

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

TEL WEST COMMUNICATIONS, LLC	)	
	)	
Petitioner,	)	DOCKET NO. UT-013097
	)	
v.	)	
	)	
QWEST CORPORATION, INC.	)	
	)	
Respondent.	)	

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**RESPONSE TESTIMONY OF  
LARRY B. BROTHERSON**

**QWEST CORPORATION**

**February 28, 2002**

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**I. IDENTIFICATION OF WITNESS**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT POSITION.**

A. My name is Larry B. Brotherson. I am employed by Qwest Corporation (“Qwest”) as a director in the Wholesale Markets organization. My business address is 1801 California Street, Room 2350, Denver, Colorado 80202.

**Q. PLEASE STATE YOUR WORK EXPERIENCE AND PRESENT RESPONSIBILITIES.**

A. In 1979, I joined Northwestern Bell Telephone Company. I have held several assignments within Northwestern Bell, and later within US WEST, and currently Qwest, primarily within the law department. Over the past 20 years, I have been a state regulatory attorney in Iowa, a general litigation attorney, and a commercial attorney supporting several organizations within Qwest addressing legal questions, drafting contracts, and advising on legal issues associated with various products. With the passage of the Telecommunications Act of 1996, I was assigned to be the attorney in support of the Interconnection Group. In that role, I was directly involved in negotiating with the CLECs the contract language implementing various sections of the Act. In 1999, I assumed my current duties as director of wholesale advocacy.

My responsibilities include coordinating the witnesses for all interconnection arbitrations and for hearings related to disputes over interconnection issues. Additionally, I work with various groups within the Wholesale Markets organization of Qwest to develop testimony addressing issues associated with interconnection services.

1 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

2 A. I have two degrees: a Bachelor of Arts degree from Creighton University in 1970, and  
3 a Juris Doctorate degree from Creighton University in 1973.

4

5 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE WASHINGTON  
6 UTILITIES AND TRANSPORTATION COMMISSION?**

7 A. Yes. I have testified in a number of proceedings, including the Sprint arbitration in  
8 Docket No. UT-003006, cost proceedings in Docket Nos. UT-960369 & UT-960370,  
9 and the 271 workshop in Docket No. UT-003022.

10

11

**II. PURPOSE**

12

13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A. My testimony is a response to certain portions of the Tel West Communication's ("Tel  
15 West") First Amended Petition for Enforcement, filed on January 10, 2002 and the  
16 Direct Testimony and Supplemental Direct Testimony of Jeff Swickard on behalf of  
17 Tel West. Specifically, I will address the billing dispute issues raised by Tel West.

18

19

**III. BILLING DISPUTE ISSUES**

20

21 **Q. WHAT IS TEL WEST'S COMPLAINT AND PROPOSED REMEDY WITH  
22 REGARD TO ITS BILLING DISPUTES WITH QWEST?**

23 A. Tel West complains that under Section 5.4.4 of its current interconnection agreement,  
24 Qwest is required to provide expedited resolution of Tel West's billing disputes. Tel  
25 West's current interconnection agreement became effective October 31, 2001. Its  
26 previous interconnection agreement dated 1998 did not include an expedited dispute

1 resolution clause similar to Section 5.4.4. of the current agreement. Tel West seeks to  
2 apply the new dispute resolution provisions contained in its October 31, 2001  
3 interconnection agreement in its January 11 Amended Petition to the billing disputes  
4 for April through November 2001. *Amended Petition, at ¶ 31.* As a remedy, Tel West  
5 urges the Commission to amend the parties' negotiated interconnection agreement by  
6 imposing a condition in Section 5.4.4 that "all billing disputes that Qwest has not  
7 *resolved*<sup>1</sup> within thirty days, after Tel West presents them to Qwest shall be deemed  
8 resolved in Tel West's favor, unless Tel West is responsible for the delay." *Amended*  
9 *Petition, at ¶ 33(d)(9).*

10  
11 **Q. ON WHAT GROUNDS DOES TEL WEST BELIEVE THAT ITS PROPOSED**  
12 **30-DAY REMEDY IS APPROPRIATE?**

13 A. Tel West does not specify a rationale for why it believes Qwest has not complied with  
14 Section 5.4.4 for those billing disputes arising after the current interconnection  
15 agreement became effective. Section 5.4.4 states:

