

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PACIFIC BELL WIRELESS
NORTHWEST, LLC,

Complainant,

v.

QWEST CORPORATION,

Respondent.

Docket No. UT-063048

QWEST'S ANSWER TO COMPLAINT

I. INTRODUCTION

1 Qwest Corporation (“Qwest”) hereby files its answer to the Complaint filed by Pacific Bell Wireless Northwest, LLC, more commonly known as Cingular Wireless (“Cingular”).

II. PARTIES

2 Answering paragraphs 1 through 3 of the Complaint, Qwest admits the allegations contained therein, except that to the extent that paragraph 3 alleges that Qwest provides services “throughout” the state of Washington, Qwest denies that it does so in a manner inconsistent with its tariffs, price lists, and contracts on file with the Commission.

III. JURISDICTION

3 Answering paragraph 4, Qwest admits that the Commission has jurisdiction over complaints pursuant to RCW 80.04.110. Qwest denies that the Commission has jurisdiction to order the relief requested herein.

4 Qwest further states that the majority of the SS7 links at issue in this proceeding were ordered as interstate circuits under Qwest's FCC Tariff No. 1 (formerly Tariff No. 5) and the Commission has no jurisdiction to hear a dispute regarding the applicability of the charges in that tariff. Such a dispute must be brought before the Federal Communications Commission ("FCC").

IV. FACTS

5 Answering paragraph 5, entitled "Interconnection Agreement" Qwest specifically denies that the interconnection agreement ("ICA") it entered into with GTE Mobilenet Incorporated applies in any way to the allegations in this complaint or the services ordered or complained of by Cingular. Based on the CCNA (the Customer's Carrier Name Abbreviation¹) that was used by Cingular on the orders for the SS7 circuits at issue, Qwest states that the applicable ICA is the ICA that was originally entered into between Qwest and VoiceStream Wireless Corporation (copy attached). Cingular adopted that agreement in its entirety, with an effective date of July 9, 2003. As will be discussed later in this answer, the ICA does not govern the SS7 links ordered by Cingular and does not override the requirements of the governing tariff, which requires Qwest to bill the carrier in accordance with a specific formula, a formula that is based on information entirely within the control of Cingular. Cingular's failure to follow the

¹ Carriers are identified, for billing and other purposes, by three-digit alpha codes. The code is generally referred to as a CCNA when used to identify IXCs. When the code is used to identify other carriers, including CLECs, it is called the ACNA, or Access Customer Name Abbreviation. CCNA/ACNAs are obtained from Telecordia and are used for billing and other identification purposes. Cingular's CCNA/ACNA is "PFM". GTE Mobilenet's ACNA is "GTB". The four (4) SS7 links at issue were ordered by Cingular via Access Request Forms ("ASRs") where it was Cingular's responsibility to populate the CCNA/ACNA field. Cingular identified itself on these ASRs as "PFM".

processes in the tariff is not affected by the terms of the ICA.

6 Answering paragraph 6, entitled Reciprocal Compensation, Qwest denies that the cited reciprocal compensation arrangements are applicable to this dispute. Reciprocal compensation applies only for the transport and termination of telecommunications traffic. 47 U.S.C. §251(b)(5). The service that Qwest has provided to Cingular on the SS7 links at issue is not transport or termination of telecommunications traffic. Rather, it is signaling, which is a separate element from either transport or termination. Signaling is used on all telecommunications networks as a way of setting up and taking down calls. Signaling is either “in-band” or “out-of-band”. In-band signaling uses the same channel as the voice call, and is less efficient than out-of-band signaling, which uses a separate data network. SS7, or Signaling System 7, typically uses a dedicated 64 kilobit data circuit to carry packetized messages between switches and signaling points to accomplish the signaling necessary to set up and take down calls. Signaling was at one time (it no longer is) designated by the FCC as an unbundled network element (“UNE”). Under the ICA between Qwest and Cingular, SS7 may be purchased under the ICA or under tariff. Part D of the ICA states that the parties will execute an amended agreement to allow for the purchase of UNEs (which would have included signaling, but no such amendment was ever executed), while Section (B) 2.2.6 describes signaling options, including the option to order signaling as a finished service out of Qwest’s FCC tariff. The evidence in this case will show that Cingular ordered signaling under Qwest’s tariffs, and has an obligation to pay for services ordered under the tariff in accordance with the terms and conditions of the tariff. Thus, the reciprocal compensation provisions in the ICA are wholly inapplicable in this case, both because transport and termination are not at issue, and because the ICA does not alter either Cingular’s or Qwest’s obligations for services ordered under the tariff.

