

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of TEL WEST
COMMUNICATIONS, LLC'S PETITION
FOR ENFORCEMENT OF ITS
INTERCONNECTION AGREEMENT
WITH QWEST CORPORATION

Docket No. UT-053098

ANSWER AND COUNTERCLAIM
OF QWEST CORPORATION

- 1 Qwest Corporation, ("Qwest"), hereby answers and responds to the Petition of Tel West Communications, LLC ("Tel West") for Enforcement of its Interconnection Agreement with Qwest Corporation ("Petition"). Qwest denies that Tel West is due any refund whatsoever. Qwest's batch hot cut ("BHC") process was implemented and operational prior to December 31, 2004. Thus, under the terms of the parties' interconnection agreement ("ICA") and the parties' commercial agreement (the Qwest Platform Plus, or "QPP" agreement), the applicable rates are the rates in the QPP. ¹
- 2 In addition, Tel West is wrongfully withholding \$286,452.11 from Qwest, which amount is past due. Tel West has not followed the billing dispute provisions in the parties' agreements, and has not established any legitimate basis for refusal to pay otherwise properly billed charges. Qwest includes a counterclaim in this answer and asks the Commission to order Tel West to pay its past due charges.

¹ Qwest does not waive its right to seek from the Commission a determination that the QPP is not a part of the interconnection agreement, consistent with a recent ruling to that effect in connection with Verizon's commercial agreements. See, Docket Nos. UT-053053-053070.

I. INTRODUCTION

3 Answering paragraph 1 of the Petition, Qwest denies the allegations contained therein, or contends they are irrelevant to Tel West's request for relief. The issue in this case is whether, by December 31, 2004, Qwest had implemented a BHC process and was able to process orders that were properly submitted and received. The relevant provision of Section 3.3 of Service Exhibit 1 to the QPP agreement is as follows: "*Provided that Qwest has implemented the Batch Hot Cut Process in a particular state pursuant to the terms and conditions of the Amendment to CLEC's ICAs entered into contemporaneously with this Agreement, the monthly recurring rates for the switch port in the attached Rate Sheets shall increase incrementally by the amount of the applicable QPP Port Rate Increase (as the same may be subsequently adjusted under Section 3.2) on January 1, 2005, January 1, 2006 and January 1, 2007 (emphasis added).*"² Qwest implemented a region-wide BHC process and received and processed BHC orders in January 2005. *See*, Declaration of Dennis Pappas, attached hereto as Exhibit 1. Tel West did not properly submit its first orders, and they were thus rejected. Tel West followed the process of escalating the trouble it was having, and after a short period of time Qwest was able to advise Tel West of what it needed to do to use the BHC process. Qwest has explained to Tel West, repeatedly, that the BHC process *was* implemented in Washington in accordance with the terms of the QPP agreement.³ Thus, Tel West must pay the QPP rates.

4 Answering paragraph 2 of the Petition, Qwest states that Tel West submitted its first successful order on March 7, 2005, and that Qwest had implemented the BHC process by December 31, 2004. Qwest denies that any amount is due Tel West, and denies that it has violated the ICA or the QPP.

² *See* Attachment A to the Petition.

³ *See* Exhibit 2 to this Answer which includes three letters that Qwest sent to Tel West in response to Tel West's letters to Qwest. The letters are dated July 7, July 28, and August 11, 2005.

II. STATEMENT OF GOOD FAITH NEGOTIATION

5 Answering the allegations set forth in this unnumbered paragraph, Qwest states that Tel West wrote several letters to Qwest on this issue. The last correspondence between the parties was in August 2005. No negotiations or discussions of this issue have taken place since that time. Qwest specifically denies that the provisions of WAC 480-07-650 apply to this dispute, which is simply a claim for money damages under the QPP and not enforcement of a provision that Petitioner contends is currently being violated.⁴ Tel West's delay in filing this Petition demonstrates that there is no basis upon which to proceed on an expedited schedule. Qwest's counterclaim, set forth below, can be heard on a normal, rather than an expedited schedule. Thus, this matter should be converted to a complaint proceeding under RCW 80.36.110.

