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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In The Matter Of
TEL WEST COMMUNICATIONS, LLC
Petition For Enforcement Of Its Interconnection
Agreement With Qwest Communications Pursuant
To WAC 480-09-530

Docket No. UT-013097

**DIRECT TESTIMONY OF
JEFF SWICKARD
FOR
TEL WEST COMMUNICATIONS, LLC
REGARDING CS/DA AND BILLING DISPUTE CLAIMS**

February 8, 2002

1 **I. IDENTITY OF TESTIFYING PARTY AND**
2 **THE PURPOSE OF THIS TESTIMONY**

3 Q. PLEASE STATE YOUR NAME, EMPLOYER, POSITION AND BUSINESS ADDRESS.

4 A. I am Jeff Swickard, President of Tel West Communications, LLC ("Tel West"). My
5 business address is 3701 S. Norfolk Street, Suite 300, Seattle, Washington 98118.

6 Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE IN
7 TELECOMMUNICATIONS.

8 A. I graduated from the University of Oregon in 1994 with a degree in Business Management.
9 I worked for AT&T from 1992 through early 1995 as a campus market manager
10 responsible for teams selling long distance in Oregon. I then moved to MCI for six months
11 during 1995, where I was a sales person in charge of strategic accounts for business
12 customers. I returned to AT&T toward the end of 1995. While I was there, I was a sales
13 person working with alternative providers for "0+" service, where I learned the Operator
14 Services business providing service to intermediaries and resale customers. AT&T
15 provided me with comprehensive training on the long distance telephone network and
16 specifically 0+. I moved to US WEST in 1996 and worked there until 1998. At US
17 WEST, I had several titles, one of which was strategic account manager in the public
18 service and paid access divisions. US WEST gave me extensive training in
19 telecommunications generally, both when I started and while I worked there. I also learned
20 a great deal about local wireline telecommunications through my work experience at US
21 WEST. US WEST gave me basic training on billing systems such as CARS and BOSS
22 and a customer account and order processing system called RSOLAR. Before the US
23 WEST strike in 1998, I was prepared to handle order entry using these and other Qwest
24 systems.

1 In 1998, I formed Tel West. As Tel West's president, I have overseen and managed all
2 aspects of Tel West's business, including ordering, provisioning, and dispute resolution. I
3 am familiar with all aspects of the telecommunications business relevant to the Petition.

4 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

5 A. I will testify regarding Tel West's claims against Qwest for operator service/directory
6 assistance ("OS/DA") and billing practices. Pursuant to the Commission's order, we are
7 reserving testimony on the other issues in our petition to a later date.

8 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

9 A. I will provide the background to Tel West's claim that Qwest is violating its
10 interconnection agreement by forcing Tel West to purchase OS/DA and/or purchase
11 OS/DA blocking. I will explain why these are services that Tel West does not want and
12 has never ordered. I will refer to Qwest's behavior as "cramming" since Qwest is
13 cramming these services on us even though we don't want them and have specifically not
14 requested them. I will explain why this cramming causes problems for Tel West's
15 business and is not in the public interest. Also I will testify regarding Qwest's inordinate
16 delays in addressing and resolving billing disputes forwarded by Tel West in a timely
17 manner. As a result, there are now some billing disputes that date back ten months.

18 Q. WILL YOU BE INTERPRETING THE TEL WEST/QWEST INTERCONNECTION
19 AGREEMENT?

20 A. No. While I have my own beliefs of what the interconnection agreement means, I am not
21 trained as an attorney. I understand that Tel West's attorneys will discuss the proper
22 interpretation of the interconnection agreement in briefs to be filed in this case. My
23 testimony is intended to address only background and facts that are relevant to
24 interpretation of the contract and what remedies the Commission might order.
25
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1 **III. OPERATOR SERVICE AND DIRECTORY SERVICE**

2 Q. WHY DOES TEL WEST OBJECT TO QWEST'S OS/DA PRACTICES?

3 A. Qwest forces Tel West to accept OS/DA services that Tel West has not ordered and pay
4 charges incurred by end users that request the use of these services over Tel West's
5 objections. Qwest is able to do this because it controls the local access lines, over which
6 it has a monopoly, and controls how end user can access Qwest's optional OS/DA
7 services.

