

**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON**

**UM 1232**

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.

AMENDED 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 Amended Complaint against Qwest Corporation (“Qwest”). In support of their Amended 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 Amended Complaint is:

Sarah K. Wallace  
Davis Wright Tremaine LLP  
1300 SW Fifth Avenue, Suite 2300  
Portland, OR 97201-5630  
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Letty S. D. Friesen  
AT&T  
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Denver, CO 80202  
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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 Amended Complaint is:

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Time Warner Telecom  
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Email: [Brian.Thomas@twtelecom.com](mailto: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 Amended Complaint is:

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Karen Johnson  
Integra Telecom of Oregon, Inc.  
1201 NE Lloyd Blvd, Suite 500  
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Phone: (503) 453-8119  
Fax: (503) 453-8221  
Email: [karen.johnson@integratelecom.com](mailto: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 Amended 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](mailto:alex.duarte@qwest.com)

### **JURISDICTION**

5. Commission Jurisdiction. The Commission has jurisdiction over this Amended 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. Damages. 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.

11. Interconnection Agreements. AT&T, TCG Oregon, TWTC, and Integra each separately entered into interconnection agreements with Qwest.

a. *AT&T and Qwest.* The Commission approved the original interconnection agreement between AT&T and U S West Communications, Inc. (Qwest's predecessor in interest) on September 5, 1997 in docket ARB 3 ("AT&T/Qwest Agreement"). The AT&T/Qwest Agreement was in effect when Qwest entered into the Eschelon and McLeodUSA Agreements.

Section 36 of the AT&T/Qwest Agreement provides:

ILEC will offer Network Elements to CLEC on an unbundled basis on rates, terms and conditions that are just reasonable, and non-discriminatory in accordance with the terms and conditions of this Agreement, the Oregon Statutes and Regulations and the requirements of Section 251 and Section 252 of the Federal Act.

b. *TCG Oregon and Qwest.* The Commission approved the original interconnection agreement between TCG Oregon and U S West Communications, Inc. (Qwest's predecessor in interest) on May 19, 1997 in docket ARB 2 ("TCG/Qwest Agreement"). The

TCG/Qwest Agreement was in effect when Qwest entered into the Eschelon and McLeodUSA Agreements. Section XVI of the TCG/Qwest Agreement provides: “The Parties agree that the provisions of Section 252(i) of the Act shall apply, including state and federal interpretive regulations in effect from time to time.”

c. *TWTC and Qwest.* On May 8, 1997, the Commission approved the interconnection agreement between GST Telecom of Oregon, Inc. (TWTC’s predecessor in interest) and U S West Communications, Inc. (Qwest’s predecessor in interest) (“First TWTC/Qwest Agreement”). The First TWTC/Qwest Agreement was in effect when Qwest entered into the Eschelon and McLeodUSA Agreements, although the parties were negotiating a new interconnection agreement during that time. Section AA of the First TWTC/Qwest Agreement provides:

**Most Favored Nation Terms and Treatment:** The parties agree that the provision of Section 252(i) of the Act shall apply, including state and federal interpretive regulations in effect from time to time.

The Commission approved a new interconnection agreement between TWTC and Qwest on August 8, 2000, in docket ARB 235 (“Second TWTC/Qwest Agreement”). Although this agreement was being negotiated during the time that Qwest entered into the Eschelon and McLeodUSA Agreements, TWTC did not know of the existence of those agreements and was not given the opportunity to opt into any provisions in those agreements. Section (A)3.36 of the Second TWTC/Qwest Agreement provides:

**Availability of Other Agreements.** With regard to the availability of other agreements, the Parties agree that the provisions of Section 252(i) of the Act shall apply, including Commission, FCC and court interpretive regulations and decisions in effect from time to time.

d. *Integra and Qwest*. On May 12, 2000, Integra opted in to the interconnection agreement between AT&T and U S West Communications, Inc. (Qwest's predecessor in interest) ("Integra/Qwest Agreement"). See OPUC Docket No. ARB 219. This agreement was in effect at the time Qwest entered into the Eschelon and McLeodUSA Agreements. Section 36 of the Integra/Qwest Agreement provides:

ILEC will offer Network Elements to CLEC on an unbundled basis on rates, terms and conditions that are just, reasonable, and non-discriminatory in accordance with the terms and conditions of this Agreement, the Oregon Statutes and Regulations and the requirements of Section 251 and Section 252 of the Federal Act.

### **CLAIMS FOR RELIEF**

#### **A. Violation of Federal Law**

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

13. 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."

14. 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.

15. 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.

**B. Violation of ORS 759.260 (Unjust discrimination in rates)**

16. AT&T, TWTC, and Integra reallege and incorporate by reference the allegations in paragraphs 1-16 above as if fully set forth herein.

17. 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.

18. 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)**

19. AT&T, TWTC, and Integra reallege and incorporate by reference the allegations in paragraphs 1-19 above as if fully set forth herein.

20. 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.

21. 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 subjected AT&T, TWTC, and Integra to undue prejudice or disadvantage in violation of ORS 759.275.

**D. Breach of Contract**

22. AT&T, TWTC, and Integra reallege and incorporate by reference the allegations in paragraphs 1-22 above as if fully set forth herein.

23. 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, Qwest breached section 36 of the AT&T/Qwest Agreement.

24. 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 TCG Oregon, Qwest breached section XVI of the TCG/Qwest Agreement.

25. 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 TWTC, Qwest breached section AA of the First TWTC/Qwest Agreement and section (A)3.36 of the Second TWTC/Qwest Agreement.

26. 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 Integra, Qwest breached section 36 of the Integra/Qwest Agreement.

**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 or damages to AT&T, TWTC, and Integra based on 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 13<sup>th</sup> day of January, 2006.

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of the Pacific Northwest, Inc., and  
TCG Oregon, Time Warner Telecom  
of Oregon, LLC, and Integra Telecom of  
Oregon, Inc.

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

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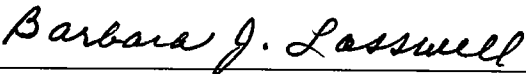
By: *Sarah K. Wallace for*  
Lety S.D. Friesen

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the AMENDED COMPLAINT was served via electronic mail and U.S. Mail (unless otherwise specified below) on the following parties on January 13, 2006:

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