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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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

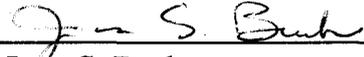
DOCKET NO. T-03693A-05-0875
T-01051B-05-0875

**NOTICE OF FILING DIRECT TESTIMONY
OF ETHAN SPRAGUE AND JOSH THIERIOT**

Pac-West Telecomm, Inc. ("Pac-West"), through its undersigned counsel, hereby files the attached Direct Testimony of Ethan Sprague and Josh Thieriot.

Respectfully submitted this 2nd day of August, 2006.

OSBORN MALEDON PA

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BEFORE THE ARIZONA CORPORATION COMMISSION

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WEST TELECOMM, INC. AGAINST
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TESTIMONY
OF
ETHAN SPRAGUE
ON BEHALF
OF
PAC-WEST TELECOMM, INC.
AUGUST 2, 2006

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1 I. **INTRODUCTION AND QUALIFICATIONS**

2 Q. **PLEASE STATE YOUR NAME AND BUSINESS ADDRESS**

3 A. My name is Ethan Sprague. My business address is Pac-West Telecomm,
4 Inc., 1776 W. March Lane, Ste 250, Stockton, CA 95207.

5 Q. **BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Pac-West Telecomm, Inc. as the Director of Regulatory.

7 Q. **PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND AND
8 TRAINING?**

9 A. I have been the Director of Regulatory at Pac-West for the past 5 years.
10 Prior to joining Pac-West I received a Master is Science in Journalism from
11 Columbia University. I have a Bachelor of Arts in politics and law from the
12 University of California at Santa Cruz.

13 Q. **WHAT ARE YOUR RESPONSIBILITIES AS DIRECTOR OF REGULATORY
14 FOR PAC-WEST?**

15 A. I am responsible for Pac-West's state level advocacy, policy development,
16 settlement negotiations, and litigation/case management in the Western
17 United States. Additionally I am responsible for negotiating and interpreting
18 Interconnection Agreements and providing guidance to our marketing and
19 network teams in order to enter and offer services in the markets we serve,
20 including Arizona.

21 II. **PURPOSE AND SCOPE OF TESTIMONY**

22 Q. **WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

23 A. The purpose of my direct testimony is to:

- 24 1. Describe the dispute that prompted this complaint;
25 2. Explain what the contract between the parties provides;
26 3. Describe the amendments to the contract; and

1 contained in the ICA between Pac-West and Qwest, obligations emanating
2 from the Act.

3 **Q. WHAT IS THE DIFFERENCE BETWEEN CUSTOMER AND CARRIER**
4 **RIGHTS AND OBLIGATIONS?**

5 **A.** The Act defined competitive local exchange carriers ("CLEC") and gave those
6 companies the right to compete as local carriers, to interconnect as peer
7 carriers with incumbent local exchange carriers ("ILECs"), but not be treated
8 as customers of the ILECs. Under the Act, Qwest is obligated to
9 interconnect with Pac-West and enter into an ICA governing the terms of the
10 interconnection. Under Section 251(c)(2) of the Act, Qwest is required to
11 "provide [interconnection to the Qwest network] for the facilities and
12 equipment of any requesting telecommunications carrier" at any technically
13 feasible point. Non-carrier customers have no such rights, because the right
14 to interconnect is a "wholesale" function that is necessary to foster
15 competition between carriers for the benefit of customers.

16 The Act obligates ILECs like Qwest to treat all competing carriers requesting
17 interconnection, such as Pac-West, on a non-discriminatory basis.

18 Fundamental to the non-discrimination required by the Act is the right of Pac-
19 West to interconnect with Qwest on the same basis as Qwest "interconnects"
20 with itself for traffic origination and termination. Each carrier must pay the
21 cost of completing traffic originated by its customers, including paying the
22 other carrier compensation for the transport and termination of traffic to
23 complete the call. Pac-West and Qwest bear the same obligation to each
24 other for traffic originated by one carrier's customers destined for the other
25 carrier's customers. Neither carrier may charge the other carrier for the cost
26 of originating a call, only for the costs of terminating a call.

1 **Q. WHY IS THE DISTINCTION BETWEEN CARRIER AND CUSTOMER**
2 **SIGNIFICANT TO THIS DISPUTE?**

3 A. Rather than treating Pac-West as a peer carrier under the existing terms of
4 the ICA between the parties, Qwest is attempting to force Pac-West to be its
5 retail customer and pay for essentially the entire cost of interconnection –
6 regardless of which carrier’s customers originated the traffic – at retail tariffed
7 rates. As envisioned by Qwest, Pac-West would be limited to purchasing
8 interconnection facilities out of a Qwest tariff regardless of which carrier’s
9 customer originated the traffic.

10 **Q. HOW IS PAC-WEST’S IDENTITY AS “CARRIER” RELEVANT TO THIS**
11 **DISPUTE?**

12 A. Pac-West and Qwest signed an ICA which govern the respective rights and
13 obligations of two carriers. Pac-West is entitled to the terms of the ICA it
14 signed and all of the products and services available under the ICA. Qwest
15 appears to have changed its electronic order request interface in a manner
16 that only allows Pac-West to request products designed and promoted by
17 Qwest. Qwest has effectively foreclosed Pac-West’s ability to request
18 services from Qwest under the ICA and has instead forced Pac-West to use
19 Qwest products by appending those products offerings to the ICA.

20 **Q. WHAT SPECIFIC NETWORK COMPONENTS ARE AT ISSUE IN THIS**
21 **CASE?**

22 A. The facilities at the center of this dispute are direct trunk transport (“DTT”)
23 used for interconnection. To better describe DTT, and its role in the Public
24 Switched Telephone Network (“PSTN), I will use an analogy. Imagine two
25 islands, one served by Qwest and the other by Pac-West. There is a bridge
26 that “interconnects” the two islands. Absent the bridge, the citizens of the two
27 islands cannot communicate with one another. Once off the bridge on each
28 island, the lanes of the bridge feed into city streets and then country roads.
29 The carriers serving the citizens of the two islands must recover the cost of
30 providing the bridge, but in what manner? The entire cost of the bridge could
31 be levied on one island or the other, or it could be allocated between the two

1 islands, either 50/50 or in proportion to usage. The lanes on the bridge and
2 the bridge itself are the DTT facilities at issue in this complaint.

3 **Q. IS THIS DISPUTE ABOUT WHO SHOULD PAY FOR THE**
4 **INTERCONNECTION FACILITIES?**

5 A. Yes. The ICA between the parties contains a basic provision for splitting the
6 cost of interconnection between the two parties. The ICA calls for the parties
7 to establish demarcation points ("POI") and for each party to pay for the
8 interconnection facilities on its side of the POI. Pac-West agrees that it
9 should pay for the DTT from the Pac-West network up to the POI, and does
10 so without dispute. Qwest is claiming that Pac-West should also pay for the
11 DTT from the Qwest side of the POI to the point the DTT ends on the Qwest
12 network. In other words, Qwest wants Pac-West to pay for the entire
13 interconnection between the two networks. Pac-West agrees that it should
14 pay for the interconnection on its side of the POI. But Pac-West should not
15 pay for the facilities on Qwest's side of the POI.

16 Qwest further asserts that Pac-West should pay tariffed rates (Qwest
17 Counterclaim Count III) for the DTT facilities purchased by Pac-West from
18 Qwest. To the extent that Pac-West uses Qwest's facilities to fulfill Pac-
19 West's interconnection obligations on its side of the POI, Pac-West should be
20 able to purchase transport UNEs at cost – not tariff rates.

21 Qwest's position would: 1) place the entire burden of interconnection
22 (including transporting Qwest's customers calls) on Pac-West; and 2) Qwest
23 would reap an additional profit on such transport by charging Pac-West
24 tariffed rates. When a Pac-West customer places a call to a Qwest
25 customer, Pac-West should be required to pay for the transport all the way
26 from the call's origination point on the Pac-West Network right up to the POI,
27 and then compensate Qwest via reciprocal compensation for the terminating
28 switch connecting the Qwest customer to the DTT. But Pac-West should not
29 be forced to pay for the cost of calls originated by Qwest's customers. The

1 ICA does not require such a disproportional allocation of responsibilities and
2 it is not supported by the Act or FCC rules.

3 **Q. IS PAC-WEST ASKING QWEST TO PAY FOR ALL THE DTT ON**
4 **QWEST'S SIDE OF THE POI?**

5 A. Yes. That is what the contract requires. Additionally Pac-West requests that
6 the Commission confirm Pac-West's contractual right that Qwest provide the
7 requested DTT, without restriction, for the exchange of local/EAS and
8 251(b)(5) traffic on the Qwest side of the POI.

9 **Q. WHAT IS PAC-WEST'S POSITION ON RESOLUTION OF THE AMOUNTS**
10 **IN DISPUTE?**

11 A. Even though a strict reading of the contract would in fact support a claim that
12 Pac-West should be refunded all monies it has paid for DTT regardless of the
13 "type" of DTT requested, Pac-West is asking for the compromise described
14 below. As demonstrated in the Pac-West testimony, Pac-West would agree
15 to maintain its current number of POI at each Qwest local tandem.

