- it does survive the execution of  
20 the agreement, a 530 proceeding is an inappropriate  
21 mechanism for discussing it, and that was the second  
22 point of our comments, so that's my response.

23 CHAIRWOMAN SHOWALTER: I just have a  
24 procedural question to ask you before we go back to  
25 Mr. Harlow, which is am I correct that if we find that

00479

1 the issue of good faith negotiations is not properly  
2 before the Commission, are there any other comments or  
3 suggestions of changes to the ALJ's order that you would  
4 make, or are they -- are all the ones that you have  
5 subsidiary to that basic question? And then there's the  
6 other issue on the other side of the 45 day time line,  
7 which I think stands aside from that issue. We just  
8 want to make sure we hear all the issues.

9 MR. SHERR: Sure. With regard -- if you  
10 determine -- well, let me try to characterize what I  
11 think you asked me. If you decide that the 251(c)(1)  
12 allegations or findings should be reversed, is there  
13 anything else Qwest wants done to the recommended  
14 decision. Is that -- did I hear it correctly?

15 CHAIRWOMAN SHOWALTER: That's basically  
16 right.

17 MR. SHERR: I would say if the finding is  
18 based on a lack of due process or the fact that it's  
19 outside of the scope of the proceeding or both, then  
20 certainly there's no real reason to reach the issue of  
21 whether the petition to reopen should have been granted,  
22 because I think it's moot at that point. If you get to  
23 that point of -- if you get -- and I, you know, very  
24 much hope you don't, but if you get to the point where  
25 you're reviewing the record and trying to determine if

00480

1 there's a basis for the cause of action that wasn't  
2 alleged, then I think that that still remains a viable  
3 request on Qwest's part.

4 The only other issue I think would need to be  
5 resolved regardless is, excuse me just one moment, the  
6 relief granted in Paragraph 183 of the recommended  
7 decision, which relates to, and I will try to paraphrase  
8 and hopefully I will do it correctly, that if Tel West  
9 orders a blocking product, and presumably if a charge  
10 that should be blocked --

11 MR. HARLOW: Mr. Sherr, we're amenable to the  
12 suggested language on the last three lines of page 12 of  
13 your brief.

14 MR. SHERR: Okey-dokey, well I would say that  
15 it's -- if -- and that's our --

16 CHAIRWOMAN SHOWALTER: We will issue an order  
17 with that effect.

18 MR. SHERR: All right, well, that's the only  
19 concern we still would have is that we would want it  
20 reasonably limited.

21 Thank you.

22 JUDGE WALLIS: Mr. Harlow.

23 MR. HARLOW: Thank you, Your Honor, if I may  
24 just step back a little bit, kind of take a bigger  
25 picture look at this. This was really a cry out for