

FORMAL COMPLAINT



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BEFORE THE ARIZONA CORPORATION COMMISSION
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T-01051B-05-0495
T-03693A-05-0495

IN THE MATTER OF THE FORMAL) DOCKET NO. T-03693A-05-_____
COMPLAINT OF PAC-WEST TELECOMM)
SEEKING ENFORCEMENT OF THE) FORMAL COMPLAINT
INTERCONNECTION AGREEMENT BETWEEN) REGARDNG ENFORCEMENT OF
PAC-WEST TELECOMM AND QWEST) INTERCONNECTION AGREEMENT
CORPORATION)
)
)
)
)

Pursuant to A.A.C. R14-3-106(L), Pac-West Telecomm, Inc. ("Pac-West"), brings the following Complaint against Qwest Corporation ("Qwest") for its failure to comply with the terms of the Interconnection Agreement between it and Qwest. In support of its Complaint, Pac-West alleges as follows:

PARTIES

1. Plaintiff. Pac-West is a public service corporation that is certified to provide competitive telecommunications services in Arizona. Docket No. T-03693A-99-0032 (Decision No. 61903). Pac-West is authorized to provide switched and non-switched local exchange and

long distance service in Arizona. The Pac-West corporate headquarters is located at 1776 W. March Lane, Suite 250, Stockton, CA 95207.

2. Defendant. Qwest is an incumbent local exchange company ("ILEC"), as defined in 47 U.S.C. § 251(h), that provides local exchange and other telecommunications services throughout the State of Arizona.

JURISDICTION

3. Commission Jurisdiction. The Commission has jurisdiction over this Complaint and over Qwest pursuant to 47 U.S.C. §§ 251-52 and A.A.C. R14-3-106(L).

LEGAL OVERVIEW

4. Interconnection Agreement. Pac-West and Qwest are parties to the *Local Interconnection Agreement between Qwest and Pac-West Telecomm, Inc.*, which governs interconnection arrangements between the two companies ("Interconnection Agreement"). The Interconnection Agreement is the result of Pac-West's request, pursuant to 47 U.S.C. § 252(i), to opt into the *Local Interconnection Agreement Between Qwest and AT&T Communications of the Mountain States, Inc.* for interconnection and resale, which the Commission approved by order docketed on July 31, 1997 (ACC Decision No. 60308). The Commission approved the Interconnection Agreement on December 14, 1999 in Decision No. 62137.

5. ISP Amendment. On May 24, 2002, Pac-West and Qwest negotiated an Internet Service Provider ("ISP") Bound Traffic Amendment ("ISP Amendment") to the Interconnection Agreement to incorporate the FCC's Order on Remand and Report and Order in *In the Matter of Intercarrier Compensation for ISP-Bound Traffic* (CC Docket No. 99-68) ("FCC ISP Order"). The ISP Amendment was filed with the Commission and became effective by operation of law on May 19, 2003 (Decision No. 66052). Under the ISP Amendment, the agreed upon rates were

effective beginning June 14, 2001. The ISP Amendment is Exhibit B to the attached Affidavit of Ethan Sprague. ("Sprague Aff.")

6. Compensation for ISP-Bound Traffic. Sections 1.4 and 3.1 of the ISP Amendment provide that "'ISP-Bound' is as described by the FCC in the [FCC ISP Order]," and that "Qwest elects to exchange ISP-bound traffic at the FCC ordered rates pursuant to the [FCC ISP Order]." The ISP Amendment further provides that "Qwest will presume traffic delivered to [Pac-West] that exceeds a 3:1 ratio of terminating (Qwest to [Pac-West]) to originating ([Pac-West] to Qwest) traffic is ISP-bound traffic." ISP Amendment Section 3.2.1. This presumption is a fundamental component of the FCC ISP Order. In plain terms, Pac-West and Qwest agreed to apply FCC-ordered rates in calculating intercarrier compensation for the termination of calls above a 3:1 ratio of inbound to outbound traffic. Traffic above the 3:1 ratio is presumed by the FCC to be "ISP-bound" if Qwest invokes the FCC's plan (which the parties agree Qwest has done). Because Pac-West terminates more calls for Qwest than Qwest terminates for Pac-West, and because Qwest has invoked the FCC ISP Order, Pac-West is entitled to payment from Qwest at the FCC-ordered ISP rate for its termination of each call from a Qwest customer above the 3:1 ratio.

7. The FCC ISP Order. The FCC has asserted jurisdiction over traffic it presumes to be ISP-bound traffic. In so doing, the FCC concluded that "traffic delivered to an ISP is predominantly interstate access traffic." FCC ISP Order ¶ 1. Under the FCC ISP Order, *all* telecommunications traffic is subject to the cost-recovery mechanism outlined by the FCC, unless it falls within the exemptions established in Section 251(g) of the Act. Section 251(g) is inapplicable here because it applies only to traffic that existed and was subject to intercarrier compensation prior to the Act (primarily long distance calls). *See* 47 U.S.C. § 251(g). All traffic

eligible for the Section 251(g) exemption is dialed initially as a toll call. The traffic at issue here, however, is locally-dialed traffic including locally-dialed traffic presumed to be ISP-bound traffic.¹

To date, Qwest and Pac-West have employed the FCC-ordered cost recovery mechanism as required by the Interconnection Agreement. Nowhere in the FCC ISP Order, the Interconnection Agreement, or the ISP Amendment are there rules that distinguish among types of locally-dialed calls other than presumed ISP-bound traffic above the 3:1 ratio. The FCC's rules apply to *all* such presumed ISP-bound traffic without exception, and these rules are made applicable by the ISP Amendment to presumed ISP-bound traffic terminated by Pac-West.

FACTUAL BACKGROUND

8. Qwest Initial Withholding of Compensation. In early 2004, Qwest began withholding payment on Pac-West's invoices for compensation, alleging that Pac-West had exceeded certain growth ceilings for ISP traffic described in Section 3.2.2 of the ISP Amendment. Consistent with the dispute-resolution provisions of the interconnection agreement, Pac-West and Qwest agreed to a private arbitration to resolve this issue (AAA Case #77Y181-00385-02 (JAG Case No. 221368)). During the pendency of that arbitration, the FCC released its Order in *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171, FCC 04-241 (Oct. 8, 2004) ("Core Order"). In the Core Order the FCC found that the growth ceilings were no longer in the public interest and forbore from applying them. On December 2, 2004 the Arbitrator in the Pac-

¹ Initially the FCC took jurisdiction over presumed ISP traffic by claiming it was subject to Section 251(g). The D.C. Circuit, however, in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), determined that ISP-bound traffic is not subject to 251(g). The Court vacated the FCC's logic but not its rules, explaining the FCC might be able to justify the ISP plan under Section 251(b)(5). *See id.* at 434.

West/Qwest matter concluded that the growth ceilings in the ISP Amendment expired at the end of 2003, and that Pac-West is entitled to full compensation from January 1, 2004, without the application of any growth-ceiling cap. *See* Exhibit C to Sprague Aff. (Arbitrator's Order).

Although Qwest did not appeal the Arbitrator's decision, it also did not – despite the Arbitrator's order – pay Pac-West the full amount it had withheld.

9. Qwest Subsequent Withholding of Compensation. On December 29, 2004, Qwest notified Pac-West that it intended to “identify” and withhold from Pac-West the amount it owed related to “virtual number” or “VNXX” traffic terminated by Pac-West retroactive to the beginning of 2004. VNXX is Qwest's term for traditional Foreign Exchange service when that service is provided by Pac-West. Qwest defines VNXX as a competitive local exchange carrier's (“CLEC's”) provision of local service to a customer in an exchange other than the exchange where the customer is physically located. In this manner, Qwest contrived a new basis for withholding compensation owed Pac-West pursuant to the Arbitrator's order for the exchange of local exchange traffic. Qwest has withheld \$443,784.34 in compensation owed Pac-West for local exchange traffic terminated between January 1, 2004 and May 31, 2005. Sprague Aff. ¶ 17.

10. Negotiations. Without conceding that Qwest's new theory regarding compensation for VNXX traffic implicated a new dispute between it and Qwest and not an attempt to evade enforcement of the Arbitrator's order, Pac-West agreed to attempt to negotiate a resolution of this issue with Qwest. The negotiations, however, were unsuccessful. Qwest notified Pac-West by letter dated April 27, 2005 that it has decided to withhold 36.6% of Pac-West's “billed ISP minutes” in Arizona in the second quarter of this year. Sprague Aff. ¶ 16.

BREACH OF CONTRACT

11. The Dispute. Qwest has refused to compensate Pac-West for local exchange traffic pursuant to the cost-recovery mechanism ordered by the FCC and agreed to by Pac-West and Qwest in the ISP Amendment. Specifically, Qwest seeks to tie the definition of local exchange service to some undefined “physical location” of the called and calling parties, other than the geographic location of the called and calling parties’ respective telephone numbers. Qwest would deny Pac-West compensation for any locally-dialed call if the called party was “physically located” outside of the prescribed calling area. This position runs contrary to the longstanding industry practice of determining the nature of a call based upon the telephone number assigned to the originating and terminating telephone numbers. Nowhere in the FCC ISP Order, the Interconnection Agreement, or the ISP Amendment are there rules that distinguish between types of locally-dialed traffic, including presumed ISP-bound traffic, as Qwest now proposes. The FCC’s rules apply to all presumed ISP-bound traffic without limitation, and the ISP Amendment applies the FCC rate to all such traffic.

12. Course of Dealing/Estoppel. Pac-West and Qwest have been exchanging traffic, including FX or (to use Qwest’s term) VNXX traffic, pursuant to the Interconnection Agreement since February 2001. Not until after the Arbitrator’s decision in late 2004 did Qwest begin contending that VNXX traffic should not be treated as Exchange Service traffic for purposes of compensation. Qwest cannot now re-interpret the Interconnection Agreement and the ISP Amendment to preclude Pac-West from receiving compensation for terminating the very traffic for which Qwest has consistently compensated Pac-West. The Commission, therefore, should hold the Parties to the interpretation of the Interconnection Agreement under which they have

operated since it became effective, and require Qwest to compensate Pac-West for terminating *all* locally-dialed traffic, including presumed ISP-bound traffic, without limitation.

13. Discriminatory Application. Qwest's effort to impose a "physical location" limitation on inter-carrier competition runs afoul of its own practice. Qwest itself uses telephone numbers, rather than customer location, to rate calls as local or toll, and provides local dialing to its own customers who may not be physically located within the local calling area (Qwest FX service). Even Qwest's own tariff describes foreign exchange service in terms of local calls that go through local exchange access lines or exchange access lines connected to or served by a central office.

The rates and charges as quoted herein for local exchange service entitle the customer to local calls, without toll charges, to all local exchange access lines connected to a CO of the exchange, or to all exchange access lines served by COs of the extended local service area where comprised of more than one exchange.

Tariff Section 5.2(a)(2). The definition makes no mention of a customer's physical location.

14. Res Judicata. An Arbitrator heard argument on the issue of compensation for Exchange Service traffic, and interpreted the Interconnection Agreement, as amended, to require Qwest to compensate Pac-West for all ISP-bound traffic that it terminates beginning January 1, 2004. *See* Exhibit C to Sprague Aff. pp. 4-7. Less than one month after the Arbitrator rendered his decision, Qwest notified Pac-West of its intention to withhold compensation for the very same traffic in amounts comparable to the amounts Qwest had previously withheld based on its now rejected growth ceiling theory. Qwest thus is impermissibly attempting to evade the Arbitrator's decision by making arguments that it could have, but did not, raise during the arbitration. The Commission should preclude Qwest from taking yet another bite at the same

apple, and should order Qwest to compensate Pac-West for the termination of *all* ISP-bound traffic, consistent with the Arbitrator's ruling.

