

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of TEL WEST
COMMUNICATIONS, LLC'S
PETITION FOR ENFORCEMENT
OF ITS INTERCONNECTION
AGREEMENT WITH QWEST
CORPORATION

Docket No. UT-053098

ANSWER OF QWEST CORPORATION TO
TEL WEST'S MOTION TO DISMISS

- 1 Qwest Corporation, ("Qwest"), hereby answers and responds to the Motion to Dismiss, and in the Alternative, Sever the Counterclaim of Qwest Corporation ("Motion") filed by Tel West Communications, LLC ("Tel West") for Enforcement of its Interconnection Agreement with Qwest Corporation ("Petition").
- 2 Tel West's Motion is not well taken. In the first instance, Tel West relies on WAC 480-07-650 to contend that no counterclaim may be brought in such a proceeding. However, there is no prohibition on bringing a counterclaim in that type of proceeding, and the Commission may and should hear both disputes in the same proceeding, if for no other reason than judicial economy – both disputes are related to the parties' interconnection agreement ("ICA"), and

both require an interpretation of the requirements of the ICA.

3 More importantly though, it is Qwest's position that neither Tel West's claim nor Qwest's own claim is properly heard under the expedited procedures set forth in WAC 480-07-650. Neither claim is properly described as one for "enforcement" of the ICA where "one party is violating" the terms of the agreement. Indeed, Qwest's counterclaim is closer to this description than Tel West's initial claim, as Qwest claims that Tel West is violating the agreement on an ongoing basis by failing to pay in a timely manner or properly follow the process for disputing bills. Tel West's claim, on the other hand, does not allege a current or ongoing violation, but merely a past dispute for a fixed monetary amount, an amount that is not growing while the dispute moves forward. Thus, Tel West has failed to establish its right to proceed under the expedited schedule or process of WAC 480-07-650, and Qwest has established that the matter should be heard as an ordinary complaint instead. Qwest is certainly within its rights to bring a counterclaim and raise affirmative defenses in a complaint proceeding. WAC 480-07-370(1) specifically identifies "counterclaims" as one of the pleadings permitted by the Commission. Further, RCW 80.04.110 gives the Commission discretion to combine issues in a single complaint proceeding.

4 Qwest further disagrees that its counterclaim must be asserted in a different case. Inclusion of the counterclaim will not unnecessarily broaden the case, which has as its issue amounts claimed due by each party. The truth of the matter here is that Tel West would like to be able to assert a claim and put Qwest at risk of being held liable for an amount owing, without incurring any risk associated with a counterclaim. However, the Commission's process should not operate as a bunker to allow Tel West to be on the offense but not have to defend itself against legitimately asserted claims. The fact that Qwest asserts a different basis for its claims than does Tel West does not make the docket unwieldy or so broad or complex that it must be bifurcated. Indeed, bifurcation would unnecessarily burden both the parties and the

Commission by requiring separate calendaring of two dockets, and separate hearing dates.

- 5 For the reasons set forth herein, Qwest's counterclaim should not be dismissed, nor should it be severed from this proceeding. The matter should proceed under the complaint statute, RCW 80.04.110, and the general procedural rules applicable to adjudicative proceedings, not under WAC 480-07-650.

DATED this 13th day of January, 2006.

QWEST

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