8 Q. HAS TEL WEST EVER REQUESTED OS/DA SERVICE OR AGREED TO ACCEPT IT
9 FROM QWEST?

10 A. No. Tel West has consistently informed Qwest that it does not want OS/DA for its lines.
11 Nevertheless, Qwest forced Tel West to accept and pay for them, based on Qwest's
12 interpretations of the First Agreement. I have frequently complained to Qwest's account
13 representatives that it was unreasonable for Qwest to force Tel West to order and pay for
14 OS/DA when Tel West did not want them.

15 Based on my understanding, Tel West's obligations for OS/DA changed under the Current
16 Agreement, which was effective on October 31, 2001. Once that agreement became
17 effective, I informed Qwest's billing account managers that Tel West will no longer accept
18 these services from Qwest.

19
20 Q. WHEN YOU DISCUSSED THE CURRENT AGREEMENT, WERE THERE ANY
21 DISCUSSIONS OR NEGOTIATIONS BETWEEN TEL WEST AND QWEST
22 REGARDING THE OS/DA ISSUES?

23 A. Yes. We made it clear to Qwest that we wanted an agreement that did not require Tel
24 West to order or accept OS/DA services. Attached as Exhibit A is our letter to Qwest
25 requesting the new contract and explaining the needs of Tel West in the new contract. In
26

1 response Qwest stated that this issue would have to be referred to Legal and Product
2 Management.
3

4 Q. DID QWEST RESPOND TO YOUR OS/DA ISSUES?

5 A. Other than providing us with the contract, no. Qwest never informed Tel West during the
6 negotiation of the Current Agreement that it intended to require Tel West to take and pay
7 for OS/DA, or that residential access line service and OS/DA were bundled. It is my
8 understanding from reading the Current Agreement that it made these services optional by
9 using very different language from the First Agreement. The language in the Current
10 Agreement is exactly what Qwest proposed.

11 Q. WHAT IS "DIAL LOCK" AND WHY DOES TEL WEST ORDER THAT FROM
12 QWEST?

13 A. Dial Lock is a service that is supposed to block end users from obtaining access to OS/DA,
14 and costs Tel West \$3.95 per line, per month. Dial Lock was originally recommended to
15 Tel West by Qwest as a way of blocking end user access to OS/DA services, even though
16 Qwest now claims that Dial Lock is not intended for use by resellers and CLECs. By
17 requiring Tel West to accept unwanted OS/DA services, Qwest effectively forces
18 Tel West to order Dial Lock or some other blocking service, that may or may not work, to
19 prevent end users from accessing Qwest's OS/DA services. Until this petition is resolved,
20 ordering Dial Lock is the only practical way Tel West has to mitigate its damages.
21 However, although Qwest's tariff does not say so, Dial Lock is often ineffective. So,
22 Qwest not only bills Tel West for Dial Lock but it also bills Tel West for OS/DA calls
23 made by end users that "leak" past Dial Lock.

24 Q. WOULD TEL WEST ORDER DIAL LOCK IF IT WERE NOT FORCED TO ACCEPT
25 OS/DA FROM QWEST?
26

1 A. No. Tel West orders Dial Lock solely to block OS/DA charges. According to Qwest,
2 Tel West must receive a service it does not want (OS/DA) and then order another service
3 (Dial Lock) to disable it. This is unreasonable and contrary to the Agreement. This also
4 provides Qwest with windfall revenues from both Dial Lock and any OS/DA charges that
5 leak past it.