CLAIM

15. Plaintiff incorporates the allegations of paragraphs 1 through 14 above.

16. The ISP Amendment is a legal and binding contract between Qwest and Pac-West that is approved by the Commission.

17. Qwest agreed in the ISP Amendment to compensate Pac-West for presumed ISP-bound traffic at the FCC's Ordered rates pursuant to the FCC's ISP Order.

18. Qwest is in breach of the Interconnection Agreement, as amended, in refusing to compensate Pac-West for *all* local and locally-dialed ISP-bound traffic.

PRAYER FOR RELIEF

WHEREFORE, Pac-West prays for the following relief:

A. An Order from the Commission requiring that Qwest comply with the Interconnection Agreement, and specifically that Qwest compensate Pac-West for its transport and termination of *all* local traffic, including all presumed ISP-bound traffic originated by Qwest and all "VNXX" or FX traffic, according to the rates, terms, and conditions in the ISP Amendment, including all amounts Pac-West has billed Qwest for traffic terminated since January 1, 2004, plus interest for all overdue payments at the interest rate specified in the Interconnection Agreement; and

...

...

...

...

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

Respectfully submitted this 15TH day of July, 2005.

OSBORN MALEDON PA

By Joan S. Burke

Joan S. Burke
2929 North Central, Suite 2100
Phoenix, Arizona 85012
(602) 640-9356
E-mail: jburke@omlaw.com

Attorney for Pac-West Telecomm, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and 13 copies of the foregoing

Formal Complaint Regarding Enforcement of Interconnection Agreement with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

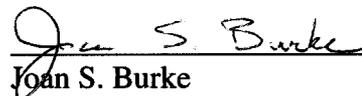
I hereby certify that I have this day served the foregoing Formal Complaint Regarding Enforcement of Interconnection Agreement on all parties of record in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

Norman G. Curtright
Corporate Counsel
Qwest
4041 N. Central Avenue, 11th Floor
Phoenix, Arizona 85012

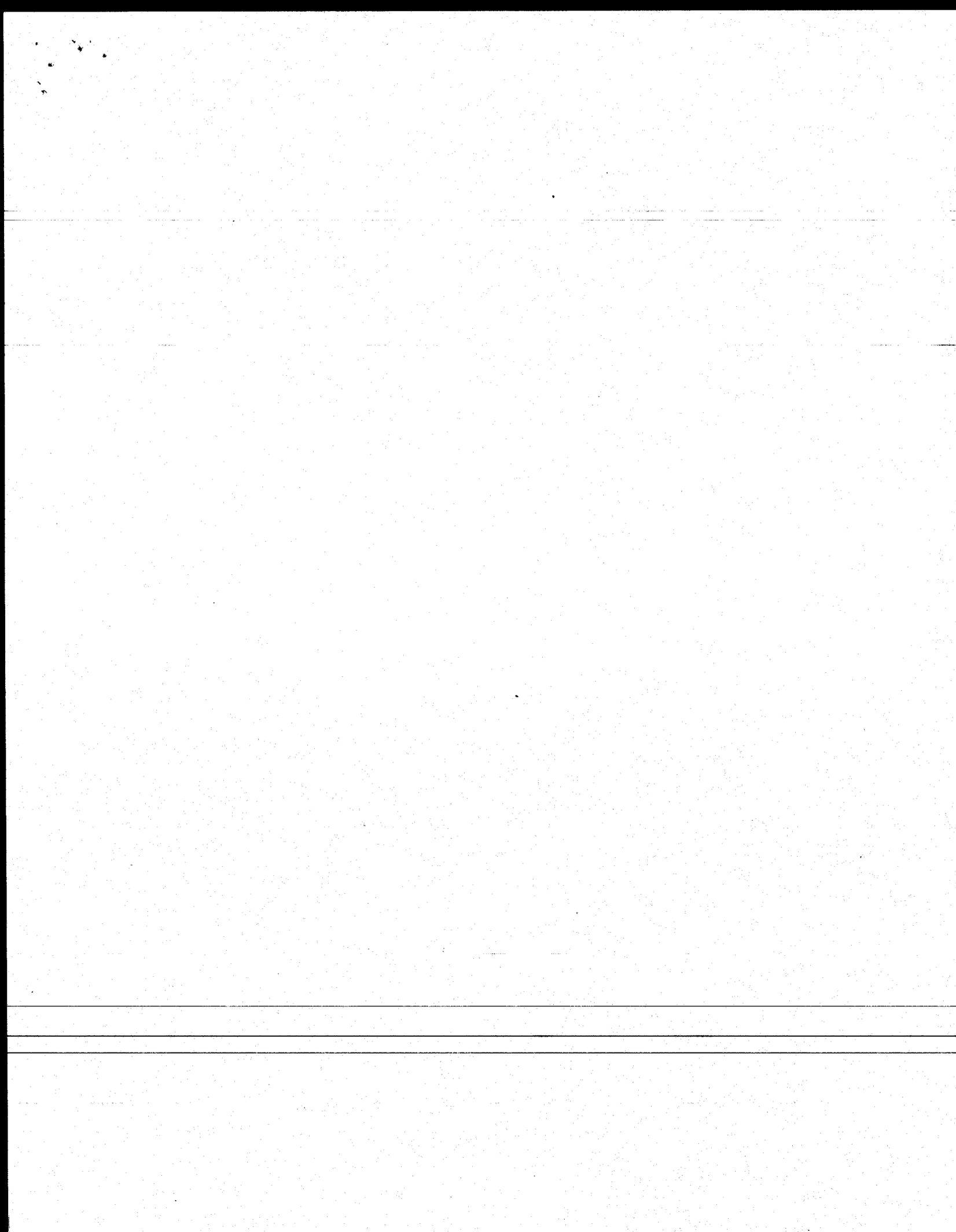
Ernest G. Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Dated at Phoenix, Arizona, this 13th day of July, 2005.



Joan S. Burke



BEFORE THE ARIZONA CORPORATION COMMISSION

PAC-WEST TELECOMM, INC.,)
) Docket No. -
)
) Petitioner,)
)
) v.) AFFIDAVIT OF ETHAN SPRAGUE
) IN SUPPORT OF FORMAL COMPLAINT
) REGARDING ENFORCEMENT OF
) INTERCONNECTION AGREEMENT
)
) QWEST CORPORATION,)
)
) Respondent.)
)
 _____)

I, Ethan Sprague, state as follows:

1. I am Director, Regulatory affairs for Pac-West Telecomm, Inc. ("Pac-West"), the Petitioner in the above-captioned proceeding. I have personal knowledge of the facts set forth in this Affidavit, and if called to testify thereto I could and would do so.
2. Pac-West is a competitive local exchange ("CLEC") and interexchange ("IXC") carrier. Pac-West provides basic local exchange service to customers in Arizona. The Arizona Corporation Commission ("ACCC") granted Pac-West's application to provide competitive local exchange services in Decision No 61903.
3. Pac-West and Qwest are parties to the Local Interconnection Agreement Between Qwest Corporation f/k/a U S WEST Communications, Inc. ("Qwest") and Pac-West Telecomm, Inc., for Arizona. ("Interconnection Agreement"). The Interconnection Agreement is the result of Pac-West's request, pursuant to 47 U.S.C. § 252(i), to opt into the Commission-approved Local Interconnection Agreement Between Qwest and AT&T Communications of the Mountain States, Inc. The Commission approved the Pac-West/Qwest Interconnection Agreement on July December 14, 1999 (Decision No. 62137).

4. Pac-West and Qwest exchange traffic pursuant to the Interconnection Agreement and have done so since the Agreement became effective. In pertinent part, the Interconnection Agreement provides the underlying terms, conditions and prices under which the parties agree to provide interconnection and reciprocal compensation for the exchange of local traffic for the purposes of offering telecommunications services. Relevant provisions of the Interconnection Agreement are attached to this Affidavit as Exhibit A.

5. On May 24, 2002 the Parties negotiated an Internet Service Provider ("ISP") Bound Traffic Amendment ("ISP Amendment") to incorporate the Federal Communications Commission's ("FCC's") Order on Remand and Report and Order in CC Docket Nos. 96-98 (Local Competition) and 99-68 (Intercarrier Compensation for ISP-Bound Traffic), FCC 01-131 (April 27, 2001). The ISP Amendment was filed with the Commission and became effective by operation of law on May 19, 2003. By its terms, the rates agreed upon in the ISP Amendment were effective beginning June 14, 2001. The ISP Amendment is attached to this Affidavit as Exhibit B.

6. In early 2004, Qwest started withholding payment on Pac-West's invoices alleging that Pac-West had exceeded the growth ceilings for ISP traffic described in section 3.2.2 of the ISP Amendment. Pac-West disagreed, contending that the growth ceilings provision of the ISP Amendment does not apply to traffic exchanged beginning in January 2004.

7. Pursuant to the dispute resolution provisions of the interconnection agreement Pac-West and Qwest agreed to a private arbitration to resolve this issue (AAA Case #77Y181-00385-02 (JAG Case No. 221368)).

8. Prior to the conclusion of the arbitration, the FCC released the Core Order on October 8, 2004, (WC Docket No. 03-171, FCC 04-241). In the Core Order the FCC found that the growth ceilings were no longer in the public interest and forbore from applying them.

9. On December 2, 2004, the Arbitrator concluded that the growth ceilings in the ISP Amendment expired at the end of 2003. The Arbitrator determined that Pac-West was entitled to compensation beginning January 1 2004, without application of the ceilings and that Pac-West continues to be so entitled. A copy of the Arbitrator's Decision is attached as Exhibit C.

10. Qwest did not appeal the Arbitrator's decision.

11. On December 29, 2004, Qwest officially notified me for the first time that it intended to withhold compensation for so-called "VNXX" traffic. A copy of this notification is attached as Exhibit D. Qwest attempts to distinguish between foreign exchange ("FX") service offered by Qwest or another incumbent local exchange company ("ILEC") and a similar service offered by Pac-West or other competitive local exchange companies ("CLECs"). Qwest calls the traffic that the CLEC FX service generates as "VNXX" traffic, for which Qwest contends it is not required to compensate Pac-West for terminating.

12. Pursuant to Qwest's notification I engaged in numerous communications with Dan Hult, Qwest Director of Carrier Relations. The purpose of those communications was to discuss Pac-West's position that this "Virtual NXX" or "VNXX" dispute was, or should have been, resolved in the prior arbitration. Dan Hult responded on January 12, 2005, that Qwest did not agree this was an overlaid dispute and that we were required to follow the ICA dispute provisions. A copy of this e-mail communication is attached as Exhibit E.

13. Pac-West did not, and has not, conceded that Qwest's so-called "VNXX" dispute is a new dispute and not an attempt to re-impose the growth ceilings through other means. Pac-West nevertheless attempted to negotiate resolution of this dispute with Qwest.

14. Qwest refused to identify the physical locations of its customers generating the traffic that Qwest delivers to Pac-West for termination. A copy of the email is attached as Exhibit F.

15. The Parties have been unable to resolve this issue through negotiations. A copy of the correspondence between the Parties is attached as Exhibit G.

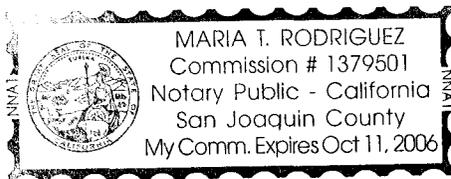
16. Qwest's notified Pac-West by letter dated April 27, 2005 that it has decided to withhold 36.6% of the "billed ISP minutes" in Washington in the second quarter of this year. A copy of this letter is attached as Exhibit H.

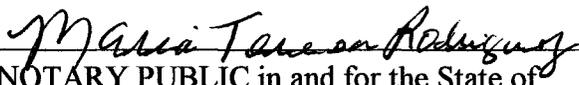
17. Qwest has withheld \$443,784.34 for usage since January 1, 2004 through May 31, 2005, based only on Qwest's belief that this amount represents compensation for FX or "VNXX" traffic.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.


