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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BERNICE BRANNAN, et al.,)	
)	DOCKET NO. UT-010988
Complainants)	QWEST’S ANSWER TO COMPLAINT
v.)	
QWEST CORPORATION,)	
)	
Respondent.)	

Pursuant to RCW 80.04.110 and WAC 480-09-420, Qwest Corporation (“Qwest”) answers the complaint in this matter as follows. Qwest denies all allegations of the complaint not expressly admitted herein.

1. As to the allegations set forth in the first paragraph of the complaint (beginning “We the undersigned are requesting”), Qwest admits that, pursuant to its Exchange and Network Services Tariff (WN U-40), Section 2.6, a section specifically challenged by similarly-situated complainants and upheld by this Commission in Docket No. UT-911306 (First Supplemental Order dated August 25, 1992 and Second Supplemental Order dated October 5, 1992), Qwest passes through to its customers receiving service within the exterior boundaries of the Lummi reservation, a business privilege tax (the “Lummi tax”) imposed on Qwest by the Lummi Indian Business Council. As to the complainants’ allegation that the Lummi tax is invalid and illegal, Qwest is aware of no decision holding such a tax to be clearly invalid; as such, based on this Commission’s holding in Docket UT-911306, Qwest denies the

1 complainants' conclusory allegations. As to the aggregate amount of the Lummi tax that has been
2 passed through by Qwest (and its predecessors-in-interest) to "fee-land residents," Qwest is presently
3 without knowledge or information sufficient to form a belief as to the truth of the allegations and
4 therefore denies the same. Qwest denies all further allegations set forth in the first paragraph of the
5 complaint.

6 2. As to the second paragraph of the complaint (beginning "Below are 25 Signatures"),
7 Qwest is without sufficient knowledge or information to form a belief as to the truth of the allegations set
8 forth therein regarding the fee-owing status of the signatories and whether those signatories have been
9 charged for the Lummi tax, and therefore denies the same. As to the complainants' allegation that the
10 Lummi tax is invalid and illegal, Qwest is aware of no decision holding such a tax to be clearly invalid; as
11 such, based on this Commission's holding in Docket UT-911306, Qwest denies the complainants'
12 conclusory allegations.

13 3. As to the third paragraph of the complaint (beginning "*Which was reconfirmed"), this
14 paragraph contains only legal conclusions and therefore requires no answer by Qwest. To the extent
15 Qwest is bound to answer the allegations set forth in the third paragraph, Qwest responds that neither
16 case cited by the complainants holds squarely that the Lummi tax is clearly invalid. In fact, Big Horn
17 County Electric Cooperative, Inc. v. Adams, 219 F.3d 944 (9th Cir. 2000) arguably stands for the
18 proposition that the Lummi tax, as a use-based (as opposed to ad valorem tax) utility tax, constitutes a
19 legitimate exercise of authority by the Lummi Tribe over nonmember residents of the Lummi reservation.
20 219 F.3d at 951-952.

21 AFFIRMATIVE DEFENSES

22 4. The complaint fails to state a claim upon which relief can be granted.

23 5. Complainants' claims are barred by the doctrines of estoppel and/or res judicata.

24 6. Some or all of complainants' claims are barred for lack of jurisdiction.

25 7. Injunctive relief is not available to complainants; and the Commission lacks jurisdiction
26 to award the same.

27 8. At all relevant times, Qwest acted in conformance with its tariffs, applicable

1 Commission Orders, and state and federal law.

2 9. The complainants are the parties required to challenge the validity of the Lummi tax in
3 federal court. As the Commission recognized in Docket No. UT-911306, neither the Commission nor
4 Qwest can be compelled to challenge the validity of the Lummi tax.

5 WHEREFORE, having answered the complaint, Qwest requests that the complaint be
6 dismissed with prejudice; that complainants take nothing by their complaint; and that Qwest be awarded
7 such further relief as the Commission may deem proper.

8 Respectfully submitted this _____ day of August, 2001.

9 Qwest Corporation

10
11 By: _____
Adam L. Sherr, WSBA #25291