

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF)	DOCKET NO. UT-051682
THE PACIFIC NORTHWEST, INC.,)	
TCG SEATTLE, AND TCG OREGON;)	
AND TIME WARNER TELECOM OF)	ORDER NO. 03
WASHINGTON, LLC,)	
)	
Complainants,)	INITIAL ORDER GRANTING
)	QWEST'S MOTION FOR
v.)	SUMMARY DETERMINATION;
)	DISMISSING COMPLAINT
QWEST CORPORATION,)	
)	
Respondent.)	
.....		

Synopsis: This initial order would grant Qwest's motion for summary determination on grounds that the complaint was not filed within the applicable statute of limitations and would dismiss the complaint.

I. INTRODUCTION

1 **Nature of Proceeding.** Docket No. UT-051682 involves a complaint filed by competitive local exchange carriers (CLECs) AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon (collectively, AT&T) and Time Warner Telecom of Washington, LLC (Time Warner) against Qwest Corporation (Qwest) alleging that Qwest charged the complainants more for certain telecommunications facilities and services from Qwest than Qwest charged other CLECs under various unfiled agreements with those CLECs, and that this practice violated federal and state laws.

2 **Appearances.** Gregory J. Kopta, attorney, Seattle, represents AT&T and Time Warner. Lisa A. Anderl, attorney, Seattle, represents Qwest.

3 **Background.** The chief issue in this complaint is whether Qwest owes complainants compensation for alleged overcharges for services covered under their interconnection agreements with Qwest. Qwest had entered into unfiled interconnection agreements with various other CLECS which offered lower charges for the same services as Qwest provided to complainants. AT&T and Time Warner seek compensation from Qwest for the amount they paid for services above what they allegedly would have paid had they been able to adopt the terms of these unfiled agreements.¹

4 The unfiled interconnection agreements at the center of this dispute were those between Qwest and Eschelon Telecom (Eschelon)² and between Qwest and McLeodUSA Telecommunications Services, Inc. (McLeodUSA).³ Among the terms of these agreements was a provision granting a 10% discount on all intrastate telephone services.⁴ These agreements were not initially filed with any state regulatory commission and were not made public. On March 12, 2002, the Minnesota Department of Commerce filed a complaint against Qwest with the Minnesota Public Utilities Commission (MPUC) regarding the existence of these

¹ 47 U.S.C. 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."

² The complaint (¶ 6) alleges that Qwest "entered into a series of interconnection agreements with Eschelon" beginning on or about February 2000. Qwest states that the only agreement with Eschelon containing a discount or lower rate was signed November 15, 2000. (Qwest Motion, ¶ 6; *see also*, Attachment to Amended Complaint, Docket No. UT-033011, Agreement 4A, Appendix A to this Order).

³ The complaint (¶ 7) alleges that the McLeodUSA agreements were entered into beginning on or about April 2000. The list of agreements attached to the Amended Complaint in Docket UT-033011 (*see* Appendix A to this order) shows two McLeodUSA agreements dated April 28, 2000 and October 21, 2000.

⁴ *See*, Attachment 5 to Qwest's Reply to AT&T/Time Warner Opposition to Motion, p. 2; Attachment 6, p. Q110423, ¶ 3.

unfiled agreements.⁵ Qwest filed the agreements with the Minnesota Commission on March 13, 2002.⁶ Time Warner Telecom of Minnesota, LLC, filed comments in the MPUC proceeding on January 21, 2003 stating that the 10% discount contained in the unfiled Eschelon agreement should be available to Time Warner.⁷

5 In the meantime, in Washington, Qwest was pursuing its request to provide long distance service under 47 U.S.C. 271 (271 proceeding).⁸ In May 2002, AT&T brought to the Commission's attention the matter of the MPUC unfiled agreements proceeding, raising the issue whether such agreements existed in Washington.⁹ The Commission declined to consider the unfiled agreements allegations in the 271 proceeding, stating that the issue would be better addressed in another proceeding.¹⁰ The Commission entered its final order in the 271 proceeding on July 15, 2002.¹¹

6 On August 14, 2003¹² the Commission opened Docket No. UT-033011, the unfiled agreements docket. Attached to the Amended Complaint filed by Commission Staff was Exhibit A, a list of interconnection agreements Staff alleged that Qwest had failed to file with the Commission, or failed to file in a timely manner.¹³ Eschelon agreements numbered one through six on the list had been provided

⁵ *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Docket No. P-421/C-02-197.

