

FORMAL COMPLAINT



ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
WILLIAM A. MUNDELL
Commissioner
MARC SPITZER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE FORMAL
COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT OF PAC-WEST
TELECOMM AGAINST QWEST
CORPORATION

) DOCKET NO. T-03693A-05-0875
) T-01051B-05-0875
) EXPEDITED REQUEST FOR
) PROCEDURAL ORDER OR
) CONFERENCE
)
)
)
)

Pac-West Telecomm, Inc. ("Pac-West") respectfully requests a procedural order or, in the alternative, an expedited procedural conference in this matter.

By letter dated November 9, 2005, Qwest notified Pac-West that it will "suspend order activity" and will undertake remedies including "disconnection of any services" if Pac-West does not immediately pay Qwest \$369,454.32. As explained in the Complaint and Request for Declaratory Relief also filed today with the Arizona Corporation Commission ("Commission"), Pac-West has explained to Qwest by letter and in conversation that the charges assessed by Qwest are not owed by Pac-West. The parties have attempted in good faith to resolve this dispute and, thus far, those efforts have failed.

Pac-West and Qwest are parties to the Local Interconnection Agreement between Qwest and Pac-West Telecomm, Inc. ("Interconnection Agreement"), which governs interconnection

arrangements and payment obligations between the two companies. Qwest and Pac-West agree that the Interconnection Agreement, as amended, governs the parties' respective interconnection and payment obligations. Section 27 of the Interconnection Agreement provides a "Dispute Resolution" procedure for resolving disputes. Section 27 allows arbitration before the American Arbitration Association or the Commission. The Interconnection Agreement does not, however, permit Qwest to unilaterally disconnect Pac-West or its customers in the event of a billing dispute.

Pac-West seeks an immediate procedural order from the Administrative Law Judge preserving the status quo and directing that unilateral action by either party to disconnect or refuse service to the other is prohibited. Alternatively, Pac-West requests an immediate procedural conference at which time the parties would be directed to take no action to disconnect or refuse service to the other pending the orderly resolution of this dispute.

Respectfully submitted this 6th day of December, 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

Expedited Request for Procedural Order or Conference with:

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

I hereby certify that I have this day served the foregoing Expedited Request for  
Procedural Order or Conference 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 6th day of December, 2005.

*Brenda Wendt*

---

Brenda Wendt

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
MARC SPITZER  
Commissioner  
MIKE GLEASON  
Commissioner  
KRISTIN K. MAYES  
Commissioner

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AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE FORMAL ) DOCKET NO. T-03693A-05-\_\_\_\_\_  
COMPLAINT AND REQUEST FOR )  
DECLARATORY JUDGMENT OF PAC-WEST ) FORMAL COMPLAINT FOR  
TELECOMM AGAINST QWEST ) DECLARATORY JUDGMENT  
CORPORATION )  
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Pursuant to A.A.C. R14-3-106(L), Pac-West Telecomm, Inc. ("Pac-West"), brings the following Complaint against Qwest Corporation ("Qwest") and alleges as follows:

**NATURE OF THE ACTION**

1. This Complaint presents two issues. The first is procedural and requires immediate action by the Commission. Qwest has notified Pac-West that it "will suspend order activity" and reserves the right to undertake remedies including "disconnection of any services" if Pac-West does not immediately pay Qwest \$369,454.32. The most recent letter forwarded by Qwest is attached hereto as Exhibit 1. Pac-West has explained to Qwest by letter and in conversation that the charges assessed by Qwest are not owed by Pac-West. Pac-West has also

asked Qwest to follow the procedure for resolving such billing disputes specified in the agreement between the parties. Pac-West and Qwest are parties to the *Local Interconnection Agreement between Qwest and Pac-West Telecomm, Inc.* (“Interconnection Agreement”), which governs interconnection arrangements and payment obligations between the two companies. Qwest and Pac-West agree that the Interconnection Agreement, as amended, governs the parties’ respective interconnection and payment obligations.