ETHAN SPRAGUE

SUBSCRIBED AND SWORN to before me this 16 day of June, 2005.




NOTARY PUBLIC in and for the State of
California, residing at Stockton - SAN JOAQUIN CO
My appointment expires Oct. 11 - 2006
Print Name MARIA TEREZA RODRIGUEZ

A

**AGREEMENT
FOR LOCAL WIRELINE NETWORK INTERCONNECTION
AND
SERVICE RESALE**

**Between
Pac-West Telecomm, Inc.
and
U S WEST Communications, Inc.**

**For the State of
Arizona**

**Agreement Number
CDS-990507-0126**

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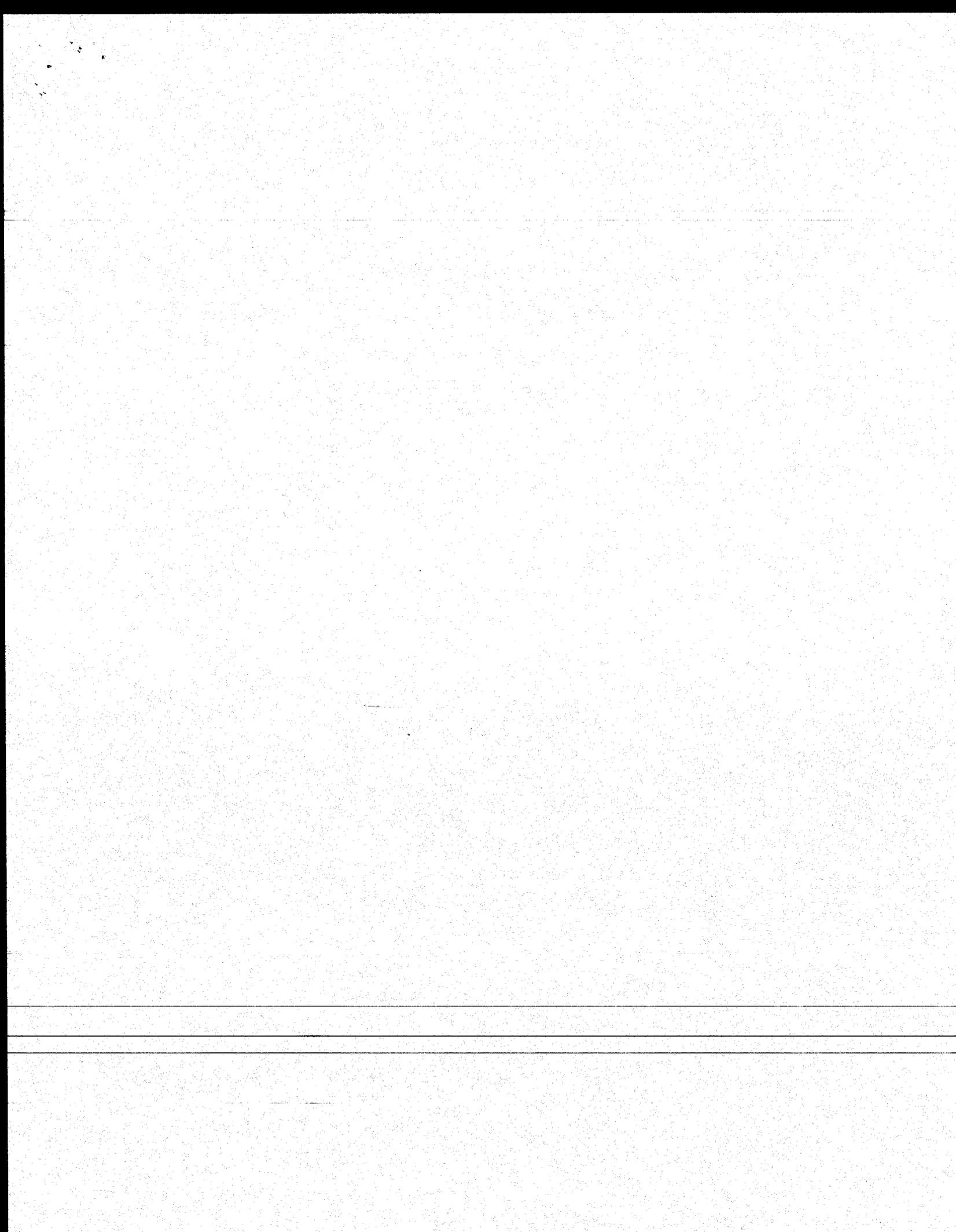


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RATES and CHARGES

1. General Principles

- 1.1 All rates provided under this Agreement shall remain in effect for the term of this Agreement unless they are not in accordance with all applicable provisions of the Act, the rules and regulations of the FCC, or the Commission's rules and regulations.
- 1.2 Except as otherwise specified in this Agreement, as approved or ordered by the Commission, or as agreed to by the Parties through good faith negotiations, nothing in this Agreement shall prevent a Party through the dispute resolution process described in this Agreement from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement.

2. Resale Rates and Charges

- 2.1¹ **The Customer Transfer Charge ("CTC") for resale customers switching to PAC-WEST from U S WEST, and U S WEST's applicable resale discount rates are set forth on Schedule 1 of this Agreement..**
- 2.2 **Pac-West shall be permitted to demonstrate what its own cost will be upon termination of a resale customer, so that amount may be discounted from the CTC payable to U S WEST.**
- 2.3 If the resold services are purchased pursuant to tariffs and the tariff rates change, charges billed to Pac-West for such services will be based upon the new tariff rates less the applicable wholesale discount as agreed to herein. The new rate will be effective upon the tariff effective date.
- 2.4 A Subscriber Line Charge (SLC) will continue to be paid by Pac-West without discount for each local exchange line resold under this Agreement. All federal and state rules and regulations associated with SLC or as found in the applicable tariffs also apply.
- 2.5 Pac-West will pay to U S WEST the PIC change charge without discount associated with Pac-West end user changes of interexchange or intraLATA carriers.
- 2.6 Pac-West agrees to pay U S WEST at the wholesale discount rate when its end user activates any services or features that are billed on a per use or per activation basis (e.g., continuous redial, last call return, call back calling, call trace, etc.). U S WEST shall provide Pac-West with detailed billing information per applicable OBF standards unless otherwise agreed to by the Parties as necessary to permit Pac-West to bill its end users such charges.
- 2.7 [Intentionally left blank for numbering consistency]

¹ MCI Order, p. 24 at Issue 41.

- 2.8 Nonrecurring charges will be billed as approved by the Commission.
- 2.9 [Intentionally left blank for numbering consistency]
- 2.10 **Service quality credits will not be applicable as additional resale discounts.²**
- 2.11 Resale prices shall be wholesale rates determined on the basis of retail rates charged to subscribers for the Telecommunications Service requested, excluding the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided by U S WEST, as specified in the Act, by the FCC and/or the Commission. **U S WEST shall be obligated to offer its volume and term discount service plans to Pac-West provided that Pac-West complies with the volume and term requirements contained therein. If selected by Pac-West, an appropriate wholesale discount shall also be applied to such plans. With the exception of the preceding, Pac-West shall not be required to agree to volume or term commitments as a condition for obtaining Local Service.³**
- 2.12 U S WEST shall bill Pac-West and Pac-West is responsible for all applicable charges for Resale Services. Pac-West shall be responsible for all charges associated with services that Pac-West resells to an end user.

3. Construction and Implementation Costs

- 3.1 **U S WEST may assess Pac-West up-front, nonrecurring charges for construction costs associated with a service only if U S WEST assesses its own end users such charges for similar construction and also demonstrates to the Commission that it is customary industry practice to charge end users for similar costs. If a tariff exists, such charges are deemed to be a customary industry practice. U S WEST shall not double recover nonrecurring construction charges. If another CLEC or U S WEST receives a benefit from the construction or other activity for which Pac-West is charged, Pac-West is entitled to recover contribution from the CLEC, or, if applicable, U S WEST as a beneficiary, for a share of the costs.⁴**
- 3.2 [Intentionally left blank for numbering consistency]
- 3.3 [Intentionally left blank for numbering consistency]
- 3.4 A quote for the Pac-West portion of a specific job will be provided to Pac-West. The quote will be in writing and will be binding for ninety (90) days after the issue date. When accepted, Pac-West will be billed the quoted price and construction will commence after receipt of payment. If Pac-West chooses not to have U S WEST construct the facilities,

² MCI Order, pp. 17-18 at Issue 28 and AT&T Order at Issue 36.

³ AT&T Order, p. 19 at Issue 33.

⁴ MCI Order, pp. 23-24 at Issue 41 and AT&T Order at Issue 39.

U S WEST reserves the right to bill Pac-West for the expense incurred for producing the engineered job design.

3.5 Pac-West shall make payment of fifty percent (50%) of the nonrecurring charges and fees upon acceptance of the quotation with the remainder due upon completion of the construction. In the event that Pac-West disputes the amount of U S WEST's proposed construction costs, Pac-West shall deposit fifty percent (50%) of the quoted construction costs into an interest bearing escrow account prior to the commencement of construction. The remainder of the quoted construction costs shall be deposited into the escrow account upon completion of the construction. Upon resolution of the dispute, the escrow agent shall distribute amounts in the account in accordance with the resolution of such dispute, and any interest that has accrued with respect to amounts in the account shall be distributed proportionately to the Parties. The pendency of any such dispute shall not affect the obligation of U S WEST to complete the requested construction.

3.6 **Notwithstanding any provision contained in this Agreement to the contrary, within ninety (90) days of the Effective Date of this Agreement, the Parties shall negotiate a pricing schedule for collocation enclosure buildouts.⁵**

4. **Unbundled Loops - Conditioning Charge**

4.1 **For loops that need conditioning, as requested by Pac-West, to ensure the necessary transmission standard, conditioning charges may apply so long as such charges are assessed to U S WEST's similarly situated customers. If U S WEST normally charges its customers an up-front fee, it may require Pac-West to pay an up-front fee. If the fee for conditioning is built into the monthly cost for its customers, however, the conditioning costs shall be considered as part of the forward looking economic cost of the upgraded loop.⁶**

5. **Transport and Termination - Interim Prices**

5.1⁷ **Pursuant to A.A.C. R14-2-1304, the Parties will utilize bill and keep as a reciprocal compensation mechanism for a period of twenty-four (24) months from the time of the Commission's approval of the first interconnection agreement between U S WEST and any CLEC (December 18, 1996). Unless permanent rates have been established, upon termination of bill and keep, interim rates shall apply. Either Party may seek an earlier termination of the bill and keep mechanism if it is able to prove to the Commission, based on six (6) consecutive months of its traffic data, that traffic terminated by Pac-West and U S WEST is out of balance by more than ten (10) percent. Reciprocal compensation shall comply with the Recommended Order on Consolidated Cost and Pricing Arbitration, to be trued up upon approval of that Decision by the Commission.⁸**

⁵ Procedural Order, July 14, 1997, page 24.

⁶ MCI Order, pp. 27-28 and AT&T Order, p. 37.

⁷ MCI Order, p. 28 and AT&T Order at Issue 88.

⁸ Procedural Order, July 14, 1997, page 16.

5.1.1 At such time as bill and keep is terminated, and permanent rates are established by the Commission, a true-up for the regulatory lag may be ordered by the Commission.

5.2⁹ Pac-West shall receive fair compensation for the use of its switch equivalent to that of U S WEST's switch beginning from the date Pac-West enters an agreement granting access to the facilities of Pac-West's long distance affiliate(s). Until that time, Pac-West's switch shall be billed at the rates equivalent to that of a U S WEST end office switch.

