

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

TEL WEST COMMUNICATIONS, LLC., )	)	DOCKET NO. UT-013097
)	
Petitioner, )	)	SECOND SUPPLEMENTAL
	)	ORDER; PREHEARING
v. )	)	CONFERENCE ORDER;
	)	DENYING MOTION TO
QWEST CORPORATION, INC., )	)	STRIKE; GRANTING
	)	REQUEST TO FILE
Respondent. )	)	AMENDED ANSWER;
	)	NOTICE OF PREHEARING
	)	CONFERENCE
	)	(February 7, 2002 at 1:30 p.m)
.....)		

- 1 Docket No. UT-013097 is a proceeding for enforcement of an interconnection agreement between Tel West Communications, LLP (“Tel West”) and Qwest Corporation, Inc. (“Qwest”) pursuant to WAC 480-09-530.
- 2 The Commission convened a Prehearing Conference in this docket at Olympia, Washington on January 11, 2002, at Olympia, Washington before Administrative Law Judge Lawrence J. Berg, the presiding officer. The purpose of the prehearing conference was to review the procedural provisions of WAC 480-09-530, to consider formulating the issues in the proceeding, and to determine other matters to aid in its disposition, including whether to convert the proceeding, in whole or in part, to a complaint proceeding under RCW 80.04.110.
- 3 **Appearances.** Brooks Harlow and David Rice, Miller Nash, LLP, Seattle, Washington, represent Tel West. Adam Sherr and Lisa Anderl, corporate counsel, Seattle, Washington, represent Qwest.
- 4 **Qwest’s Motion to Strike.** Tel West on January 11, 2002, filed its Amended Petition stating five claims based on Qwest’s alleged failure to comply with the parties’ interconnection agreement.. On January 22, 2002, Qwest filed its Answer to Tel West’s petition and also filed a motion to strike numerous allegations. Qwest states that it did not specifically respond to the objectionable allegations and requested that it be allowed to file additional responses if the Commission denies the motion or converts this proceeding to a general complaint proceeding.
- 5 As part of an agreement between the parties, Tel West agrees to strike the sentence in paragraph 15 of the Amended Petition at page 5, line 7, that begins with “[i]n

addition,” and continues to the end of line 9. Qwest agrees to withdraw its motion to strike that specific language. Neither party has agreed to waive any right that they have to offer evidence regarding the matters stricken, nor has any party waived the right to object to such an offer.

- 6 The presiding officer and the parties discussed the nexus between Qwest’s motion to strike and the Commission’s discretion to convert the proceeding. The motion was taken under advisement and Tel West agreed to file its response to the motion on January 25, 2002.
- 7 Qwest’s motion is based on Tel West’s reference in the Amended Petition to supporting data that predates the effective date of the current interconnection agreement. In 1998, Tel West entered into a resale agreement (“First Agreement”) with Qwest in Washington. The First Agreement expired on August 1, 2001, but remained in effect pending the approval of a new agreement. Qwest and Tel West negotiated a new interconnection and resale agreement (“Current Agreement”) that was approved on October 31, 2001, in Docket No. UT-013086.
- 8 Qwest argues that a WAC 480-09-530 proceeding (a “Section 530 Adjudication”) is reserved for disputes that arise under existing interconnection agreements as a matter of law and policy. Because Tel West either seeks remedies for violations of the First Agreement, or relies on acts occurring during the First Agreement to prove violations of the Current Agreement, Qwest argues that certain allegations are outside the scope of a Section 530 Adjudication. According to Qwest, the truncated and expedited process of a Section 530 Adjudication imposes undue burdens on its ability to fully and fairly respond to Tel West’s claims.
- 9 Tel West responds that its claims are based on ongoing violations and that Qwest’s duties are virtually the same under both agreements. According to Tel West, the majority of relief it seeks is prospective and what little retrospective relief Tel West seeks is proper for ongoing violations that span two agreements. Tel West also argues that, for certain purposes, the First Agreement continues to be enforceable under its own terms. Further, Tel West argues that the Commission is not prohibited from applying WAC 480-09-530 procedures to enforce an agreement that has been superseded where the obligations of the first agreement survive and are enforceable.
- 10 Qwest’s concerns regarding the application of WAC 480-09-530 for the enforcement of obligations under agreements that have been amended or superseded are justified. The Section 530 Adjudication process anticipates that parties will require expedited resolution of disputes arising under their current agreements. However, allegations of ongoing violations spanning more than one agreement may require that the Commission consider past activity in order to determine whether prospective relief is warranted, particularly where the current agreement has just recently been made effective.