16 **Q. PLEASE DESCRIBE PAC-WEST'S PROPOSAL?**

17 A. Qwest has six local tandems on its network where Pac-West will agree to
18 establish POIs. See Ex. EDS-1 (Interconnection Facilities diagram). Typically
19 each tandem connects to end-offices. The end-offices "sub-tend" or are
20 served by the Qwest tandem where traffic is aggregated for routing purposes.
21 By agreeing to multiple POIs per LATA (one at each tandem), Pac-West is
22 willing to pay for the cost interconnection on its side of those POIs. Qwest
23 would be responsible for exchanging traffic at those points and would agree
24 not to charge Pac-West for facilities (DTT) on its side of the POI that ran from
25 the POI at the tandem switches to the sub-tending Qwest end-office
26 switches.

1 **IV. THE PAC-WEST / QWEST INTERCONNECTION AGREEMENT**

2 **Q. WHAT SPECIFIC TERMS AND CONDITIONS EFFECT THE OBLIGATION**
3 **TO PAY FOR DTT?**

4 A. The Parties' POI, as defined in the ICA is used to determine each entities
5 obligation to pay for the DTT.

6 In Attachment 4, section 3 "Location of Interconnection" the financial
7 responsibilities for the interconnection are clearly delineated.

8 3.1 Pac-West will be responsible for implementing and maintaining its
9 network on its side of the POI. **U S WEST will be responsible for**
10 **implementing and maintaining its network on its side of the POI.** If
11 and when the Parties choose to interconnect at a Meet Point, Pac-West
12 and U S WEST will jointly provision the fiber optic facilities that connect
13 the two networks and shall proportionately share the financial and other
14 responsibilities for that facility based on the reasonably negotiated Meet
15 Point percentage.

16 Agreement for Local Wireline Network Interconnection, Attachment 4,
17 Section 3 (emphasis added).

18 **Q. HAVE THE PARTIES AGREED TO INTERCONNECT VIA A MEET POINT?**

19 A. No neither Qwest nor Pac-West claim that they interconnect via meet point.

20 **Q. HOW MANY POIs DOES THE ICA REQUIRE OF PAC-WEST?**

21 A. Attachment 4 of the ICA, Section 2, "Points of Interconnection," specifies that
22 Pac-West may chose the POI(s) and only requires Pac-West to establish one
23 POI per LATA.

24 **2.2.1 Pac-West shall designate at least one POI in the LATA in which**
25 **Pac-West originates local traffic and interconnects with**
26 **U S WEST.**¹ Pac-West will be responsible for engineering and

¹ MCIIm Order, p. 6 at Issue 2 and AT&T Order at Issue 3(a).

1 maintaining its network on its side of the POI. If and when the Parties
2 choose to interconnect at a mid-span meet, Pac-West and U S WEST
3 will jointly provision the fiber optic facilities that connect the two (2)
4 networks and shall share the financial and other responsibilities for that
5 facility.

6 As a practical matter the Pac-West POI is at the Qwest end of any
7 interconnection facility for which Pac-West takes financial responsibility. For
8 example, if Pac-West agrees to pay for a DTT facility to a Qwest tandem, the
9 Pac-West POI is at the end of the facility at the Qwest tandem. Pac-West
10 witness Josh Thieriot describes specifically where Pac-West's POIs are
11 located.

12 **Q. WHAT DOES THE CONTRACT SAY ABOUT DTT COST ALLOCATION?**

13 **A. DTT is described in Attachment 4 to the ICA under Section 17.4 "Transport**
14 **and Termination of Exchange Traffic."**

15 **17.4.2 EAS/Local Traffic**

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

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

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

28 It is clear from section "(b)" that either Party may purchase the DTT from each
29 other or a third Party. The bolded language imposes on the originating carrier

1 the obligation to deliver the traffic to the terminating Party's end office. As
2 discussed above, the requirement that Qwest pay for "implementing and
3 maintaining" the network on its side of the POI make this obligation explicit.

4 **Q. DOES THE CONTRACT CONTAIN RATES FOR DTT?**

5 A. Yes it does. In Schedule 1 to Attachment 1, the contract contains cost-based
6 rates for varying lengths of DTT. As shown in the chart below, rates for DTT
7 in the underlying contract are available to Pac-West which is entitled to order
8 DTT without restriction for the exchange of local interconnection traffic.

DS0 Dedicated, Recurring		\$4.26
	<u>Fixed</u>	<u>Per Mile</u>
DS1 - 0 Miles	None	None
DS1 - Over 0 to 8	\$35.98	\$0.65
DS1 - Over 8 to 25	\$35.99	\$0.94
DS1 - Over 25 to 50	\$36.00	\$1.75
DS1 - Over 50	\$36.00	\$1.59
DS3 - 0 Miles	None	None
DS3 - Over 0 to 8	\$243.17	\$13.32
DS3 - Over 8 to 25	\$246.15	\$15.90
DS3 - Over 25 to 50	\$250.66	\$22.91
DS3 - Over 50	\$249.26	\$22.49

9 **Q. IS PACWEST DISPUTING THE RATE FOR DTT?**

10 A. No.

11 **Q. DID THE ACC RULE ON LOCATION OF THE POIs WHEN IT**
12 **ARBITRATED THE ORIGINAL INTERCONNECTION AGREEMENT**
13 **BETWEEN AT&T AND QWEST?**

14 A. Yes. In Decision No. 59915, Issue 3(a) the ACC found that section 252(c)(2)
15 of the Act "requires ILECs to provide interconnection at any technically
16 feasible point. The Act does not permit US West to object to any particular
17 point of interconnection based on cost or efficiency. US WEST's objection to

1 any proposed point of interconnection based on cost or efficiency concerns
2 could act as a barrier to competitive entry by AT&T.”

3 **Q. DID THE ACC RULE ON COST ALLOCATION FOR DTT FACILITIES?**

4 A. Yes. US WEST proposed that AT&T direct trunk to US WEST end-offices
5 when the traffic volume reached a certain threshold. In deciding Issue No. 5
6 the ACC made clear that the financial obligation for trunking from the POI to
7 the end-office was and is US WEST’s:

8 “We will require AT&T to deliver end-office traffic to the point of
9 interconnection between US WEST’s and AT&T’s network’s on
10 separate trunk groups when traffic reaches 512 ECCs, thereby
11 allowing US WEST to route this traffic to the end-office without the
12 need for any tandem switching (page 5)”

13 **Q. PLEASE SUMMARIZE THE ACC’S FINDINGS WITH REGARD TO**
14 **UNDERLYING CONTRACT.**

15 A. The ACC determined that the contract allows the CLEC to identify to Qwest
16 at least one POI in each LATA it wishes to offer service and require that
17 Qwest provide the DTT from that POI location to the Qwest’s end-office or
18 tandem switches. Furthermore the ACC determined that the financial
19 obligation for that DTT facility was entirely on Qwest.

20 **Q. WHY IS THIS FAIR?**

21 A. The ACC was following the FCC’s interpretation of the Act in ruling that new
22 entrants must maintain at least one POI per LATA. One POI per LATA is fair
23 because new competitors have not had decades of rate of return regulation
24 with which to build their network and the FCC wanted to encourage facilities
25 based competitors such as Pac-West. The ILEC networks were built in a
26 monopoly environment, in an era of guaranteed profit. This subsidized
27 network and captured customer base gives the ILEC a tremendous
28 advantage as new competitors struggle to win customers and become

1 profitable. The dearth of competitive LECs in the market is evidence of the
2 ILEC advantage.

3 The FCC explained its reasoning on interconnection in the 1996 Local
4 Competition Order (FCC 96-325).

5 The interconnection obligation of section 251(c)(2), discussed in this
6 section, allows competing carriers to choose the most efficient points
7 at which to exchange traffic with incumbent LECs, thereby lowering the
8 competing carriers' cost of, among other things, transport and
9 termination of traffic.

10 **Q. WHAT IS QWEST'S VIEW OF ITS CONTRACTUAL OBLIGATION?**

11 A. Qwest most succinctly describes its view of the contract in Robert
12 Weinstein's response to Pac-West data request no. 02-12:

13 "Nothing in the Arizona rules, orders or under the original
14 agreement obligates Qwest to transport calls anywhere other
15 than within the local calling area; it was through the InterLCA and
16 SPOP amendments that Qwest agreed to transport traffic for a
17 fee to a Pac West POI located in a different local calling area."

