

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC., AND TCG
OREGON; TIME WARNER TELECOM
OF OREGON, LLC; AND INTEGRA
TELECOM OF OREGON, INC.

Complainants,

v.

QWEST CORPORATION,

Respondent.

Docket No.

COMPLAINT

Pursuant to ORS 756.500 and OAR 860-013-0015, AT&T Communications of the Pacific Northwest, Inc., and TCG Oregon (collectively “AT&T”), Time Warner Telecom of Oregon, LLC (“TWTC”), and Integra Telecom of Oregon, Inc. (“Integra”) bring the following Complaint against Qwest Corporation (“Qwest”). In support of their Complaint, AT&T, TWTC and Integra allege as follows:

PARTIES

1. Complainant AT&T. AT&T provides switched and non-switched local exchange and long distance services in Oregon as a competitive telecommunications service provider pursuant to a certificate of authority issued by the Commission. AT&T’s contact information for purposes of this Complaint is:

Mark P. Trincherro
Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201-5630
Phone: (503) 778-5318
Fax: (503) 778-5299
Email: marktrincherro@dwt.com

Letty S. D. Friesen
AT&T
1875 Lawrence Street, Suite 1575
Denver, CO 80202
Phone: (303) 298-6475
Fax: (303) 298-6301
Email: lsfriesen@att.com

2. Complainant TWTC. TWTC provides switched and non-switched local exchange and long distance services in Oregon as a competitive telecommunications service provider pursuant to a certificate of authority issued by the Commission.

TWTC's contact information for purposes of this Complaint is:

Mark P. Trincherro	Brian Thomas
Davis Wright Tremaine LLP	Time Warner Telecom
1300 SW Fifth Avenue, Suite 2300	223 Taylor Avenue North
Portland, OR 97201-5630	Seattle, WA 98109
Phone: (503) 778-5318	Phone: (206) 676-8090
Fax: (503) 778-5299	Fax: (206) 676-8001
Email: marktrincherro@dwt.com	Email: Brian.Thomas@twtelecom.com

3. Complainant Integra. Integra provides switched and non-switched local exchange and long distance services in Oregon as a competitive telecommunications service provider pursuant to a certificate of authority issued by the Commission.

Integra's contact information for purposes of this Complaint is:

Mark P. Trincherro	Karen Johnson
Davis Wright Tremaine LLP	Integra Telecom of Oregon, Inc.
1300 SW Fifth Avenue, Suite 2300	1201 NE Lloyd Blvd, Suite 500
Portland, OR 97201-5630	Portland, OR 97232
Phone: (503) 778-5318	Phone: (503) 453-8119
Fax: (503) 778-5299	Fax: (503) 453-8221
Email: marktrincherro@dwt.com	Email: karen.johnson@integratelecom.com

4. Respondent. Qwest is an incumbent local exchange company ("ILEC"), as defined in 47 U.S.C. § 251(h) and provides local exchange and other telecommunications services throughout the State of Oregon. On information and belief, Qwest's contact information for purposes of this Complaint is:

Alex M. Duarte
Qwest Corporation
421 SW Oak Street, Suite 810
Portland, OR 97204
Phone: (503) 242-5623
Fax: (503) 242-8589
Email: alex.duarte@qwest.com

JURISDICTION

5. Commission Jurisdiction. The Commission has jurisdiction over this Complaint and Respondent Qwest pursuant to ORS 756.500, ORS 759.260, ORS 759.275, 47 U.S.C. § 252(a), 47 U.S.C. § 252(e)(1), and 47 U.S.C. § 252(i).

FACTS

6. Eschelon Agreements. Beginning in or about February 2000, Qwest entered into a series of interconnection agreements with Eschelon Telecom (“Eschelon”). Those agreements established rates, terms and conditions for telecommunications services and facilities that Qwest provided, or agreed to provide, to Eschelon, including rates, terms, and conditions that were not contained in any agreement with any other similarly situated company (“Eschelon Agreements”). Qwest did not file these agreements with the Commission. The Eschelon Agreements were not publicly available, and Qwest did not provide AT&T, TWTC or Integra with a copy of these agreements or otherwise notify AT&T, TWTC or Integra of the existence or contents of these agreements.

7. McLeodUSA Agreements. Beginning in or about April 2000, Qwest entered into a series of interconnection agreements with McLeodUSA

Telecommunications Services, Inc. (“McLeodUSA”). Those agreements established rates, terms and conditions for telecommunications services and facilities that Qwest provided, or agreed to provide, to McLeodUSA, including rates, terms, and conditions that were not contained in any agreement with any other similarly situated company (“McLeodUSA Agreements”). Qwest did not file these agreements with the Commission. The McLeodUSA Agreements were not publicly available, and Qwest did not provide AT&T, TWTC or Integra with a copy of these agreements or otherwise notify AT&T, TWTC or Integra of the existence or contents of these agreements.

8. Same or Comparable Services. AT&T, TWTC or Integra each obtained telecommunications facilities and services from Qwest that were the same as, or comparable to, the telecommunications facilities and services that Qwest provided, or agreed to provide, to Eschelon under the Eschelon Agreements during the time frame in which those agreements were in effect. AT&T, TWTC and Integra each obtained telecommunications facilities and services from Qwest that were the same as, or comparable to, the telecommunications facilities and services that Qwest provided, or agreed to provide, to McLeodUSA under the McLeodUSA Agreements during the time frame in which those agreements were in effect.