⁶ Qwest Reply to AT&T/Time Warner Opposition, Attachment 1; Qwest Motion, Exhibit 1, p. 3.

⁷ Qwest Motion, Exhibit 3, p. 4-5.

⁸ *In re Investigation into Qwest's Compliance with Section 271(C)*, Docket No. UT-003022. This proceeding commenced on March 30, 2000. A final order was entered on July 15, 2002.

⁹ AT&T/Time Warner Opposition, ¶3.

¹⁰ Docket No. UT-003022, 40th Supp. Order, ¶ 7 (July 15, 2002). The Commission stated it would "establish a docket to allow Qwest to continue to file any unfiled agreements or amendments to interconnection agreements, and would discuss how the Commission would address the agreements within the docket."

¹¹ *Id.*

¹² On August 14, 2003, Commission Staff filed the Complaint opening the unfiled agreements proceeding but immediately thereafter, on August 15, 2003, filed an Amended Complaint.

¹³ *See*, Appendix A to this order.

non-confidentially in the Commission's 271 proceeding on April 18, 2002.¹⁴ The Eschelon agreement containing the 10% discount (Agreement No. 4 on Appendix A to this order) had been provided publicly in Minnesota in April 2002.¹⁵ The actual agreements listed in the attachment to the Amended Complaint were made public in the Washington unfiled agreements as attachments to Staff's testimony in the case on June 8, 2004.¹⁶

7 AT&T was a named respondent in the Washington unfiled agreements case. Time Warner intervened in the proceeding. Time Warner filed testimony stating that under RCW 80.04.220 and 80.04.230 (reparations statutes) it should be compensated for the higher rates it had been required to pay because it was not able to adopt the Eschelon unfiled agreement. Qwest filed a motion to strike the testimony, arguing among other things that Time Warner's request for this relief was time-barred.

8 In its October 22, 2004 ruling on Qwest's motion to strike, the Commission did not reach the time-bar issue, but granted Qwest's motion to strike this testimony on grounds that the remedy requested was not within the scope of the Amended Complaint, stating that the reparations statutes "are not pure remedy statutes but require a party to file a pleading – a complaint – with the Commission asserting the claim of unreasonable rates or overcharges."¹⁷

9 AT&T and Time Warner filed their complaint initiating this proceeding on November 4, 2005.

10 **Motion for Summary Determination or Dismissal.** Qwest styles its motion as a motion for summary determination or dismissal. Motions for summary determination are governed by WAC 480-07-380(2) and Court Rule 56(c). WAC 480-07-380(2) provides that considering the pleadings filed and any properly

¹⁴ Qwest Reply to Opposition, ¶ 7.

¹⁵ *Id.*

¹⁶ AT&T/Time Warner Opposition, ¶ 8-9.

¹⁷ Docket No. UT-033011, Order No. 15, October 22, 2004, ¶ 80.

admissible evidentiary support, the Commission may grant a motion for summary determination if there is “no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”

11 Motions to dismiss are governed by WAC 480-07-380(1) which provides that the Commission may dismiss a claim or a case if the party’s pleading fails to state a claim on which the commission may grant relief. If a party presents an affidavit or other material in support of its motion to dismiss, not excluded by the Commission, the rule states that the Commission “will treat the motion as one for summary determination.”

12 Qwest filed with its motion and with its reply to AT&T’s opposition to the motion copious additional supporting materials. In light of Qwest’s “other material filed in support of its motion,” which AT&T has not requested be excluded from Commission review, it is appropriate to treat Qwest’s motion as one for summary determination. Therefore, this order will determine whether Qwest is entitled to relief “as a matter of law.”