7 Answering paragraph 7, entitled SS7 Signaling Charges, Qwest states that Cingular has

obtained the SS7 links and signaling capability by virtue of having ordered those links under tariff, either Qwest's Washington intrastate tariff or Qwest's FCC tariff. As described above, Cingular submitted ASRs for four (4) SS7 circuits. Cingular had no provisions in its ICA under which those circuits could be ordered as UNEs. The ICA specifies that the only other way Qwest could provision those services was under tariff. Thus, the tariff terms and conditions govern the provision and billing for those circuits. The evidence in this case will show that under the explicit terms of those tariffs, contained in Section 2.3.10 of both the intrastate and the FCC tariffs, Qwest is to bill and the carrier customer is to pay for all minutes and messages in accordance with the Percent Interstate Use (PIU) factor (apparently not at issue here), excluding certain messages based on the Percent Other Messages ("POM") factor. The POM factor must be calculated and submitted to Qwest by Cingular. The tariff explicitly provides that failure to provide a POM means that the factor will be zero (0) percent, until the customer submits a POM quarterly report. The tariff further provides that there will be "[n]o prorating or backbilling" in connection with the POM, rather that "usage will be billed utilizing the POM percentage that was in effect at the time the usage was generated." These tariff provisions are binding on both Qwest and Cingular and they cannot be modified retroactively.

8 Answering paragraph 8, entitled SS7 Signaling, Qwest admits that SS7 signaling enables telecommunications switches to properly route calls. Qwest denies that Cingular has its own SS7 signaling for calls destined outside of Cingular's own subscribers, and Qwest further denies that Cingular has its own signaling transfer point (STP) in Washington.

9 Answering paragraph 9, entitled Dispute, Qwest admits that it billed Cingular in accordance with Qwest's applicable tariff and admits that Cingular paid the SS7 signaling charges that Qwest billed. Qwest also admits that Cingular disputed those charges and that Qwest denied that dispute in October 2005. The neglect or failure to act by Cingular in accordance with

Qwest's tariffs do not form a basis upon which to demand a refund, especially when such retroactive adjustment is expressly prohibited by the tariff.

10 Answering paragraph 10, entitled Submission of POM Updates, Qwest admits that Cingular began submitting the PIU and POM Quarterly Update form to Qwest in accordance with the applicable tariff requirements discussed above. The first such form was submitted on October 14, 2005 and was effective for the billing period beginning October 1, 2005.

11 Answering paragraph 11, entitled Cessation of Charges, Qwest states that it has been billing in accordance with its filed tariffs, including the use of an actual or a default POM factor as required in those tariffs. Starting in November of 2005, for the billing period beginning October 1, 2005, the POM factor submitted by Cingular has been used.

V. CLAIMS FOR RELIEF

A. Breach of Interconnection Agreement

12 Answering paragraph 12, Qwest restates and incorporates by reference the answers to paragraphs 1-11 above as if fully set forth herein.

13 Answering paragraph 13, Qwest states that the provisions of Section 4.4.1.1 of the GTE Mobilenet agreement speaks for itself, but denies that that agreement pertains to this dispute, and further denies the agreement, if applicable, would require Qwest to provide services not identified in that agreement, such as SS7 signaling. The carrier who ordered the SS7 links at issue in this proceeding is Pacific Bell Wireless. The full discussion concerning the applicability of the ICA is contained in paragraphs 5-7 above.

14 Answering paragraph 14, Qwest denies that the ICA applies to alter the terms of its filed tariffs. Qwest's tariffs provide for SS7 billing in accordance with the rates terms and conditions contained therein, and contain specific provisions as to how a carrier may exclude

local messages from billing. Qwest billed Cingular in accordance with its filed tariffs at all times. During the period when no POM was submitted, Qwest billed and Cingular paid on a zero (0) percent POM, as specified in the tariff. After Cingular submitted the POM form in late 2005, Qwest began billing in accordance with that form, also as required by the tariffs.

B. RCW 80.36.170 (Unreasonable Preference Prohibited)

- 15 Answering paragraph 15, Qwest restates and incorporates by reference the answers to paragraphs 1-11 above as if fully set forth herein.
- 16 Answering paragraph 16, Qwest states that the provisions of RCW 80.36.170 speak for themselves.
- 17 Answering paragraph 17, Qwest denies that the Commission has never authorized Qwest to charge for SS7 signaling. Qwest's filed and effective state and federal tariffs state clearly that Qwest may assess SS7 charges, and place the burden on the ordering carrier to provide a POM, specifying the percent of messages that should be excluded. Messages that are not excluded by virtue of submission of a POM are presumed to be chargeable, and this presumption cannot be changed retroactively. This is reasonable because only the ordering carrier has the information regarding local versus non local messages. Failure to submit a POM results in the application of a default POM factor of zero percent, and Qwest and the Commission are without authority to alter that tariff provision.
- 18 Answering paragraph 18, Qwest denies that Cingular was prejudiced by the application of Qwest's tariffs or that such application, in accordance with the terms and conditions on file, constitutes a violation of state law. Qwest therefore denies that it subjected Cingular to any undue prejudice or disadvantage in violation of RCW 80.36.170.