18 See Ex. EDS-2 (Qwest Response to Pac-West data request 02-12).

19 **V. AMENDMENTS TO THE PAC-WEST / QWEST ICA**

20 **Q. WHEN WAS THE ICA AMENDED TO INCLUDE THE "LIS INTER LOCAL**
21 **CALLING AREA FACILITY (INTERLCA AMENDMENT)?**

22 A. The amendment was filed with the Commission on December 20, 2000.

23 **Q. DID THE AMENDMENT MODIFY THE CONTRACT?**

24 A. Yes it did. The InterLCA Amendment changed only Attachment 4,
25 Section 7.1, "Points of Interconnection." The amendment gave Pac-West an

1 additional option for point-to-point routing which was entitled LIS Inter Local
2 Calling Area (LCA) facility. The new language is underlined below:

3 Upon a request for specific point to point routing, U S WEST will make
4 available to Pac-West information indicating the location and technical
5 characteristics of U S WEST's network facilities. The following alternatives
6 are negotiable and include, but are not limited to: (a) a DS-1 or DS-3
7 entrance facility, where facilities are available (where facilities are not
8 available and U S WEST is required to build special or additional facilities,
9 special construction charges may apply); (b) virtual collocation; (c) physical
10 collocation; (d) negotiated Meet Point facilities; and (e) LIS Inter Local
11 Calling Area (LCA) Facility. Each Party is responsible for providing its own
12 facilities up to the Meet Point. The Parties will negotiate the facilities
13 arrangement between their networks.

14 **Q. DID THE LANGUAGE MODIFY THE CONTRACT IN ANY OTHER WAY?**

15 A. No it did not.

16 **Q WHY WAS THE CONTRACT AMENDED TO INCLUDE THE INTER-LCA**
17 **AMENDMENT?**

18 A. There is no evidence that a change of law required the contract to be
19 amended. I believe Qwest was trying to improve on the contract language by
20 offering a new service to Pac-West which Pac-West really did not need given
21 the underlying terms of the ICA. In retrospect, given the confusion created by
22 the Amendment, Pac-West would not have signed the amendment.

23 **Q DO YOU HAVE ANY EVIDENCE TO SUPPORT THIS CLAIM?**

24 A. In correspondence from Qwest dated October 18, 2005, Qwest indicates that
25 it developed both the InterLCA and SPOP amendment to formalize a product:

26 "Qwest has two different and distinct product offerings under which
27 CLECs may establish one point of presence in a LATA and order
28 facilities to cross Local Calling Areas ("LCA"). These two products are

1 1) InterLCA, and 2) Single Point of Presence (SPOP). To distinguish
2 between these two different offerings, Qwest developed a separate
3 standardized amendment for each product.”

4 This is a classic example of Qwest’s effort to make competitors “customers,”
5 by requiring those carriers to use the Qwest “products,” and by so doing
6 forcing Qwest competitors to accept something other than the underlying
7 terms of the ICA.

8 **Q. WHEN WAS THE CONTRACT AMENDED TO INCLUDE THE SINGLE**
9 **POINT OF PRESENCE AMENDMENT (“SPOP AMENDMENT”)?**

10 A. Pac-West signed the SPOP Amendment on January 1, 2001.

11 **Q. TO WHAT EXTENT DOES THE SINGLE POINT OF PRESENCE (“SPOP”)**
12 **AMENDMENT MODIFY THE TERMS OF THE UNDERLYING ICA?**

13 A. The SPOP Amendment does not modify any terms of the underlying contract.
14 The amendment says “the agreement is hereby amended by adding terms
15 and conditions for Single Point of Presence (SPOP) in the LATA.” As
16 explained above, the contract already provided for a single POI in the LATA.
17 It is important to note that none of the underlying contract language was
18 changed by the SPOP Amendment and that Qwest intended to offer Pac-
19 West more, and in our view optional, services. Moreover, the SPOP option is
20 at best a misnomer as it requires the purchaser of that service to pay for
21 multiple points of presence in the LATA, instead of the advertised single
22 point.

23 **Q. IS PAC-WEST REQUIRED TO REQUEST THE QWEST “PRODUCTS”?**

24 A. No, not according to the contract. However, Qwest has routinely rejected the
25 Pac-West requests for DTT crossing LCA boundaries unless the request form
26 identifies the Qwest-specified product. Qwest has indicated on calls with
27 Pac-West provisioning personnel that it requires Pac-West to indicate SPOP
28 on the service request form. In essence Qwest has forced Pac-West to buy

1 its products and prohibited it from requesting services available under the
2 ICA.

3 **Q. WHAT IS YOUR UNDERSTANDING OF QWEST'S POSITION?**

4 A. Qwest claims that it offers only two products that CLECs may use "to order
5 facilities to cross Local Calling Areas ("LCA"). See Ex. EDS-3 (Qwest letter
6 dated October 18, 2005). Qwest also claims that Pac-West initiated the
7 orders to convert all of the InterLCA facilities to SPOP on March 25 2003.

8 **Q. DID PAC-WEST ASK TO CONVERT ALL DTT FACILITIES TO SPOP IN**
9 **MARCH OF 2003?**

10 A. No. Pac-West did place an order to convert some of its facilities to SPOP.
11 Pac-West did not intend to convert all the interconnection trunks to SPOP as
12 Qwest claims.

13 **Q. DO YOU AGREE WITH QWEST THAT IN MARCH 2003 PAC-WEST WAS**
14 **REQUIRED TO CONVERT ALL DTT FACILITIES TO SPOP?**

15 A. I do not. In fact, according to two independent Qwest sources this is not a
16 requirement. According to the Qwest website:

17 If you have an existing LIS interconnection network, you can
18 keep your existing trunking network intact, with its multiple
19 POIs, adding to this current configuration as appropriate,
20 and/or utilizing the SPOP in the LATA offering. You can either
21 convert the existing LIS network to the SPOP offering or elect
22 to use SPOP as an alternative for new additions to your
23 existing network.

24 See Ex. EDS-4 (Qwest summary sheet on SPOP available at Qwest link:
25 <http://www.qwest.com/wholesale/pcat/lis.html>). Additionally, in e-mail
26 correspondence to Josh Thieriot dated July 19, 2005, a Qwest representative
27 provided the following information on the SPOP product:

1 If a wholesale customer has an existing CLEC local
2 interconnection service (LIS) network; they can keep this
3 existing network intact with its multiple points of interconnection
4 (POIs), adding to this current configuration appropriately.

5 See Ex. EDS-5 (email from Qwest representative to Josh Thieriot).

6 **Q. PLEASE RESPOND TO QWEST'S COUNTERCLAIMS.**

7 A. In Qwest's amended answer to Pac-West's amended complaint it raises four
8 counterclaims. Claim I is Pac-West's failure to pay. Claim II through IV relate
9 to the traffic exchanged by the Parties.

10 I will address Claims II and IV directly.

11 **Q. WHAT IS THE CORE OF THE QWEST ARGUMENT?**

12 A. Qwest argues that its InterLCA and SPOP product limitations preclude use of
13 those transport options for certain types of traffic. Essentially, Qwest is
14 asserting that certain types of traffic are ineligible to go over the
15 interconnection facilities. Qwest relies on its characterization of the retail
16 services Pac-West offers to claim that the traffic Qwest's customers send to
17 Pac-West are Pac-West's responsibility to transport.

18 **Q. WHAT IS PAC-WEST'S RESPONSE TO QWEST'S CLAIMS?**

19 A. As I have described above, Pac-West does not believe it is required to use
20 Qwest's transport products for the transport of Qwest traffic. In fact the traffic
21 is generated by Qwest's customers (Qwest Traffic) and the ICA clearly states
22 that Qwest has the obligation to deliver Qwest traffic to the POI. The
23 fundamental flaw in Qwest's underlying logic is that it is based on vague retail
24 product descriptions and not the Act's statutory language.

1 **Q. ARE EITHER PARTY'S RETAIL OFFERINGS RELEVANT TO THE**
2 **TRAFFIC THAT FLOWS OVER THE DTT FACILITIES?**

3 A. No, with the exception of presumed ISP bound traffic. Legally there are only
4 two types of traffic recognized under the 1996 Act, 251(g) traffic and
5 251(b)(5) traffic. 251(b)(5) encompasses all telecommunications traffic.
6 251(g) traffic is carved out from 251(b)(5) on a temporary basis and covers
7 traffic for which there was a preexisting compensation mechanism prior to
8 1996. To date only interLATA and intraLATA access traffic have been
9 recognized as meeting the requirements of 251(g). The contract and the
10 facilities established there under (e.g. DTT) is for the exchange of 251(b)(5)
11 traffic, which includes local traffic and ISP bound traffic. The only exception to
12 this rule is that INRALATA toll traffic may be exchanged over the DTT
13 facilities.

14 **Q. WHAT IS "PRESUMED ISP BOUND" TRAFFIC?**

15 A. In the FCC remand order, the FCC said it could not identify ISP bound traffic.
16 ISPs are not required to be certified and Pac-West has no reliable way to
17 track ISPs. The FCC made a presumption that an analysis of a carrier's
18 balance of traffic would enable the parties to presume what traffic is ISP
19 traffic (as opposed to which end-users are ISPs). The FCC presumed that
20 any traffic a carrier terminated that was three times its originating traffic was
21 presumed ISP-bound traffic. The contract incorporates this identification
22 method in the ISP Amendment.