2. Section 27 of the Interconnection Agreement provides a “Dispute Resolution” procedure. Section 27 allows arbitration before the American Arbitration Association or the Arizona Corporation Commission (the “Commission”). The Interconnection Agreement does not, however, permit Qwest to unilaterally disconnect Pac-West or its customers in the event of a billing dispute. In a separate filing accompanying this Complaint, Pac-West seeks an immediate order prohibiting Qwest from unilaterally disconnecting Pac-West or its telecommunications customers until this dispute is heard and fully resolved.

3. The second, substantive issue raised by the Complaint involves Qwest’s obligation to pay for interconnection facilities located on its side of the parties’ “Point of Interconnection” (“POI”). A dispute has arisen between Pac-West and Qwest regarding their respective payment obligations under the Interconnection Agreement. Pac-West brings this action to secure declaratory relief confirming that Qwest is obliged, pursuant to the Interconnection Agreement, to pay for direct trunk transport facilities less than twenty miles in length on its side of the POI.

## **PARTIES**

4. 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 West March Lane, Suite 250, Stockton, California 95207.

5. 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**

6. Commission Jurisdiction. The Commission has jurisdiction over this Complaint and over Qwest pursuant to 47 U.S.C. §§ 251-52, A.R.S. §§ 40-203, 40-246, 40-249, 40-329 and A.A.C. R14-3-106.

### **LEGAL OVERVIEW**

7. Interconnection Agreement. The Interconnection Agreement between Pac-West and Qwest 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 between Qwest and Pac-West on December 14, 1999 in Decision No. 62137.

8. InterLCA Amendment. Pac-West and Qwest entered into *Amendment No. 1 to the Interconnection Agreement* on September 11, 2000 ("InterLCA Amendment"). The InterLCA Amendment was executed to allow Pac-West to purchase from Qwest local interconnection service Inter Local Calling Area Facilities ("LIS LCA Facilities"). The InterLCA Amendment was approved by the Commission on February 2, 2001 (Decision No. 63340).

9. Agreed-Upon Rate for LIS Facilities. Section 1.3 of Attachment 1 to the InterLCA Amendment states that “[i]f the distance between the USW Central Office in the local calling area and the distant POI is twenty (20) miles or less, the fixed and per-mile rates for Direct Trunk Transport (‘DTT’) shall apply in accordance with Appendix A to the Agreement.” DTT is a sub-category of LIS LCA Facilities. Thus, the rate applicable to DTT facilities is found in Appendix A to the Agreement.

10. Relative Use Reduction by Qwest. Section 1.5 of Attachment 1 to the InterLATA LCA provides that “USW will reduce the rate for the first twenty (20) miles of the interLCA facility to reflect the portion of the interLCA facility that is used by USW to transport USW-originated traffic to Pac-West.” Read together, sections 1.3 and 1.5 set a fixed rate for DTT facilities that are under 20 miles in length and require Qwest to pay a proportionate share of that rate based on its relative use of the facilities.

11. SPOP Amendment. On January 12, 2001, Pac-West and Qwest entered into the *Single Point of Presence (SPOP) in the LATA Amendment to the Interconnection Agreement*. (“SPOP Amendment”). The SPOP Amendment provides that Pac-West has the option to use SPOP at its discretion, on an as-requested basis. Nothing in the SPOP Amendment replaced or otherwise modified the parties’ financial obligations for LIS facilities as calculated under the relative use provisions of the InterLCA Amendment. The SPOP Amendment expressly provides that “[E]xcept as modified herein, the provision of the Agreement shall remain in full force and effect.” SPOP p. 1.

## FACTUAL OVERVIEW

12. Invoicing by Qwest. In December of 2004, the United States District Court for the District of Arizona vacated Commission Decision No. 66385, a decision that had set new

rates for transport and switching. *See Qwest Corp. v. Arizona Corp. Comm'n*, No. 03-CV-2462-PHX-FJM (Ariz. 2004). In February of 2005, acting pursuant to the District Court's order, Qwest sent a letter notifying its wholesale customers that it would send new invoices for amounts owed to Qwest. Pac-West received a spreadsheet from Qwest on March 15, 2005, detailing the amounts Qwest figured it was owed by Pac-West. Pac-West does not dispute the rate Qwest was directed to charge by the district court. However, the invoicing, and subsequent re-invoicing, of those charges caused Pac-West to examine closely the amount Qwest was charging Pac-West for interconnection facilities. As a result of this examination, Pac-West discovered that Qwest was charging Pac-West the full cost of certain facilities without deducting the cost of Qwest's relative use as required by the Interconnection Agreement.

