

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC., TCG
SEATTLE, AND TCG OREGON; AND
TIME WARNER TELECOM OF
WASHINGTON, LLC,

Complainants,

v.

QWEST CORPORATION,

Respondents

Docket No. UT-051682

QWEST'S ANSWER TO AT&T
AND TWTC PETITION FOR
ADMINISTRATIVE REVIEW OF
ORDER NO. 3

I. INTRODUCTION

I Qwest Corporation (“Qwest”) files this answer to the Petition for Administrative Review (“Petition”) filed by AT&T and Time Warner (collectively “Complainants”).¹ In that Petition, Complainants ask the Commission to reverse the Initial Order’s decision that the six-month statute of limitations period applies, to hold that the two-year period applies instead, and to reverse the Initial Order’s dismissal of the complaint. As set forth herein, as well as in

¹ The AT&T entities are AT&T of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon. Time Warner is Time Warner Telecom of Washington, LLC.

Qwest's own petition for administrative review of other aspects of that Initial Order, the six-month period is the correct one and that aspect of the Initial Order should be affirmed.

II. ARGUMENT

2 As the Initial Order correctly decided, the Complainant's claims ask for relief regarding "unreasonable" as opposed to "unlawful" rates. Thus the six-month period for "cases involving the collection of unreasonable rates" is the applicable limitations period.² Indeed, Complainants do not allege, and cannot allege, that Qwest charged them anything other than the rates that were contained in their interconnection agreements. As Qwest argued in its prior pleadings, those rates were approved by the Commission and as such must be concluded to be the approved and lawful rates in effect at the time.

3 The Initial Order agreed, and held, at paragraph 24, that the rates in the Complainants' interconnection agreements were lawful and approved, and that the complaint did not complain of unlawful rates. The Complainants complain of the unfairness to them of Qwest's alleged favoritism toward Eschelon. They are not asserting that they were billed more than an approved rate. And as such, Complainants' claims are for "unreasonable" rates and therefore fall under the six-month limitations period.

4 Complainants argue that the Commission has previously rejected arguments that charges must be considered to be lawful because they were previously approved by the Commission. *Petition at ¶ 8, citing AT&T v. Verizon, Docket No. UT-020406.* Complainants misread the Commission's order in that case. Nowhere does the Commission's order in that case state that Verizon's previously approved access charges were unlawful during the time they were charged. Nor does that case deal with the question of reparations or overcharges.

² See RCW 80.04.240.

5 There is a significant and relevant difference between finding that rates should be changed on a going forward basis, as is the result in many complaint proceedings and virtually all rate case proceedings, and finding that rates already approved by the Commission (in this case, rates that were approved both in individual interconnection agreements and in generic cost dockets) were unlawful during the time they were in effect. The latter ruling is what the Complainants request here, but that is not the question that was addressed in *AT&T v. Verizon*.

6 Complainants next argue that the Commission should look outside the agreements to determine that the rates were unlawful. *Petition at ¶ 10*. However, as noted above, the rates that the Complainants complain of are approved cost docket rates, memorialized not only in each carrier's interconnection agreement, but in Qwest's wholesale tariffs as well³. Filed tariffs have the force and effect of law in this state⁴, and the rates in those tariffs must be concluded to be lawful. Indeed, the better argument is that the only unlawful rates were the ones allegedly charged to Eschelon and McLeod. Indeed, Qwest paid a significant fine in Docket No. UT-033011 in connection with the Commission's findings and conclusions that it violated the law by failing to file the agreements at issue in that case. If the rates charged under those agreements were unlawful, it is because the *lawful* rates were the ones in the tariff and the filed agreements. As such, Complainants can make no claim that the rates in their own agreements, rates that were filed and approved, were unlawful.

III. CONCLUSION

7 Qwest requests an order of this Commission affirming the Initial Order's conclusion that the six-month limitations period applies to this dispute. In addition, as set forth in its own Petition for Administrative Review, Qwest requests that the Commission's final order find that Complainants' cause of action accrued no later than September, 2003. The Commission

³ WN U-42

⁴ *General Telephone Company of the Northwest, Inc v. City of Bothell*, 105 Wn.2d 579; 716 P.2d 879; 1986 Wash.

should dismiss Complainants' Complaint as barred by the statute of limitations.

DATED this 10th day of March, 2006.

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