- 11 While the Section 530 Adjudication process does not anticipate that parties will require expedited resolution of disputes arising under expired agreements, these claims may be addressed under WAC 480-09-530 for purposes of administrative efficiency. The determination of whether the Section 530 Adjudication process is appropriate to resolve disputes between parties regarding the enforcement of interconnection agreements is subject to the broad discretion of the presiding officer.
- 12 The objections raised by Qwest are procedural in nature, and Qwest does contend that Tel West is estopped from presenting its allegations in a general complaint proceeding. Tel West's claim that violations are of an ongoing nature – and that the same obligations are present in both of the parties' agreements – requires consideration of Qwest's performance and conduct prior to the effective date of the Current Agreement. It would conflict with WAC 480-09-530 if there were a waiting period before a party could petition for expedited resolution of disputes arising under an interconnection agreement. There is no difference between reviewing performance that spans two agreements and performance that coincides with the effective date of a current agreement in order to decide whether an ongoing violation is occurring.
- 13 Accordingly, Qwest's Motion to Strike is denied, but the parties' arguments are further considered regarding whether the proceeding, in whole or in part, should be converted into a complaint proceeding under RCW 80.04.110.
- 14 **Conversion of Proceedings.** WAC 480-09-530 (5)(a) confers broad discretion on the presiding officer to conduct the proceeding in a manner that best suits the petition, including, but not limited to, converting the proceeding into a complaint proceeding under RCW 80.04.110.¹ The number of claims stated in the Amended Petition and their apparent complexity presents a procedural challenge under the expedited procedures of a Section 530 Adjudication.
- 15 The Commission acknowledges and supports both Tel West's need for resolution of its claims as soon as possible and Qwest's right to an opportunity to fully and fairly respond to the allegations. Tel West, as a complainant, has a procedural advantage to the extent that it was able to choose when to file its petition and to prepare its case in advance. Both parties agree that they must conduct discovery before a hearing can be conducted. Qwest agrees that one of Tel West's claims -- whether Tel West must accept Qwest's operator services and directory assistance ("OS/DA") as part of Tel West's resold local Exchange Service lines -- is appropriate for a Section 530 Adjudication.

¹ It should also be noted that the Commission has authority to conduct general complaint proceedings on a relatively expedited schedule.

- 16 It is apparent from the Amended Petition that one of Tel West's other claims – whether Qwest has timely processed billing disputes – is related to the OS/DA claim. The other three claims are based on the premise that Qwest is conferring an undue advantage on itself. While the first two claims – OS/DA and billing disputes – appear to require little, if any, testimony and may be susceptible of submission on a paper record, the other three claims are based on more complex provisioning issues.
- 17 Based on the number of claims presented and their relative complexity, it is not appropriate to proceed under Tel West's proposed schedule. However the Section 530 Adjudication process would be administratively efficient and would allow the parties adequate opportunity to conduct discovery and prepare for hearings if presentation of the issues are bifurcated. Tel West's first preference is that all claims be heard together as soon as possible, but alternatively states that resolution of its OS/DA and billing dispute claims are paramount.
- 18 In light of the need for expedient resolution of Tel West's claims, the proceeding will not be converted into a complaint proceeding under RCW 80.04.110. However, in light of the number of claims, their relative complexity, and Qwest's right to fully and fairly respond to the allegations, presentation of Tel West's claims are bifurcated; the OS/DA and billing dispute claims will be heard in early-March, and the provisioning claims will be heard in April, at the earliest. Separate recommended decisions will be made on the two sets of claims under WAC 480-09-530 (5) and (6). A prehearing conference is noticed in this order to develop a more detailed schedule.
- 19 **Qwest's Request to File an Amended Answer.** Qwest's request to further respond to the allegations objected to in its motion to strike is granted. Qwest must file its amended answer on or before Thursday, February 7, 2002, at noon.

Notice of Prehearing Conference

- 20 **NOTICE IS HEREBY GIVEN That a prehearing conference will be held at 1:30 p.m. on Thursday, February 7, 2002, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**
- 21 The purpose of the conference is to develop a bifurcated procedural schedule, to discuss the need for prefiling evidence and cross-examining witnesses, to consider objections to pending data requests, and to address any other procedural matters that may require attention.

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NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this document, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.

Dated at Olympia, Washington and effective this 31st day of January, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAWRENCE J. BERG
Administrative Law Judge