23 **Q. HAS THE FCC EVER DISCUSSED WHETHER THE EXCHANGE OF ISP**
24 **BOUND TRAFFIC CHANGES THE OBLIGATIONS OF INCUMBENT LECS**
25 **TO PROVIDE INTERCONNECTION?**

26 A. Yes. In both the ISP Remand Order and the subsequent Core order, the
27 FCC reiterated that the interconnection obligations under 251(c)(2) were not
28 altered in any way by the exchange of ISP bound traffic. Order, *Petition of*
29 *Core Communications for Forbearance Under 47 U.S.C. sec. 160(c)*, FCC

1 04-241 WC Docket No. 03-171 (rel. October 18, 2004), Page 3, ftnt 16; *ISP*
2 *Remand Order*, 16 FCC Rcd at 9187, para. 78, n.149.

3 **Q. DOES PAC-WEST SEND OUTBOUND TRAFFIC (E.G. PAC-WEST**
4 **ORIGINATED TRAFFIC) OVER THE INTERCONNECTION FACILITIES?**

5 A. Yes. I have attached and reviewed Qwest's reciprocal compensation
6 invoices to Pac-West since the beginning of this year. On average Pac-West
7 has originated and Qwest has billed it on average over 200 thousand
8 reciprocal compensation minutes a month. This is traffic that Pac-West has
9 originated. See Ex. EDS-6 (Qwest Invoices for traffic originate by Pac-West).

10 **Q. WHY SHOULD QWEST'S ATTEMPTS TO IDENTIFY AND**
11 **CHARACTERIZE PAC-WEST'S SERVICE OFFERINGS AND**
12 **CUSTOMERS BE DISMISSED?**

13 A. The primary reason is that the contract, with the sole exception of ISP bound
14 traffic, does not limit or restrict to whom Pac-West can sell its service, or how
15 those services should be structured. As noted above, the one exception is
16 the SPOP Amendment which says that "SPOP in the LATA is not available
17 for the sole purpose of delivering ISP bound, interstate in nature traffic."
18 This, however, is the only limitation on the products or services Pac-West can
19 deliver on DTT. Furthermore, traffic is exchanged by Qwest and Pac-West
20 based on a comparison of the numbers assigned to the calling and called
21 parties – not the type of customer or service that customers purchases.
22 Both the Pac-West switch and the Qwest switch look at the number assigned
23 to the calling and called parties in order to determine the carrier to which that
24 customer belongs and the trunk group to which the call should be routed for
25 termination. The trunk groups are generally broken into two types: Local
26 interconnection and Feature Group. Not surprisingly the traffic allowed over
27 those trunk groups correspond with the sections of the act discussed above:
28 251(b)(5) and 251(g), respectively.

1 **Q. IS PAC-WEST USING SPOP FACILITIES SOLELY FOR ISP TRAFFIC?**

2 A. No. In fact, the Pac-West originated traffic is presumed to be non-ISP bound
3 and some portion of the Qwest originated traffic, approximately 600 thousand
4 minutes a month are also presumed to be non-ISP bound. Because the
5 traffic is exchanged in both directions the facilities are not solely used for the
6 exchange of ISP bound traffic.

7 **Q. SHOULD THE COMMISSION GRANT QWEST'S COUNTERCLAIMS II**
8 **AND III?**

9 A. No, it should not. The Commission should find that Pac-West is entitled to
10 request DTT facilities from Qwest pursuant to the original contract and further
11 find that Qwest is responsible for delivering Qwest originated traffic to Pac-
12 West at a POI of Pac-West's choosing in the LATA.

13 **Q. HOW SHOULD THIS DISPUTE BE RESOLVED?**

14 A. Contrary to the parties' ICA, Qwest has required Pac-West to pay DTT costs
15 for transport from the POI extending all the way to Qwest end offices. By the
16 terms of the ICA, Qwest must pay the cost of DTT on its side of the POI.
17 This has not been happening. Instead, Qwest has, by flexing its sole-source
18 muscle, forced Pac-West to buy tariff facilities that it did not need for DTT.
19 To resolve this dispute the Commission should enter an order which requires
20 Qwest to: credit Pac-West for DTT costs paid by Pac-West where the DTT
21 facility did not cross LCA boundaries; adjust the re-bill calculation to reflect
22 Qwest's obligation to pay DTT on its side of the POI; credit Pac-West for all
23 charges for InterLCA DTT; and confirm Pac-West's contractual right to
24 request DTT (or convert DTT) pursuant to the ICA and independent of any
25 product promoted by Qwest.

26 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

27 A. Yes it does.

1

INTERCONNECTION FACILITY COST ALLOCATION

Pac-West Point of Interconnection (POI)

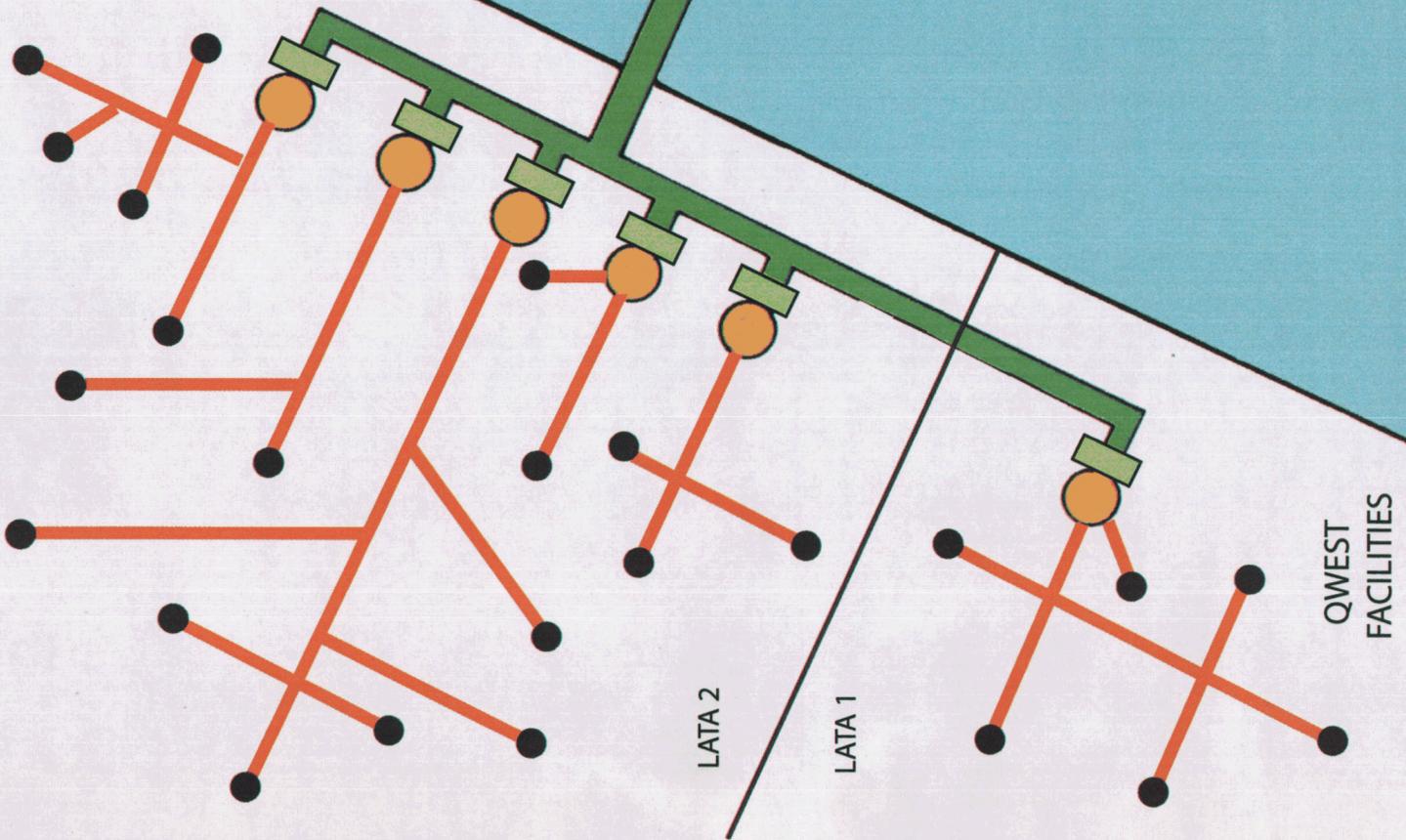
Tandem Switch

End Office



INTERCONNECTION FACILITIES

PAC-WEST FACILITIES



LATA 2

LATA 1

QWEST FACILITIES

2

Arizona
T-03693A-05-0875; T-01051A-05-0875
PWT 02-012

INTERVENOR: Pac-West Telecomm, Inc.