III. DISPUTED INTERCONNECTION PROVISION

6 Answering paragraph 3 of the Petition, Qwest states that Attachments A and B to the Petition are the parties' Batch Hot Cut Amendment and the parties' QPP agreement. Qwest denies that Attachment C is an agreement between the parties. Attachment C is a product notification sent to CLECs regarding QPP availability.

IV. DESCRIPTION OF FACTS

7 Answering paragraph 4 of the Petition, Qwest states that to the extent the declarations attached to the Petition as Attachments D and E support specific paragraphs of the Petition, Qwest will answer each of those paragraphs below.

8 Answering paragraph 5 of the Petition, Qwest states that most of the allegations in this

⁴ WAC 480-07-650 provides that "[t]he purpose of this rule is to provide a speedy and enforceable means to resolve disputes when one party to an interconnection agreement contends that the other party is violating the terms of the agreement." This suggests that the rule should be limited to applications where one party is allegedly violating the ICA currently, or on an ongoing basis, thereby necessitating speedy resolution of the dispute. The claim presented in this case does not meet that standard.

paragraph are so vague as to the time period, that Qwest is unable to admit or deny them with specificity and Qwest therefore denies those allegations. However, if Tel West is alleging, as it appears to be, that it attempted unsuccessfully to use the BHC process in December 2004, such an allegation is irrelevant. Only those carriers who have a current BHC process amendment to their ICAs are entitled to use the BHC process. Tel West did not have such an amendment until February 1, 2005. Thus, Tel West was not entitled to use the BHC process prior to that time, and Qwest's systems would not have accepted BHC orders until after such an amendment was signed and the necessary work done in Qwest's systems to allow each individual CLEC to place BHC orders. The fact that Tel West was unable to use the process in December 2004 does not establish that the process was not implemented – as shown in Exhibit 1 to this Answer, it was.

9 Answering paragraph 6 of the Petition, Qwest states that to the extent that the allegations in this paragraph reference the December 2004 timeframe, Qwest's discussion in paragraph 8 above is applicable here as well.

10 Answering paragraph 7 of the Petition, Qwest states that to the extent that the allegations in this paragraph reference the December 2004 timeframe, Qwest's discussion in paragraph 8 above is applicable here as well. To the extent that this allegation now references the February 2005 timeframe instead, Qwest responds that there were two issues in connection with Tel West's attempt to place orders for batch hot cuts. One issue had to do with CLLI (common language location identifier) codes, and the other had to do with the necessary USOCs (uniform service order codes) being loaded for Tel West. Both issues were identified and resolved in a timely manner, and neither issue affects the implementation of the BHC process (*see*, attachments F, G and H to the Petition).

11 Answering paragraph 8 of the Petition, Qwest denies the allegations contained in that

paragraph. A trouble ticket was not opened until February 24, 2005, not February 14. Qwest's service manager, Steven Hudson, did discuss the matter with Tel West on February 15, 2005, and instructed Tel West to follow the usual procedures and consult with the help desk. It is unclear why Tel West then waited nine days to do so. After a ticket was opened with the help desk, the matter was quickly resolved.

12 Answering paragraph 9 of the Petition, Qwest denies the allegations in that paragraph, except as specifically set forth herein. It is unclear why Tel West alleges in this paragraph that it had not yet executed the QPP – Tel West signed that agreement on January 28, 2005 (*see*, Attachment A to the Petition). In any event, on Friday, March 4, 2005, Qwest explained to Tel West the method that Tel West was to use in filling out the local service request (“LSR”) form to place a BHC order. In addition, on March 4, 2005 Qwest was able to finish loading the BHC USOCs for the Tel West account, which would enable Tel West to place BHC orders. Loading of the USOCs is a process which is individual to each CLEC and which cannot happen until the CLEC completes the CLEC questionnaire. The USOCs for Tel West were loaded by March 4, 2005, which is within the usual interval.

13 Answering paragraph 10 of the Petition, Qwest states that the BHC process was working during all relevant times, and that on March 7, 2005, following instructions with regard to the proper entry of the CLLI codes on the LSR, Tel West was able to successfully place a BHC order. Qwest denies that it “acknowledged the BHC Process was defective”, but admits that the BHC process that Petitioner references in this complaint was in existence at the time of Tel West's orders, and further states that the override function that Tel West was required to use was a part of the process that was implemented.

