

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,

Complainants,

v.

QWEST CORPORATION,

Respondent.

Docket No. UT-
COMPLAINT

Pursuant to RCW 80.04.110 and WAC 480-07-305, AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon (collectively “AT&T”) and Time Warner Telecom of Washington, LLC (“TWTC”), bring the following Complaint against Qwest Corporation (“Qwest”).

In support of their Complaint, AT&T and TWTC allege as follows:

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

For AT&T:

Gregory J. Kopta
DAVIS WRIGHT TREMAINE LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688
Phone: (206) 628-7692
Fax: (206) 628-7699
Email: gregkopta@dwt.com

and

Letty S. D. Friesen

For TWTC:

Gregory J. Kopta
DAVIS WRIGHT TREMAINE LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688
Phone: (206) 628-7692
Fax: (206) 628-7699
Email: gregkopta@dwt.com

and

Brian Thomas

AT&T
1875 Lawrence Street, Suite 1575
Denver, CO 80202
Phone: (303) 298-6475
Fax: (303) 298-6301
Email: lsfriesen@att.com

Time Warner Telecom
223 Taylor Avenue North
Seattle, WA 98109
Phone: (206) 676-8090
Fax: (206) 676-8001
Email: Brian.Thomas@twtelecom.com

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 TWTC. TWTC is registered and classified by the Commission as a competitive telecommunications company. TWTC 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 Complaint and Respondent Qwest pursuant to RCW 80.01.040, RCW 80.04.110, RCW 80.36.170, RCW 80.36.180, RCW 80.36.186, 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. 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 TWTC with a copy of these agreements or otherwise notify AT&T or TWTC of the existence or contents of these agreements.

7. 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 TWTC with a copy of these agreements or otherwise notify AT&T or TWTC of the existence or contents of these agreements.

8. Same or Comparable Services. AT&T and TWTC 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 TWTC 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.

9. Adoption. AT&T and TWTC each would have adopted, or otherwise would have agreed to, the rates and reasonably related and legitimate terms and conditions in the Eschelon and/or McLeodUSA Agreements if AT&T and TWTC had known of the existence of those agreements or the rates and reasonably related and legitimate terms and conditions contained in those agreements and if Qwest had made those agreements or rates and reasonably related and legitimate terms and conditions available to AT&T and TWTC.

10. Qwest Overcharges. The amounts that AT&T and TWTC 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 TWTC the rates and reasonably related and legitimate terms and conditions contained in those agreements. Qwest, therefore, overcharged AT&T and TWTC the difference between the amounts that AT&T and TWTC each paid to Qwest and the amounts that AT&T and TWTC each would have paid had AT&T and TWTC adopted or otherwise accepted the rates and reasonably related and legitimate terms and conditions in the

Eschelon and/or McLeodUSA Agreements.

CLAIMS FOR RELIEF

A. Violation of Federal Law.

11. AT&T and TWTC reallege and incorporate by reference the allegations in paragraphs 1-9 above as if fully set forth herein.

12. 47 U.S.C. § 251(b) and (c) requires Qwest to provide access to, and interconnection with, its network to AT&T, TWTC, and other competing telecommunications service providers “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”

13. 47 U.S.C. § 251(e) provides, “Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission,” and subsection 252(i) provides,

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

14. In paragraph 96 of Order No. 21 in Docket No. UT-033011, the Commission previously concluded that “Qwest willfully and intentionally violated Section 252 . . . by not filing, in a timely manner, its transactions with Eschelon and McLeodUSA relating to rates or discounts off of rates for Section 251(b) and (c) wholesale services.”

15. By providing facilities and services to Eschelon and McLeodUSA at rates or discounts off of rates that were lower than the rates and/or discounts that Qwest made

available to AT&T, TWTC, and other similarly situated competing telecommunications service providers, Qwest violated 47 U.S.C. §§ 251 and 252.