6. Number Portability

6.1 Pac-West and U S WEST shall provide remote call forwarding functionality, or other INP capabilities, to each other at no charge, in accordance with the provisions of the FCC's First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116 ("FCC Number Portability Order").

6.2 The costs incurred by Pac-West and U S WEST of providing INP shall be recovered through a broad-based cost recovery mechanism, as described in the FCC Number Portability Order. Costs shall be assessed in an annual surcharge based upon each carrier's number of ported telephone numbers relative to the total number of active telephone numbers in the local service area, as discussed by the FCC in the FCC Number Portability Order, at paragraph 16.

6.3¹⁰ In respect to distribution of terminating charges in the context of INP, such charges shall be distributed in a manner consistent with meet-point billing arrangements. Accordingly, there shall be no requirement that all of the terminating interstate or intrastate access charges paid by IXCs on calls forwarded as a result of number portability measures be paid to either Pac-West or U S WEST. Pac-West and U S WEST shall share in the access revenues received for a ported call. If U S WEST or Pac-West is unable to identify the particular IXC carrying a forwarded call for purposes of assessing access charges, the forwarding carrier shall provide the terminating carrier with the necessary information to permit the terminating carrier to issue a bill. The Parties shall work together to incorporate the results of the FCC Access Reform Order when final.

6.4 Pac-West may request U S WEST to provide Pac-West call detail records identifying each IXC which are sufficient to allow Pac-West to render bills to IXCs for calls IXCs place to ported numbers in the U S WEST network which U S WEST forwards to Pac-West for termination. To the extent U S WEST is unable to provide billing detail information within a reasonable time frame, the Parties may agree on an interim method to share access revenues pursuant to a mutually agreed upon surrogate approach.

⁹ MCI Order, p. 26.

¹⁰ AT&T Order, p. 28 at Issue 50.

7. Network Elements

7.1¹¹ U S WEST may receive compensation for electronic interfaces as an initial access fee for its expenditures at such time as the completion of the gateway interfaces are effected. The reimbursement for such expenditures shall be apportioned among all end users of the gateway interfaces in Arizona, including U S WEST. U S WEST and Pac-West acknowledge that the specific cost-sharing mechanism for electronic interfaces shall be determined by a generic proceeding held by the Commission for this purpose.

7.2 [Intentionally left blank for numbering consistency]

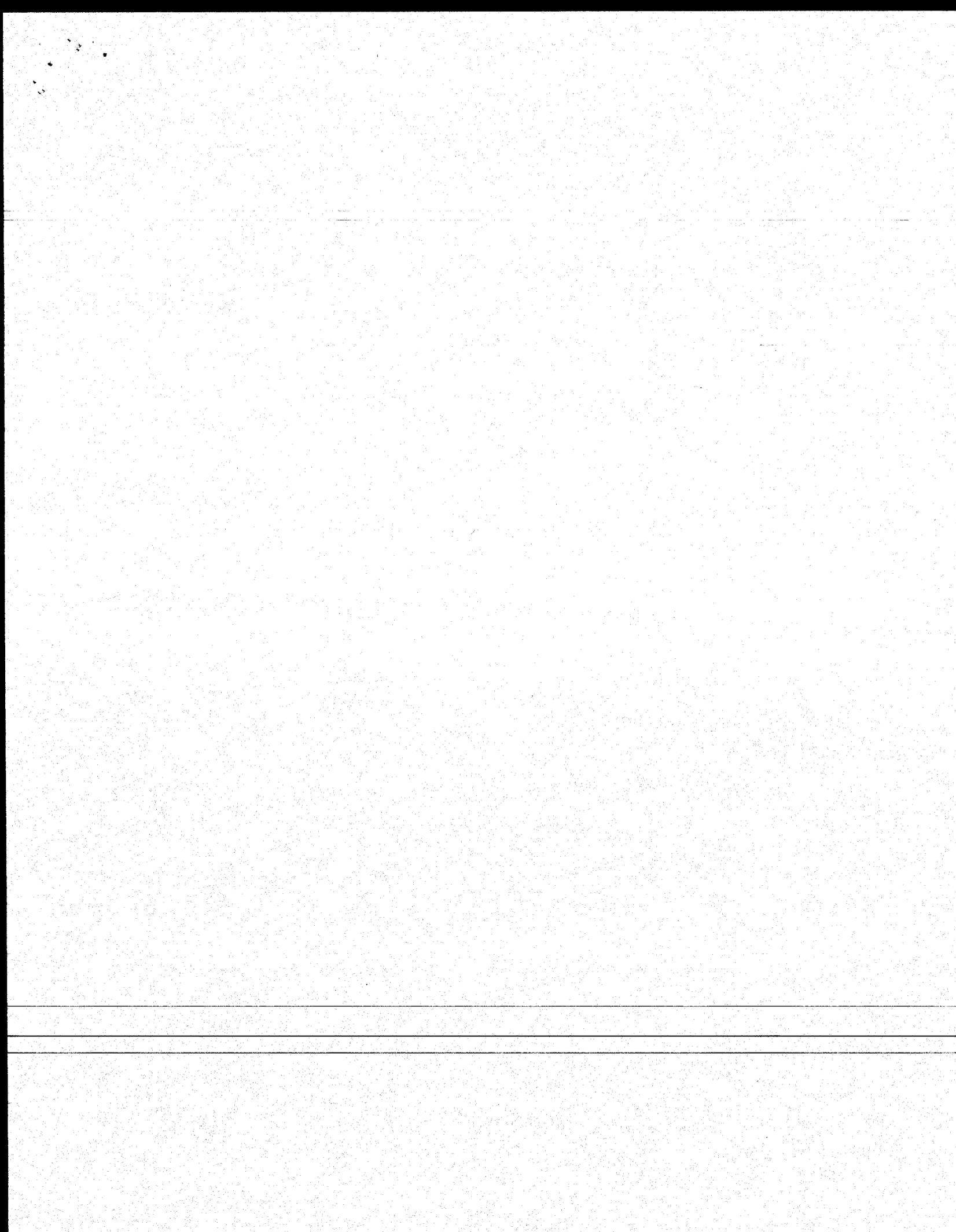
7.3¹² The expense of rebranding operator services and directory assistance, if requested by Pac-West, shall be included as a forward looking economic cost, such cost to be resolved in the future proceeding to be conducted by the Commission as it considers cost studies.

8. Rate Schedule

8.1 The rates for interconnection, unbundled Network Elements, Ancillary Services, and Reciprocal Compensation are provided in Schedule 1 to this Attachment 1.

¹¹ AT&T Order, p. 26 at Issue 45.

¹² AT&T Order, p. 18 at Issue 30.



16.2.4 U S WEST Operator Services Trunk

U S WEST shall provide Operator Services trunks as one-way trunks from the U S WEST network to the Pac-West network.

16.3 Network Interconnection between U S WEST and Pac-West shall meet or exceed all of the requirements for network Interconnection set forth in the following technical references:

16.3.1 GR-317-CORE, Switching System Generic Requirements for Call Control Using the Integrated Services Digital Network User Part (ISDNUP), Bellcore, February 1994;

16.3.2 GR-394-CORE, Switching System Generic Requirements for Interexchange Carrier Interconnection Using the Integrated Services Digital Network User Part (ISDNUP), Bellcore, February 1994;

16.3.3 FR-NWT-000271, OSSGR Operator Services Systems Generic Requirements, Bellcore, 1994 Edition; and

16.3.4 FR-NWT-000064, LATA Switching Systems Generic Requirements (LSSGR), Bellcore, 1994 Edition.

17. Reciprocal Traffic Exchange

17.1 Scope

Reciprocal traffic exchange addresses the exchange of traffic between Pac-West end users and U S WEST end users. If such traffic is local, the provisions of this Agreement shall apply. Where either Party acts as an intraLATA toll provider or interLATA IXC or where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective tariffs or contractual offerings for such third party terminations. Absent a separately negotiated agreement to the contrary, compensation for reciprocal traffic exchange applies solely to traffic exchanged directly between the Parties without the use of third party transit providers.

17.2 Responsibilities of the Parties

17.2.1 U S WEST and Pac-West agree to treat each other fairly, nondiscriminatorily, and equally for all items included in this Agreement, or related to the support of items included in this Agreement.

17.2.2 Pac-West and U S WEST agree to exchange such reports and/or data as provided in this Agreement to facilitate the proper billing of traffic.

17.2.3 [Intentionally left blank for numbering consistency]

17.2.4 Pac-West and U S WEST shall share responsibility for all Control Office functions for Local Interconnection trunks and trunk groups, and both Parties shall share the overall coordination, installation, and maintenance responsibilities for these trunks and trunk groups.

- 17.2.5 The Party that performs the End Office function is responsible for all Control Office functions for the meet point trunking arrangement trunks and trunk groups, and shall be responsible for the overall coordination, installation, and maintenance responsibilities for these trunks and trunk groups.
- 17.2.6 Pac-West and U S WEST shall:
- 17.2.6.1 Provide trained personnel with adequate and compatible test equipment to work with each other's technicians.
 - 17.2.6.2 Notify each other when there is any change affecting the service requested, including the due date.
 - 17.2.6.3 Coordinate and schedule testing activities of their own personnel, and others as applicable, to ensure its Interconnection trunks/trunk groups are installed per the Interconnection order, meet agreed-upon acceptance test requirements, and are placed in service by the due date.
 - 17.2.6.4 Perform sectionalization to determine if a trouble is located in its facility or its portion of the Interconnection trunks prior to referring the trouble to each other.
 - 17.2.6.5 Advise each other's Control Office if there is an equipment failure which may affect the Interconnection trunks.
 - 17.2.6.6 Provide each other with a trouble reporting/repair contact number that is readily accessible and available twenty-four (24) hours per day, seven (7) days per week. Any changes to this contact arrangement must be immediately provided to the other Party.
 - 17.2.6.7 Provide to each other test-line numbers and access to test lines.
 - 17.2.6.8 Cooperatively plan and implement coordinated repair procedures for the meet point and Local Interconnection trunks and facilities to ensure trouble reports are resolved in a timely and appropriate manner.

17.3 Types of Traffic

- 17.3.1 The types of traffic to be exchanged or provided under this Agreement include, but are not limited to, the following:
- 17.3.1.1 EAS/Local Traffic,
 - 17.3.1.2 Transit Traffic,
 - 17.3.1.3 Switched Access Traffic,
 - 17.3.1.4 Ancillary traffic includes all traffic destined for Ancillary Services, or that may have special billing requirements, including, but not limited to, the following:

- (a) Directory Assistance
- (b) 911/E911
- (c) Operator call termination (busy line interrupt and verify)
- (d) 800/888 database dip
- (e) LIDB
- (f) Information services requiring special billing.

17.3.1.5 Unless otherwise stated in this Agreement, ancillary traffic will be exchanged in accordance with whether the traffic is Local/EAS, intraLATA toll, or Switched Access.

17.4 Transport and Termination of Exchange Traffic

17.4.1 Termination of Local Traffic

Local Traffic will be terminated pursuant to the Reciprocal Compensation described in Attachment 1.

17.4.2 EAS/Local Traffic

As negotiated between the Parties, the exchange of local traffic between the Parties may occur in several ways.

(a) While the Parties anticipate the use of two-way trunks for the delivery of Local Traffic, either Party may elect to provision its own one-way trunks for delivery of Local Traffic to be terminated on the other Party's network at the "initial" point of interconnection;

(b) The Parties may elect to purchase transport services from each other or from a third party. Such transport delivers the originating Party's Local Traffic to the terminating Party's end office or tandem for call termination. Transport may be purchased as either tandem switched transport (which is included in the tandem call termination rate) or direct trunk transport;

(c) To the extent that Pac-West has established a Collocation arrangement at a U S WEST end office location, and has available capacity, the Parties agree that Pac-West shall provide two-way direct trunk facilities, when required, from that end office to the Pac-West switch. In all other cases, the direct facility may be provisioned by U S WEST or Pac-West or a third party. If both Pac-West and U S WEST desire to provision the facility and cannot otherwise agree, the Parties may agree to resolve the dispute through the submission of competitive bids.

