BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., TCG SEATTLE, AND TCG OREGON; AND TIME WARNER TELECOM OF WASHINGTON, LLC, Complainants, v. QWEST CORPORATION, Respondent.	Docket No. UT-051682 QWEST'S REPLY TO THE AT&T AND TWTC RESPONSE TO QWEST'S PETITION FOR ADMINISTRATIVE REVIEW

1 Qwest Corporation ("Qwest") files this reply to the "Response" ("Answer") filed by Complainants on March 10, 2006. This reply addresses the inaccurate statements in paragraphs 3, 4, 6, 7, and 8 of the Answer, and is filed because Complainants continue to misrepresent the availability and confidentiality of the agreements at issue herein.

2 In paragraph 3 of the Answer, Complainants state that "Qwest provided those agreements to the Commission in 2002 as confidential documents . . . ", and goes on to claim that the Commission has treated the agreements as confidential, and that nothing that Qwest has provided in this docket to date contradicts the Initial Order's finding that the documents were confidential. These statements are incorrect. Qwest's Reply to the Opposition of

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AT&T/TWTC, filed January 13, 2006, included Attachment 6, which is a copy of Qwest's response to the Commission's Bench Request No. 46 in Docket Nos. UT-003022 and 003040. The response states "Qwest is attaching the agreements that it provided in response to Public Counsel's Data Request No. ATG 07-052." This response does *not* designate the attachments as confidential; the attachments are *not* designated as confidential pursuant to the Commission protective order in that proceeding and they were *not* provided on colored paper as required for confidential submissions in Washington. The fact that some of the agreements contained the words "Confidential" on their face is not dispositive, and reflects only that Qwest did not alter the agreements from their original form when it filed them, not that they remained confidential in that docket or any other subsequent proceeding. As previously noted, the Eschelon agreement that forms the heart of Complainants' claims in this case was part of that non-confidential filing.

3 In paragraph 4 of the Answer, Complainants state that "Qwest cannot reasonably contend that the agreements were publicly available in 2002" and that Qwest "represented that they were specific to Minnesota". To the contrary, Qwest can and does contend that the agreements were publicly available in 2002 because they *were* – the discussion in paragraph 2 above demonstrates this, as do Exhibits 1 and 3 to Qwest's November 28, 2005 Motion to Dismiss and Attachments 1-6 to Qwest's January 13, 2006 Reply. Indeed, Attachment 1, dated *March 13, 2002*, is a letter from Qwest in the Minnesota proceeding *removing* the confidential designation from the agreements. And, AT&T filed several pleadings in Washington and other states during 2002 in which it publicly argued the substance of the agreements, claiming that they were discriminatory and that the 10% discount should be given to other CLECs. Continued claims that the agreements were confidential are disingenuous in light of these facts. Nor did Qwest represent that the agreements were specific to Minnesota – Qwest's representations were simply that it was the Complainants

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who must establish the connection to Washington. Furthermore, as soon as the complaint was filed in Washington by the Commission, Complainants' knew or should have known that there was a basis for an allegation that they applied in Washington.

4 In paragraph 6 of the Answer, in spite of clear evidence to the contrary, Complainants again state that the agreements were confidential. Complainants then admit that if they had requested those agreements they likely would have been provided, albeit under the protective order. While Qwest disagrees that the agreements were necessarily subject to the protective order, Complainants nonetheless now admit that the agreements were available to them as of September 2003. This fact alone should be sufficient for the Commission to establish that date as the date the cause of action accrued.

5 In paragraph 7 of the Answer, Complainants state that even if they had received the documents, under the terms of the protective order they would have been prohibited from using them in another proceeding. This is entirely beside the point. Complainants would not have had to use them in another proceeding. Complainants could have used them to file cross complaints in that very same docket. Cross-claims (claims by one party against another separate from the original action) are specifically allowed under Commission rules. WAC 480-07-370(1). Thus, Complainants' contentions in paragraph 7 are without merit.

6 In paragraph 8 of the Answer, Complainants state that they had no reason to request copies of the agreements because the Commission had already initiated a complaint and that they "*reasonably believed that their issues with the agreements would be addressed in that proceeding*." At last, Complainants *admit* that they had sufficient knowledge, at the outset of the proceeding in Docket No. UT-033011, to know that they had issues with the agreements that they wanted addressed. Yet they took no action on that knowledge. It is difficult to imagine a more plain admission that the cause of action had already accrued at that time –

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August or September of 2003.

DATED this 17th day of March, 2006.

QWEST

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