13. Correspondence. Pac-West sent a letter to Qwest on May 18, 2005, detailing the improper charges for DTT facilities less than twenty miles in length. Qwest responded by letter on August 16, 2005. Pac-West replied to this letter on September 20, 2005. Qwest replied to Pac-West's letter on October 18, 2005. All of this correspondence is attached hereto as Exhibit 2. Numerous email communications were also exchanged by the parties in an effort to reach agreement on what the Interconnection Agreement required. Throughout this dispute, the parties have worked actively to communicate their respective positions and correct any mistakes of fact or analysis. Unfortunately, those efforts have not succeeded, necessitating this Complaint.

### **FIRST CLAIM FOR RELIEF**

#### **Declaratory Judgment Precluding Disconnection by Qwest**

14. Plaintiff incorporates the allegations of paragraphs 1 through 13 above.

15. Declaratory Judgment is necessary and proper because there is a present, substantial and justiciable controversy between the parties concerning the Qwest's authority to unilaterally disconnect Pac-West, or its customers, due to a billing dispute. Qwest should be prohibited from disconnecting service to Pac-West or its customers pending resolution of this dispute.

16. Accordingly, the Commission should declare that Qwest may not discontinue service to Pac-West or its customers, or otherwise compromise Pac-West's ability to serve its customers, pending resolution of this dispute.

### **SECOND CLAIM FOR RELIEF**

#### **Declaratory Judgment Requiring Qwest to Pay Proportionate Share of LIS Facilities**

17. The Interconnection Agreement, as amended, is a legal and binding contract between Qwest and Pac-West that was approved by the Commission.

18. As provided in the InterLCA Amendment to the Interconnection Agreement, Qwest is obligated to adjust the billing for DTT facilities to allow for Qwest's proportionate use of these two-way trunks. Under the contract, Pac-West cannot be charged for Qwest's relative use of these facilities.

19. Qwest is in breach of the Interconnection Agreement, as amended, in refusing to reduce the charge for these interconnection facilities based on Qwest's relative use of the facility.

20. The Commission should therefore declare Pac-West entitled to reimbursement for prior DTT facilities overpayments, and preclude Qwest from bringing any future action demanding payment for amounts attributable to Qwest's relative use of the LIS facilities.

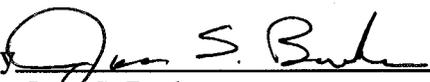
**PRAYER FOR RELIEF**

WHEREFORE, Pac-West prays for the following relief:

- A. An Order prohibiting Qwest from disconnecting Pac-West (or its customers) or otherwise compromising Pac-West's service to customers because of this good faith billing dispute.
- B. An Order from the Commission requiring that Qwest comply with the Interconnection Agreement, and specifically that Qwest reduce its invoices to Pac-West for LIS facilities to reflect Qwest's relative use of these facilities. Furthermore, the Order should require the parties to true-up all prior billing of LIS facilities, and should direct repayment by Qwest to Pac-West for all overpayments for DTT facilities.
- C. Such other or further relief as the Commission finds fair, just and reasonable.

Respectfully submitted this 6th day of December, 2005.

OSBORN MALEDON PA

By   
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 for Declaratory Judgment 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 for Declaratory Judgment 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 6th day of December, 2005.

*Brenda Wendt*

---

Brenda Wendt

**1**



**SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

November 9, 2005

Pac West Telecom  
Attn: Crystal Batch  
4210 Coronado Ave  
Stockton, CA 95204

Dear Crystal,

The purpose of this letter is to inform you that Pac West Telecom has past due balances on its Qwest accounts. This letter constitutes written notice of non-payment as may be required under applicable contract, tariff and/or state utility commission rules and regulations. Failure to respond to this letter or submit payment may result in additional treatment activity(discussed below) being initiated thirty(30)days after the date of this letter.

The total amount past due as of today is \$369,454.32. If Qwest does not receive payment in full on or before December 9, 2005 it may take action with respect to your accounts including, but not limited to the suspension of all service order activity and the eventual disconnection of your services. Further, in accordance with applicable contract, and/or tariffs, during this 30 day period or thereafter, Qwest may demand a security deposit as a condition of its continuing provision of services to Pac West Telecom.