14 Answering paragraph 11 of the Petition, Qwest denies the allegations contained in that paragraph. Tel West placed its first successful BHC orders on March 7, 2005. The completion

date of these orders was on March 16, 2005. The standard interval for a BHC is seven (7) business days. Thus, the orders were timely completed.

V. DAMAGES

15 Answering paragraph 12 of the Petition, Qwest states that paragraph 3.3 of Exhibit 1 to the QPP agreement speaks for itself. Tel West though has omitted the first sentence of that paragraph, which reads as follows: “*Provided that Qwest has implemented the Batch Hot Cut Process in a particular state* pursuant to the terms and conditions of the Amendment to CLEC’s ICAs entered into contemporaneously with this Agreement, the monthly recurring rates for the switch port in the attached Rate Sheets shall increase incrementally by the amount of the applicable QPP Port Rate Increase (as the same may be subsequently adjusted under Section 3.2) on January 1, 2005, January 1, 2006 and January 1, 2007 (emphasis added).” The Declaration of Dennis Pappas, included at Exhibit 1 to this Answer, establishes that Qwest had already met the condition precedent at the time that Tel West signed the QPP. Qwest did not modify or amend the QPP to reflect that fact because some CLECs had signed the QPP before the end of 2004, and Qwest simply left the agreement unchanged so that all CLECs knew they were getting the identical agreements.

16 Answering paragraph 13 of the Petition, Qwest denies that any amount is due and owing from Qwest to Tel West.

VI. ANALYSIS

17 Answering paragraphs 14-30 of the Petition, Qwest states that these paragraphs contain legal argument and generally do not contain factual allegations which must be admitted or denied. To the extent that factual allegations are intertwined with the legal argument in these paragraphs, Qwest denies those allegations unless specifically admitted herein.

18 With regard to the argument set forth in paragraphs 14-22, Qwest notes that the question presented in this case is whether a batch hot cut process was implemented in the state of Washington as of January 1, 2005. Qwest submits that the Declaration of Dennis Pappas establishes that it was. That Declaration establishes that the process was implemented region-wide as of December 31, 2004. There was no difference in the process or its usability from one state to another. The first BHC orders were placed on January 5, 2005 and were filled on January 12, 2005, and the process was available to all CLECs who had signed a BHC amendment to their ICA.

19 To “implement” means to put a plan or system into operation.⁵ Qwest’s BHC process was implemented and the systems that allowed orders to be placed and processed were operational as of December 31, 2004. Indeed, even though Tel West encountered some minor difficulty in its initial order attempts, the process was in operation, as shown by the fact that other CLECs’ orders were placed and processed only a few days into January 2005. Qwest resolved Tel West’s issues without changing or modifying the BHC process in any way.

20 In addition, it was through the established help desk process that Tel West was able to resolve its issue in a just over a week. It is somewhat puzzling that Tel West claims that it had problems with the BHC process in December 2004⁶, but waited until February 24, 2005 to open a ticket with the help desk. The help desk process is well-established, and through the help desk it was identified that there were two issues with Tel West’s orders – the CLLI code issue, for which Qwest had developed a work around, and which affected all CLECs in the affected central offices equally, and the USOC issue, which was resolved when the ordering USOCs for BHC were loaded for Tel West. Neither issue establishes that the BHC was not

⁵ <http://dictionary.cambridge.org/define.asp?key=39421&dict=CALD>

⁶ As explained in ¶ 8 above, the process would not have worked for Tel West in December 2004, because Tel West did not have a BHC amendment to its ICA and had no legal right to attempt to use the process. However, Tel West apparently did not know that, and believed it had identified problems with the process that it failed to call to Qwest’s attention.

implemented in a timely way.