17.4.3 Transit Traffic

17.4.3.1 U S WEST will accept traffic originated by Pac-West and will terminate it at a point of interconnection with another CLEC, Exchange Carrier, IXC or Wireless Carrier. U S WEST will provide this transit service through Tandem Office Switches. Pac-West may also provide U S WEST with transit service.

17.4.3.2 The Parties expect that all networks involved in transporting Transit Traffic will deliver calls to each involved network with CCS/SS7 protocol and the appropriate ISUP/TCAP message to facilitate full interoperability and billing

functions. In all cases, the originating company is responsible to follow the EMR standard and to exchange records with both the transiting company and the terminating company, to facilitate the billing process to the originating network.

17.4.3.3 The Parties will use industry standards developed to handle the provision and billing of Switched Access by multiple providers (MECAB, MECOD and the Parties' FCC tariffs).

17.4.4 Toll Traffic

Toll Traffic routed to an access tandem, or directly routed to an end office, will be terminated as Switched Access Service.

17.5 Interface Code Availability And Optional Features

17.5.1 Interface Code Availability

Supervisory Signaling specifications, and the applicable network channel interface codes for Local Interconnection trunks, are the same as those used for Feature Group D Switched Access Service, as described in the Parties' applicable Switched Access tariffs.

17.5.2 Optional Features

17.5.2.1 Inband MF or SS7 Out of Band Signaling

Inband MF signaling and SS7 out of band signaling are available for local trunks. MF signaling or SS7 out-of-band signaling must be requested on the order for the new local trunks. Provisioning of the local trunks equipped with MF signaling or SS7 out of band signaling is the same as that used for Feature Group D Switched Access. Common Channel Signaling Service, as described in this Agreement, must be ordered by Pac-West when SS7 out-of-band signaling is requested on local trunks.

17.5.2.2 Clear Channel Capability

Clear channel capability permits 24 DS-0-64 kbit/s services or 1.536 Mbit/s of information on the 1.544 Mbit/s line rate. Clear channel capability is available for local trunks equipped with SS7 out-of-band signaling. Clear channel capability is only available on trunks to U S WEST's access tandem switch or U S WEST's end office switches (where available). Clear channel capability must be requested on the order for the new local trunks. The provisioning of the local trunks equipped with clear channel capability is the same as that used for Feature Group D Switched Access Service. U S WEST will provide Pac-West with a listing of U S WEST end offices, local tandems and access tandems equipped with clear channel capability. (Clear channel capability is not available on trunks to U S WEST's local tandem switches or end offices where it is currently not deployed. Pac-West agrees to use the Bona Fide Request process to request clear channel capability for such additional switches. Prices for such additional clear channel capability, if any, will be established through the BFR process).

17.6 Measuring Local Interconnection Minutes

17.6.1 Measurement of terminating Local Interconnection minutes, as calculated per Attachment 5, begins when the terminating local entry switch receives answer supervision from the called end user's end office indicating the called end user has answered. The measurement of terminating call usage over local trunks ends when the terminating local entry switch receives disconnect supervision from either the called end user's end office, indicating the called end user has disconnected, or Pac-West's Point of Interconnection, whichever is recognized first by the entry switch.

17.6.2 U S WEST and Pac-West are required to provide each other the proper call information (e.g., originated call party number and destination call party number, etc.) to enable each Party to issue bills in a complete and timely fashion.

17.7 Testing

17.7.1 Acceptance Testing

At the time of installation of a local trunk group, and at no additional charge, the Parties will cooperatively test the same parameters tested for terminating Feature Group D Switched Access Service.

17.7.2 Testing Capabilities

17.7.2.1 Terminating Local Interconnection trunk testing is provided where equipment is available, with the following test lines: seven-digit access to balance (100 type), milliwatt (102 type), nonsynchronous or synchronous, automatic transmission measuring (105 type), data transmission (107 type), loop-around, short circuit, open circuit, and non-inverting digital loopback (108 type).

17.7.2.2 In addition to Local Interconnection trunk acceptance testing, other tests are available (e.g., additional cooperative acceptance testing, automatic scheduled testing, cooperative scheduled testing, manual scheduled testing, and non-scheduled testing) at the applicable tariff rates.

17.10. Mileage Measurement

Where required, the mileage measurement for Local Interconnection facilities and trunks is determined in the same manner as the mileage measurement for Feature Group D Switched Access Service.

B

**Internet Service Provider ("ISP") Bound Traffic Amendment
to the Interconnection Agreement between
Qwest Corporation and
Pac-West Telecomm, Inc.
for the State of Arizona**

This is an Amendment ("Amendment") to the Interconnection Agreement between Qwest Corporation ("Qwest"), formerly known as US WEST Communications, Inc., a Colorado corporation, and Pac-West Telecomm, Inc. ("CLEC"). CLEC and Qwest shall be known jointly as the "Parties".

RECITALS

WHEREAS, CLEC and Qwest entered into an Interconnection Agreement ("Agreement") which was approved by the Arizona Corporation Commission ("Commission") on December 14, 1999; and

WHEREAS, The FCC issued an Order on Remand and Report and Order in CC Docket 99-68 (Intercarrier Compensation for ISP-Bound Traffic); and

WHEREAS, the Parties wish to amend the Agreement to reflect the aforementioned Order under the terms and conditions contained herein.

WHEREAS, the Parties wish to amend the Agreement to add a Change of Law provision.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the language as follows in lieu of existing contract language:

1. Definitions

For purposes of this Amendment the following definitions apply:

- 1.1 "Bill and Keep" is as defined in the FCC's Order on Remand and Report and Order in CC Docket 99-68 (Intercarrier Compensation for ISP-Bound Traffic). Bill and Keep is an arrangement where neither of two (2) interconnecting networks charges the other for terminating traffic that originates on the other network. Instead, each network recovers from its own end users the cost of both originating traffic that it delivers to the other network and terminating traffic that it receives from the other network. Bill and Keep does not, however, preclude intercarrier charges for transport of traffic between carriers' networks.

- 1.2 "Information Service" is as defined in the Telecommunications Act of 1996 and FCC Order on Remand and Report and Order in CC Docket 99-68 and includes ISP-bound traffic.
- 1.3 "Information Services Access" means the offering of access to Information Services Providers.
- 1.4 "ISP-Bound" is as described by the FCC in its Order on Remand and Report and Order (Intercarrier Compensation for ISP-Bound Traffic) CC Docket 99-68.

2. Exchange Service (EAS/Local) Traffic

Pursuant to the election in Section 5 of this Amendment, the Parties agree to exchange all EAS/Local (§251(b)(5)) traffic at the state ordered reciprocal compensation rate.

3. ISP-Bound Traffic

3.1 Qwest elects to exchange ISP-bound traffic at the FCC ordered rates pursuant to the FCC's Order on Remand and Report and Order (Intercarrier Compensation for ISP-Bound Traffic) CC Docket 99-68 (FCC ISP Order), effective June 14, 2001, and usage based intercarrier compensation will be applied as follows:

3.2 Compensation for presumed ISP-bound traffic exchanged pursuant to Interconnection agreements as of adoption of the FCC ISP Order, April 18, 2001:

3.2.1 Identification of ISP-Bound traffic -- Qwest will presume traffic delivered to CLEC that exceeds a 3:1 ratio of terminating (Qwest to CLEC) to originating (CLEC to Qwest) traffic is ISP-bound traffic. The Parties agree that the "3:1 ratio of terminating to originating traffic", as described in Paragraph 79 of the FCC ISP Order, will be implemented with no modifications.

3.2.2 Growth Ceilings for ISP-Bound Traffic -- Intercarrier compensation for ISP-bound traffic originated by Qwest end users and terminated by CLEC will be subject to growth ceilings. ISP-bound MOUs exceeding the growth ceiling will be subject to Bill and Keep compensation.

3.2.2.1 For the year 2001, CLEC may receive compensation, pursuant to a particular Interconnection Agreement for ISP bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP bound minutes for which CLEC was entitled to compensation under that Agreement during the first quarter of 2001, plus a ten percent (10%) growth factor.

3.2.2.2 For 2002, CLEC may receive compensation, pursuant to a particular Interconnection Agreement, for ISP bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation under that Agreement in 2001, plus another ten percent (10%) growth factor.

3.2.2.3 In 2003, CLEC may receive compensation, pursuant to a particular Interconnection Agreement, for ISP bound minutes up to a ceiling

equal to the 2002 ceiling applicable to that Agreement.

3.2.3 Rate Caps -- Intercarrier compensation for ISP-bound traffic exchanged between Qwest and CLEC will be billed in accordance with their existing Agreement or as follows, whichever rate is lower:

3.2.3.1 \$.0015 per MOU for six (6) months from June 14, 2001 through December 13, 2001.

3.2.3.2 \$.001 per MOU for eighteen (18) months from December 14, 2001 through June 13, 2003.

3.2.3.3 \$.0007 per MOU from June 14, 2003 until thirty six (36) months after the effective date or until further FCC action on intercarrier compensation, whichever is later.

3.2.3.4 Compensation for ISP bound traffic in Interconnection configurations not exchanging traffic pursuant to Interconnection agreements prior to adoption of the FCC ISP Order on April 18, 2001 will be on a Bill and Keep basis until further FCC action on Intercarrier compensation. This includes carrier expansion into a market it previously had not served.

4. Effective Date

This Amendment shall be deemed effective upon approval by the Commission; however, Qwest will adopt the rate-affecting provisions for both ISP bound traffic and (§251(b)(5)) of the Order as of June 14, 2001, the effective date of the Order.

5. Rate Election

The reciprocal compensation rate elected for (§251(b)(5)) traffic is (elect and sign one):

Current rate for voice traffic in the existing Interconnection Agreement:

Signature

Name Printed/Typed

OR

The rate applied to ISP traffic:



Signature
JOHN SUMPTER

Name Printed/Typed

6. Change of Law

The provisions in this Agreement are based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the Existing Rules). Among the Existing Rules are the results of arbitrated decisions by the Commission which are currently being challenged by Qwest or CLEC. Among the Existing Rules are certain FCC rules and orders that are the subject of, or affected by, the opinion issued by the Supreme Court of the United States in *AT&T Corp., et al. v. Iowa Utilities Board, et al.* on January 25, 1999. Many of the Existing Rules, including rules concerning which network elements are subject to unbundling requirements, may be changed or modified during legal proceedings that follow the Supreme Court opinion. Among the Existing Rules are the FCC's orders regarding BOCs' applications under Section 271 of the Act. Qwest is basing the offerings in this Agreement on the Existing Rules, including the FCC's orders on BOC 271 applications. Nothing in this Agreement shall be deemed an admission by Qwest concerning the interpretation or effect of the Existing Rules or an admission by Qwest that the Existing Rules should not be vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, dismissed, stayed or modified. To the extent that the Existing Rules are changed, vacated, dismissed, stayed or modified, then this Agreement and all contracts adopting all or part of this Agreement shall be amended to reflect such modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the modification or change of the Existing Rules, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. This Section shall be considered part of the rates, terms and conditions of each Interconnection, service and network element arrangement contained in this Agreement, and this Section shall be considered legitimately related to the purchase of each Interconnection, service and network element arrangement contained in this Agreement.