Please be advised that if service order provisioning is interrupted, or service is disconnected, all outstanding charges will be due prior to service restoration. If service disconnection occurs, other charges may also apply to re-establish the accounts. Late payment charges will be assessed to all past due balances in accordance with applicable contracts, and/or tariffs.

Qwest is sending this notice pursuant to Section 32.1.1 of the Interconnection Agreement between Qwest and Pac-West. Pac-West has refused to pay the amounts due and they have no good faith dispute to refuse payment. Therefore, Pac-West has 30 days to cure the breach by paying or Qwest will suspend order activity. In addition, Qwest specifically reserves the right to seek all other legal and equitable remedies available including but not limited to disconnection of any services Pac-West continues to refuse to pay for.

If you have already paid in full, please disregard this notice. If you have any questions regarding this notice or the status of your accounts, please contact me at 800 335 5672 ext. 4389.

Sincerely,

Claudia Blackburn  
Service Delivery/Billing  
250 Bell Plaza Room 601  
Salt Lake City, UT 84111

cc: Ernest Johnson Arizona Corporate Commission  
cc: Monica Luckritz Qwest  
cc: Sandra Stulen Qwest

2

The Phoenix Plaza  
21st Floor  
2929 North Central Avenue  
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Joan S. Burke

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jburke@omlaw.com

May 18, 2005

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

Dear Mr. Curtright:

This letter is in response to the recent invoices Pac-West received from Qwest for Direct Trunk Transport (DTT) charges. Qwest has invoiced Pac-West in the amount of \$283,965.30, on two separate BANs for these DTT facilities ("DTT Invoices"). Pac-West understands that the applicability of the rate used by Qwest is the subject of an appeal by the Arizona Corporation Commission and Mountain Telecommunications, Inc. to the United States Court of Appeals for the Ninth Circuit. Pac-West takes no position here regarding that appeal, or the legality of the rate used by Qwest in calculating the DTT charges. However, as described in more detail below, Pac-West believes Qwest is billing Pac-West for DTT facilities that Qwest is obligated to provide.

Initially Pac-West conducted an internal investigation to confirm that the charges corresponded with the actual facilities leased. During this investigation, Pac-West discovered that Qwest is, and has been, billing Pac-West for DTT facilities less than 20 miles in length. Qwest is not authorized to bill Pac-West for these facilities and, indeed, Qwest is financially responsible for these costs. The Interconnection Agreement ("Agreement") between Qwest and Pac-West requires Qwest to cover the cost of the Local Interconnection facilities on its side of the Point of Interconnection (POI), as well as apply a Relative Use Factor to Qwest's proportionate use of those facilities when calculating the charges. The relevant sections of the Agreement provide as follows:

Amendment 1, section 1.5:

"USW will reduce the rate for the first twenty (20) miles of the interLCA facility to reflect the portion of the interLCA facility that is used by USW to transport USW-originated traffic to Pac-West. USW shall not be required to reduce the Private Line

Norman G. Curtright

Page 2

May 18, 2005

Transport Services rates for the portion of the interLATA LCA facility that exceeds twenty (20) miles in length.”

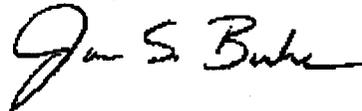
Interconnection Agreement, section 3.1 (in relevant part):

“US West will be responsible for implementing and maintaining its network on its side of the POI.”

Because the majority of the traffic carried on these facilities is originated by Qwest and the facilities are less than 20 miles in length, Qwest must pay the costs associated with these DTT facilities. Pac-West’s payment obligation for its relative use of these facilities (meaning only those costs associated with traffic that is originated by Pac-West) in this case is de minimus. Because Qwest’s obligation to pay has been in place since the Agreement was approved, Qwest also owes Pac-West for amounts mistakenly billed by Qwest, and previously paid by Pac-West.