9. Adoption. AT&T, TWTC and Integra each would have adopted, or otherwise would have agreed to, the rates and reasonably related and legitimate terms and conditions in the Eschelon and/or McLeodUSA Agreements if AT&T, TWTC and Integra had known of the existence of those agreements or the rates and reasonably related and

legitimate terms and conditions contained in those agreements and if Qwest had made those agreements or rates and reasonably related and legitimate terms and conditions available to AT&T, TWTC and Integra.

10. Qwest Overcharges. The amounts that AT&T, TWTC and Integra each paid Qwest for telecommunications facilities and services during the time period in which the Eschelon and McLeodUSA Agreements were in effect were significantly higher than the amounts that Eschelon and McLeodUSA paid, or agreed to pay, Qwest for the same or comparable telecommunications facilities and services. Qwest concealed the existence of the Eschelon and McLeodUSA Agreements and the rates and reasonably related and legitimate terms and conditions in those agreements and did not make available to AT&T, TWTC, or Integra the rates and reasonably related and legitimate terms and conditions contained in those agreements. Qwest, therefore, overcharged AT&T, TWTC and Integra the difference between the amounts that AT&T, TWTC and Integra each paid to Qwest and the amounts that AT&T, TWTC and Integra each would have paid had AT&T, TWTC and Integra adopted or otherwise accepted the rates and reasonably related and legitimate terms and conditions in the Eschelon and/or McLeodUSA Agreements.

CLAIMS FOR RELIEF

A. Violation of Federal Law.

11. AT&T, TWTC and Integra reallege and incorporate by reference the allegations in paragraphs 1-10 above as if fully set forth herein.

12. 47 U.S.C. § 251(b) and (c) requires Qwest to provide access to, and interconnection with, its network to AT&T, TWTC, Integra, and other competing telecommunications service providers “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”

13. 47 U.S.C. § 251(e) provides, “Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission,” and subsection 252(i) provides,

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

14. By providing facilities and services to Eschelon and McLeodUSA at rates or discounts off of rates that were lower than the rates and/or discounts that Qwest made available to AT&T, TWTC, Integra, and other similarly situated competing telecommunications service providers, Qwest violated 47 U.S.C. §§ 251 and 252.

C. Violation of ORS 759.260 (Unjust discrimination in rates)

15. AT&T, TWTC and Integra reallege and incorporate by reference the allegations in paragraphs 1-14 above as if fully set forth herein.

16. ORS 759.260 provides in relevant part:

[N]o telecommunications utility . . . shall, directly or indirectly, by any device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by it than:

(a) That prescribed in the public schedules or tariffs then in force or established; or

(b) It charges, demands, collects or receives from any other person for a like and contemporaneous service under substantially similar circumstances.

17. By providing facilities and services to Eschelon and McLeodUSA at rates or discounts off of rates that were lower than the rates and/or discounts that Qwest made available to AT&T, TWTC, Integra, and other similarly situated competing telecommunications service providers, Qwest demanded, collected, or received greater compensation from AT&T, TWTC and Integra than Qwest demanded, collected, or received from Eschelon and McLeodUSA for a like and contemporaneous service under substantially similar circumstances in violation of ORS 759.260.

C. Violation of ORS 759.275 (Undue preferences and prejudices)

18. AT&T, TWTC and Integra reallege and incorporate by reference the allegations in paragraphs 1-17 above as if fully set forth herein.

19. ORS 759.275 provides in relevant part:

No telecommunications utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

20. By providing facilities and services to Eschelon and McLeodUSA at rates or discounts off of rates that were lower than the rates and/or discounts that Qwest made available to AT&T, TWTC, Integra, and other similarly situated competing telecommunications service providers, Qwest granted an undue preference to Eschelon and McLeodUSA and subjecting AT&T, TWTC and Integra to undue prejudice or disadvantage in violation of ORS 759.275.

PRAYER FOR RELIEF

WHEREFORE, AT&T, TWTC and Integra pray for the following relief:

A. An order from the Commission requiring Qwest to provide refunds to AT&T, TWTC and Integra for overcharges for the intrastate telecommunications services and facilities they each obtained from Qwest, specifically the difference between the amounts that AT&T, TWTC and Integra each paid to Qwest and the amounts that AT&T, TWTC and Integra each would have paid had Qwest charged AT&T, TWTC and Integra the rates and applied the discounts in the Eschelon and/or McLeodUSA Agreements while those agreements were in effect, plus interest; and

B. Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

DATED this _____ day of November, 2005.

DAVIS WRIGHT TREMAINE LLP
Attorneys for AT&T Communications of the Pacific Northwest, Inc., and TCG Oregon, Time Warner Telecom of Oregon, LLC, and Integra Telecom of Oregon, Inc.

By _____
Mark P. Trincherro
OSB No. 88322

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., AND TCG OREGON

By _____
Letty S. D. Friesen

CERTIFICATE OF SERVICE

I, Melissa K. Geraghty, the undersigned, hereby certify and declare under penalty of perjury under the laws of the States of Oregon and Washington that the following statements are true and correct:

1. I am over the age of 18 years and am not a party to the within cause.
2. I am employed by the law firm of Davis Wright Tremaine. My business and mailing addresses are both 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington 98101-1688.
3. On the 10th day of November, 2005, I served a true and correct copy of the document to which this is attached, titled exactly COMPLAINT, by Federal Express, overnight delivery, to the following:

Alex M. Duarte
Qwest Corporation
421 SW Oak Street, Suite 810
Portland, OR 97204

Executed at Seattle, Washington, this 10th day of November, 2005.

Melissa K. Geraghty