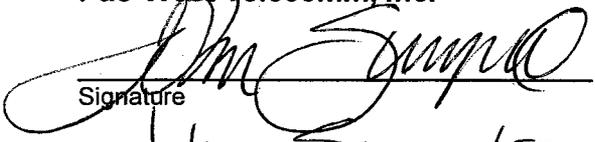
7. Further Amendments

Except as modified herein, the provisions of the Agreement shall remain in full force and effect. Neither the Agreement nor this Amendment may be further amended or altered except by written instrument executed by an authorized representative of both Parties. This Amendment shall constitute the entire Agreement between the Parties, and supercedes all previous Agreements and Amendments entered into between the Parties with respect to the subject matter of this Amendment.

The Parties understand and agree that this Amendment will be filed with the Commission for approval. In the event the Commission rejects any portion of this Amendment, renders it inoperable or creates an ambiguity that requires further amendment, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Pac-West Telecomm, Inc.



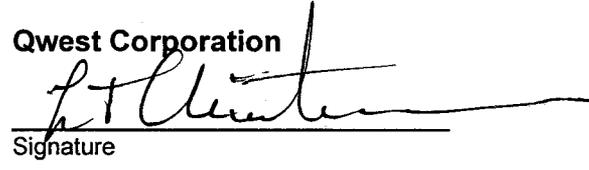
Signature

John Sumpter
Name Printed/Typed

Vice President, Regulatory
Title

8/12/2002
Date

Qwest Corporation



Signature

L. T. Christensen
Name Printed/Typed

Director - Business Policy
Title

2/6/03
Date

C

IN PRIVATE ARBITRATION

<p>PAC-WEST TELECOMM, INC.,</p> <p>Claimant,</p> <p>v.</p> <p>QWEST CORPORATION,</p> <p>Respondent.</p>	<p>AAA Case #77Y181-00385-02</p> <p>JAG Case No. 221368</p>
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Ruling on Joint Motions for Summary Judgment

Background

Qwest is a regional Bell operating company ("RBOC") operating as the incumbent local exchange carrier (ILEC) in fourteen Western region states. Pac-West, operating as a competitive local exchange carrier ("CLEC"), has entered into Interconnection Agreements ("ICAs") with Qwest for a number of those states, including Washington, Oregon, and Arizona.

The FCC issued on April 17, 2001 its so-called ISP Remand Order.¹ Qwest and Pac-West ("the Parties") amended their Washington, Oregon, and Arizona ICAs in January 2003.² The Parties made these amendments ("the 2003 Amendments"), which are identical for each of the Washington, Oregon, and Arizona ICAs, in order to implement the requirements of the ISP Remand Order. These amendments provide specifically that "the Parties wish to amend the Agreement to reflect the [ISP Remand] Order under the terms and conditions contained herein."³ The amendments address reciprocal compensation for the transport and termination of traffic initiated on one carrier's network and delivered to Internet Service Providers ("ISPs") that are local-exchange-service customers of the other.

The amendments explicitly limit the number of year 2001, 2002, and 2003 minutes for which compensation is required, but do not provide for any such limit on minutes for succeeding years. The parties dispute whether, in the absence of explicit ICA limits for year 2004 and beyond, Qwest may nevertheless cease compensating Pac-West for a certain portion of minutes involved in the transport and termination of ISP-bound traffic. That portion specifically consists of those minutes in excess of the capped amounts for 2003.

Pac-West filed a Demand for Arbitration seeking a resolution of this issue. Qwest filed an

¹ Order on Remand in the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 96-98, ¶ 58 (April 17, 2001).

² Pac-West provided the Arizona ICA amendment as Exhibit 1 to its Demand for Arbitration and the amendments for Washington and Oregon as Exhibits 2 and 3 to the Declaration of Ethan Sprague.

³ 2003 Agreements, third clause of recitals.

Answering Statement. Each filing contained a number of exhibits. This arbitrator was selected by the parties to address their dispute. At a telephonic pre-hearing conference, the parties agreed to an effort to resolve this issue on cross motions for summary judgment, in hopes of avoiding the submission of evidence. The parties filed their motions and supporting argument on September 8, 2004. Each replied to the other's motion on October 5, 2004. The parties then filed briefs on November 3, 2004 to address questions posed by the arbitrator and to address the FCC's recent decision in the Core Communications Petition. (the "Core Order").⁴

The Parties' Positions

Qwest takes the position that the parties intended by the amendment in question to reflect the intent and to match the scope of the ISP Remand Order. Qwest further argues that other portions of the ISP Remand Order make it clear that the FCC intended to make the cap on minutes survive the end of 2003, in the event that the FCC had not by then (which in fact turned out to be the case) completed its expected review of intercarrier compensation. Qwest notes that the FCC's decided in its October 2004 Core Order to forbear from enforcing the minutes cap. Qwest asserts that this order constitutes a change in law, which the relevant ICAs would not permit to become effective before negotiation of replacement language by the parties.

Pac-West takes the position that the language of the amendment is clear and unambiguous in setting a December 31, 2003 termination date for the minutes cap and that adhering to this end-date is required by established rules of contract interpretation. Pac-West further argues that the lack of ambiguity in the amendment language makes it both unnecessary and inappropriate to examine questions of the FCC's intent with respect to the ISP Remand Order, because the language of the amendment makes it clear that there was no intent to incorporate that Order into the agreement. Pac-West takes the further position that, even had the parties intended such incorporation, nothing in the ISP Remand Order can be read as intending to extend the minutes cap beyond a 2003 year-end expiration provided for in the Order.

Arbitrator's Findings

1. The amendment to the parties' ICA provides in part that:

3.1 Qwest elects to exchange ISP-bound traffic at the FCC ordered rates pursuant to the FCC's Order on Remand and Report and Order (Inter-carrier Compensation for ISP-Bound Traffic) CC Docket 99-68 (FCC ISP Order), effective June 14, 2001

2. The amendment to the three ICAs next applies the minutes cap set forth in the ISP Remand Order for the years 2001 through 2003, but is silent about such a cap for ensuing years during which the agreements remain in force. The portion of the ISP Remand Order principally and directly addressing minutes cap does not provide explicitly for what should happen to the cap following 2003.

3. The parties' ICA amendment also applies the ISP Remand Order's presumed ratio about minutes delivered to ISPs and about rate caps, including in the provision keeping rate caps in

⁴ *Petition of Core Communications, Inc. for Forbearance Under 47 USC § 160(c) from Application of the ISP Remand Order*, WC Docket 03-171, FCC Release No. 04-241, October 18, 2004).

place pending further FCC order.

4. The ISP Remand Order indicates only a preference for moving to a bill-and-keep arrangement (*i.e.*, the end of any direct compensation for transport and termination of ISP-bound traffic), and specifically provides that a final conclusion on the question of future compensation arrangements would require further inquiry:

- *[W]e affirm our conclusion in the Declaratory Ruling that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5).*⁵
- *Based upon the record before us, it appears that the most efficient recovery mechanism for ISP-bound traffic may be bill and keep, whereby each carrier recovers costs from its own end-users. As we recognize in the NPRM, intercarrier compensation regimes that require carrier-to-carrier payments are likely to distort the development of competitive markets by divorcing cost recovery from the ultimate consumer of services.*⁶
- *We do not fully adopt a bill and keep regime in this Order, however, because there are specific questions regarding bill and keep that require further inquiry, and we believe that a more complete record on these issues is desirable before requiring carriers to recover most of their costs from end-users.*⁷
- *Although it would be premature to institute a full bill and keep regime before resolving the questions presented in the NPRM, n145 in seeking to remedy an exigent market problem, we cannot ignore the evidence we have accumulated to date that suggests that a bill and keep regime has very fundamental advantages over a CPNP regime for ISP-bound traffic.*⁸
- *We believe that a hybrid mechanism that establishes relatively low per minute rates, with a cap on the total volume of traffic entitled to such compensation, is the most appropriate interim approach over the near term.*⁹
- *The interim regime we establish here will govern intercarrier compensation for ISP-bound traffic until we have resolved the issues raised in the intercarrier compensation NPRM.*¹⁰
- *The three-year transition we adopt here ensures that carriers have sufficient time to re-order their business plans and customer relationships, should they so choose, in light of our tentative conclusions in the companion NPRM that bill and keep is the appropriate long-term intercarrier compensation regime. It also affords the Commission*

⁵ ISP Remand Order at ¶3.

⁶ ISP Remand Order at ¶4.

⁷ ISP Remand Order at ¶6.

⁸ ISP Remand Order at ¶76.

⁹ ISP Remand Order at ¶77.

¹⁰ ISP Remand Order at ¶77.

*adequate time to consider comprehensive reform of all intercarrier compensation regimes in the NPRM and any resulting rulemaking proceedings. Both the rate caps and the volume limitations reflect our view that LECs should begin to formulate business plans that reflect decreased reliance on revenues from intercarrier compensation, given the trend toward substantially lower rates and the strong possibility that the NPRM may result in the adoption of a full bill and keep regime for ISP-bound traffic.*¹¹

- *We impose an overall cap on ISP-bound minutes for which compensation is due in order to ensure that growth in dial-up Internet access does not undermine our efforts to limit intercarrier compensation for this traffic and to begin, subject to the conclusion of the NPRM proceedings, a smooth transition toward a bill and keep regime. A ten percent growth cap, for the first two years, seems reasonable in light of CLEC projections that the growth of dial-up Internet minutes will fall in the range of seven to ten percent per year. We are unpersuaded by the ILECs' projections that dial-up minutes will grow in the range of forty percent per year, n163 but adoption of a cap on growth largely moots this debate. If CLECs have projected growth in the range of ten percent, then limiting intercarrier compensation at that level should not disrupt their customer relationships or their business planning.*¹²

5. In the Intercarrier Compensation NPR accompanying this order, the FCC said:¹³

In a related order that we are adopting today ("ISP Intercarrier Compensation Order"), n3 we address intercarrier compensation for traffic that is specifically bound for Internet service providers ("ISPs We adopt interim measures that, for the next three years, will significantly reduce, but not altogether eliminate, the flow of intercarrier payments associated with delivery of dial-up traffic to ISPs.

Arbitrator's Conclusions

1. The language of the parties' ICA amendments reflect an intent to incorporate minutes-cap provisions taking a form and scope that are identical to what the FCC set forth in the ISP Remand Order.

The language of the parties' amendment makes it clear that the parties did, as Qwest contends, intend to incorporate the key parameters of the ISP Remand Order without exclusion or alteration. The first provision of the parties' amendment that supports this conclusion is the inclusion of the recital that the "the Parties wish to amend the Agreement to reflect the [ISP Remand] Order under the terms and conditions contained

¹¹ ISP Remand Order at ¶83.

¹² ISP Remand Order at ¶86.

¹³ Intercarrier Compensation NPR ¶3.

herein.”¹⁴ The term “reflection” suggests a mirroring of the FCC’s intent and scope. PacWest’s argument that the parties intended actually to create an altered image of what the FCC ordered is not, absent more, compelling in light of the language of this recital.

There is certainly danger in taking a recital, consisting as it does, of a background statement, as superior to a clearly contradictory and material contract provision that follows. Undoubtedly, the minutes cap constitutes a material provision of the bargain between the parties. However, the recital at issue here can be read as perfectly consistent with all the later, relevant provisions of the contract.

Specifically, the ISP Remand Order discussed a number of parameters involving temporary compensation for ISP-bound traffic. For example, the FCC set a presumption about the ratio of ISP-bound minutes to other minutes, it set rate caps, and it set a minutes cap. For all of the relevant parameters, the parties used language making it clear that they intended no deviation from what the FCC established in the ISP Remand Order. Where there were deadlines for a particular parameter, the parties’ amendment reflected them; where the FCC was silent, so were the parties. The manifest effort to parallel ISP Remand Order language, like the recital discussed above, supports the conclusion that the parties intended the treatment of the minutes cap to be as the FCC for in the ISP Remand Order, with respect to the minutes-cap issue.

Taken together, the language of the recital and the language addressing the key parameters of the temporary provisions for ISP-bound traffic compel the conclusion that the parties’ intent was to do no more and no less than what the FCC provided for in the ISP Remand Order with respect to the minutes cap.