13 Qwest’s primary contentions are: 1) that AT&T and Time Warner waited too long to file their complaint and that as a matter of law, their complaint is barred under the limitation period set forth in the reparations statutes; and 2) that the Commission does not have authority to grant the relief requested. The issues that arise out of Qwest’s motion are addressed in more detail below.

II. MEMORANDUM

A. Are complainants’ claims barred by statutory limitation periods contained in RCW 80.04.240?

14 RCW 80.04.220¹⁸ and RCW 80.04.230,¹⁹ the two statutory reparations provisions, govern requests for relief from overcharges or unlawful rates. RCW 80.04.240 relates back to these two statutory provisions and states in part:

All complaints concerning overcharges resulting from collecting unreasonable rates and charges or from collecting amounts in excess of lawful rates shall be filed with the commission within *six months* in cases involving the collection of unreasonable rates and *two years* in cases involving the collection of more than lawful rates *from the time the cause of action accrues.*" (Emphasis added).

Under the limitations provisions, the Commission has to determine: 1) when complainants' cause of action accrued and 2) whether the six-month or the two-year time bar applies to the complaint.

1. When did complainants' cause of action accrue?

15 Qwest contends that complainants' claim for reparations accrued when they discovered (or should by exercise of reasonable diligence have discovered) their

¹⁸ RCW 80.04.220. When complaint has been made to the commission concerning the reasonableness of any rate, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission has determined that the public service company has charged an excessive or exorbitant amount for such service, and the commission has determined that any party complainant is entitled to an award of damages, the commission shall order that the public service company pay to the complainant the excess amount found to have been charged, whether such excess amount was charged and collected before or after the filing of said complaint, with interest from the date of the collection of said excess amount.

¹⁹ RCW 80.04.230. When complaint has been made to the commission that any public service company has charged an amount for any service rendered in excess of the lawful rate in force at the time such charge was made, and the same has been investigated and the commission has determined that the overcharge allegation is true, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, whether such overcharge was made before or after the filing of said complaint, with interest from the date of collection of such overcharge.

right to apply for relief.²⁰ Qwest argues that complainants' discovery of their right to apply for relief occurred on March 12, 2002 when the Minnesota Commission published public notice of its decision to commence an unfiled agreements proceeding.²¹

16 Qwest cites other possible dates that could be recognized as dates for accrual of complainants' claims. These dates include: June 2002 when Qwest provided the agreements to the Washington commission in the Qwest 271 case; January 21, 2003 when Time Warner argued in the Minnesota case that it should receive the benefit of the 10% discount included in the Eschelon agreement; September 8, 2003, when AT&T and Time Warner attended the prehearing conference in the Washington Commission's unfiled agreements case.

17 AT&T and Time Warner respond that the earliest they could reasonably have known they had a claim for relief was June 8, 2004 when Staff made public the agreements in the Washington unfiled agreements case.²² Complainants contend that only then could they have had sufficient access to the agreements to enable them to file a complaint. Complainants assert they could not have used the Minnesota agreements as a basis for filing a complaint in Washington; that the Commission cannot impute their Minnesota affiliates' knowledge of the agreements to complainants in Washington; and that documents filed in Qwest's Washington 271 case were confidential and limited to that case alone.²³

18 **Discussion and decision.** The Commission must determine on which date complainants claim for compensation accrued. The courts have held that: "The statute of limitations on an action 'does not begin to run until the cause of action accrues – that is, when the plaintiff has a right to seek relief in the courts

²⁰ *Janicki Logging and Construction Company, Inc. v. Schwabe, Williamson & Wyatt, P.C.*, 109 Wash. App. 655, 659, 37 P. 3d 309 (2001); *see also*, Qwest Motion, ¶ 6..

²¹ Motion, ¶ 6-9.