REQUEST NO: 012

Please provide citation to any Arizona rule, order, or agreement provision (including provisions found in the Qwest/Pac-West Interconnection Agreement) that would specifically prevent Pac-West from ordering stand alone DTT (not ordered pursuant to the InterLCA or SPOP amendments) from the LCA in which the Pac-West POI is located, to a neighboring LCA located in the same LATA?

RESPONSE:

Qwest assumes that by "DTT", Pac West means the transport service offered to CLEC's. Nothing in the Arizona rules, orders or under the original agreement obligates Qwest to transport calls anywhere other than within the local calling area; it was through the InterLCA and SPOP amendments that Qwest agreed to transport traffic for a fee to a Pac West POI located in a different local calling area. Absent the referenced amendments, there is no contractual obligation to do so.

Respondent: Robert Weinstein

3

FENNEMORE CRAIG, P.C.

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

RECEIVED

OCT 19 2005

OSBORN MALEDON PA *ML*

Theresa Dwyer
Direct Phone: (602) 916-5396
Direct Fax: (602) 916-5596
tdwyer@fclaw.com

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

October 18, 2005

Joan S. Burke
OSBORN MALEDON
21st 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

FENNEMORE CRAIG, P.C.

Joan S. Burke.
October 18, 2005
Page 2

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.

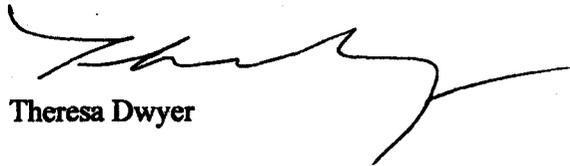
Pac-West does not have any RUF language anywhere in its ICA with Qwest, including both its ICA and SPOP amendments. Neither amendment contains language that requires a reduction of facility charges to reflect actual/relative use. Pac-West has not taken steps to amend its ICA to include RUF language despite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

TD/kb

1722131/67817.395

4

Single Point of Presence (SPOP) in the Local Access and Transport Area (LATA) for Interconnection Trunking

Qwest provides a form of Local Interconnection Service (LIS) called Single Point of Presence (SPOP) in the Local Access and Transport Area (LATA). The Point of Interconnection (POI) is your physical point of presence in Qwest territory in the LATA. The terms Point of Presence (POP) and POI are sometimes used interchangeably with the same meaning.

LIS SPOP in the LATA enables you to deliver not only Exchange Access (IntraLATA Toll non-Interexchange Carrier (IXC)) and Jointly Provided Switched Access (JPSA) (InterLATA and IntraLATA IXC) traffic, but also Exchange Service (Extended Area Service (EAS)/Local) traffic to Qwest's access tandem switches. With this offering, you can utilize Qwest's behind-the-tandem infrastructure to collect traffic from and terminate traffic to the Qwest access tandem's subtending End Offices (EOs). You won't need to establish a POI per Local Calling Area (LCA) and you may have a minimum of one SPOP per LATA.

LIS SPOP in the LATA is offered within Qwest's 14-state local service territory. This offering will follow published LIS interconnection provisioning intervals or project-based intervals for conversion from earlier versions of LIS service to the LIS SPOP in the LATA. You provide notification to all Competitive Local Exchange Carriers (CLECs), Independent Local Exchange Carriers (ILECs) and Wireless Service Providers (WSPs) of your change in routing when you choose to route your traffic in accordance with Qwest's LIS SPOP in the LATA.

If you have an existing LIS interconnection network, you can keep your existing trunking network intact, with its multiple POIs, adding to this current configuration as appropriate, and/or utilizing the SPOP in the LATA offering. You can either convert the existing LIS network to the SPOP offering or elect to use SPOP as an alternative for new additions to your existing network. Additionally, the physical SPOP must be in Qwest territory. Overlay of the SPOP in the LATA onto an existing network may require a review to determine implementation feasibility and optimum network design.

SPOP in the LATA will involve an Entrance Facility (EF), Expanded Interconnect Channel Termination (EICT), or Mid Span Meet POI and Direct Trunked Transport (DTT).

All combined LIS trunk groups ordered to the Qwest access tandem need a Traffic Use Code (TUC) of "MD" on the Access Service Request (ASR). You populate the "SPEC" field on the ASR with a code of "SPOLATA" and populate the ASR "Remarks" field with "Single POP in LATA". Qwest will add an additional "S" modifier to the TUC. For example, the TUC for a direct final, Signaling System 7 (SS7) group carrying 64 Clear Channel (64 CC) toll to the access tandem would be DF77MDKESJJ. The "S" is an additional modifier to assist Qwest translations personnel.

If you wish to convert part or all of your existing interconnection trunking to LIS SPOP in the LATA, you will need to perform this conversion as a project on a planned interval. For the majority of cases, you send Qwest change activity ASRs. You may need to send in related ASRs to install or change trunking to additional appropriate local or access tandems. For example, if you have existing LIS direct trunking to six Qwest EOs within a designated local calling area and you wish to exchange this traffic via a Qwest access tandem, you should contact your Qwest Service Manager. You might issue one ASR to install a new trunk group or to change an existing trunk group. If 512 Centum Call Seconds (CCS) does not apply, you may choose to issue another ASR to disconnect the direct trunking to each EO or you might convert Direct-Final (DF) trunking

¹ Qwest must honor existing Interconnection Agreement language. CLECs may amend their existing Interconnection Agreements to include new SPOP terms. This descriptive information is not an Interconnection Agreement and CLECs may have agreements with language that differs from this description.

to Primary High (PH) use with overflow to an Alternate-Final (AF) tandem trunk group. Depending upon the complexity of the conversion, Qwest will identify whether published standard LIS intervals or project-based intervals apply.

Local Tandem Interconnection

You may order LIS to the Qwest local tandem that supports the area in which you intend to do business. You may choose to use the Qwest access tandem for local traffic in those circumstances where the traffic volumes do not justify connection to the Qwest local tandem. This is explained more fully in the next section of this document.

Generally, when volumes of local traffic between you and Qwest EOs subtending a Qwest local tandem justify it, a direct trunk group may be required to the Qwest local tandem. In some cases, where volumes justify a trunk group between you and the Qwest local tandem, Qwest will provide this interconnection at the same price as a connection to the Qwest access tandem. In some states, you may interconnect at the access tandem and Qwest will not require you to interconnect at the local tandem even when volumes might suggest that it is the appropriate interconnection. As an alternative, you may terminate traffic on Qwest EO switches. Trunks to a Qwest local tandem may be two-way or one-way trunks based upon your Interconnection Agreement. These trunks will carry Exchange Service (EAS/Local) traffic only. Qwest does not route local calls between tandems for itself.

Except as described below, when a LATA contains more than one access tandem, a separate trunk group to each Qwest access tandem in the LATA is also necessary for the exchange of non-local Exchange Access (IntraLATA Toll Non-IXC) traffic and non-local JPSA (InterLATA and IntraLATA IXC) traffic. Qwest will waive the requirement for a trunk group to each access tandem in the LATA in some circumstances. Those circumstances are:

- You certify that you have no end-users in any of the serving areas of the Qwest access tandem for which you seek a waiver, and/or
- You certify that all traffic destined for an EO subtending an access tandem under this waiver is routed directly to a non-Qwest network for delivery to the appropriate access tandem as identified in the Local Exchange Routing Guide (LERG), and/or
- You certify that you will not originate any traffic destined for subtending offices of the access tandem for which you are requesting the waiver.

When you want to take advantage of the waiver, send an electronic letter to your Qwest Sales Executive indicating the Qwest access tandems that are subject to this waiver. This is required before ordering trunks to implement SPOP in the LATA. You should advise Qwest of any changes in routing to the distant access tandems. If you want to start providing service to end-users in the area of a Qwest access tandem currently under this waiver, you need to establish trunking to the Qwest access tandem.

Should misrouted traffic occur, your Qwest Service Manager will arrange a meeting upon Qwest's first identification of misrouted traffic to discuss methods for avoiding future misrouting. If Qwest identifies further misrouting which continues 30 business days after the meeting, your Qwest Service Manager will arrange another meeting to discuss methods for avoiding future misrouting. If misrouting continues beyond 30 business days after the subsequent meeting, Qwest will consider this waiver null and void and all requirements of the former Interconnection Agreement between you and Qwest will be reinstated. If you and Qwest disagree about whether the traffic, identified by Qwest, was actually misrouted, you and Qwest may exercise the dispute resolution provision of your Interconnection Agreement.