2. The ISP Remand Order cannot be read as imposing a continuation of the minutes cap past the end of 2003.

PacWest correctly observes that the FCC failed to provide explicitly for a continuation of the cap on minutes eligible for compensation for 2004 and beyond. It is most difficult to find support for an implicit continuation as well. The FCC addressed specifically what would happen to rates, as opposed to minutes, beyond 2003. The FCC continued 2003 rates until further action by the FCC. There is no similar continuation language for the cap on minutes. The other portions of the ISP Remand Order cited by Qwest as continuing the minutes cap are not relevant, or, at best, they are tangential. The language cited by Qwest does not directly address the issue of extending the minutes cap. At most, it should causes a critical reader only to question whether one can rationally presume the FCC to have intended no savings clause for the minutes cap, even though it:

- Generally focused on the need to limit compensation until completing the agency’s examination of the matter
- Specifically demonstrated concern about preserving the remainder of the limits on compensation from automatic extinction.

We must begin from the general proposition that the FCC’s inclusion of clear language continuing other parameters on compensation for ISP-bound traffic makes the absence of any such language on the question of the minutes cap a matter of significance in

¹⁴ 2003 Agreement recitals, third clause.

interpreting the agency's intent. Having taken care to address specifically the fact that other parameters would not expire without a later order, we should presume, absent strong reasons to the contrary, that, should the FCC would have made a similar provision for the minutes cap, after having assigned it an expiration date, had it intended a similar result.

There does exist in any administrative agency order the potential for omission. We should consider the possibility that the FCC committed an oversight in failing to provide for the continuation of a minutes cap, especially after having done so in the case of other parameters -- for example the rate cap. Were it clear that such an omission had occurred, it would be proper to seek a means for applying the FCC's intent, should it be discernible, to identify what it meant to do, but failed unintentionally to do.

Of course, we should be very hesitant to disrupt objective and reasonably clear provisions of an agency's order without compelling reasons. What that means here is that we should not deal with an order in this fashion unless:

- Other provisions of the ISP Remand Order demonstrate with reasonable certainty an intent to extend the minutes cap, and
- One can identify no rational reason for a failure not to extend the minutes cap until further FCC order.

One cannot conclude that it was irrational for the FCC to have excluded a savings clause for the minutes cap. First, the FCC made it clear that it had not finally determined that its interim (or for that matter any final) compensation method was clearly the correct one. Second, the FCC had separate reasons for the different kinds of temporary limits it put on compensation. The ratio limit arose from the need to determine when one might fairly conclude that ISP-bound traffic was having a material impact on intercarrier compensation. The limit on rates reflected concern about whether transport and termination rates were far above costs for ISP-bound traffic. It is perfectly logical and consistent for the FCC to have reached a conclusion that its ratio and its rate cap would continue to serve public policy, beyond the point in time when the cap on minutes might no longer do so. It is entirely rational for the FCC to have anticipated the possibility that it would ultimately find that there is no long-term concern about arbitrage in the face of the continuation of its ratio presumption and its rate caps.

There is now evidence that this is indeed the thinking of the FCC; *i.e.*, the Core Order, in which the FCC specifically forbears from extending the minutes cap, despite the continuation of the other parameters on compensation for temporary ISP-bound minutes.

3. The Core Order should not be read as an intent by the FCC to change the law established by the ISP Remand Order, but rather to make clear the intent of that order as originally issued.

Qwest's argument on this point is simply that the minutes cap must, as a matter of law, be deemed to have been in existence in 2004. Otherwise, according to Qwest, there would have been no need for the FCC to have exercised forbearance from enforcing it, and, therefore, no need for anyone to have requested such forbearance. In fact, the petitioner in that case asked the FCC for forbearance on a wide range of ISP Remand Order elements, including those with savings clauses that unarguably kept them in existence

pending further FCC order. Accepting Qwest's base argument would, given the multiple issues on which the petitioner sought relief in the Core petition, exalt the niceties of pleading over substance. What bears much more on the matter at hand is whether the FCC used the Core Order to say anything specifically about whether the minutes cap would have continued to exist in the absence of the Core Order.

A close reading of the Core Order language cited by Qwest does not disclose any direct FCC statement regarding the effect of the minutes cap between the end of 2003 and the time (October 2004) that the FCC declared it no longer to be in the public interest. The language cited by Qwest includes a number of references generally consistent with the view that there was at the time of the ISP Remand Order's issuance a time horizon on the minutes cap; e.g., the reference to the two-year period used to estimate growth in dial-up minutes, and "[m]arket developments since 2001 have eased the concerns about growth of dial-up ISP traffic that led the Commission to adopt these rules." On the contrary, no language states that only at the time of the Core Order did the minutes cap cease to exist, or, for that matter, cease to become consistent with the public interest.

The request to clarify the Core Order does not constitute an admission that Pac-West believes the FCC must do more for it to gain the relief it seeks. Rather it appears more designed to bring finality to a matter of economic significance that remains in dispute.

Arbitrator's Decision

1. The cap on minutes for ISP-bound traffic compensation expired at the end of 2003.
2. Pac-West is entitled to compensation for such traffic beginning on January 1, 2004 without application of the cap.
3. Pac-West continues to be so entitled under those interconnection agreements at issue in this arbitration.

Issued By:

John Antonuk

2 December 2004

D



Qwest

1314 Douglas-on-the Mall – Room 1330
Omaha, Nebraska 68102

Dan E. Hult

Director-Carrier Relations
Worldwide Wholesale Markets
Phone 402-422-4198
Facsimile 402-422-5585
Email – dan.hult@qwest.com

December 29, 2004

Ethan Sprague
Director – Regulatory Affairs
Pac-West Telecomm Inc.
1776 W. March Lane, Ste 250
Stockton, CA 95207

**Re: Payment for 2004 Reciprocal Compensation In Accordance with
Arbitrator's Award**

Dear Ethan:

Qwest has completed its review of the 2004 invoices billed by PacWest related to reciprocal compensation and as a result of the arbitration award in AAA Case #77Y181-00385-02 (JAG Case No. 221368) released December 2, 2004.

Qwest records show that PacWest has billed Qwest \$1,312,944 for the states of Arizona, Oregon and Washington for usage through October 2004. Of that amount, Qwest has previously paid \$84,740. After a thorough review of the invoices and of the Qwest usage records, Qwest has determined that the minutes billed by PacWest include two categories of non-compensable traffic: 1) traffic that is non-Qwest originated (i.e., "transit traffic"); and 2) traffic that is categorized as "virtual NXX" or "VNXX" traffic. Qwest is not responsible for termination charges related to the Category 1 non-Qwest originated traffic, as those charges under the interconnection agreement ("ICA") must be billed to the originating carrier. Category 2 VNXX traffic involves calls that are originated in one local calling area and are terminated in another local calling area. The ICA only contemplates the exchange of local calls that originate and terminate in the same local calling area and therefore allows for compensation related to the exchange of those local calls. By definition and practice, VNXX traffic is not local, and therefore also not subject to compensation under the ICA. In addition, VNXX traffic does not fall within the definitions of Exchange Access or Jointly Provided Switched Access, as defined in the ICA. Thus, since there is no provision in the ICA permitting the exchange of this traffic, as discussed above, it does not allow the compensation for termination of this traffic.

Therefore, excluding from PacWest's invoices the amount Qwest previously paid, as well as charges associated with the non-Qwest originated and VNXX traffic, Qwest will pay PacWest \$587,575 by wire transfer, for usage through October 2004. Qwest will make future payments in accordance with the foregoing framework.

In order to process the payment, Qwest needs the following bank information to complete the payment via wire:

- Payee Name (company)
- Payee Telephone number
- Payee Physical address
- Payee Tax ID number
- Bank Account name
- ABA/Routing number
- Bank Name
- Account number
- City and State of Bank

As soon as the above bank information is received, Qwest will begin processing the payment.

Please feel free to contact me if you have any questions

Dan Hult

E

Ethan Sprague

From: Hult, Dan E [Dan.Hult@qwest.com]
Sent: Wednesday, January 12, 2005 8:01 AM
To: Ethan Sprague
Subject: RE: next steps on Pacwest ISP dispute

Ethan - Listed below is the Qwest response in red:

We received your partial payment of \$587K on the Arbitrator's order - thanks. However I have a few questions related to the outstanding amounts.

First, from your correspondence I understand that Qwest is laying another dispute on top of the first. The second dispute has to do with whether a portion of the presumed ISP traffic that Pac-West billed Qwest (and for which the arbitrator ruled compensation was due under the ISP amendment) is in fact covered by the ISP Amendment. Qwest appears to believe that certain presumed ISP bound traffic is carved out of the ISP Amendment and FCC jurisdiction based on that traffic's routing characteristics. It occurs to me that the best and most efficient way to resolve this related dispute, which only comes about because of the Arbitrator's initial ruling, is to engage him again to decide this second related matter of what ISP traffic the ISP Amendment covers. Pac-West proposes the parties contact him to ascertain his availability.

Qwest response: Qwest does not view the VNXX issue as a dispute that is "overlaid" or somehow a "second" dispute related to the recent arbitration order. As we stated previously, VNXX traffic by nature, is not covered under the ICA and the facts surrounding VNXX traffic is a separate and stand alone issue, not related to any facts that were presented in the arbitration case. While it does impact the payment of reciprocal compensation, it does not in any way relate, nor was discussed in the arbitrators decision on the ISP caps that were in dispute. Given that position, the appropriate method to address the VNXX issue would be for PacWest to initiate a separate dispute under the ICA dispute resolution terms, if it so chooses. As this issue does not relate to the dispute presented to or ruled upon by the arbitrator, Qwest does not accept the PacWest suggestion to return to the same arbitrator in the recent unrelated ISP cap decision.

Qwest points to two recent decisions related to the VNXX issue that support the Qwest position that reciprocal compensation for VNXX traffic is not due under the interconnection agreements, as Qwest never agreed to exchange this traffic with PacWest under the ICA. The Oregon PUC issued OPUC's order (No. 04-704) in docket UM1058, and the United States District Court for the District Court of Oregon in civil case 04-6047-AA, issued its order under summary judgement clearly stating that the exchange of VNXX traffic is inappropriate under the terms of the local interconnection agreements and compensation is inappropriate.

Secondly, Qwest said it was going to prospectively pay Pac-West's invoices, with the exception of the traffic described above. As you'll see from the attached email, Qwest hasn't done so (at least for our December invoices). Can you please confirm whether you've had a change of heart, or can we should expect some further payment?

Qwest response: Qwest is processing the December payment for AZ and WA for approx. \$61K and will include the appropriate dispute identification for that portion withheld for VNXX and non-Qwest originated traffic. See the response below for OR. Barb Newman began processing those payments on 1/7/05.

Third, we have not received any payment for local traffic in Oregon, even after the Core order. I cannot tell from your spreadsheet whether that has to do with something related to "the new market restrictions" or your methodology for identifying alleged "VNXX" traffic. Are you aware that Pac-West

6/16/2005

has a POI in Portland? I would assume even Qwest would agree that compensation is due on calls that allegedly originating from rate centers which are local to the POI location? Or is it Qwest's position that a switch is required in each local calling area for traffic to be considered terminated within that local calling area?

Qwest response: Qwest has not issued any payments in OR as Qwest records show that all the traffic billed by PacWest is related to VNXX traffic. Qwest is aware that PacWest has a POI in OR and a switch in Seattle. As PacWest terminates no traffic to Qwest in OR, Qwest believes that PacWest does not have any end users physically located in any OR communities. Again, these calls are being transported out of the local calling area and therefore, these calls are not local calls but VNXX traffic and not subject to compensation under the local ICA.

