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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Complaint and Petition for
Enforcement of Tel West Communications, LLC
Against

QWEST CORPORATION, INC.

For Failure to Comply with Provisions of its
Resale Agreement with Tel West; and,

Provision of Inferior Wholesale Services

Docket No. UT-013097

QWEST CORPORATION'S MOTION TO
STRIKE ALLEGATIONS FROM FIRST
AMENDED PETITION FOR
ENFORCEMENT

Pursuant to WAC 480-09-425(2) and WAC 480-09-530, Qwest Corporation ("Qwest") hereby moves to strike several allegations (collectively, the "objectionable allegations") from Tel West's First Amended Petition for Enforcement ("Amended Petition"). The objectionable allegations include two subsets, those pertaining to occurrences outside the proper scope of a WAC 480-09-530 proceeding and those subject to protection under Evidence Rule 408 as being evidence of conduct or statements made in compromise negotiations.

1. Relief Requested.

Qwest respectfully requests that the Commission strike each of the objectionable allegations identified below. In answering the Amended Petition, Qwest will not specifically respond to the objectionable allegations on grounds that the allegations are improper and/or irrelevant to the proceeding.

1 As discussed below, should the Commission deny Qwest's motion and/or convert this proceeding to a
2 generic complaint proceeding, Qwest seeks leave to address each of the objectionable allegations
3 remaining in the Amended Petition. Both legally and factually, Qwest can rebut the objectionable
4 allegations and believes it should be given a full opportunity to do so.

5 **2. The Objectionable Allegations.**

6 Qwest seeks the following allegations from the Amended Petition to be stricken. For purposes of
7 this pleading, the terms "Current Agreement" and "First Agreement" are used identically to Tel West's
8 use of those terms in the Amended Petition.

9 a. The Outside-the-Scope Allegations.

10 (1) Paragraph 13: page 4, line 14 (beginning "Similarly, the First Agreement")
11 through page 4, line 17 (ending "§ IV.B.2.").

12 (2) Paragraph 13: page 4, line 18 (beginning "The following chart") through page 5,
13 line 3.

14 (3) Paragraph 14: page 4, line 25 through page 5, line 1 (ending "§ IV.B.2."), except
15 to the extent those allegations pertain to events occurring on or after October 31, 2001.

16 (4) Paragraph 17: page 5, line 19 (beginning "In one case") through page 5, line 25
17 (ending "\$180,000 per year.").¹

18 (5) Paragraph 18: page 6, line 5 (beginning "Similarly, the First Agreement") through
19 page 6, line 7 (ending "§ IV.B.2.").

20 (6) Paragraph 28: page 9, line 4 (beginning "This is the same") through page 9, line
21 6 (ending "§ IV.B.2.").

22 (7) Paragraph 31: page 10, line 8 (beginning "The First Agreement") through page
23 10, line 17, except to the extent those allegations pertain to events occurring on or after October 31,

24 _____
25 ¹ Tel West, which under WAC 480-09-530 bears the burden of alleging specific facts demonstrating
26 that Qwest failed to comply with the terms of the Current Agreement, has not asserted in its Amended
27 Petition that the incident described in paragraph 17 occurred on or after the effective date of the Current
Agreement.

1 2001.²

2 (8) Confidential Insert No. 2, except for that information pertaining to November

3 2001.

4 (9) Confidential Insert No. 3.

5 (10) Confidential Insert No. 4, except for that information pertaining to November

6 2001.

7 (11) Exhibit A, pages 23 through 32 (pages 1, 5-14 of the First Agreement).

8 b. The ER 408 Allegations.

9 (1) Paragraph 15: page 5, line 7 (beginning “In addition”) through Page 5, line 9.

10
11 **3. Discussion.**

12 a. The Commission Should Strike the Outside-the-Scope Allegations.

13 The special proceeding created by WAC 480-09-530 (a “Section 530 Adjudication”) is a
14 dramatically truncated and expedited adjudicative process³ reserved only for situations in which a
15 telecommunications company “that is party to an interconnection agreement with another
16 telecommunications company” seeks enforcement of that interconnection agreement. WAC 480-09-
17 530(1). Both as a matter of law (given the plain language of the rule) and a matter of policy, a Section
18 530 Adjudication is not the forum for raising disputes or seeking remedies outside this narrow scope.
19 This is evident from the Commissioners’ own description of the purpose of the rule. In a recent
20 Interpretive and Policy Statement, the Commissioners unanimously explained that “[t]he Commission
21 adopted WAC 480-09-530 to establish an expedited process to resolve disputes between parties to
22 existing interconnection agreements pursuant to Section 252(e) of the [Telecommunications] Act.” *In the*
23 *Matter of the Implementation of Section 252(i) of the Telecommunications Act of 1996*

24 _____
25 ² Further information is needed about the allegations set forth in paragraph 31 of the Amended
26 Petition to ascertain whether any of the occurrences described therein occurred after the effective date of
27 the Current Agreement.