To expeditiously rectify these billing errors, Pac-West will deduct from the amount billed on the DTT Invoices the amount Pac-West was mistakenly billed by Qwest. While, we are still in the process of calculating the exact figure, initial calculations show that the amount Qwest owes Pac-West exceeds the amount Pac-West owes Qwest. Pac-West will send an invoice providing the exact amount of the overpayment as soon as that figure is calculated. Please feel free to contact me with questions, or to discuss this matter further.

Sincerely,



Joan S. Burke

JSB/bw

cc: Josh Thieriot, Pac-West Telecom, Inc.

# FENNEMORE CRAIG, P.C.

3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
(602) 916-5000

RECEIVED

AUG 17 2005

OSBORN MALEDON PA

Theresa Dwyer  
Direct Phone: (602) 916-5396  
Direct Fax: (602) 916-5396  
tdwyer@fclaw.com

Law Offices  
Phoenix (602) 916-5000  
Tucson (520) 879-6800  
Nogales (520) 761-4215  
Lincoln (402) 323-6200

August 16, 2005

## VIA UNITED STATES MAIL

Joan S. Burke  
OSBORN MALEDON  
21<sup>st</sup> Floor  
2929 North Central Avenue  
Phoenix, Arizona 85012-2794

Re: Pac-West Dispute Regarding DTT Charges

Dear Joan:

Qwest is in receipt of your letter to Norman G. Curtright, dated May 18, 2005, wherein Pac-West disputes Qwest's invoiced amount of \$283,965.30 on two separate BANs for DTT facilities. Except for the adjustment set forth below, Qwest is sustaining the invoiced charges and expects immediate payment by Pac-West.

Qwest has reviewed the contract and amendment language referred to in your letter and the actual billing data used to calculate the amount Qwest invoiced to Pac-West. Qwest offers two products that cross Local Calling Areas - InterLCA and Single Point of Presence (SPOP) - both of which have been ordered by Pac-West at different times. Pac-West ordered InterLCA from Qwest through the March 2003 timeframe. In April of 2003, Pac-West made changes to its network and changed its InterLCA network to SPOP.

Your letter asserts that the InterLCA amendment waives charges for facilities less than 20 miles. Qwest disagrees. The language that Pac-West references (in the Pac-West InterLCA amendment) concerning the 20 miles does not relieve Pac-West from its obligation to pay Qwest if this traffic is 20 miles or less. Rather, it reads as follows:

If the distance between the USW Central Office in the local calling area and the distant POI is greater than twenty (20) miles, the fixed and per-

# FENNEMORE CRAIG, P.C.

Joan S. Burke  
August 16, 2005  
Page 2

mile DTT rates shall apply to the first twenty (20) miles in accordance with Appendix A, and the remaining miles are rated as intrastate monthly fixed and per mile DS1 Private Line Transport Services. The Private Line Transport Services rates are contained in the applicable state Private Line catalogs and Tariffs.

There are two components to the rate, and the provision clearly states that "the fixed and per-mile DTT rates shall apply to the first twenty (20) mile."

However, upon further review of this InterLCA amendment, there is another section that provides for sharing of the 20 miles billed at the Appendix A rate.

USW will reduce the rate for the first twenty (20) miles of the interLCA facility to reflect the portion of the interLCA facility that is used by USW to transport USW-originated traffic to Pac-West. USW shall not be required to reduce the Private Line Transport Services rates for the portion of the interLATA LCA facility that exceeds twenty (20) miles in length.

Qwest has determined that it did not provided Pac-West with this credit for the time period of the dispute and, therefore, Qwest has calculated that it owes Pac-West \$10,632.30 for the portion of traffic Qwest used, which was 100% of the 20 miles billed at Appendix A.

The other section that Pac-West references in your letter is Section 3.1 in the current Interconnection Agreement between Pac-West and Qwest. This section reads as follows:

Pac-West will be responsible for implementing and maintaining its network on its side of the POI. U S WEST will be responsible for implementing and maintaining its network on its side of the POI. If and when the Parties choose to interconnect at a Meet Point, Pac-West and U S WEST will jointly provision the fiber optic facilities that connect the two networks and shall proportionately share the financial and other responsibilities for that facility based on the reasonably negotiated Meet Point percentage.