16 Should CLEC or Qwest dispute, in good faith, any portion of the monthly  
17 billing under this Agreement, the Parties will notify each other in writing  
18 within thirty (30) calendar days of the receipt of such billing, identifying the  
19 amount, reason and rationale of such dispute. At a minimum, CLEC and  
20 Qwest shall pay all undisputed amounts due. Both CLEC and Qwest agree to  
21 expedite the investigation of any disputed amounts in an effort to resolve and  
22 settle the dispute prior to initiating any other rights or remedies.

23 Neither does Tel West explain why its proposed 30-day penalty mechanism is  
24 appropriate apart from Mr. Swickard's testimony that he believes "30 days is a

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<sup>1</sup> Tel West's Amended Petition and testimony are not consistent in this regard. While the Amended Petition asks the Commission to amend the parties' interconnection agreement by imposing a self-executing mechanism if Qwest has not *resolved* all Tel West's disputes within 30 days, Mr. Swickard's testimony urges that the mechanism should trigger if Qwest has not *responded* to Tel West's disputes. *Swickard Part A Direct Testimony, at page 12, lines 8-13.*

1 reasonable maximum time for Qwest to respond to Tel West's billing disputes.”

2 *Swickard Part A Direct Testimony, at page 12, lines 8-9.*

3

4 **Q. DO YOU AGREE THAT QWEST HAS VIOLATED SECTION 5.4.4 OF THE**  
5 **INTERCONNECTION AGREEMENT AND THAT TEL WEST'S 30-DAY**  
6 **MECHANISM IS APPROPRIATE?**

7 A. I do not for the following reasons, each of which I will discuss in greater detail below.

8 First, Section 5.4.4 does not require the type of self-executing mechanism Tel West  
9 desires, and Tel West should not be allowed to use this proceeding to renegotiate its  
10 interconnection agreement. Second, Qwest has acted reasonably with regard to Tel  
11 West's billing disputes. Third, Tel West greatly contributes to the length of time it  
12 takes Qwest to respond to its many billing disputes. Lastly, Tel West has not complied  
13 with the very provision (Section 5.4.4) it has sued Qwest to enforce.

14

15 **Q. DOES QWEST BELIEVE THAT SECTION 5.4.4 REQUIRES RESOLUTION**  
16 **OR COMPREHENSIVE RESPONSE BY QWEST WITHIN 30 DAYS?**

17 A. No, it requires expedited investigation of all good faith disputes. The term “expedited”  
18 is neither precisely defined, nor tied to any time-specific benchmark as Tel West now  
19 claims it should be. And that is for good reason. What constitutes expeditious  
20 handling of one company's dispute is different from what constitutes expeditious  
21 handling of another company's, depending the nature of the dispute. A company's  
22 dispute of 10 line items in a given month can likely be handled in a very different  
23 timeframe from a company's dispute of 300 line items. Expeditious handling of Tel  
24 West's 1,109 April-November disputes (just for Washington) or its 390 December line  
25 item disputes (just for Washington) will take more than 30 days.

1 Moreover, Tel West did not ever raise the 30-day mechanism during the parties'  
2 negotiations of the current interconnection agreement, even though most of the April-  
3 November billing disputes referenced in the Amended Petition were pending when the  
4 current interconnection agreement went into effect on October 31, 2001. Neither did  
5 Tel West specifically attempt to negotiate the terms of Section 5.4.4.<sup>2</sup> Nor did Tel  
6 West exercise its right under Section 252 of the Telecommunications Act to seek this  
7 Commission's involvement in mediating or arbitrating this issue which it now holds out  
8 to be critical.<sup>3</sup> Qwest believes it is totally inappropriate for Tel West to attempt to  
9 achieve via litigation what it failed to pursue via negotiation, especially since (1) the  
10 current interconnection agreement (the first between the parties to require expedited  
11 dispute investigation) has only recently gone into effect and (2) Qwest has acted  
12 reasonably and consistent with its terms (see below). Lastly, to my knowledge, no  
13 Qwest interconnection agreement contains a dispute resolution mechanism such as the  
14 one Tel West now demands to be imposed in its agreement with Qwest.