²² The agreements were attached as exhibits to Staff testimony; *see*, AT&T/Time Warner Opposition, ¶ 9.

²³ AT&T/Time Warner Opposition, ¶ 7-10.

[citations omitted]' ...[when] the client 'discovers, or in the exercise of reasonable diligence should have discovered the facts which give rise to his or her cause of action.' [citations omitted]...This rule does not require that a plaintiff have knowledge of the cause of action itself; rather, only the 'facts' that give rise to that cause of action must be known to start the running of the statute...[Citations omitted] Still the facts supporting each of the essential elements of the cause of action...must be known before the statute begins to run."²⁴

19 This order would find that complainants are correct. Until June 8, 2004, when the unfiled agreements were made public in the Commission's unfiled agreements proceeding, complainants did not have available the facts that would have supported a cause of action in Washington. The fact that there were unfiled agreements in Minnesota does not signify that those agreements would have supported the basis for a claim in Washington.

20 In Washington, the complainants called to the Commission's attention the possibility of unfiled agreements during the pendency of Qwest's 271 proceeding. However, the Commission declined to consider the unfiled agreements in that proceeding, but stated that it would open a separate proceeding to consider the issue.²⁵ Thus, the fact of the existence of unfiled agreements was not acknowledged until the Commission commenced its investigation of the issue in August 2003.

21 Until June 8, 2004, the agreements were not public, even in the unfiled agreements proceeding. Although a list of the agreements was attached to the Amended Complaint in that proceeding, the agreements themselves were not disclosed until the Staff filing on June 8, 2004. Although complainants might have requested that the Commission immediately disclose the agreements, it is speculative as to when that request would have been granted. Therefore, June 8,

²⁴ Janis at 659-660.

²⁵ Docket No. UT-003022, 40th Supplemental Order, July 15, 2002.

2004 is the date most appropriate from which to measure whether the complaint was filed within the statutory time period.

2. Which limitation period applies to complainants' claim for relief?

22 Qwest asserts that all of the dates it identifies for accrual of a cause of relief are more than two years from the November 4, 2005 date when this complaint was filed, and thus the complaint is barred by both the six-month and the two-year limitation periods established in RCW 80.04.240.²⁶ Qwest contends that in any event, the six-month provision is the proper limitation period because it pertains to "overcharges," whereas the two-year limitation period pertains to unlawful rates. Qwest asserts that because complainants have at all times paid lawful rates established in approved interconnection agreements, the two-year limit does not apply.²⁷

23 AT&T and Time Warner assert that the two- year limitation period related to unlawful charges under RCW 80.04.230 is the appropriate period.²⁸ Complainants argue that they were entitled to pay the same rates and discounts that were available under the Eschelon and McLeod agreements. They point out that the Commission unequivocally held that Qwest had violated anti-discrimination laws and the statutory requirement for filing such agreements with the state commission by failing to make public and to file the agreements that contained Eschelon and McLeod rates and discounts.²⁹ Therefore, complainants claim their approved rates could not be considered "lawful."³⁰

24 **Discussion and decision.** This order concludes that complainants should have filed a complaint within six months of the date their cause of action accrued, June 8, 2004. The six-month limitation period applies to claims for overcharges. The

²⁶ Qwest Motion, ¶ 11.

²⁷ *Id.*, ¶ 22-23.

²⁸ AT&T/Time Warner Opposition, 9.

²⁹ *Id.*, ¶ 5.

³⁰ *Id.*, ¶ 16.

two-year limitation period applies to unlawful rates. The rates complainants paid under their interconnection agreement with Qwest were lawful, approved rates. Complainants' cause is more accurately identified as a claim of overcharge, since they point to something outside their interconnection agreements – transactions that were not properly filed and approved by the Commission – as support for what they should have been charged.

