

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PAC-WEST TELECOMM, INC.,)	
)	Docket No. UT-
Complainant,)	
)	COMPLAINT TO ENFORCE
v.)	NUMBER PORTABILITY
)	OBLIGATIONS
QWEST CORPORATION,)	
)	Expedited Consideration Requested
Respondent.)	
_____)

Pursuant to RCW 80.04.110 and WAC 480-07-305, Pac-West Telecomm, Inc. (“Pac-West”), brings the following Complaint against Qwest Corporation (“Qwest”), which Pac-West requests be considered on an expedited basis. In support of its Complaint, Pac-West alleges as follows:

PARTIES

1. Complainant. Pac-West is a corporation that has been registered and classified by the Commission as a competitive telecommunications company. Pac-West is authorized to provide switched and non-switched local exchange and long distance services in Washington.
2. 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

3. Commission Jurisdiction. The Commission has jurisdiction over this Complaint and Respondent Qwest pursuant to 47 U.S.C. §§ 251-52, RCW 80.04.110, RCW 80.36.610, and WAC 480-07-305.

BACKGROUND

4. Interconnection Agreement. Pac-West and Qwest are parties to the Local Interconnection Agreement Between [Qwest] and Pac-West Telecomm, Inc., for Washington. (“Interconnection Agreement” or “ICA”). The Interconnection Agreement is the result of Pac-West’s request, pursuant to 47 U.S.C. § 252(i), to opt into the Local Interconnection Agreement Between Qwest and Northwest Telephone, Inc., for Washington. The Commission approved the ICA on February 14, 2001, in Docket No. UT-013009.

5. Pac-West Bankruptcy. On April 30, 2007, the Pac-West debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 through 1330 (the “Bankruptcy Code”). Having negotiated a Plan of Reorganization with their major constituents, Pac-West had planned to emerge from bankruptcy early in November 2007. Qwest is the lone creditor of Pac-West still objecting to Pac-West’s Plan of Reorganization and has sought a delay in Pac-West’s emergence from bankruptcy.

6. The Dispute. Pac-West and Qwest’s dispute involves the status of the ICA. To eliminate the risk of liability associated with the Commission’s disposition of Pac-West’s Petition for Enforcement of Interconnection Agreement in Docket No. UT-053036, Pac-West notified Qwest on or about October 24, 2007, that Pac-West intended to exercise its rights under Section 365 of the Bankruptcy Code to reject the ICA and opt into another interconnection agreement. Qwest opposed Pac-West’s plan, taking the position that if Pac-West rejected the ICA, Qwest would terminate all existing services that Qwest provides to Pac-West, including all interconnection (which includes E-911) and other services on which Pac-West relies to provide telecommunications service to its customers. In an act of good faith and in an effort to minimize

the disruption to its customers and its operations, Pac-West subsequently notified Qwest on or about November 2, 2007, that Pac-West would not reject but would assume the ICA. Qwest, however, continues to oppose Pac-West's plan to emerge from bankruptcy, claiming that Qwest lacks adequate assurance that Pac-West will satisfy any outstanding or contingent liabilities under the ICA, in particular making any payments required by the Commission in Docket No. UT-053036 and that such contingent liabilities must be paid upon Pac-West's emergence from bankruptcy. That issue is pending before the bankruptcy court.

7. Qwest Actions. As part of its response to Pac-West's now-withdrawn notice of intent to reject the ICA, Qwest began to refuse to process new orders for services or trouble tickets for existing services. At approximately the same time Qwest also blocked Pac-West's access to the interface through which Pac-West submits requests to port local telephone numbers from Qwest customers. Local number portability ("LNP") requests are not orders for service, do not incur a charge, and are initiated by end-users, not carriers. Qwest's action effectively stopped end-users throughout Qwest's multi-state footprint, including in the state of Washington, from choosing to port their telephone numbers to Pac-West or its wholesale customers.

8. Qwest's Continued Refusal to Port Numbers. Qwest continues to block Pac-West's access to the interface through which Pac-West submits LNP requests to Qwest and declines to otherwise honor requests from Pac-West to port local telephone numbers in Washington. Qwest thus is refusing to provide number portability to its Washington customers who choose to obtain service from Pac-West or its wholesale customers.