15  
16 **Q. YOU SAID ABOVE THAT QWEST HAS ACTED REASONABLY WITH**  
17 **REGARD TO TEL WEST'S BILLING DISPUTES. PLEASE EXPLAIN.**

18 A. Tel West's Amended Petition and testimony implies that Qwest has made no efforts to  
19 work with Tel West on its billing issues. This is simply untrue, as Tel West admits in  
20 its scant responses to data requests Qwest-045 and -046. *See Exhibit KM-5*. First, as  
21 documents produced in discovery show, Qwest's former billing manager in charge of  
22 Tel West's account, Sheryl Hild (who retired at the end of 2001), had a very friendly

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<sup>2</sup> See Exhibit KM-5 (attached to the testimony of Kathryn Malone): *Tel West's response to data request Qwest-047 (Tel West admits it did not raise the issue of including the 30-day penalty mechanism during negotiations of the current interconnection agreement)*. While Tel West asserts in its response that the parties negotiated in the May-July timeframe, the agreement was not signed until August 15, 2001, meaning that Tel West was apparently not significantly concerned about Qwest's handling of its billing disputes despite that some of its pending disputes related to a Qwest invoice that was over 4 months old.

<sup>3</sup> See Exhibit KM-5: Tel West's response to data request Qwest-047(d), (e).

1 and cordial relationship with Tel West and frequently corresponded with Tel West  
2 regarding billing issues. Thus, to imply that Qwest ignored Tel West's concerns in any  
3 way is inaccurate. Second, as Tel West acknowledges, on February 15, 2002, Qwest  
4 responded to each of the 1,109 Washington billing disputes for April-November 2001  
5 and committed to responding to its 390 Washington billing disputes (which were not  
6 presented to Qwest until January 18, 2002) for the December 2001 invoice by the end  
7 of February. *See Exhibit KM-5: Tel West's responses to data requests Qwest-048, -*  
8 *049 and -050.* Qwest met this commitment and responded to all 390 of Tel West's  
9 December 2001 billing disputes on February 27, 2002. Thus, Qwest does not believe  
10 that there is any problem with billing dispute resolution process between the parties.  
11 Given how onerous the process of resolving Tel West's billing disputes is (see below),  
12 Qwest believes it has acted reasonably at all times since the current interconnection  
13 agreement and Section 5.4.4 took effect.  
14

15 **Q. YOU SAID THAT TEL WEST GREATLY CONTRIBUTES TO THE LENGTH**  
16 **OF TIME IT TAKES QWEST TO RESPOND TO ITS MANY BILLING**  
17 **DISPUTES. PLEASE EXPLAIN.**

18 A. There are three facets to my explanation of that point. First, for context I need to  
19 summarize how much effort is required, in general, on Qwest's part to review each  
20 individual disputed line item charge. Second, I will discuss how Tel West contributes  
21 to the length of the process by not fully protecting itself against the types of charges it  
22 wants to avoid. Third, I will discuss how Tel West contributes to the length of the  
23 process by its attempt to shift the entire burden of avoiding unwanted charges on  
24 Qwest.  
25

1 **Q. CAN YOU SUMMARIZE THE PROCESS A QWEST BILLING MANAGER**  
2 **GOES THROUGH FOR EACH DISPUTED LINE ITEM ?**

3 A. I can. Virtually all of Tel West's billing disputes relate to Tel West's desire to be  
4 credited for any pay-per-use charges incurred by its customers. Thus, almost each of  
5 the line items challenged by Tel West are for directory assistance or toll charges  
6 incurred by Tel West's customers. Tel West disputes each such charge that appears on  
7 its billing statements from Qwest. *See Exhibit KM-4: Tel West's response to data*  
8 *request Qwest-010 ("Now, Tel West disputes all OS/DA charges.").*