Access Tandem Interconnection

You may order local interconnection to a Qwest access tandem pursuant to terms and conditions outlined above, and a combined local/toll trunk group to the access tandem may be utilized. As

discussed above, you may also need to establish trunking, due to traffic volumes, to a Qwest local tandem and/or to a Qwest EO in the area where you have end-users. You may order from the following trunk options:

- A two-way trunk group to the Qwest access tandem for your traffic terminating to, originating from, or passing through the Qwest network that combines Exchange Service (EAS/ Local), Exchange Access (IntraLATA Toll Non-IXC), and JPSA (InterLATA and IntraLATA IXC) traffic.
- A two-way trunk group to the Qwest access tandem for JPSA (InterLATA and IntraLATA IXC) traffic terminating to and originating from the IXC Feature Group (FG) A/B/D network through the Qwest network. An additional two-way trunk group to the Qwest access tandem for the combined Exchange Service (EAS/Local) and Exchange Access (IntraLATA Toll Non-IXC) traffic terminating to, originating from, and transiting the Qwest network.
- A one-way terminating trunk group to the Qwest access tandem for your traffic destined to or through the Qwest network that combines Exchange Service (EAS/Local), Exchange Access (IntraLATA Toll Non-IXC) and JPSA (InterLATA and IntraLATA IXC) traffic.
- A one-way trunk group to the Qwest access tandem for your JPSA (InterLATA and IntraLATA IXC) traffic terminating to the IXC FG A/B/D network through the Qwest network. You will also need an additional one-way trunk group to the Qwest access tandem for the combined Exchange Service (EAS/ Local) and Exchange Access (IntraLATA Toll Non-IXC) traffic terminating to, originating from, and transiting the Qwest network.

If you order either of the one-way trunk options above, Qwest will return the traffic via one trunk group which combines Exchange Service (EAS/ Local), Exchange Access (IntraLATA Toll Non-IXC), and JPSA (InterLATA and IntraLATA IXC) traffic. If you wish to utilize your existing Exchange Access (IntraLATA Toll)/JPSA (InterLATA and IntraLATA IXC) LIS Access Tandem trunk group, you will need to convert this group to a trunk group with a TUC of "MD". If you do not have the ability to separate the combined traffic coming to you from Qwest, we will, upon request, provide a Percent Local Use (PLU) factor for the percent of Qwest originated Exchange Service (EAS/Local) traffic on a specific trunk group.

Due to the unique network architecture in the Denver, Colorado LATA, you must establish a trunk group at both the access tandem, DNVRCOMA02T, and the intraLATA tandem, DNVRCOMA3GT, when ordering SPOP. The intraLATA tandem trunk group is needed to route ported intraLATA traffic (CLECs) and potential incorrectly routed transit traffic.

Where there is a DS1's worth of traffic (512 CCS) between you and a Qwest EO, you order direct trunks to that Qwest EO. Similarly, if you are exchanging 512 CCS with the aggregate of those Qwest EOs that subtend the Qwest local tandem, then a trunk group may need to be established between your switch and the Qwest local tandem.

In some cases, if Qwest's access tandem is at exhaust, Qwest will arrange for you to route your local traffic to a Qwest local tandem and/or Qwest EO at the same cost to you as the Qwest access tandem.

If you take advantage of Local Number Portability (LNP) and the quantity of Location Routing Numbers (LRNs) and the quantity of Qwest rate centers requested are not equal, you may need to select your preferred call routing from among several options. Information describing LNP is available in the Local Number Portability (LNP) product catalog.

If facilities are available, Qwest will provide Direct Trunked Transport (DTT) LATA-wide. If DTT is greater than 50 miles in length, and existing facilities are not available in either Qwest's or your network to meet a request, Parties may be jointly responsible for construction and cost of the requested facilities. Qwest may use a "LATA Infrastructure Mileage Initial Transport" (LIMIT) process to coordinate this form of interconnection per terms and conditions of Interconnection Agreements or amendments. Qwest may also propose a mid-span meet or seek regulatory relief.

Information regarding LIMIT is available in the Local Interconnection Services (LIS) Product Catalog (PCAT). When you are in the PCAT, click on LATA Infrastructure Mileage Initial Transport (LIMIT) download.

You may also order trunking to the appropriate Qwest Ancillary Service switches, for example 911, operator services, and mass calling.

Recurring, non-recurring, and MOU rates for Exchange Service (EAS/Local) traffic will be billed based on state local interconnection tariffs or your current Interconnection Agreement, including terms governing relative use adjustments. The MOU rate elements for Exchange Access (IntraLATA Toll Non-IXC) and JPSA (InterLATA and IntraLATA IXC) will be billed per the applicable Qwest Switched Access Tariff.

Except when Bill and Keep applies, you bill Qwest the same rates for Exchange Service (EAS/Local) and Exchange Access (IntraLATA Toll Non-IXC) traffic as Qwest bills you for a call flowing in the opposite direction. JPSA (InterLATA and IntraLATA IXC) traffic is billed by you and Qwest to the applicable IXC per Multiple Exchange Carrier Access Billing (MECAB) guidelines and the applicable Switched Access Tariff.

5

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

From: Lott, Lisa [mailto:Lisa.Lott@qwest.com]

Sent: Tuesday, July 19, 2005 3:06 PM

To: Crystal Batch; Josh Thieriot

Subject: Info on SPOP

Crystal and Josh,

Here is some additional information on SPOP. I checked with my provisioning dept. She said the change to SPOP was done by Karen Madrid 209 926-4019 and the engineer was Paul G 209 926-4286. Qwest didn't initiate the conversion, PacWest did. My understanding was that the project was started and cancelled more than once before the conversion was finally completed on 3-25-03 and 3-27-03.

Here's some additional information to help in understanding SPOP

Single Point of Presence in the LATA

In October, 2000, Qwest began to offer a new product called "Single Point of Presence in the LATA (SPOP)". For the purposes of this product, the Point of Interconnection (POI) is the CLEC's physical point of presence in Qwest territory in the LATA.

The SPOP in the LATA product allows Qwest's wholesale customers to deliver not only their Exchange Access (IntraLATA Non-IXC Toll) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic, but also their Exchange Service (EAS/Local) traffic at Qwest's Access Tandem Switches. With this offering, Qwest's wholesale customers can take advantage of Qwest's behind-the-tandem infrastructure to terminate traffic to specific end offices from which they wish to do business. This way our wholesale customers are not required to establish a POP per local calling area (LCA). Qwest's wholesale customers can now have a minimum of one Single Point of Presence SPOP per LATA. This product provides another means of interconnection with Qwest in addition to the existing options.

If a wholesale customer has an existing CLEC Local Interconnection Service (LIS) network; they can keep this existing network intact with its multiple points of interconnection (POIs), adding to this current configuration appropriately. Or, wholesale customers can utilize the new SPOP in the LATA product as their means of interconnection establishing their network from this location.

The TSCs and facilities ordered using SPOP are identified in IABS by a RMKR Single POP in LATA. This is accomplished by the CLEC populating a SPEC code of SPO LATA on the ICASR screen of the ASR.

Please call me if you have questions.

Thank You,

Lisa Lott

800 335-5672 x4228

6

BILL NO
INVOICE NO
BILL DATE
ACNA ARZL

520 L04-0003 003
L040003003-06161
JUN 10, 2006
PAGE 593

*** DETAILED SUMMARY OF USAGE CHARGES ***

*** MAY 10 06 THRU JUN 09 06 ***

FGU - ARIZONA - 5101

LOCAL

	QUANTITY	AMOUNT
	-----	-----
SWC TO EO		
TERMINATING		
MI 3	20	.02
MI 5	12	.01
MI 6	27	.02
MI 8	9	.01
MI 10	15	.01
MI 11	3,071	2.42
MI 58	85	.07
MI 61	10	.01
MI 84	95	.07
SWC TO HOST		
TERMINATING		
MI 58	43	.03
MI 61	7	.01
HOST TO REMOTE		
TERMINATING		
MI 4	35,608	28.12
MI 7	4,347	3.43
MI 17	3,803	3.00
MI 18	4,271	3.37
MI 19	5,031	3.97
MI 22	1,480	1.17
MI 23	479	.38
MI 27	12,583	9.94
MI 48	27,919	22.06
TANDEM SWITCHING CHARGE		
TERMINATING	3,595	1.98
TRANSITING		
TERMINATING	151,317	202.71
END OFFICE		
LOCAL SWITCHING		
TERMINATING	434,764	421.64
TOTAL		----- 704.45

BILL NO
INVOICE NO
BILL DATE
ACNA ARZL

520 L04-0003 003
L040003003-06130
MAY 10, 2006
PAGE 829

* * * DETAILED SUMMARY OF USAGE CHARGES * * *

* * * APR 10 06 THRU MAY 09 06 * * *

FGU - ARIZONA - 5101

LOCAL

	QUANTITY	AMOUNT
TERMINATING	4,941	2.73
TRANSITING TERMINATING	97,617	130.73
END OFFICE LOCAL SWITCHING TERMINATING	224,178	217.45
TOTAL		401.00



BILL NO
INVOICE NO
BILL DATE
ACNA ARZL

520 L04-0003 003
L040003003-06100
APR 10, 2006
PAGE 872

*** DETAILED SUMMARY OF USAGE CHARGES ***

*** MAR 10 06 THRU APR 09 06 ***

FGU - ARIZONA - 5101

LOCAL

	QUANTITY	AMOUNT
TERMINATING	7,972	4.39
TRANSITING TERMINATING	78,298	104.85
END OFFICE LOCAL SWITCHING TERMINATING	206,929	200.72
TOTAL		339.48