6 Q. CAN TEL WEST RECOVER OS/DA CHARGES FROM ITS CUSTOMERS?

7 A. As Tel West noted in the Petition, Tel West serves the portion of the residential customer
8 market that is unable for credit reasons to obtain service directly from Qwest. Because of
9 this credit risk, Tel West bills for service for a month in advance, but, unlike Qwest, we do
10 not require a deposit. Even though Tel West tells its customers they may not make DA
11 calls or OS calls charged to their home phone, Tel West customers often attempt such calls
12 and often succeed in completing them. These customers can accumulate a large number of
13 charges for OS/DA calls that have slipped past Dial Lock or are handled in COs where
14 Qwest does not provide Dial Lock. Then, they terminate their service without paying for
15 their OS/DA calls. Tel West must pay for any outstanding OS/DA bills, due to Qwest's
16 refusal either to block the calls or waive the charges. It is not cost-effective for Tel West
17 to attempt to collect these charges from this category of end users. The majority of these
18 customers dispute they even made the calls, stating that they didn't use the service. I think
19 the reasons are: the OS/DA is branded by Qwest, the DA ending states "thank you for
20 using Qwest," and the call is completed by Qwest.

21 Q. DOES TEL WEST DO ANYTHING ELSE TO TRY TO PREVENT ITS END USERS
22 FROM MAKING OS/DA CALLS?

23
24 A. Yes. We tell our customers that we do not offer OS/DA when customers start service with
25 us. We tell them that the toll restrictions on their lines are intended to block these types of
26 calls. So, if these types of calls are generated from their home telephone, they are violating

1 their agreement with us and could be subject to interruption of service. Every customer
2 hears an automated announcement with this information when starting service and every
3 customer gets a written notice of our terms and conditions of service.

4 Q. HOW HAS QWEST MADE IT MORE DIFFICULT THAN NECESSARY FOR
5 TEL WEST TO BLOCK OS/DA CALLS?

6 A. The OS/DA problem faced by Tel West is the result of Qwest's promotion of its OS/DA
7 services. Qwest has done this by making it progressively easier to access OS/DA service
8 while simultaneously increasing the risk that improper OS/DA charges will slip past
9 blocking features. Qwest reaps the benefit of the revenues from credit-worthy customers
10 and passes on much of bad debt costs for the less credit-worthy customers to Tel West.
11 The situation is of Qwest's own making. For example, Qwest once required customers
12 seeking OS/DA service to dial "1-Area Code + 555-1212". Companies like Tel West
13 could easily block this service by ordering a "1+" toll call screening service. Qwest now
14 requires customers only to dial "411" to access these services. So, the "1+" toll restriction
15 no longer blocks DA calls. Similarly, Qwest allows access to its operator services by
16 simply dialing "0." Qwest could require end users to dial "10xxxx-0," "950-xxxx," or
17 some other type of access code, as other operator service providers ("OSPs") must do.
18 These dialing protocols give Qwest a significant marketing advantage over any other
19 OS/DA provider and force OS/DA on resellers. Clearly, Qwest makes access to OS/DA
20 easy, and blocking hard. As a result, customers can easily access OS/DA, and resellers
21 must order Dial Lock at \$3.95 per line less the small wholesale discount to block it. By the
22 way, a standard residential line costs \$12.50 retail and approximately \$10.62 wholesale.
23 With two calls to DA, our entire wholesale discount is eroded. The alternative is Dial
24 Lock, which also costs more than our discount. This is an easy way for Qwest to recapture
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1 the discount on the line by cramming their high margin/low discount products onto resellers
2 that have no control over the usage.

3 Qwest's OS/DA system design is premised on the fact that Qwest serves captive customers
4 who can and will pay for the service. This is inappropriate in a competitive environment,
5 where resellers may not want customers to receive them. Qwest should bear the costs for
6 the billing problems it has created for these optional services.