C. RCW 80.36.180 (Rate Discrimination Prohibited)

- 19 Answering paragraph 19, Qwest restates and incorporates by reference the answers to paragraphs 1-11 above as if fully set forth herein.
- 20 Answering paragraph 20, Qwest states that the provisions of RCW 80.36.180 speak for themselves.
- 21 Answering paragraph 21, Qwest denies that the Commission has never authorized Qwest to charge for SS7 signaling. Qwest's filed and effective state and federal tariffs state clearly that Qwest may assess SS7 charges, and place the burden on the ordering carrier to provide a POM, specifying the percent of messages that should be excluded. Messages that are not excluded by virtue of submission of a POM are presumed to be chargeable, and this presumption cannot be changed retroactively. This is reasonable because only the ordering carrier has the information regarding local versus non local messages. Failure to submit a POM results in the application of a default POM factor of zero percent, and Qwest and the Commission are without authority to alter that tariff provision.
- 22 Answering paragraph 22, Qwest denies that Cingular was prejudiced by the application of Qwest's tariffs or that such application, in accordance with the terms and conditions on file, constitutes a violation of state law. Qwest therefore denies that it engaged in rate discrimination in violation of RCW 80.36.180.

D. RCW 80.36.186 (Pricing of or Access to Noncompetitive Services)

- 23 Answering paragraph 23, Qwest restates and incorporates by reference the answers to paragraphs 1-11 above as if fully set forth herein.
- 24 Answering paragraph 24, Qwest states that the provisions of RCW 80.36.186 speak for themselves.

25 Answering paragraph 25, Qwest denies that the Commission has never authorized Qwest to charge for SS7 signaling. Qwest's filed and effective state and federal tariffs state clearly that Qwest may assess SS7 charges, and place the burden on the ordering carrier to provide a POM, specifying the percent of messages that should be excluded. Messages that are not excluded by virtue of submission of a POM are presumed to be chargeable, and this presumption cannot be changed retroactively. This is reasonable because only the ordering carrier has the information regarding local versus non local messages. Failure to submit a POM results in the application of a default POM factor of zero percent, and Qwest and the Commission are without authority to alter that tariff provision.

26 Answering paragraph 26, Qwest denies that Cingular was prejudiced by the application of Qwest's tariffs or that such application, in accordance with the terms and conditions on file, constitutes a violation of state law. Qwest therefore denies that it subjected Cingular to any undue prejudice or disadvantage in violation of RCW 80.36.186.

E. Federal Law

27 Answering paragraph 27, Qwest restates and incorporates by reference the answers to paragraphs 1-11 above as if fully set forth herein.

28 Answering paragraph 28, Qwest states that 47 C.F.R. § 51.705(a) speaks for itself. That rule governs reciprocal compensation arrangements, which are not at issue in this proceeding. Qwest therefore denies that that provision is applicable to this action.

29 Answering paragraph 29, Qwest states that 47 C.F.R. § 51.711(a) speaks for itself. That rule governs reciprocal compensation arrangements, which are not at issue in this proceeding. Qwest therefore denies that that provision is applicable to this action.

30 Answering paragraph 30, Qwest states that 47 C.F.R. § 51.703(b) speaks for itself. That rule

governs reciprocal compensation arrangements, which are not at issue in this proceeding.

Qwest therefore denies that that provision is applicable to this action.

31 Answering paragraph 31, Qwest states that the Commission has approved rates for signaling that are in Qwest's wholesale tariffs, WN U-43, but that those rates are not applicable to this dispute because the SS7 links that are the subject of this dispute were ordered under either the Washington access tariff (WN U-44) or the FCC tariff.

32 Answering paragraph 32, Qwest denies that has violated 47 C.F.R. § 51.705(a) by charging its tariffed rates for SS7 services.

33 Answering paragraph 33 Qwest denies that has violated 47 C.F.R. § 51.711(a) by charging its tariffed rates for SS7 services.

34 Answering paragraph 34, Qwest denies that has violated 47 C.F.R. § 51.703(b) by charging its tariffed rates for SS7 services.

VI. AFFIRMATIVE DEFENSES

35 Cingular's complaint fails to state a claim upon which relief can be granted.

36 Qwest provides services in accordance with its lawful tariffs, which are on file with the FCC and the Commission, and in accordance with the interconnection agreements it has with Cingular. Qwest's effective tariffs have the force and effect of law, and Qwest is not and was not obligated to provision service contrary to the requirements and obligations set forth in the tariffs.

37 Cingular is responsible for compliance with Qwest's filed tariffs when those tariffs impose an obligation on the carrier customer. Cingular's negligence in following the tariff, if indeed that is what occurred here, is not Qwest's responsibility and the filed tariff doctrine bars Cingular

from any of the relief requested.

38 Cingular's claims are barred in whole or in part by the applicable statute of limitations.

39 Cingular's claims are barred by the doctrine of waiver.

VII. PRAYER FOR RELIEF

WHEREFORE, Qwest asks the Commission to deny Cingular's complaint in its entirety and dismiss this matter with prejudice.

DATED this 7th day of July, 2006.

QWEST

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