

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THE LUMMI NATION,
Complainant,

v.
VERIZON NORTHWEST INC.,
QWEST CORPORATION,
Respondents

Docket No. UT-060147

QWEST CORPORATION'S REPLY TO
LUMMI'S RESPONSE TO MOTIONS
FOR SUMMARY DETERMINATION

- 1 Qwest Corporation ("Qwest") hereby files this Reply to the Response to Motions for Summary Determination filed by the Lummi Nation ("Lummi"). For the reasons set forth in the Motions for Summary Determination filed by Qwest and by Verizon Northwest Inc. on April 6, 2006, the Commission should dismiss the complaint as to Qwest.¹
- 2 Lummi claims that a six-year statute of limitations applies to a claim brought under RCW 80.04.440 and WAC 480-120-161. As set forth below, Qwest disagrees with that assertion and

¹ As noted in Qwest's Motion, if this matter were to go to hearing, Qwest would deny, and Complainant would be unable to prove, the allegations regarding whether Qwest failed to notify Verizon (then GTE) of a disconnection, or even that Qwest had an obligation to do so. However, for purposes of this motion only, Qwest will not dispute those allegations.

believes that the longest statute of limitations that could apply is two years. Nevertheless, even if the statute is a six-year period, Lummi has not alleged, and cannot prove, that any action or inaction by Qwest giving rise to a cause of action took place within the six years prior to the filing of the complaint. Indeed, Lummi's Response is absolutely silent as to why Qwest should remain a party. Because Lummi has not disputed Qwest's Motion, or asserted that material facts remain with regard to the dispute as to Qwest, the Complaint should be dismissed as to Qwest.

3 The simple fact is, as established by the allegations in the Complaint, any relevant action that Qwest did or did not take, or should or should not have taken, occurred at least 10 years ago, in 1995 or earlier. As such, any claim premised on those allegations is barred by the applicable statute of limitations, as set forth in RCW 80.04.240. That statute is applicable as argued in the original Motions filed herein, and Qwest will not repeat those arguments. In brief response to the Lummi's argument that RCW 80.04.230 and .240 only apply if service was actually provided, Qwest believes that Lummi misreads those statutes – those statutes are clearly intended to apply to any action for refunds.² Further, given the Lummi's absolute lack of records on this issue, it seems unlikely in the extreme that any proof will be forthcoming to the effect that no service was ever provided.

4 Nor does RCW 80.04.440 create a right of action with a six-year statute of limitations. First, and most importantly, Lummi does not have a right to bring an action before the Commission under RCW 80.04.440. The statute itself is clear, allowing an action to be brought only in court.³ Thus, any reliance on that statute is misplaced. And, the Commission itself has

² See, *Hopkins v. GTE Northwest, Inc.*, 89 Wn. App. 1, 947 P.2d 1220 (1997)

³ RCW 80.04.440 provides as follows: "In case any public service company shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by any law of this state, by this title or by any order or rule of the commission, such public service company shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery if the court shall find that such act or omission was wilful, it may, in its discretion, fix a reasonable counsel or attorney's fee, which shall be taxed and collected as part of the costs in the case. An action to recover for such loss, damage or injury may be *brought in any court of competent jurisdiction* by any

acknowledged that it does not have the right to award damages, further confirming the inapplicability of this statute.⁴ Second, Qwest does not agree with Lummi's characterization of this dispute as one involving an "account receivable," but will defer to Verizon's argument on that issue.

5 Qwest requests an order of this Commission dismissing Complainant's Complaint as barred by the statute of limitations.

DATED this 5th day of May, 2006.

QWEST

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person or corporation."

This provision clearly limits the right of action to an action brought in court, not before the Commission.

⁴ See, *AT&T v. Verizon*, Docket No. UT-020406, 11th Supp. Order, ¶ 34, citing *Hopkins v. GTE Northwest, Inc.*, 89 Wn. App. 1, 947 P.2d 1220 (1997); RCW 80.04.440.