Lastly, the attached spreadsheet calculates the interest Qwest owes on the amount it has agreed to pay through October usage for WA and AZ (\$9,399.88). Can we expect Qwest to pay the late payment charges called out in the contract for the traffic it has agreed to pay? I'd appreciate if you could clarify Qwest's position on these issues and would be happy to schedule a call to discuss. Thanks

Qwest response: Qwest would like to point out that PacWest did not bill Qwest, nor include any Late Payment Charges in the information it provided in its claim, so it finds it somewhat lacking that PacWest now demands interest. Nevertheless, so as not to prolong any more issues associated with the arbitration order, Qwest will provide a late payment charge in the amount you identified (\$9,399.88) in its next billing cycle.

Qwest believes that all the issues that are directly related to the arbitration order are now sufficiently addressed, all payments will be completed shortly, and considers the issues related to the arbitration order closed.

Please let me know if you have any questions

Dan Hult
Director-Carrier Relations
Qwest Wholesale Markets

<<FW: Qwest Pac West Nov and Dec Inv. - Dec Pymts for AZ and WA only>>
Amount Documentation.xls>>

<<Pay

-----Original Message-----

From: Ethan Sprague [mailto:esprague@pacwest.com]
Sent: Thursday, January 06, 2005 6:10 PM
To: Hult, Dan E
Subject: next steps on ISP dispute

We received your partial payment of \$587K on the Arbitrator's order - thanks. However I have a few questions related to the outstanding amounts. First, from your correspondence I understand that Qwest is laying another dispute on top of the first. The second dispute has to do with whether a portion of the presumed ISP traffic that Pac-West billed Qwest (and for which the arbitrator ruled compensation was due under the ISP amendment) is in fact covered by the ISP Amendment. Qwest appears to believe that certain presumed ISP bound traffic is carved out of the ISP Amendment and FCC jurisdiction based on that traffic's routing characteristics. It occurs to me that the best and most efficient way to resolve this related dispute, which only comes about because of the Arbitrator's initial ruling, is to engage him again to decide this second related matter of what ISP traffic the ISP Amendment covers. Pac-West proposes the parties contact him to ascertain his availability. Secondly, Qwest said it was

6/16/2005

going to prospectively pay Pac-West's invoices, with the exception of the traffic described above. As you'll see from the attached email, Qwest hasn't done so (at least for our December invoices). Can you please confirm whether you've had a change of heart, or can we should expect some further payment? Third, we have not received any payment for local traffic in Oregon, even after the Core order. I cannot tell from your spreadsheet whether that has to do with something related to "the new market restrictions" or your methodology for identifying alleged "VNXX" traffic. Are you aware that Pac-West has a POI in Portland? I would assume even Qwest would agree that compensation is due on calls that allegedly originating from rate centers which are local to the POI location? Or is it Qwest's position that a switch is required in each local calling area for traffic to be considered terminated within that local calling area?

Lastly, the attached spreadsheet calculates the interest Qwest owes on the amount it has agreed to pay through October usage for WA and AZ (\$9,399.88). Can we expect Qwest to pay the late payment charges called out in the contract for the traffic it has agreed to pay? I'd appreciate if you could clarify Qwest's position on these issues and would be happy to schedule a call to discuss. Thanks

<<FW: Qwest Pac West Nov and Dec Inv. - Dec Pymts for AZ and WA only>>
Amount Documentation.xls>>

<<Pay

ETHAN SPRAGUE
Director - Regulatory Affairs
Pac-West Telecomm, Inc.
1776 W. March Lane, Ste 250
Stockton, CA 95207
209.926.3416 Tel
209.926.4585 Fax
esprague@pacwest.com

<< Message: FW: Qwest Pac West Nov and Dec Inv. - Dec Pymts for AZ and WA only >> << File:
Pay Amount Documentation.xls >>

6/16/2005

F

Ethan Sprague

Subject: FW: next steps on Pacwest ISP dispute

-----Original Message-----

From: Hult, Dan E [mailto:Dan.Hult@qwest.com]
Sent: Tuesday, March 29, 2005 8:35 AM
To: Ethan Sprague
Subject: RE: next steps on Pacwest ISP dispute

Ethan:

Qwest is not able to provide specific telephone numbers of specific customers, since this would be a violation of Qwest's CPNI obligations and may also be a violation of its contractual relationships with certain customers. Qwest does agree that the intercarrier compensation principles must be applied equally for all carriers. However, what is being dealt with in this dispute is whether PacWest is entitled to compensation for forcing Qwest to exchange VNXX traffic with PacWest. Qwest remains of the position that the ICA neither encompasses nor envisions the exchange of VNXX traffic and therefore no compensation is appropriate when PacWest, in contravention of the ICA, forces Qwest to exchange this type of traffic with PacWest.

Dan

-----Original Message-----

From: Ethan Sprague [mailto:esprague@pacwest.com]
Sent: Monday, March 21, 2005 12:19 PM
To: Hult, Dan E
Subject: RE: next steps on Pacwest ISP dispute

So is Qwest declining to identify the physical location of its customers?

-----Original Message-----

From: Hult, Dan E [mailto:Dan.Hult@qwest.com]
Sent: Monday, March 21, 2005 9:25 AM
To: Ethan Sprague
Subject: RE: next steps on Pacwest ISP dispute

We are not changing our position related to this type of traffic. We are also not "simply" calling the Qwest service different for the sake of a dispute. The services are markedly different as laid out in the information we provided. Qwest stands on its stated positions.

-----Original Message-----

From: Ethan Sprague [mailto:esprague@pacwest.com]
Sent: Monday, March 21, 2005 11:12 AM
To: Hult, Dan E
Subject: RE: next steps on Pacwest ISP dispute

My view is that if Qwest suddenly is going to change its position (from billing based on a comparison of the NPA-NXXs) and now rely on the "customer physical location" for billing it should at least be willing to identify situations where its customer's location for billing purposes is not the same as is identified by the originating NPA-NXX. Simply calling your service something different makes no difference to the intercarrier compensation principle which we argue must be applied equally between carriers.

-----Original Message-----

6/16/2005

From: Hult, Dan E [mailto:Dan.Hult@qwest.com]
Sent: Monday, March 21, 2005 9:04 AM
To: Ethan Sprague
Cc: Downey, Linda; Newman, Barb
Subject: RE: next steps on Pacwest ISP dispute

The issue here is the assignment by PacWest of NPA-NXX numbers that do not correspond to the LCA's, not a list of NPA-NXX's that Qwest has with a limited offering on a different service. Qwest views your reference to FX service as not related to the VNXX argument. To assist you in understanding the Qwest position on VNXX vs. FX, please see the attached.

-----Original Message-----

From: Ethan Sprague [mailto:esprague@pacwest.com]
Sent: Thursday, March 17, 2005 2:27 PM
To: Hult, Dan E
Subject: RE: next steps on Pacwest ISP dispute

Thanks for the response. Will Qwest provide PacWest a list of NPA-NXXs assigned to Qwest customers which purchase VNXX like services such as FX or Market Expansion Lines or Centrex, by state.

Thanks

G

Ethan Sprague

Subject: FW: next steps on Pacwest ISP dispute

-----Original Message-----

From: Hult, Dan E [mailto:Dan.Hult@qwest.com]
Sent: Tuesday, March 29, 2005 11:53 AM
To: Ethan Sprague
Subject: RE: next steps on Pacwest ISP dispute

I disagree with your relevancy interpretation and will not engage in leading you to any assumptions - you have our position from all the previous discussion and this exchange is serving no purpose at this point. I think we should close by saying we agree to disagree in this area.

-----Original Message-----

From: Ethan Sprague [mailto:esprague@pacwest.com]
Sent: Tuesday, March 29, 2005 1:47 PM
To: Hult, Dan E
Subject: RE: next steps on Pacwest ISP dispute

It is relevant regardless of the direction of the traffic. Can I assume that your answer to my question is "yes"?

-----Original Message-----

From: Hult, Dan E [mailto:Dan.Hult@qwest.com]
Sent: Tuesday, March 29, 2005 11:43 AM
To: Ethan Sprague
Subject: RE: next steps on Pacwest ISP dispute

Ethan

I guess I have 1 question in response: Does PacWest terminate any traffic to Qwest ?? If not, I do not understand how your question is relevant to the exchange of traffic between Qwest and PacWest.

Dan

-----Original Message-----

From: Ethan Sprague [mailto:esprague@pacwest.com]
Sent: Tuesday, March 29, 2005 11:46 AM
To: Hult, Dan E
Subject: RE: next steps on Pacwest ISP dispute

Does Qwest have customers who are not physically located in the same exchange to which their NPA-NXX is assigned?

-----Original Message-----

From: Hult, Dan E [mailto:Dan.Hult@qwest.com]
Sent: Tuesday, March 29, 2005 8:35 AM
To: Ethan Sprague
Subject: RE: next steps on Pacwest ISP dispute

Ethan:

Qwest is not able to provide specific telephone numbers of specific customers, since this would be a violation of Qwest's CPNI obligations and may also be a violation of its contractual relationships with certain customers. Qwest does agree that the intercarrier compensation principles must be applied equally for all carriers. However, what is being dealt with in this dispute is whether PacWest is entitled to compensation for forcing Qwest to exchange VNXX traffic with PacWest. Qwest remains of the position that the ICA neither encompasses nor envisions the exchange of VNXX traffic and therefore no compensation is appropriate when PacWest, in contravention of the ICA, forces Qwest to exchange this type of traffic with PacWest.

Dan

6/16/2005

H



Worldwide Wholesale Markets

Barbara Newman
Senior Access Manager
1801 California Street, Room 2420
Denver, Colorado 80202
Phone 303-965-0562
Fax 303.896.1287
Email barb.newman@qwest.com

April 27, 2005

Ethan Sprague
Director Regulatory Affairs
Pac-West Telecom, Inc.
1776 W. March Lane
Suite 250
Stockton, CA 95207

Ethan:

Attached is a spreadsheet that shows the trunks that Qwest is considering VNXX along with an explanation of the calculations.

Also, for the next quarter Qwest will be using the following VNXX percents and will apply that percent against the billed ISP and voice minutes, as long as the volumes are in line with our validation system.

AZ = 36.6%
WA = 68.3%
OR = 100%

If you have questions, please contact me at the above number.

VNXX – Shows each trunk group that Qwest believes is carrying VNXX traffic.

High Volume – Are telephone numbers using what Qwest believes are VNXX trunk groups.



AZ Trunk Compare – is a trending of all local and VNXX trunks from November 2004 through February 2005. This was supplied to give you the tools necessary to determine if your local or VNXX trunks are increasing in volume month over month.

WA Trunk Compare – same as AZ Trunk Compare

AZ Payments – shows all of the billed minutes from PacWest from December 2004 through February 2005, with a breakout between local and ISP (Columns C – G). Column I & J represent the like information recorded by Qwest's validation system, CroSS7, with the information further broken down by local and VNXX minutes. The minutes in column J for December usage are also the VNXX minutes that are shown on the VNXX tab. Column K is a subtraction of the VNXX minutes from the total recorded minutes.

Col L data is also from Qwest's validation system, CroSS7 and shows the minutes that were terminated to Qwest from PacWest customers. The information in this column is used in determining the amount of voice minutes that Qwest must pay to Pac West. (Col L * 3 = voice minutes), for the total listed in Column M.

Col N, ISP minutes are calculated by subtracting the voice minutes, Col M from the local, non VNXX minutes in Col K.

Col P, voice amount to pay represents the amount that Qwest will be paying for the voice minutes.. The dollars are derived by multiplying the voice minutes in Col M by the voice rate.

Col Q, ISP amount to pay represents the amount that Qwest will be paying for ISP minutes. The dollars are derived by multiplying the ISP minutes in Col N by the ISP rate.

Col R represents the total payment that Qwest will be making and is the total of Col P and Col Q.

WA Payments – See AZ Payments.