³ Among the more dramatic and germane differences between the two processes is that, in a generic
complaint proceeding, the respondent is given twenty days to file an answer, while it is given only five days
in a Section 530 Adjudication. WAC 480-09-425(3)(a); WAC 480-09-530(2)(b).

1 *Interpretive and Policy Statement (First Revision), Docket No. UT-990355 (April 12, 2000), at ¶*
2 *25.*⁴

3 Thus, the only allegations properly within the scope to this Section 530 Adjudication are the
4 relevant provisions of the Current Agreement and any allegations by Tel West that Qwest is not abiding
5 by such provisions. The allegations identified in Section 2.a. above pertain only to the First Agreement,
6 Qwest's alleged conduct during the effective period of the First Agreement (i.e., prior to October 31,
7 2001) and Qwest's alleged breach of the First Agreement. Given that each of these allegations is outside
8 the scope of a Section 530 Adjudication, each should be stricken from the Amended Petition.
9 Alternatively, should these allegations be of paramount importance to Tel West, this proceeding should be
10 immediately and entirely converted to a generic complaint proceeding.

11 Should the Commission deny Qwest's motion to strike or convert this proceeding (in whole or in
12 part) to a general complaint proceeding, Qwest will answer each of the objectionable allegations set forth
13 in Section 2.a. above. Until that time, neither WAC 480-09-530, nor any other Commission rule,

14 _____
15 ⁴ That the drafters of the WAC 480-09-530 intended this narrow scope is likewise evident from
16 Commission Staff's 1998 Open Meeting Memorandum supporting adoption of the rule. In relevant part,
17 Administrative Law Judge Robert Wallis (for Commission Staff) articulated the scope and purpose of the
18 rule as follows:

19 This proposal would provide a specific process for companies who have entered
20 interconnection agreements *to secure enforcement* of those agreements. The
21 Subject matter – the Commission's procedural rules -- is within the scope of a
22 CR-101 filed August 14, 1997, at WSR-97-17-047, under Docket No. A-970591.

23 Telecommunications interconnection agreements are provided for by federal law,
24 and a process for mediation or Commission arbitration of the agreements is set by
25 federal law. *This rule would apply after an interconnection agreement
26 becomes effective, when one party believes that the other is failing to meet
27 its commitments under an agreement. It would provide a process tailored to
the setting, in which the requirements of the agreement may be determined,
behavior may be examined to see if it is in compliance with the terms of the
agreement, and enforcement may be ordered if required by the agreement
and the facts of the case.*

26 *Rulemaking Docket No. A-970591, Open Meeting Memorandum (August 26, 1998) (emphasis
27 added).*

1 requires Qwest to do so. WAC 480-09-530(2) (If a respondent chooses to answer a petition for
2 enforcement, the answer must be filed and served within five business days after service of the petition
3 and must “respond to each allegation of failure to comply with the terms of the interconnection
4 agreement, stating relevant facts.”) (emphasis added).

5 b. Striking the ER 408 Allegations.

6 In paragraph 15 of the Amended Petition, Tel West improperly (Qwest believes) discloses
7 information concerning conduct and activities arising directly out of the parties’ settlement discussions.
8 Qwest believes that, under the letter and spirit of ER 408,⁵ these particular allegations are improper and
9 should be stricken from the Amended Petition. Furthermore, Tel West misconstrues the results of the test
10 being discussed in paragraph 15. For both reasons, Qwest believes that the Administrative Law Judge
11 needs to be presented with the context of the December 13 test so that he is equipped with sufficient
12 information to rule on Qwest’s motion to strike. [Confidential Information No. 1]
13
14

15 Thus, Qwest requests the Commission to strike the objectionable allegations set forth in set forth
16 in Section 2.b. above. Should the Commission deny this request and/or should Tel West not voluntarily
17 withdraw these allegations, Qwest will supplement its answer with the additional reasons and factors
18 requiring Commission consideration in evaluating Tel West’s allegations regarding the December 13 test.
19

20 \\\

21 RESPECTFULLY SUBMITTED this 18th day of January, 2002.

22 _____
23 ⁵ ER 408 provides in relevant part:

24 Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting
25 or offering or promising to accept a valuable consideration in compromising or
26 attempting to compromise a claim which was disputed as to either validity or
27 amount, is not admissible to prove liability or invalidity of the claim or its amount.
Evidence of conduct or statements made in compromise negotiations is likewise
not admissible....

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QWEST

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