7 Q. IS THERE ANY TECHNICAL REASON WHY QWEST MUST FORCE TEL WEST TO
8 ORDER AND PAY FOR OS/DA SERVICE?

9 A. No. There are many ways to provision OS/DA services and many ways to block it.
10 Switches are all electronic today. Therefore their functionality is controlled by software.
11 So long as Qwest can "have its cake and eat it too" by benefiting from promoting its
12 OS/DA services and cramming it on resellers like Tel West, it will have no motivation to
13 effectively block the services or to make it harder for end users that cannot pay for the
14 services to access them. Currently, Qwest blocks DA to several types of customers,
15 proving that Qwest can technically block it. Every option that Qwest presents seem to
16 cost the reseller more and more. It becomes more expensive to buy their ancillary services
17 than to block the OS/DA. This situation is the same as Tel West's refusal to order other
18 pay per use items like Last Call Return, 3 Way Calling, Call Trace Service, and other
19 features for its lines. Qwest does not charge Tel West for not ordering these services or to
20 block them.

21 Q. IS TEL WEST ASKING QWEST TO PROVIDE SERVICES FOR FREE?

22 A. No, but that is really up to Qwest. Tel West agrees that Qwest should be paid for services
23 it prudently provides. The real issue is to whom Qwest should look for payment: Tel
24 West or the End User. Qwest can simply obtain compensation from end users if a charge is
25 necessary. This is appropriate, since Qwest has done everything possible to make OS/DA
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1 service available to these end users at the same time Tel West is trying to prevent access to
2 it. Also, Qwest states that the customer is using Qwest by branding the call “Qwest
3 Directory Assistance” and stating “thank you for using Qwest.” The customer understands
4 they are using Qwest, and there is no connection to Tel West. If a consumer called AT&T
5 Double 0 Info (a competing product to Qwest DA), AT&T brands and bills the call.
6 AT&T cannot cram those charges through to us, and Qwest should be treated no differently.
7 Effectively, these end users are Qwest's customers for purposes of OS/DA. Qwest can ask
8 for alternative billing such as credit cards for these end users if it is concerned about
9 recovering these charges. It certainly should not be entitled to pass these costs on to
10 Tel West.

11 Q. HOW HAVE QWEST'S ACTIONS HURT TEL WEST AND THE PUBLIC?

12 A. Tel West must charge a very high rate in order to cover OS/DA charges. Tel West's rates
13 in Washington are 40% higher than those Tel West charges in all other parts of the U.S.,
14 where ILECs do not force Tel West to order OS/DA service or have effective blocking
15 capabilities. As a result, the costs of Qwest's OS/DA cramming are largely borne by
16 Washington rate payers. These customers are often the least capable of paying higher
17 rates, since they have experienced credit troubles in the past. Thus, by causing Tel West to
18 charge so much more for its services, Tel West's rates are beyond the ability or
19 willingness to pay of many potential customers. The result is that Qwest's practices
20 reduce Tel West's potential customer base. Of course they also reduce the number of
21 Washington residents with home phone service.

22 Q. IN ITS ANSWER TO YOUR PETITION, QWEST SUGGESTED CUSTOMIZED
23 ROUTING. WOULD THAT SOLVE TEL WEST'S PROBLEMS?

24 A. No, that is not a viable solution. Customized routing allows CLECs to choose a different
25 OS/DA provider than Qwest. All OS/DA calls are routed to that provider. In contrast,
26

1 Tel West wants *no* OS/DA provider. There is no alternative OS/DA provider to which
2 Qwest would route the calls. Also, Qwest customized routing charges are cost prohibitive.
3 The charges are on a per central office (“CO”) basis, and Tel West provides services
4 statewide. To incur a substantial charge for customized routing in a small CO where Tel
5 West may have only a few customers does not make sense, particularly when Tel West
6 doesn’t want customized routing. Again, this is an example of Qwest seeking to force Tel
7 West into expensive and unwanted solutions to a problem that is of Qwest’s own making,
8 for Qwest’s own benefit.