25 On June 8, 2004, the complainants had all the information they needed to file a complaint under the Washington reparations statute concerning the alleged overcharges. Even if the Commission were to consider as an alternative accrual date October 22, 2004, the date upon which the Commission explicitly advised complainants of the requirement to file such a complaint, the six-month limitation would still apply and would still bar their claim. Complainants are sophisticated in the Commission's procedures and knowledgeable about the requirements of the reparations statutes. Their experienced legal counsel should have known that they needed to file a complaint within six months to fall within the statutory time bar. Instead they waited until November 2005, almost two years.

3. Was the limitation period equitably tolled?

26 Complainants also assert that even if the earlier accrual dates identified by Qwest should be found to apply, the two-year limitation period was equitably tolled during the pendency of the unfiled agreements litigation.³¹ Complainants contend that Washington and federal courts have found equitable tolling proper "when extraordinary forces, rather than plaintiff's lack of diligence, account for the failure to timely file a claim."³²

³¹ AT&T/Time Warner Opposition, ¶ 9-12.

³² *Seattle Audubon Society v. Robertson*, 931 F 2d 590, 596 (9th Cir. 1991). Plaintiffs claimed that the 15-day limitation period at issue should be tolled during the time that their constitutional challenge to the law was pending.

- 27 Complainants point out that they tried to persuade the Commission to investigate the unfiled agreements during the pendency of Qwest's 271 proceeding but the Commission declined. Then, during the unfiled agreements proceedings, which complainants believed were broad enough in scope to encompass their claims for specific relief, complainants found that the Commission held a different view about the scope of the case and ruled that complainants needed to file complaints specifically alleging violations of the reparations statutes in order to advance their claims for relief.³³
- 28 Complainants calculate that if the Commission should determine that their cause accrued in June 2002, tolling the limitation period during the pendency of the two dockets would mean that only 21 months had elapsed before they filed their complaint.³⁴
- 29 **Discussion and decision.** This order concluded that complainants' cause of action accrued on June 8, 2004 and that the six-month limitation period applies, thus barring the complaint. Should the Commission conclude otherwise upon review, this order would recommend rejecting complainants' argument that their claim is timely due to equitable tolling.
- 30 The fact that complainants relied on their view of the scope of the unfiled agreements proceeding to their detriment is not the type of extraordinary circumstance sufficient to permit equitable tolling. Complainants were aware under which specific statutory provisions Commission Staff filed the Amended Complaint in that proceeding. The Amended Complaint asserted seven specific causes of action, both in federal and state law. None of the stated causes of action included RCW 80.04.220 or RCW 80.04.230. Complainants relied on the catchall section of the Amended Complaint as the basis for their requests for relief in that proceeding: "To make such other determinations and enter such

³³ AT&T/Time Warner Opposition, ¶ 11,

³⁴ From June 2002 to November 2005 is 41 months. Subtracting approximately six weeks for the Section 271Docket (which ended July 15, 2002) and 18 and a half months for the unfiled agreements case (final order February 25, 2005) leaves 21 months.

orders as may be just and reasonable.”³⁵ The Commission declined to grant their requests on grounds the record was insufficient and because the reparations statutes explicitly require that a complaint be made to the Commission concerning the overcharges or unlawful rates complained of.³⁶ The Commission held that to honor a request for reparations would have required the filing of an amended complaint alleging violations of those specific statutes.³⁷

31 Complainants, sophisticated in the ways of the Commission and familiar with the provisions of the reparations statutes, should have immediately filed a separate complaint under the reparations statutes or sought an amendment to the complaint that initiated the unfiled agreements case. This order would propose that the pendency of the litigation on the unfiled agreements was not an extraordinary circumstance permitting equitable tolling of the applicable limitation period.

4. Does the six-year statute of limitations in RCW 4.16.040(1) apply to the complaint?

32 RCW 4.16.040 provides a six-year limitation on actions on “a contract in writing, or liability express or implied arising out of a written agreement.”