BILL NO
INVOICE NO
BILL DATE
ACNA ARZL

520 L04-0003 003
L040003003-06069
MAR 10, 2006
PAGE 849

*** DETAILED SUMMARY OF USAGE CHARGES ***

*** FEB 10 06 THRU MAR 09 06 ***

FGU - ARIZONA

- 5101

LOCAL

	QUANTITY	AMOUNT
	-----	-----
SWC TO EO		
TERMINATING		
MI 10	15	.01
MI 11	2,233	1.76
MI 44	223	.18
MI 50	10	.01
MI 58	9	.01
MI 84	3,877	3.06
SWC TO HOST		
TERMINATING		
MI 33	1,116	.88
MI 58	30	.03
MI 84	297	.23
HOST TO REMOTE		
TERMINATING		
MI 4	5,586	4.42
MI 7	1,504	1.19
MI 9	297	.23
MI 17	834	.66
MI 18	1,100	.87
MI 19	1,327	1.05
MI 22	891	.70
MI 23	267	.21
MI 27	5,415	4.28
MI 29	7	.01
MI 48	3,749	2.96
MI 56	804	.63
MI 57	305	.24
MI 73	118	.09
TANDEM SWITCHING CHARGE		
TERMINATING	8,007	4.40
TRANSITING		
TERMINATING	59,355	79.48
END OFFICE		
LOCAL SWITCHING		
TERMINATING	177,840	172.46

BILL NO
INVOICE NO
BILL DATE
ACNA ARZL

520 L04-0003 003
L040003003-06041
FEB 10, 2006
PAGE 834

*** DETAILED SUMMARY OF USAGE CHARGES ***

*** JAN 10 06 THRU FEB 09 06 ***

FGU - ARIZONA

- 5101

LOCAL

	QUANTITY	AMOUNT
SWC TO EO TERMINATING		
MI 6	106	.08
MI 11	1,154	.91
MI 44	50	.04
MI 50	63	.05
MI 58	132	.10
MI 84	2,479	1.96
SWC TO HOST TERMINATING		
MI 33	1,050	.83
MI 58	125	.10
MI 84	398	.31
HOST TO REMOTE TERMINATING		
MI 4	8,071	6.38
MI 7	879	.69
MI 9	398	.31
MI 17	956	.76
MI 18	1,499	1.18
MI 19	900	.71
MI 22	396	.31
MI 23	272	.21
MI 27	4,130	3.27
MI 29	11	.01
MI 48	5,222	4.13
MI 56	902	.71
MI 57	137	.11
MI 73	146	.12
TANDEM SWITCHING CHARGE TERMINATING	5,848	3.22
TRANSITING TERMINATING	58,038	77.74
END OFFICE LOCAL SWITCHING TERMINATING	130,887	126.91

BILL NO
INVOICE NO
BILL DATE
ACNA ARZL

520 L04-0003 003
L040003003-06010
JAN 10, 2006
PAGE 812

*** DETAILED SUMMARY OF USAGE CHARGES ***

*** DEC 10 05 THRU JAN 09 06 ***

FGU - ARIZONA - 5101

LOCAL

	QUANTITY	AMOUNT
SWC TO EO		
TERMINATING		
MI 11	1,044	.82
MI 33	42	.03
MI 44	43	.03
MI 50	43	.03
MI 84	401	.32
SWC TO HOST		
TERMINATING		
MI 33	501	.41
MI 84	194	.15
HOST TO REMOTE		
TERMINATING		
MI 4	7,062	5.57
MI 7	686	.54
MI 9	219	.17
MI 17	903	.71
MI 18	682	.53
MI 19	585	.46
MI 22	490	.39
MI 23	183	.14
MI 27	1,869	1.48
MI 29	11	.01
MI 38	7	.01
MI 48	4,997	3.95
MI 56	349	.28
MI 57	109	.09
MI 73	237	.19
TANDEM SWITCHING CHARGE		
TERMINATING	2,347	1.28
TRANSITING		
TERMINATING	39,572	53.00
END OFFICE		
LOCAL SWITCHING		
TERMINATING	77,448	75.13
TOTAL		145.72

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
WILLIAM A. MUNDELL
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner
BARRY WONG
Commissioner

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

DOCKET NO. T-03693A-05-0875
T-01051B-05-0875

TESTIMONY
OF
JOSH THIERIOT
ON BEHALF
OF
PAC-WEST TELECOMM, INC.
AUGUST 2, 2006

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1 I. **INTRODUCTION AND QUALIFICATIONS**

2 Q. **PLEASE STATE YOUR NAME AND BUSINESS ADDRESS**

3 A. My name is Josh Thieriot. My business address is Pac-West Telecomm, Inc.,
4 1776 W. March Lane, Ste 250, Stockton, CA 95207.

5 Q. **BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Pac-West Telecomm, Inc. as a Regulatory Case manager.

7 Q. **PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND AND
8 TRAINING?**

9 A. I have been employed in the telecommunications industry for over 10 years. I
10 began my work with Pac-West in 2003 and for the past 2 ½ years I have worked
11 as a Regulatory Case Manager. My prior work experience includes employment
12 with wireless and facilities based telecommunication providers.

13 Q. **WHAT ARE YOUR RESPONSIBILITIES AS REGULATORY CASE MANAGER
14 FOR PAC-WEST?**

15 A. As a Regulatory Case Manager, I handle interconnection agreement negotiations
16 and dispute resolution for Pac-West in the Western Region of the United States.

17 II. **PURPOSE AND SCOPE OF TESTIMONY**

18 Q. **WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

19 A. In my testimony, I will describe what DTT facilities were requested by Pac-West,
20 the Qwest charges for DTT facilities, and the credit due Pac-West. Additionally,
21 my testimony will describe how Pac-West learned that it was being over-billed by
22 Qwest, the method by which Pac-West quantified the dispute, the relevant dates,
23 and Qwest's contradictory correspondence regarding DTT products requested by
24 Pac-West.

1 **III. DIRECT TRUNK TRANSPORT DISPUTE**

2 **Q. CAN YOU DESCRIBE THE DISPUTE?**

3 A. Yes. From a high level there are two basic disputes. The first dispute is whether
4 Pac-West is required to pay a Qwest invoice that re-billed UNE facilities known
5 as Direct Trunk Transport (DTT) between June 2002 and October 2003 ("Re-Bill
6 Dispute"). In analyzing the invoice, Pac-West realized that it was not required to
7 pay for any of the underlying DTT facilities on the Qwest re-bill invoice; and this
8 spawned the second dispute (DTT dispute). These two issues are critically
9 linked and resolution of the second issue bears on the resolution of the first.

10 **Q. ARE THERE SUBCATEGORIES OF THE DISPUTES?**

11 A. Yes. For ease of reference, I will refer to the three types of DTT as "Contract
12 DTT," "InterLCA DTT," and "SPOP DTT." Pac-West's position may be
13 summarized as follows:

- 14 1) Pac-West has no obligation to pay for any type of DTT facility on Qwest
15 side of the Pac-West POI used for the exchange of 251(b)(5)/local traffic;
16 and
17 2) Pac-West may, under the ICA, request that Qwest establish DTT across
18 LCA boundaries to a Pac-West POI located within the same LATA.
19 3.) On a going forward basis, with the exception of DTT requested expressly
20 pursuant to the SPOP amendment, Pac-West should not be charged for
21 any DTT facilities on the Qwest side of the POI.

22 **Q. WHEN DID PAC-WEST ENTER THE ARIZONA MARKET AND BEGIN**
23 **REQUESTING DTT FACILITIES?**

24 A. Pac-West signed an Interconnection agreement with Qwest on September 2,
25 1999 and began placing requests for DTT facilities in September of 2000.

1 **Q. PLEASE DESCRIBE THE PAC-WEST AND QWEST NETWORK**
2 **INTERCONNECTION ARCHITECTURE?**

3 A. Pac-West has established POIs (Points of Interconnection) with Qwest at several
4 locations in Arizona. Pac-West's switch is located at 3110 N. Central, Suite B75,
5 Phoenix, AZ. 85012. Pac-West also has extended one Special Access DS-3s to
6 six Qwest End Offices in the Phoenix and Tucson LATAs in order to establish
7 distant POIs, one in each LATA as required by the ICA. The Local
8 Interconnection trunking (e.g. the disputed DTT facility), connects to the Special
9 Access DS3's and extends beyond the Pac-West POIs to a Qwest End Office.
10 Pac-West pays for 100% of the facilities on the Pac-West side of the POI without
11 dispute.

12 **Q. WHEN DID PAC-WEST FIRST REALIZE IT WAS BEING BILLED FOR**
13 **FACILITIES THAT WERE ON QWEST'S SIDE OF THE POI?**

14 A. On February 14, 2005, Qwest sent a letter to Pac-West via email, notifying Pac-
15 West that Qwest would be sending a true-up invoice to reflect the change in the
16 rate structure adopted by the Commission in Docket T-00000A-00-0194
17 (Decision 64922), and confirmed by the vacatur of decision 66385 by the District
18 Court of Arizona (re-bill invoice).

