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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NORTHWEST TELEPHONE, INC.,

Docket No. UT-053081

Complainant,

QWEST CORPORATION'S
MOTION TO DISMISS

v.

QWEST CORPORATION,

Respondent.

- 1 Pursuant to WAC 480-07-380(1) Qwest Corporation ("Qwest") hereby files this motion requesting the Washington Utilities and Transportation Commission ("Commission") to dismiss Northwest Telephone, Inc.'s ("NTI") Complaint for Payment of Interconnection Facilities ("Complaint"). On this same date Qwest is also filing its Answer to the Complaint.
- 2 As set forth in Qwest's Answer, the Commission is without jurisdiction to order the vast majority of relief requested by NTI. NTI is interconnected with Qwest via facilities purchased from Qwest's federal (FCC) private line tariff. NTI has asked the Commission to order proportional cost allocation on those facilities. *Complaint ¶¶ 7, 10.* However, as set forth herein, the Commission has already ruled, consistent with FCC requirements, that it does not have jurisdiction to order such cost allocation on tariffed interstate circuits.
- 3 Qwest's records indicate that the vast majority of the circuits between NTI and Qwest are

purchased by NTI from Qwest's FCC tariff as interstate circuits.¹ NTI then uses some or all of the capacity on those circuits for purposes of local interconnection. This is permissible under the interconnection agreement between Qwest and NTI. However, the interconnection agreement very clearly provides that if NTI "chooses to use an existing facility purchased as Private Line Transport Service from the state or FCC Access Tariffs, the rates from those Tariffs will apply." Section 7.3.1.1.2. The Commission has confirmed, in decisions in the Qwest §271 proceeding and the Qwest/AT&T arbitration proceeding, that Qwest's FCC tariff prohibits proportional cost allocation on FCC circuits and that the Commission is without jurisdiction to order otherwise.

4 The first time this question was addressed by the Commission was in the docket to consider Qwest's compliance with Section 271 of the Act. There, the Commission did order proportional cost allocation for private line facilities used for interconnection, but confirmed that such cost allocation applied only to circuits purchased from the intrastate tariff, not the FCC or interstate tariff.²

5 The question was addressed again in the more recent AT&T/Qwest arbitration. There, the Commission affirmed the arbitrator's decision that rejected AT&T's request for proportional pricing – the same request that NTI is making here. The Commission stated that this request "calls for apportionment and pro rata sharing of costs for PLTS [private line transport services] obtained from Qwest under federal tariff. It is not within our power to make determinations in this arbitration that implicate, and appear to be contrary to, the requirements of a federal tariff that is under the Federal Communication Commission's exclusive jurisdiction. Thus, we

¹ NTI does not designate in its Complaint which circuits are at issue in this proceeding.

² 34th Supplemental Order; Order Regarding Qwest's Demonstration of Compliance with Commission Orders, *Investigation Into U S WEST Communications, Inc.'s Compliance With Section 271 of the Telecommunications Act of 1996*; *U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Docket Nos. UT-003022, UT-003040, ¶ 22 (May 2002).

affirm the Arbitrator's decision on this issue."³

6 Then, as now, Section 2.7 of Qwest's Tariff F.C.C. No. 1 covered shared use of an interstate special access circuit. This tariff provides for proportional charges for shared services, but only for shared use of federally-tariffed services. However, when PLTS is shared with local exchange service, this tariff provides no apportionment based on the use of the facility. The tariff prohibits any cost adjustment based upon the local use of the PLTS. Consequently, the tariff precludes apportioning the costs of the PLTS based upon relative use:

2.7.1 PLTS with Local Exchange Service

PLTS and Local Exchange Service may be provided on a Shared Use facility. *However, individual recurring and nonrecurring charges shall apply for each PLTS and Local Exchange Line. The Shared Use facility is not apportioned* (emphasis added).

7 Thus, any requirement of this Commission to apportion a federally tariffed service would violate those tariffs, which are under the exclusive jurisdiction of the FCC. Therefore, Qwest requests an order of this Commission dismissing that portion of NTI's Complaint that relates to FCC tariffed services.

DATED this 27th day of September, 2005.

QWEST



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³ Order No. 5, *In the Matter of the Petition for Arbitration of AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST AND TCG SEATTLE With QWEST CORPORATION Pursuant to 47 U.S.C. Section 252(b)*, Docket No. UT-033035, ¶ 19 (Feb. 6, 2004).