

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

In the Matter of	)	DOCKET NO. UT-053098
	)	
TEL WEST COMMUNICATIONS, LLC'S	)	<b>MOTION TO DISMISS, AND IN</b>
PETITION FOR ENFORCEMENT OF ITS	)	<b>THE ALTERNATIVE, SEVER</b>
INTERCONNECTION AGREEMENT	)	<b>THE COUNTERCLAIM OF</b>
WITH QWEST CORPORATION	)	<b>QWEST CORPORATION</b>
_____	)	

Tel West Communications, LLC ("Tel West"), hereby submits this *Motion to Dismiss, and in the Alternative, for Sever the Counterclaim of Qwest Corporation* ("Qwest") pursuant to WAC 480-07-650 and WAC 480-07-320 and would respectfully show as follows:

Factual Background

1. 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 process and therefore Qwest should be enjoined from seeking to charge and collect from Tel West the higher port rate as if the BHC had been implemented.
2. On December 21, 2005, the *Answer and Counterclaim of Qwest Corporation* ("Counterclaim") was filed.

Motion to Dismiss

3. Tel West's *Petition* was brought pursuant to WAC 480-07-650 which is entitled "Petitions for enforcement of telecommunications company interconnection agreements."

4. The purpose of WAC 480-07-650, as stated in the preamble, “is to provide a speedy and enforceable means to resolve disputes when one party to an interconnection agreement contends that the other party is violating the terms of the agreement.”
5. To that end, WAC 480-07-650 only permits the respondent to file an answer. WAC 480-07-650(2). The “contents of the answer” is limited to “respond[ing] to each allegation of failure to comply with the terms of the interconnection agreement” as alleged in the petition. WAC 480-07-650(2)(a). There is no provision for asserting a counterclaim.
6. Qwest’s *Counterclaim* is therefore not a permitted filing to a petition filed pursuant to WAC 480-07-650(2)(a) and must be dismissed.

The Counterclaim Cannot Be Heard in this Case at this Time

7. The *Counterclaim* seeks affirmative relief based on allegations that Qwest is in arrears in its payment obligations to Qwest. Such allegations must be asserted in a different case.
8. Dismissing the *Counterclaim* and requiring it to be filed in a separate docket is consistent with the Commission’s policy is to not unnecessarily broaden a docket. See WAC 480-07-320 entitled “Consolidation of proceedings.”
9. Pursuant to WAC 480-07-320, if a party wishes to have its matter consolidated with another, it must first seek the permission of the Commission and further establish that the facts or principles of law are related. Id.
10. Qwest failed to seek permission to file its *Counterclaim* herein; therefore, it should be dismissed.

11. For further argument, if such further argument is necessary, the facts and principles of law involved in resolving Tel West's *Petition* are neither similar nor related to the *Counterclaim*. Tel West alleges in its *Petition* (and notably Qwest never specifically denies) that Qwest should be barred from seeking to collect higher port rates because its Batch Hot Process had not been implemented until March 16, 2005 (which was well past the December 31, 2004 deadline).
12. Qwest alleges (and Tel West specifically denies) that Tel West is in arrears in what it owes to Qwest.
13. The *Petition* and *Counterclaim* speak for themselves, but in general, to resolve Tel West's *Petition* requires an analysis of the QPP and an understanding of the Batch Hot Cut Process that the Batch Hot Cut Process must be implemented for Tel West prior to Qwest being allowed to charge Tel West as if it were. The facts and law established the BHC process was not implemented vis-à-vis Tel West until March, 2005.
14. To resolve the *Counterclaim*, however, it is necessary to have a rudimentary understanding of accounting and the ability to properly book payments received to the proper accounts. In addition, it is necessary to differentiate between what Qwest charges and what Qwest actually delivers in the form of services to ensure that all charges by Qwest are correct and accurately reflect the cost of the services provided to Tel West.

Motion to Server

15. In the alternative, and to the extent the Commission has in its discretion decided to consolidate these matters (which Tel West asserts it has not), Tel West hereby

moves for a severance. For the reasons set forth herein, the issues alleged in the *Petition* and the *Counterclaim* are not even tangentially linked and do not arise from facts or principles of law that are related.

Prayer for Relief

16. Tel West respectfully prays that Qwest's *Counterclaim* be dismissed, or in the alternative, be severed from this proceeding and for such other and further relief to which it may be entitled.

Respectfully submitted this day of January, 2006.

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

By: \_\_\_\_\_  
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## CERTIFICATE OF SERVICE

I hereby certify that I served *Tel West Communications' Motion to Dismiss and in the Alternative Sever the 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