B. Violation of RCW 80.36.170 (Unreasonable Preference Prohibited)

16. AT&T and TWTC reallege and incorporate by reference the allegations in paragraphs 1-9 above as if fully set forth herein.

17. RCW 80.36.170 provides in relevant part:

No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation, or locality, or subject any particular person, corporation, or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

18. In paragraph 96 of Order No. 21 in Docket No. UT-033011, the Commission concluded that “Qwest willfully and intentionally violated . . . RCW 80.36.170 . . . by not filing, in a timely manner, its transactions with Eschelon and McLeodUSA relating to rates or discounts off of rates for Section 251(b) and (c) wholesale services.”

19. By providing facilities and services to Eschelon and McLeodUSA at rates or discounts off of rates that were lower than the rates and/or discounts that Qwest made available to AT&T, TWTC, and other similarly situated competing telecommunications service providers, Qwest granted an undue preference to Eschelon and McLeodUSA and subjecting AT&T and TWTC to undue prejudice or disadvantage in violation of RCW 80.36.170.

C. Violation of RCW 80.36.180 (Rate Discrimination Prohibited)

20. AT&T and TWTC reallege and incorporate by reference the allegations in

paragraphs 1-9 above as if fully set forth herein.

21. RCW 80.36.180 provides in relevant part:

No telecommunications company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, unduly or unreasonably charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to communication by telecommunications or in connection therewith, except as authorized in this title or Title 81 RCW than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telecommunications under the same or substantially the same circumstances and conditions.

22. In paragraph 96 of Order No. 21 in Docket No. UT-033011, the Commission previously concluded that “Qwest willfully and intentionally violated . . . RCW 80.36.180 . . . by not filing, in a timely manner, its transactions with Eschelon and McLeodUSA relating to rates or discounts off of rates for Section 251(b) and (c) wholesale services.”

23. By providing facilities and services to Eschelon and McLeodUSA at rates or discounts off of rates that were lower than the rates and/or discounts that Qwest made available to AT&T, TWTC, and other similarly situated competing telecommunications service providers, Qwest violated RCW 80.36.180.

D. Violation of RCW 80.36.186 (Pricing of or Access to Noncompetitive Services)

24. AT&T and TWTC reallege and incorporate by reference the allegations in paragraphs 1-9 above as if fully set forth herein.

25. RCW 80.36.186 provides (with emphasis added):

Notwithstanding any other provision of this chapter, **no**

telecommunications company providing noncompetitive services shall, as to the pricing of or access to noncompetitive services, make or grant any undue or unreasonable preference or advantage to itself or to any other person providing telecommunications service, nor subject any telecommunications company to any undue or unreasonable prejudice or competitive disadvantage. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section.

26. In paragraph 96 of Order No. 21 in Docket No. UT-033011, the Commission previously concluded that “Qwest willfully and intentionally violated . . . RCW 80.36.186 by not filing, in a timely manner, its transactions with Eschelon and McLeodUSA relating to rates or discounts off of rates for Section 251(b) and (c) wholesale services.”

27. By providing facilities and services to Eschelon and McLeodUSA at rates or discounts off of rates that were lower than the rates and/or discounts that Qwest made available to AT&T, TWTC, and other similarly situated competing telecommunications service providers, Qwest granted an undue preference to Eschelon and McLeodUSA and subjecting AT&T and TWTC to undue prejudice or competitive disadvantage in violation of RCW 80.36.186.

PRAYER FOR RELIEF

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

A. An order from the Commission requiring Qwest to reimburse AT&T and TWTC for overcharges for intrastate telecommunications services and facilities, specifically the difference between the amounts that AT&T and TWTC each paid to Qwest and the amounts that AT&T and TWTC each would have paid had Qwest charged AT&T and TWTC 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 November, 2005.

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

By _____
Gregory J. Kopta
WSBA No. 20519

AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC., TCG
SEATTLE, AND TCG OREGON

By _____
Letty S. D. Friesen