

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

<p>PAC-WEST TELECOMM, INC. Petitioner, v. QWEST CORPORATION, Respondent.</p>	<p>DOCKET UT-053036 MOTION TO AMEND ANSWER AND COUNTERCLAIMS</p>
<p>LEVEL 3 COMMUNICATIONS, LLC, Petitioner, v. QWEST CORPORATION, Respondent.</p>	<p>DOCKET UT-053039 MOTION TO AMEND ANSWER AND COUNTERCLAIMS</p>

- 1 Qwest is filing this motion for leave to amend, and Amended Answer and Counterclaims only in the alternative and only for use if the Commission determines an amendment to the pleadings is necessary. The Amended Answers and Counterclaims are provided in redline format so that the amendment is easily identified.
- 2 The argument concerning this issue is set out more fully in the Opposition to Motion for Summary Determination, also filed today. However, a summary is provided here.
- 3 Should the Commission determine that Qwest's existing answer and counterclaims require more specificity, permitting Qwest to amend would clearly be appropriate under the circumstances of this case. The Commission's rules establish that amendments to pleadings should be permitted when necessary to promote fair and just results.<sup>1</sup>

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<sup>1</sup> WAC 480-07-395(5).

- 4 Under Washington law, the purpose of pleadings is to facilitate a proper decision on the merits, not to erect formal impediments to the litigation process.<sup>2</sup> Delay in and of itself is not sufficient reason to deny a motion to amend pleadings.<sup>3</sup> Delay in amending a pleading may be grounds for denying amendment only where the delay works undue hardship or prejudice upon the opposing party.<sup>4</sup>
- 5 If an amendment is allowed, the claim relates back to the date the Pac-West and Level 3 complaints were filed. CR 15(c)(1)(B) provides that an amendment to a pleading relates back to the date of the original pleading when “the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading.”

Respectfully submitted this 21<sup>st</sup> day of June, 2012.

CENTURYLINK D/B/A QWEST CORPORATION

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<sup>2</sup> *Caruso v. Local Union 690 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 100 Wn.2d 343, 349 (Wash. Supreme Ct. 1983) (permitting amendment of pleadings five and one half years after initial pleading).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*