9. Pac-West Compliance with Applicable Law. Pac-West continues to provide service to its customers in Washington. Pac-West also continues to honor its obligations under

the ICA and applicable law. Pac-West is paying for all services it receives from Qwest under the ICA in advance of receiving those services, and Pac-West is not in breach of any other obligation under that agreement.

10. Resulting Harm to Pac-West. Qwest's blocking of Pac-West's access to the electronic interface through which Pac-West submits LNP requests to Qwest and Qwest's refusal to otherwise honor requests from Pac-West to port local telephone numbers from Qwest customers is causing irreparable harm to Pac-West. Customers who will not obtain service from Pac-West or its wholesale customers are delaying or refusing to obtain such service as long as Qwest continues to refuse to port their telephone numbers. Qwest's refusal to port customer telephone numbers thus results in financial damage to Pac-West and damages Pac-West's relationship with its existing wholesale customers and Pac-West's business reputation. Such damage is severely worsening with each day that Qwest refuses to port customer telephone numbers.

CAUSES OF ACTION

A. **Breach of Interconnection Agreement.**

11. Reallegations. Pac-West incorporates the allegations in paragraphs 1-10, as if fully set forth herein.

12. ICA Number Portability Requirement. Section (F)2.1 of the Interconnection Agreement provides in relevant part as follows:

Upon Implementation of Local Number Portability (LNP) pursuant to FCC regulations, both Parties agree to conform and provide such LNP. Both Parties will also conform to LNP industry, Western Region and state guidelines and agreements.

13. Qwest Breach of ICA. Qwest's blocking of Pac-West's access to the electronic interface through which Pac-West submits LNP requests to Qwest and Qwest's refusal to honor requests from Pac-West to port local telephone numbers from Qwest customers is a breach of the Parties' Interconnection Agreement.

B. Violation of Commission Rule

14. Reallegations. Pac-West incorporates the allegations in paragraphs 1-9, as if fully set forth herein.

15. Commission Number Portability Rule. WAC 480-120-146 provides in relevant part as follows:

When a customer migrates from one local exchange company (LEC) to another, where applicable, the carriers involved must perform local number portability (LNP) in compliance with the Federal Communications Commission (FCC)-approved method and time frame for disconnecting that service following the scheduled port under Title 47, Chapter I, Part 52.26 of the Code of Federal Regulations. Part 52.26 adopts the North American Numbering Council (NANC) recommendations on local number portability administration, "Working Group Report" with certain qualifications and additions.

16. Qwest Violation of Commission Rule. Qwest's blocking of Pac-West's access to the electronic interface through which Pac-West submits LNP requests to Qwest and Qwest's refusal to honor requests from Pac-West to port local telephone numbers from Qwest customers is a violation of WAC 480-120-146.

C. Violation of Federal Law

17. Reallegations. Pac-West incorporates the allegations in paragraphs 1-9, as if fully set forth herein.

18. Statutory Number Portability Provision. The federal Telecommunications Act of 1996 (“Act”) imposes on all local exchange carriers “[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC].” 47 U.S.C. § 251(b)(2).

19. FCC Requirements. The FCC has established requirements for number portability pursuant to the Act in 47 C.F.R. §§ 52.20-33. Specifically, the FCC requires that “all local exchange carriers (LECs) must provide number portability in compliance with [specified] performance criteria.” *Id.* § 52.23(a).

20. Qwest Violation of Federal Law. Qwest’s blocking of Pac-West’s access to the electronic interface through which Pac-West submits LNP requests to Qwest and Qwest’s refusal to honor requests from Pac-West to port local telephone numbers from Qwest customers is a violation of 47 U.S.C. § 251(b)(2) and 47 C.F.R. §§ 52.20-33.


PRAYER FOR RELIEF

WHEREFORE, Pac-West prays for the following relief:

- A. An order from the Commission requiring that Qwest comply with the LNP requirements in the Interconnection Agreement, WAC 480-120-146, and federal law;
- B. Assessment of penalties for Qwest’s willful violation of WAC 480-120-146 in the amount of \$1,000 per telephone number requested to be ported per day that Qwest refused to port that number as authorized under RCW 80.04.380; and
- C. Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

DATED this 9th day of November, 2007.

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By  _____
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