

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-063021

DECLARATION OF FLORINE CLARK

- 1 My name is Florine Clark. I am employed by Qwest Services Corporation in the legal department, and I am the in-house attorney managing the action against TSS in Thurston County Superior Court, Cause No. 04-2-00324-2.
- 2 Prior to filing that action, outside counsel on behalf of Qwest sent Mr. Ellis two letters inquiring about arbitration and advising that the dispute would be litigated in state court if he did not respond. After the state court lawsuit was filed, TSS did not raise as an affirmative defense failure to arbitrate. Qwest's complaint claims damages in excess of \$320,000. The circuits at issue in this Commission docket constitute less than \$11,000 of that dispute.
- 3 TSS has participated in the lawsuit (including propounding and responding to a substantial amount of discovery) for a considerable amount of time and at substantial expense to the parties.
- 4 Other actions taken by TSS in the state court action include: 1) demand of a 12 person jury, 2)

motion to compel plaintiff to respond to discovery; and 3) disclosure of fact witnesses. TSS also requested and facilitated the signing of a stipulation and protective order.

5 Qwest would be substantially prejudiced if it were required to remove these two circuits to arbitration at this point, as the litigation is well advanced and considerable time and resources have been expended. The state court litigation is set for trial September 11, 2006.

6 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 19th day of April, 2006 at Denver, Colorado.



Florine Clark