9  
10 After Qwest receives Tel West's spreadsheet of disputed line item charges (much in the  
11 form as attached as Exhibit B to Mr. Swickard's Part A Direct Testimony), the first step  
12 is to pull up the bill Tel West is disputing to check the description and amounts on the  
13 disputed charges on the bill. Second, the billing manager must review the end user's  
14 Customer Service Record ("CSR") to check for the Uniform Service Order Code  
15 ("USOC") of any restriction or blocking service that Tel West may have ordered to  
16 limit pay-per-use charges from being incurred. If there is no blocking service in place,  
17 the billing manager next goes into a Qwest database to identify the date the service  
18 went in and to check the original Local Service Request ("LSR") to see if Tel West had  
19 indeed requested a restriction/blocking service be placed on the line at the time the  
20 service was ordered. If it did not, the billing manager sustains the disputed charge and  
21 generally notes on the spreadsheet it returns to Tel West (detailing resolution of each of  
22 the disputed line items) something like 'no block req. on any LSR.' If the billing  
23 manager finds that a restriction/blocking service was requested and that Qwest had  
24 inadvertently neglected to put it in place, the billing manager completes and sends  
25 (internally) a billing feedback form to not only get the service put in place, but also  
26 sometimes to provide a full credit on the charges Qwest billed to Tel West. If the

1 restriction/blocking service is on the CSR, the billing manager also has to check to  
2 make sure the necessary Field Identifier (“FID”)<sup>4</sup> was properly programmed. If the  
3 FID appears on the CSR, the billing manager then calls repair to see if the blocking  
4 service is working. The length of that process obviously varies with how many steps  
5 the billing manager needs to go through. It is also lengthened if Tel West provides  
6 Qwest an erroneous telephone number since the billing manager then has to investigate  
7 the proper telephone number for the related charge before she can move forward  
8 through the process I just described. In Qwest’s experience, these errors have occurred  
9 with some regularity with Tel West.

10  
11 **Q. EXPLAIN WHAT YOU MEANT WHEN YOU SAID ABOVE THAT TEL WEST**  
12 **CONTRIBUTES TO THE LENGTH OF THE PROCESS BY ITS ATTEMPT TO**  
13 **SHIFT THE ENTIRE BURDEN OF AVOIDING UNWANTED CHARGES ON**  
14 **QWEST.**

15 A. This answer also involves several facets. First, as explained in the testimony of  
16 Kathryn Malone and David Teitzel, Tel West (despite Mr. Swickard’s professed  
17 telecommunications and US WEST-specific knowledge and experience) has not  
18 ordered or (apparently) thoroughly investigated appropriate restriction services it can  
19 purchase from Qwest by which it can effectively restrict its customers from accessing  
20 pay-per-use services. As Ms. Malone explained, Tel West has not ordered or in good  
21 faith investigated the viability of a customized routing solution. Neither has Tel West  
22 pursued the use of CustomNet, a service that would effectively block (or require  
23 alternate billing for) all outgoing pay-per-use services. Instead, Tel West relies solely  
24 on ordering Dial Lock, a retail offering intended for Qwest’s retail customers to control

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<sup>4</sup> A FID is an internal Qwest code often necessary (in conjunction with the USOC) to program the switch properly.

1 (by means of a PIN code) the outgoing use of their phone lines. As Tel West admits,  
2 Qwest expressly informed Tel West in late 2001 that Dial Lock was not intended for  
3 use by resellers to block use by their end users. Nevertheless, Tel West did not alter or  
4 curtail its reliance on Dial Lock and continues to order it on, it says, 100% of lines  
5 where available.<sup>5</sup>

6  
7 Second, it appears that Tel West – despite its assertion that it orders Dial Lock on 100%  
8 on all its lines where available and Toll Restriction Service on all other lines<sup>6</sup> -- does  
9 not always order Dial Lock. For example, Qwest reviewed the November and  
10 December billing dispute spreadsheets forwarded by Tel West and responded to by  
11 Qwest, respectively, on February 15, 2002 and February 27, 2002. Of the 28  
12 November line items sustained because Tel West had not requested a blocking service  
13 on the line, Dial Lock was available for 27 of the affected lines. Of the 311 December  
14 line items sustained because Tel West had not requested a blocking service on the line,  
15 Dial Lock was available for all 311 of the affected lines.