9 Q. ARE QWEST'S VIOLATIONS OF THE INTERCONNECTION AGREEMENTS
10 WILLFUL AND INTENTIONAL?

11 A. Yes. Tel West has repeatedly informed Qwest that it does not want OS/DA, and Qwest
12 ignored Tel West's claims and the Current Agreement. Qwest continues to cram OS/DA
13 services and bill Tel West for them, as well as for Dial Lock.

14 Q. WHAT IS THE APPROPRIATE REMEDY FOR QWEST'S VIOLATION OF THE
15 CURRENT AGREEMENT?

16 A. First, the Commission should enter an order stating that Tel West’s Current Agreement
17 does not require Tel West to order OS/DA from Qwest. Qwest should not require
18 Tel West to pay any charges for OS/DA even if it does not order blocking services.
19 Second, Qwest must credit or refund to Tel West all charges it has imposed since the
20 Current Agreement became effective on October 31, 2001 for blocking OS/DA using Dial
21 Lock, plus all charges billed to Tel West for Qwest's OS/DA services that have slipped
22 past Dial Lock. Third, the Commission should find that Qwest's actions were willful and
23 intentional.

24 **IV. BILLING DISPUTES**

25 Q. DOES TEL WEST HAVE ANY PENDING BILLING DISPUTES WITH QWEST?
26

1 A. Yes. I have attached as Exhibit B spreadsheets showing outstanding billing disputes with
 2 Qwest, some of which date from April 2001. Tel West notified Qwest of its billing
 3 disputes as required by the Current Agreement by timely sending the attached spreadsheets
 4 to Qwest. These spreadsheets, in the format requested by Qwest, indicate the dates and
 5 circumstances of these disputes by ANI. The abbreviations on the spreadsheet are defined
 6 as follows:
 7

<u>Abbreviation</u>	<u>Full Description</u>
3Way Calls	Three-way calling
C/W	Call waiting
CF	Call forwarding
CHG 2	Improper charge for a single service
CID	Caller ID
CON-Redial	Continuous redial
CR	Call return (*69)
CW	Call waiting
DA	Directory assistance
DIREC ASST	Directory assistance
ESX	Call waiting
First Call Re	Last call return (*69)
LD	Long distance
NON PUB	Non-published number fee
NXX	Improper toll charge (confirm)
Pay Per Use	Includes *69, repeat dial, call trace, and three-way calling
PGOC	Custom choice package
PPU	Pay per use
Special Service Charges	Unknown Qwest charge

20 Q. HAS TEL WEST WORKED WITH QWEST TO RESOLVE THESE BILLING
 21 DISPUTES?

22 A. Yes. Tel West's customer service representatives have worked diligently to resolve these
 23 disputes and have provided all the necessary information that Qwest needs. Qwest has not
 24 requested any additional action by Tel West, yet it still refuses to resolve the disputes.
 25
 26

1 Q. DID QWEST EVER INFORM TEL WEST THAT IT WOULD WAIVE CHARGES FOR
2 OS/DA CALLS THAT HAD NOT BEEN BLOCKED BY DIAL LOCK?

3 A. Yes. However, I understand Qwest changed its position after Tel West filed the pending
4 Petition with this Commission.

5 Q. WHAT IS THE APPROPRIATE REMEDY FOR QWEST'S VIOLATIONS?

6 A. The Commission should issue an order directing Qwest to resolve all pending billing
7 disputes promptly. The Current Agreement requires the parties to “expedite” dispute
8 resolution. I believe 30 days is a reasonable maximum time for Qwest to respond to Tel
9 West’s billing disputes. To ensure that Qwest will not violate its requirement to expedite
10 bill dispute resolution in the future, the Commission should order that all billing disputes
11 that Qwest has not responded to within 30 days after Tel West presents them to Qwest
12 shall be deemed resolved in Tel West's favor, unless Tel West is responsible for the delay.

13 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

14 A. Yes.
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