19 On March 15, 2005 Qwest sent a spreadsheet to Pac-West detailing the amount
20 Qwest alleged Pac-West owed Qwest for Direct Trunk Transport facilities based
21 on the Arizona rate change (re-bill). After considerable review and research, it
22 became apparent to Pac-West that Qwest was invoicing Pac-West for facilities
23 that Qwest was financially obligated to maintain, under the ICA. Additionally,
24 Qwest included in the re-bill invoices charges for facilities that Qwest had
25 previously billed at Tariff rates. This caught Pac-West's attention because the
26 Commission ordered re-bill was for UNE (Unbundled Network Elements) facilities
27 only, not Tariffed facilities.

1 **Q. DID PAC-WEST ALERT QWEST THAT IT DID NOT AGREE WITH THE**
2 **REBILL?**

3 A. Yes. Pac-West and Qwest exchanged several emails regarding the dispute
4 charges and Pac-West sent a formal dispute letter to Qwest Counsel on May 18,
5 2005.

6 **Q IS PAC-WEST DISPUTING THE RATES IMPOSED BY THE COMMISSION IN**
7 **DECISION 64922 OR THE RATES QWEST IS USING TO CALCULATE THE**
8 **INVOICES TO PAC-WEST?**

9 A. No, Pac-West is not contesting the Commission ordered rates. As discussed in
10 more detail by Pac-West witness Ethan Sprague, Pac-West believes Qwest is
11 invoicing Pac-West for facilities that Qwest is financially obligated to maintain.

12 **Q. WHAT DID PAC-WEST LEARN FROM THE QWEST RE-BILL INVOICE?**

13 A. The spreadsheet Qwest provided to Pac-West initiated a formal review because
14 the invoiced facilities were on the Qwest side of the POI. Additionally, the Qwest
15 spreadsheet included facilities that Pac-West was being invoiced pursuant to
16 Qwest tariffs and the Commission rate docket adjusted rates for UNE's
17 (Unbundled Network Elements) only. Equally confusing was the fact that Qwest
18 sent an email on March 31, 2005 stating the re-bill rates were not for services
19 purchased pursuant to the tariff, but only for services purchased from the ICA. In
20 summary, Pac-West should never have been billed for the interconnection
21 facilities at issue. It follows that Pac-West should have no obligation to pay a re-
22 bill for facilities costs that should have been allocated to Qwest in the first
23 instance.

24 **Q. ARE THERE DIFFERENT TYPES OF DTT FOR PRICING PURPOSES?**

25 A. Yes. As I stated earlier in my testimony, Direct Trunk Transport can be classified
26 for pricing purposes into 3 categories, Contract DTT, InterLCA DTT, and SPOP
27 DTT. Contract DTT is plain vanilla direct trunk transport available pursuant to

1 ICA. Nothing in the ICA limits Pac-West's ability to order DTT that crosses LCA
2 boundaries. InterLCA DTT and SPOP DTT are products available as a result of
3 amendments to the ICA. The pricing for SPOP DTT and Contract DTT are the
4 same. That is to say the pricing for SPOP DTT references the contract rates for
5 DTT in the ICA. The pricing for InterLCA DTT varies based on the mileage of the
6 facility, with the first 20 (1-20 miles) miles priced as contract rates (same as DTT
7 and SPOP), and the portion of the facility extending beyond 20 (21+ miles) miles
8 billed at Qwest tariff rates.

9 **Q. HOW DID PAC-WEST CALCULATE THE AMOUNT QWEST OVER BILLED?**

10 A. Using data detailing facilities and the respective charges, Pac-West has taken
11 100% of the amount invoiced by Qwest for Contract DTT facilities, and the
12 portion of the amount invoiced for InterLCA DTT facilities that has not been
13 credited by Qwest, and then taken the sum of these two categories to support its
14 request for credit.

15 The credit calculation is based on a limited time frame, January 2002 to January
16 2006 due to limited availability of historical data. This calculation under reports
17 the total amount overcharged by Qwest because Pac-West had InterLCA
18 facilities in place as early as January 2001.

19 **Q. HAVE YOU INCLUDED CHARGES FOR SPOP FACILITIES IN THE TOTAL**
20 **AMOUNT OWED?**

21 A. No. Pac-West excluded from the calculation the amount invoiced by Qwest for
22 SPOP facilities (facilities expressly ordered by Pac-West pursuant to the SPOP
23 amendment). DTT that is provided pursuant to the SPOP amendment allows
24 Pac-West to exchange access traffic (251(g)) over the same facility as it receives
25 its reciprocal compensation traffic (251(b)(5)). Pac-West is not asking for
26 reimbursement for the SPOP DTT because of the additional functionality of those
27 facilities.

1 **Q. HAS PAC-WEST MADE ANY PAYMENTS TO QWEST FOR DTT FACILITIES?**

2 A. Yes, Pac-West initially withheld 100% of the payments for BANS 602-L08-0011-
3 011 and 520-L08-0002-002 because these were the BANS Qwest originally used
4 to invoice Pac-West in the re-bill. Additionally, Pac-West reviewed all Qwest
5 Arizona BANS in an attempt to determine which, if any, additional BANS
6 contained facility charges. After Pac-West had an opportunity to review the
7 BANS and the Qwest facility charges on the respective BANS, Pac-West began
8 paying 40% of the amount invoiced on BAN 608-L08-0011-011 and BAN 520-
9 L08-0002-002. This commitment to partial payment was communicated in a
10 memorandum sent to Qwest on April 27, 2006. The 40% was calculated by
11 taking the total number of trunks Pac-West had on record as of August 25, 2005,
12 the total number of trunks Pac-West showed as being SPOP, multiplying the
13 number of SPOP trunks by 4 (a roughly estimating that SPOP DTT trunks are 4
14 times longer than non-SPOP DTT trunks) and then dividing that number by the
15 total number of trunks. The final percentage was rounded down to the nearest
16 whole percentage in order to comply with system requirements to generate
17 partial payments to Qwest.

18 These partial payments were rough calculations based on general presumptions.
19 The amount withheld was not intended to reflect precisely the amount Pac-West
20 was over-billed.

21 **Q. WHY IS QWEST FINANCIALLY RESPONSIBLE FOR THE FACILITIES IN**
22 **QUESTION?**

23 A. Based on the following provisions outlined in the Interconnection agreement
24 between Pac-West and Qwest, Pac-West determined it was being over-billed by
25 Qwest for facilities on its side of the POI.

26 Attachment 4 "Interconnection":

27 Section 2.2, page 1:

28 **Pac-West shall designate at least one POI in the LATA in which**
29 **Pac-West originates local traffic and interconnects with**

1 **U S WEST.**¹ Pac-West will be responsible for engineering and
2 maintaining its network on its side of the POI. If and when the
3 Parties choose to interconnect at a mid-span meet, Pac-West and
4 U S WEST will jointly provision the fiber optic facilities that connect
5 the two (2) networks and shall share the financial and other
6 responsibilities for that facility.

7
8 Section 3.1, page 2:

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

17
18 **Q. QWEST CLAIMS IN ITS AMENDED ANSWER THAT PAC-WEST**
19 **CONVERTED ALL ITS CONTRACT AND INTERLCA DTT FACILITIES TO**
20 **SPOP DTT. HAS QWEST ALWAYS TAKEN THIS POSITION?**

21 A. No, Qwest has taken contradictory positions. Beginning with an email sent on
22 July 19, 2005 Qwest indicated Pac-West had only ordered SPOP DTT facilities
23 in Utah. However, in a letter sent October 18, 2005, Qwest indicated to Pac-
24 West counsel that in April 2003 Pac-West converted all of its facilities to SPOP
25 DTT facilities. Additionally, Qwest has provided data to Pac-West that indicates
26 the network contains a substantial mix of Contract DTT and SPOP DTT.

27 **Q. TO THE BEST OF YOUR KNOWLEDGE DID QWEST REQUIRE PAC-WEST**
28 **TO INDICATE SPOP ON THE ORDER FORM IN ORDER TO SUBMIT**
29 **ORDERS FOR DTT?**

30 A. Yes, it is my understanding, based on experience working with Qwest in several
31 states, that if Pac-West attempts to request DTT that crosses LCA boundaries,

¹ MCI Order, p. 6 at Issue 2 and AT&T Order at Issue 3(a).

1 we are required to indicate either SPOP or InterLCA on the request. In fact,
2 every month Qwest sends Pac-West a spreadsheet detailing where Qwest
3 believes trunk capacity should be increased and Qwest specifies on the sheet
4 the type of trunk Pac-West should request.

5 **Q. IF THE PAC-WEST PROPOSAL IS ACCEPTED HOW MANY POIS WILL**
6 **PAC-WEST ESTABLISH?**

7 A. Pac-West would be financially responsible for six POIs in the 2 LATAs covered
8 under the ICA.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 A. Yes it does.