The provisions of the above language concerning jointly provided facilities and cost sharing apply only if the Parties choose to interconnect at a Meet Point. Pac-West and Qwest do not interconnect at a Meet Point, and Pac-West did not order the facilities at a Meet Point. Therefore Pac-West has the financial responsibility to pay for the facilities it has ordered from Qwest.

Once these facilities were changed from InterLCA to SPOP, the InterLCA amendment no longer pertained to the SPOP facilities, so the 20 miles at Appendix A rates and the 20 miles cost of sharing those facilities rated at the Appendix A rate no longer applied. In fact, the whole

## FENNEMORE CRAIG, P.C.

Joan S. Burke  
August 16, 2005  
Page 3

facility 20 miles and more under SPOP is rated all at Appendix A rates, which means Pac-West's total facility rate was lowered starting in April of 2003. There is no language in either Pac-West's current Interconnection Agreement or the SPOP amendment that would allow for sharing of the facility, and the charge for the entire facility is the responsibility of Pac-West.

In addition to the dispute identified in your letter, Pac-West has started with the May 2005 bill to dispute all charges on its SPOP facilities. Qwest has asked a number of times for Pac-West to explain the reason for this dispute on the current SPOP facilities, but to date Pac-West did not provide the information requested or any substantive explanation that would justify its dispute of the charges at issue. These current charges are appropriate and Pac-West should pay Qwest for the SPOP facilities it has ordered from Qwest.

Qwest expects payment of \$273,333.00 and the current dispute balance to be paid in full immediately or Qwest will turn over this dispute to collections.

Sincerely,

FENNEMORE CRAIG, P.C.



Theresa Dwyer

TD/kb

cc: Norm Curtright

1699990/67817.020

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21st Floor  
2929 North Central Avenue  
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Phoenix, Arizona 85067-6379

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Joan S. Burke

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Direct Fax 602.640.6074

jburke@omlaw.com

September 20, 2005

Theresa Dwyer  
Fennemore Craig, P.C.  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913

Re: Pac-West Claim for DTT Charges

Dear Theresa:

I have discussed your letter dated August 16, 2005, with my client and submit the following responses to the positions outlined in your letter.

First, we disagree with Qwest's position that the InterLCA amendment does not apply to Single Point of Presence ("SPOP") facilities and for that reason the Relative Use Factor ("RUF") does not apply to SPOP facilities that are less than 20 miles in length. The SPOP Amendment makes no provision for cost sharing and provides that "[e]xcept as modified herein, the provisions of the Agreement shall remain in full force and effect." SPOP Amendment at 1.

The InterLCA Amendment is the section of the ICA that governs the parties' cost-sharing obligation with respect to facilities that are under 20 miles in length. Specifically, it provides that "USW will reduce the rate for the first twenty (20) miles of the interLCA facility to reflect the portion of the interLCA facility that is used by USW to transport USW originated traffic to Pac-West." Nothing in the SPOP Amendment or the InterLCA Amendment states that cost-sharing arrangements for facilities that are less than twenty miles in length will change if interLCA facilities are replaced by SPOP facilities.<sup>1</sup>

Pac-West fundamentally disagrees that the SPOP amendment relieved Qwest of its obligation under the ICA Amendment to absorb its share of the cost of the local interconnection facilities on its side of the Point of Interconnection (POI).

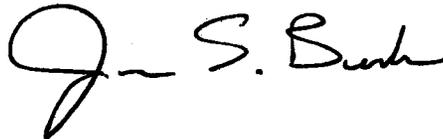
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<sup>1</sup> The SPOP allows the carrier to pay lower rates only for the portion of the facility that exceeds twenty miles.

The second argument submitted by Qwest is also based on a mistaken reading of the ICA Amendment. Qwest submits that the ICA Amendment cost-sharing obligation applies only if the parties choose to connect at a Meet Point. However, that is not what the text of the Amendment says. The Amendment imposes the cost-sharing obligation first, and secondarily discusses what would occur *if and when* the parties interconnect at a Meet Point. Pac-West and Qwest do not interconnect at a Meet Point, rather the two carriers meet, as anticipated by this provision, at the POI and the cost-sharing obligation applies.