33 Complainants argue that the Commission should apply this six-year statute of limitations because Qwest breached their written interconnection agreements which included “most favored nation” provisions requiring Qwest to make available terms and conditions of other interconnection agreements.³⁸ Complainants contend that this obligation in the interconnection agreements is the same obligation imposed by the Telecommunications Act of 1996 and Washington statutes that the Commission found Qwest had violated.³⁹

³⁵ Docket No. UT-033011, Amended Complaint, ¶ 49.

³⁶ *Id.*, Order No. 15, ¶ 74-84.

³⁷ *Id.*, ¶ 81.

³⁸ AT&T/Time Warner Opposition, ¶ 13.

³⁹ *Id.*

Complainants point out that they filed this complaint well within six years from even the earliest date upon which Qwest contends their cause of action arose. Finally, Complainants state that if the Commission requires it, they would seek to amend their complaint to include a breach of contract claim.⁴⁰

34 Qwest responds that in *Glick v. Verizon*⁴¹ the Commission found that its authority to order a refund or reparations is based on RCW 80.04.240, and that claims not falling under that provision are governed by the general two-year limitation period in RCW 4.16.130. Qwest also states that it does not believe complainants could sustain a claim for breach of contract.⁴²

35 **Discussion and decision.** Qwest misinterprets the Commission's holding in *Glick*. In that case, the Commission held that the limitations for filing claims for refunds or reparations are governed by RCW 80.04.240, but that other unspecified actions, like claims that the Commission's rules were violated, are governed by RCW 4.16.130's general two-year limitation period. In *Glick*, the Commission did not address the appropriate limitation period for claims of breach of contract.

36 Nevertheless, this order would reject complainants' argument that the six-year statute of limitations for breach of contract might apply to their cause of action. Complainants offer no authority or support for their contention that the Commission could address a pure breach of contract action which would fall outside the scope of an interconnection agreement enforcement action. Allowing amendment of the complaint on that basis would be inappropriate without such support.

⁴⁰ *Id.*

⁴¹ Docket No. UT-040535, Order No. 3, January 28, 2005, ¶ 42 *et seq.*

⁴² Qwest Reply to Opposition, ¶ 11.

B. Does the Commission have the authority to order reparations in connection with the complaint allegations?

37 Qwest contends that another ground for dismissal of the complaint is that the Commission lacks authority to award “equitable remedies” for violations of federal and state law arising out of Qwest’s failure to file interconnection agreements in accord with 47 U.S.C. 252.⁴³ Qwest maintains that Washington’s reparations statutes permit the Commission to award reparations for charging customers “excessive or exorbitant” rates under RCW 80.04.220 or for charging customers more than lawful rates under RCW 80.04.230, but that neither statute strictly applies to complainants’ claim. Thus any relief granted by the Commission would be equitable in nature and prohibited as unauthorized by statute.

38 Qwest asserts that AT&T and Time Warner do not complain that the rates they were charged were other than those established in their interconnection agreement and approved by the Commission.⁴⁴ Therefore, their rates were lawful.

39 Moreover, in order for the Commission to determine that Qwest was assessing excessive or exorbitant overcharges on complainants, Qwest contends the Commission would have to take certain preliminary steps: consider and approve the Eschelon/MCLEodUSA rates, terms and conditions and determine whether complainants could adopt the approved rates, terms and conditions from those agreements. Qwest maintains that under the Telecommunications Act, the rates, terms and conditions in interconnection agreements may differ from CLEC to CLEC, and different CLECs may be charged different rates for what appear to be identical services.⁴⁵

⁴³ Qwest Motion, ¶ 21-25.

⁴⁴ *Id.*

⁴⁵ *Id.*

- 40 Qwest also points out that the MPUC imposed both fines and restitution awards on Qwest, but the imposition of restitution was overturned in the federal courts.⁴⁶
- 41 Complainants respond that it is paradoxical for Qwest to rely on the Washington reparations statutes for their limitation provisions while arguing that the Commission lacks authority to order relief under those statutes.⁴⁷ Complainants also point out that the statutes that govern the MPUC are more general in nature than the more specific reparations statutes that govern reparations relief in Washington.⁴⁸ Complainants state that Qwest does not cite any Washington authority that precludes the Commission from requiring a utility to refund the difference between discriminatory and unreasonable charges imposed on a customer and the lawful amounts that should have been charged.⁴⁹
- 42 **Discussion and decision.** Complainants' arguments are persuasive. It is contradictory for Qwest to rely on the statutory limitation periods but to contend that the Commission may not provide relief under those statutes. Complainants are also correct that the statutes governing reparations in Washington are different from the Minnesota statute. The Washington statutes provide for specific relief for overcharges and unlawful rates beyond the general admonition that the Commission determine just and reasonable rates.

