

ATTACHMENT



Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE WASHINGTON, D.C. SHANGHAI

GREGORY J. KOPTA
DIRECT: (206) 628-7692
gregkopta@dwt.com

2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE, WA 98101-1688

TEL (206) 622-3150
FAX (206) 628-7699
www.dwt.com

May 18, 2005

Notice of Intent to File Petition

To: Attached Service List

Re: Compensation for Terminating FX Traffic

PLEASE BE ADVISED that pursuant to Wash. Admin. Code 480-07-650, Pac-West Telecomm, Inc. ("Pac-West") intends to file a petition with the Washington Utilities and Transportation Commission ("Commission") for enforcement of the Local Interconnection Agreement Between Qwest Corporation ("Qwest") and Pac-West ("Interconnection Agreement"), including the Internet Service Provider ("ISP") Bound Traffic Amendment ("ISP Amendment"), no less than ten days from the date of this Notice. Specifically, Pac-West will seek to enforce Qwest's obligation to compensate Pac-West for terminating foreign exchange ("FX") traffic originated by Qwest customers, including ISP-bound traffic.

Section (C)2.3.4.1.1, of the Interconnection Agreement provides as follows:

The Parties agree that per minute of use call termination rates as described in Part H of this Agreement will apply reciprocally for the termination of Exchange Service (EAS/Local) traffic.

Section (C)2.3.4.1.3, of the Interconnection Agreement provides as follows:

As set forth above, the Parties agree that reciprocal compensation only applies to Local Traffic and further agree that the FCC has determined that traffic originated by either Party (the "Originating Party") and delivered to the other Party, which in turn delivers the traffic to an enhanced service provider (the "Delivering Party") is primarily interstate in nature. Consequently, the Delivering Party must identify which, if any, of this traffic is Local Traffic. The Originating Party will only pay reciprocal compensation for the traffic the Delivering Party has substantiated to be Local Traffic. In the absence of such substantiation, such traffic shall be presumed to be interstate.

Notice of Intent to File Petition

May 18, 2005

Page 2

The ISP Amendment modifies section (C)2.3.4.1.3, of the Interconnection Agreement, providing in section 1.4 that “‘ISP-Bound’ is as described in the FCC in its Order on Remand and Report and Order (Intercarrier Compensation for ISP-Bound Traffic) CC Docket 99-68” (“FCC ISP Order”) and in section 3.2.1 that “Qwest will presume traffic delivered to [Pac-West] that exceeds a 3:1 ratio of terminating (Qwest to [Pac-West]) to originating ([Pac-West] to Qwest) traffic is ISP-bound traffic.” The Amendment further provides in section 3.1 that “Qwest elects to exchange ISP-bound traffic at the FCC ordered rates pursuant to” the FCC ISP Order.

In early 2004, Qwest started withholding payment on Pac-West’s invoices for reciprocal compensation and compensation for ISP-bound traffic, alleging that Pac-West had exceeded the growth ceilings for ISP-bound traffic described in section 3.2.2 of the ISP Amendment. The parties agreed to a private arbitration to resolve their dispute. On December 2, 2004, the Arbitrator concluded that the growth ceilings expired at the end of 2003 and that Pac-West is entitled to compensation beginning January 1, 2004, without application of the cap.


Subsequently on December 29, 2004, Qwest officially notified Pac-West for the first time that Qwest intended to withhold compensation for what Qwest terms “VNXX” traffic retroactive to the beginning of 2004. Qwest defines “VNXX” traffic as traffic that Qwest originates from a customer physically located in local calling area “A” and Pac-West terminates to a customer physically located in a different local calling area “B” who has been assigned a telephone number rated as “local” in local calling area “A.” Qwest, however, considers such traffic to be FX service when Qwest is the terminating carrier in that same scenario and claims that such traffic is “local” and subject to reciprocal compensation. Specifically with respect to ISP-bound traffic, the FCC has determined, and the Interconnection Agreement provides, that such traffic is interstate in nature and subject to the FCC’s compensation requirements. Qwest, however, contends that “simply because the traffic is bound for the internet does not change the VNXX traffic to ISP bound traffic.” Accordingly, Qwest has refused to pay compensation for any calls that Qwest delivers to Pac-West for termination if the telephone number assigned to the Qwest customer is not designated as local to the Pac-West switch location.

Qwest is in violation of the Interconnection Agreement by refusing to compensate Pac-West for terminating FX traffic that is rated as local under the Local Exchange Routing Guide, while insisting on reciprocal compensation from Pac-West for terminating calls to Qwest’s FX customers. If Qwest continues to refuse to comply with its legal obligations, Pac-West will file a petition with the Commission seeking to enforce the Interconnection Agreement and Pac-West’s legal rights.

Notice of Intent to File Petition
May 18, 2005
Page 3

Sincerely yours,

Davis Wright Tremaine LLP


Gregory J. Kopta
Attorneys for Pac-West Telecomm, Inc.

cc: Ethan Sprague

SERVICE LIST

Lisa Anderl
Associate General Counsel
Qwest
1600 Seventh Avenue, Room 3206
Seattle, WA 98191
lisa.anderl@qwest.com

- Email
- US Mail
- Federal Express, overnight delivery
- Legal Messenger

Dan Hult
Director-Carrier Relations
Qwest Wholesale Markets
1314 Douglas-on-the-Mall- Room 1330
Omaha, Nebraska 68102
Dan.Hult@qwest.com

- Email
- US Mail
- Federal Express, overnight delivery
- Legal Messenger

USW
Director Interconnection Compliance
1801 California Street, Room 2410
Denver, CO 80202

- Email
- US Mail
- Federal Express, overnight delivery
- Legal Messenger

US WEST Law Department
Attention: General Counsel, Interconnection
1801 California Street, 51st Floor
Denver, CO 80202

- Email
- US Mail
- Federal Express, overnight delivery
- Legal Messenger

Northwest Telephone, Inc.
Mr. Andrew Metcalfe, President
1630 N. Wenatchee Avenue, Suite 9
Wenatchee, WA 98801

- Email
- US Mail
- Federal Express, overnight delivery
- Legal Messenger