16  
17 Third, Tel West makes no, or virtually no, effort to collect charges for pay-per-use  
18 services or obtain a security deposit from its customers to protect itself against  
19 unauthorized use of pay-per-use services. Instead, Tel West simply disputes each and  
20 every pay-per-use charge (for example, 390 such charges in December for Washington)  
21 and demands a credit from Qwest. For instance, if Tel West instead tried to collect  
22 such charges from its customers (at whatever markup it deemed reasonable) and then  
23 only challenged those charges that it was unable to collect from its customers, the

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<sup>5</sup> See Exhibit KM-4: Tel West's response to data requests Qwest-008 and -009. See also Exhibit KM-5: Tel West's response to data requests Qwest-029(a), -056, and -057.

<sup>6</sup> See Exhibit KM-4: Tel West's response to data request Qwest-006. See also Exhibit KM-5: Tel West's response to data request Qwest-055.

1 length of time for Qwest to respond to Tel West's billing disputes would be much  
2 shorter. Instead, it puts the burden of investigating each and every pay-per-use charge  
3 on Qwest's shoulders. Qwest believes it is unreasonable for Tel West to then turn  
4 around and initiate litigation against Qwest because it takes (in its opinion) a great deal  
5 of time for Qwest to work through each of its disputes.  
6

7 **Q. DOES TEL WEST STRICTLY COMPLY WITH SECTION 5.4.4 OF THE**  
8 **INTERCONNECTION AGREEMENT?**

9 A. It does not. That section requires Tel West to notify Qwest in writing *within 30 calendar*  
10 *days* of receiving Qwest's billing, identifying the amount, reason and rationale of each  
11 billing dispute. Ironically, Tel West does not comply with this requirement, yet has  
12 pursued litigation to "enforce" and expand Qwest's obligations under the section. For  
13 example, Qwest issued its billing statement to Tel West on December 7, 2001. Tel  
14 West acknowledges that it did not provide Qwest its spreadsheet of 390 disputed line  
15 items from that bill until January 18, 2002. Tel West seeks to write a new penalty into  
16 the agreement if Qwest fails to respond to Tel West within 30 days of receipt of a claim  
17 but is not currently complying with its own 30 day requirement to notify Qwest of the  
18 dispute. *See Exhibit KM-5: Tel West's response to data requests Qwest-048, -049 and*  
19 *-050.*<sup>7</sup>  
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<sup>7</sup> During the effective period of the prior interconnection agreement, Tel West regularly took greater than 30 days to present its billing disputes. Assuming a bill date (from Qwest) of the 7<sup>th</sup> of each month, Tel West provided its disputes to Qwest as follows: January 2001 (44 days); February 2001 (51 days); March 2001 (23 days); April 2001 (30 days); May 2001 (31 days); June 2001 (40 days); July 2001 (73 days); August 2001 (46 days); September 2001 (70 days); and October 2001 (40 days). See attached Exhibit LBB-2C, which contains an excerpt from Qwest's response to data request Tel West 01-011 (more specifically, Qwest's billing dispute worksheet).

1 **Q. WOULD IT BE REASONABLE TO REQUIRE QWEST TO RESPOND TO TEL**  
2 **WEST WITHIN THE SAME AMOUNT OF TIME IT TAKES TEL WEST TO**  
3 **DISPUTE CHARGES TO QWEST?**

4 A. No, that would not be reasonable because the processes the two companies go through  
5 are so very different. It is my understanding that Tel West simply reviews the Qwest  
6 billing statement and transports to a spreadsheet all pay-per-use charges appearing on  
7 the bill. I do not believe Tel West engages in any additional analysis or investigation  
8 into the line item charges. By the terms of the current interconnection agreement, Tel  
9 West has 30 days to produce this simple spreadsheet to Qwest. As I discussed in detail  
10 above, Qwest then engages in a very detailed (and sometimes prolonged) review and  
11 investigation of each disputed charge. Especially given the volume of charges Tel  
12 West disputes, it would not at all be reasonable to expect or require Qwest to  
13 investigate and respond to all of Tel West's disputes in the same amount of time it takes  
14 Tel West to review Qwest's bill and type up a list of disputes on a spreadsheet.

15

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 A. Yes it does.

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