21 “Implemented” means that the process is in place, as the BHC process was, and is operational, as the BHC process also was. Temporary difficulties in the use of the process do not affect the fact of its implementation. For example, if there were a legal requirement that the Commission “implement a teleconference bridge system” to allow telephonic participation in certain proceedings, the Commission could most assuredly establish that such system is implemented at the Commission. However, as all participants are aware, there are issues which may affect the operability and quality of the system on a day to day basis. Those issues, while they might even render the system unusable for a particular proceeding, do not create a situation where the system is “not implemented”. And that is the test here – was the process implemented? Qwest believes that the Declaration of Dennis Pappas establishes that it was, and the QPP rates were therefore properly imposed.

22 Answering paragraph 23 of the Petition, Qwest states that the QPP was not changed to delete the BHC language after January 1, 2005, even though the BHC process was implemented, because Qwest had made a decision to offer the identical agreement to all CLECs for a defined period of time (*see*, Attachment C to the Petition). The QPP agreement that Tel West signed contained the same language for versions executed both before and after December 31, 2004, in order that all CLECs be treated the same.

23 Answering paragraphs 24-27 of the Petition, Qwest denies that it has treated Tel West in a discriminatory manner or has treated any other CLEC in a preferential manner. The BHC process was available to all CLECs equally. All CLECs who had collocations in the same central office as Tel West did (Seattle Main), were affected by the CLLI code issue, and the same work-around solution would have been proposed to each one. With regard to the USOC issue, each CLEC is required to wait until USOCs are loaded before being able to place an

order – Tel West’s USOCs for the BHC process were loaded in a timely way, in the order in which each CLEC completed the necessary forms.

24 Answering paragraphs 28-30, Qwest denies any factual allegations in these paragraphs, and affirmatively states that in these paragraphs Tel West is refuting arguments that Qwest has not made. Qwest agrees that Tel West had a QPP agreement and a BHC amendment as of February 1, 2005 and that it is entitled to the terms of those agreements. The BHC process was implemented for all CLECs prior to that date, and Tel West is therefore obligated to pay the QPP rates.

VII. PRE-FILING NOTICE OF PETITION

25 Answering paragraph 31 of the Petition, Qwest states that Tel West did provide Qwest, in August of 2005, with a notice that it intended to file a petition for enforcement of its interconnection agreement. Tel West took no further action in that regard until it filed its Petition on December 8, 2005. As set forth above, Qwest denies that this matter is appropriately handled under the provisions of WAC 480-07-650, and asks that the Petition be converted to a Complaint under RCW 80.04.110, and that Qwest’s counterclaim be addressed in this proceeding as well.

VIII. REQUEST FOR DISCOVERY

26 Answering paragraph 32 of the Petition, Qwest states that it does not object to discovery in this matter. Qwest has conducted an investigation regarding the requested information and states that, other than the batch hot cut amendments, which are publicly available, Qwest has no documents or other information that is responsive to the requests.

IX. QWEST'S AFFIRMATIVE DEFENSES AND COUNTERCLAIM

- 27 Tel West's claims are barred by the statute of limitations.
- 28 Tel West's claims are barred by the doctrine of laches.
- 29 Qwest has billed Tel West for services that Tel West has received and Tel West has improperly and unlawfully withheld payment on various accounts as set forth in the Declaration of Elaine Maynard, attached to this Answer as Exhibit 3.
- 30 Tel West has failed to follow the billing dispute processes in Section 5.4 of its ICA and Section 8.4 of the QPP (the QPP was included as Attachment A to the Petition) and is in arrears on its payments to Qwest in the amount of \$286,452.11. Section 5.4 of Tel West's ICA is attached hereto as Exhibit 4.

X. PRAYER FOR RELIEF

- 31 Qwest asks the Commission to determine that this matter should not proceed under WAC 480-07-650 and convert this matter to a complaint proceeding. Qwest further asks the Commission to deny the relief requested in the Petition for the reasons set forth herein.
- 32 Qwest further asks that the Commission order Tel West to immediately pay Qwest the amount of \$ 286,452.11 to bring Tel West's accounts current.

DATED this 21st day of December, 2005.

QWEST

Lisa A. Anderl, WSBA #13236
Adam L. Sherr, WSBA #25291
1600 7th Avenue, Room 3206
Seattle, WA 98191
Phone: (206) 398-2500