

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

In the Matter of	)	
	)	DOCKET NO. UT-053098
TEL WEST COMMUNICATIONS,	)	
LLC'S PETITION FOR ENFORCEMENT	)	<b>TEL WEST'S ANSWER TO</b>
OF ITS INTERCONNECTION	)	<b>COUNTERCLAIM OF QWEST</b>
AGREEMENT WITH QWEST	)	<b>CORPORATION</b>
CORPORATION	)	

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1. Subject to Tel West Communications, LLC ("Tel West") *Motion to Dismiss, and in the Alternative, Sever the Counterclaim of Qwest Corporation* ("Qwest"), Tel West submits this *Answer* to the *Counterclaim of Qwest*.

Factual Background

2. On December 8, 2005, Tel West filed its *Petition for Enforcement of its Interconnection Agreement with Qwest Corporation* ("Petition") alleging that Tel West could not timely utilize Qwest's Batch Hot Cut ("BHC") Process and therefore Qwest is enjoined from seeking to charge and collect from Tel West the higher port rate as if the BHC process had in fact been implemented.
3. On December 21, 2005, Qwest filed its *Answer and Counterclaim of Qwest Corporation* ("Response").
4. In its *Response*, Qwest admits that Tel West was unable to utilize the BHC process until March 16, 2005. Qwest seeks to excuse its inability to process Tel West's orders as a "temporary difficulty." *Response* at ¶ 21; Pappas Affidavit at ¶ 16.
5. The "temporary difficulty" was for seventy-five (75) days during which time the BHC process was not available to Tel West and for which Qwest seeks to charge

higher port rates as of the BHC process had been implemented as required by the parties' interconnection agreement.

6. Qwest should not be allowed to charge or collect as if the Batch Hot Cut process had been fully implemented vis-à-vis Tel West as of December 31, 2004.

#### Tel West's General Denial

7. As the majority of the *Response* constitutes Qwest's answer to the *Petition*, no responsive pleading is required. To the extent the *Response* requires an answer, Tel West generally denies all the averments and to the extent a more specific denial is required or to correct misstatements of facts, a specific denial is contained herein.
8. Further to the extent the *Response* contained factual allegation intermingled with legal argument, Tel West denies the allegations unless specifically admitted herein.

#### Specific Denials

9. Answering paragraph 5 of the *Response*, Tel West denies that there was no communication or correspondence regarding this matter since August 2005. There have been discussions and efforts by Tel West and Qwest to resolve Qwest's billing errors up to and continuing since the filing of the *Petition*; however, Qwest would not acknowledge a dispute regarding the BHC until Tel West filed a complaint with the Commission. See Declaration of Debra McBride attached hereto.
10. Further answering paragraph 5, Tel West denies the relevance of RCW 80.36.110 to this proceeding.
11. Subject to *Tel West's Motion to Dismiss, and in the Alternative, Sever the Counterclaim of Qwest Corporation*, Tel West specifically denies the allegations

contained in paragraph 29 of the *Response*. See Declaration of Debra McBride attached hereto.

12. Subject to *Tel West's Motion to Dismiss, and in the Alternative, Sever the Counterclaim of Qwest Corporation*, in answer to paragraphs 2, 30 and 32 of the *Response*, Tel West denies owing Qwest the amount Qwest has alleged because Qwest has failed to properly apply, has misapplied Tel West payments, has not provided the underlying service, or has incorrectly charged for the underlying service. See Declaration of Debra McBride attached hereto.

#### Affirmative Defenses

13. Answering paragraph 29 of the *Response*, to the extent that Qwest has engaged in, and continues to engage in discussions regarding alleged outstanding balances, Qwest's claims are barred by the doctrine of waiver.
14. Answering paragraph 29 of the *Response*, to the extent that Qwest has engaged in, and continues to engage in discussions regarding alleged outstanding balances, Qwest's claims are barred by the doctrine of estoppel.
15. Answering paragraphs 30 and 32 of the *Response*, to the extent that Qwest has engaged in, and continues to engage in discussions regarding alleged outstanding balances, Qwest's claims are barred by the doctrine of waiver.
16. Answering paragraphs 30 and 32 of the *Response*, to the extent that Qwest has engaged in, and continues to engage in discussions regarding alleged outstanding balances, Qwest's claims are barred by the doctrine of estoppel.

Prayer for Relief

17. Tel West respectfully prays for the relief requested in its *Petition*.
18. Tel West further respectfully prays all relief requested by Qwest for monetary amounts, or set-off, be denied.

Respectfully submitted this day of January, 2006.

**TEL WEST COMMUNICATIONS, L.L.C.**

By: \_\_\_\_\_  
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**DECLARATION OF DEBRA MCBRIDE**

## CERTIFICATE OF SERVICE

I hereby certify that I served *Tel West Communications' Answer to Counterclaim of Qwest Corporation* was served, with the correct number of copies, by overnight delivery to:

Carole Washburn, Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
Olympia, WA 98503-7250

I further certify that I served a true and correct copy of the foregoing document on the following parties by e-mail, if known, and via overnight delivery for next day service:

Lisa A. Anderl  
Qwest Corporation  
1600 7<sup>th</sup> Avenue, Room 3206  
Seattle, WA 98191  
e-mail: [lisa.Anderl@qwest.com](mailto:lisa.Anderl@qwest.com)

I declare penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this \_\_\_\_ th day of January, 2006.

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David Mittle, NMSBA # 6597