⁴⁶ *Id.*, see also, Memorandum Opinion and Order, *Qwest Corporation v. Minnesota Public Utilities Commission*, Civil No. 03-3476 ADM/JSM, 2004 WL 19297 **2-3 (D. Minn. Aug. 25, 2004); *Qwest Corp. v. Minnesota Public Utilities Commission*, Nos. 04-3368, 04-3510, 04-3408 (8th Cir. Nov. 1, 2005).

⁴⁷ AT&T/Time Warner, Opposition, ¶ 14.

⁴⁸ The Minnesota complaint statute authorizes the MPUC to "make an order respecting [an unreasonable, insufficient, or unjustly discriminatory] ...act, omission, practice, or service that is just and reasonable," and to "establish just and reasonable rates and prices." *Minn. Stat.* § 237.462, *subd.* 9; § 237.081, *subd.* 4.

⁴⁹ AT&T/Time Warner, Opposition, ¶ 17.

C. Conclusion.

43 This initial order proposes that June 8, 2004 is the date complainants' cause of action accrued; that the six-month statute of limitations under RCW 80.04.220 and RCW 80.04.240 applies to that cause of action; that the complaint must be dismissed as a matter of law because it was filed on November 4, 2005, approximately a year beyond the expiration of the statutory limitation period. This initial order also recommends rejection of complainants' argument that equitable tolling would bring the complaint within the statutory time period and that the six-year statute of limitations under RCW 4.16.040 would apply to their cause of action. Finally, this initial order rejects Qwest's claim that the Commission lacks authority to order relief under the reparations statutes.

III. ORDER

44 IT IS ORDERED That Qwest's motion for summary determination is granted and the complaint is dismissed.

Dated at Olympia, Washington, and effective this 10th day of February, 2006.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge

APPENDIX A

Interconnection Agreements Qwest Failed to File
or Failed to File in a Timely Manner

1.	ATI	February 28, 2000
2.	Eschelon, f/k/a ATI	July 21, 2000
3.	Eschelon	November 15, 2000
4.	Eschelon	November 15, 2000
5.	Eschelon	July 3, 2001
6.	Eschelon	July 31, 2001
7.	Covad	April 19, 2000
8.	*McLeod	April 28, 2000
9.	*McLeod	October 21, 2000
10.	SBC	June 1, 2000
11.	ATI	February 29, 2000
12.	*Eschelon	March 3, 2002
13.	Allegiance	December 24, 2001
14.	*AT&T	December 27, 2001
15.	Covad	January, 1999
16.	*Covad	January 3, 2002
17.	Eschelon	November 14, 2000
18.	Eschelon	November 15, 2000
19.	Eschelon	November 15, 2000
20.	Eschelon	August 1, 2001
21.	Eschelon	November 15, 2000
22.	Eschelon	November 15, 2000
23.	Eschelon	March 31, 2001
24.	Eschelon	February 22, 2002
25.	Integra	November 20, 2001
26.	AT&T	March 13, 2000
27.	ATG	June 30, 2000
28.	ELI	December 30, 1999
29.	ELI	June 12, 2000
30.	*Fairpoint	September 4, 2001
31.	MCI	November 18, 1999

Asterisk (*) denotes an interconnection agreement that Qwest filed with the WUTC on August 22, 2002. These agreements were not timely filed. The WUTC docketed and acted upon these agreements without regard to the instant complaint.