In conclusion, we do not believe Qwest has a viable defense to Pac-West's claim for a credit equaling the amount Qwest should have paid for its share of interconnection facilities on Qwest's side of the POI. Additionally, turning this matter over to collections or disconnecting facilities would not be advisable. Pac-West is disputing these charges in the manner detailed in the Commission approved Interconnection Agreement between Pac-West and Qwest. If you are aware of any additional information that would impact the foregoing analysis, please let us know at your earliest convenience.

Sincerely,

A handwritten signature in black ink that reads "Joan S. Burke". The signature is written in a cursive style with a large, looped initial "J".

Joan S. Burke

JSB/bw

# FENNEMORE CRAIG, P.C.

3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
(602) 916-5000

RECEIVED

OCT 19 2005

OSBORN MALEDON PA *mw*

**Theresa Dwyer**  
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**Law Offices**  
Phoenix (602) 916-5000  
Tucson (520) 879-6800  
Nogales (520) 761-4215  
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October 18, 2005

Joan S. Burke  
OSBORN MALEDON  
21<sup>st</sup> Floor  
2929 North Central Avenue  
Phoenix, Arizona 85012-2794

RE: Pac-West Claim for DTT Charges

Dear Joan:

I have reviewed your letter, dated September 20, 2005, with Qwest, and respond as follows:

Qwest has two different and distinct product offerings under which CLECs may establish one point of presence in a LATA and order facilities to cross Local Calling Areas ("LCA"). These two products are: (1) InterLCA, and (2) Single Point of Presence (SPOP). To distinguish between these two offerings, Qwest developed a separate standardized ICA amendment for each product. Terms and conditions for each type of amendment are mutually exclusive and not interchangeable.

Although Pac-West executed separate amendments to its ICA with Qwest for both InterLCA (approved by the Commission on February 2, 2001) and an SPOP (approved by the Commission on June 6, 2001), Pac-West converted all of its facilities to SPOP in April 2003. Since that time, Pac-West has purchased the services at issue solely out of the SPOP amendment using only SPOP facilities. As a result, the pricing of the InterLCA amendment is simply not applicable.

Pac-West is incorrect when it states that "The SPOP allows the carrier to pay lower rates only for the portion of the facility that exceeds twenty miles." The SPOP amendment, in fact, mandates that Qwest bill the entire facility at the lower rate.

Qwest also does not agree that its InterLCA amendment imposes a Relative Use Factor ("RUF") on all interconnection services. InterLCA is a product offering for CLECs to cross

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LCAs using a private line. As part of this product, Qwest allowed for line-sharing of the first 20 miles of InterLCA facilities to reflect that portion of those facilities used by Qwest to transport Qwest originating traffic to Pac-West. This is not a RUF amendment, which is an agreement to share facilities initially set at a 50/50 division, and later revised to reflect actual/relative usage.

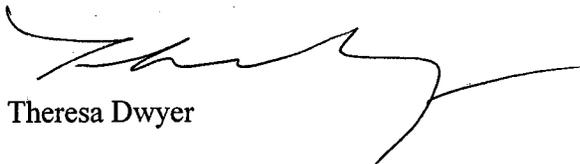
Pac-West does not have any RUF language anywhere in its ICA with Qwest, including both its ICA and SPOP amendments. Neither amendment contains language that requires a reduction of facility charges to reflect actual/relative use. Pac-West has not taken steps to amend its ICA to include RUF language despite that amendment having been made available to it.

There is no basis for the claim that Qwest owes Pac-West more credit for sharing of transport ("Relative Use"). Qwest expects full payment of the amounts due and currently in dispute by Pac-West.

It also appears that Pac-West is withholding payment for amounts billed by Qwest under a rate that is the subject of the appeal by the Arizona Corporation Commission to the Ninth Circuit, notwithstanding your letter of May 18, 2005. There is no basis for nonpayment of the amounts billed by Qwest subsequent to judgment of the district court, issued on December 17, 2004, vacating a portion of the Commission's Decision No. 66385. If Pac-West fails to pay the amounts due under its contract, Qwest will take further action authorized by that agreement. If Pac-West fails to pay in full the arrearage by October 25, 2005, Qwest will continue in its collection activities as previously notified in writing on September 15, 2005.

Sincerely,

FENNEMORE CRAIG, P.C.



Theresa Dwyer

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