

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

ELECTRIC LIGHTWAVE, LLC.,)	
)	Docket No. UT-
Petitioner,)	
)	PETITION FOR ENFORCEMENT
v.)	OF INTERCONNECTION
)	AGREEMENT
QWEST CORPORATION,)	
)	
Respondent)	
_____)	

Pursuant to WAC 480-07-650, Electric Lightwave, LLC (ELI) respectfully petitions the Commission to enforce the Interconnection Agreement originally entered into by Qwest Corporation (Qwest) and ELI on June 2, 2002.

Parties

1. Petitioner ELI is a Delaware Limited Liability Company certified by the Commission as a competitive local exchange company (CLEC) authorized to provide inter and intraexchange services in Washington.
2. Respondent Qwest is an incumbent local exchange company (ILEC) certified by the Commission to provide telecommunications services throughout Washington.

JURISDICTION

3. The Commission has jurisdiction over this dispute and the parties pursuant to 47 USC SS 251-252, RCW 80.36.610, and WAC 480-07-650.

NATURE OF THE DISPUTE

4. ELI and Qwest are parties to an Interconnection Agreement (ICA) in Washington that was entered into on June 2, 2002 and subsequently filed with and approved by the Commission in Docket No. UT-023037.

5. The ICA between Qwest and ELI provides for compensation for transport and termination of local traffic. Section (A) 2.22 of the ICA defines local traffic as follows:

Extended Area Service (EAS/Local Traffic (Exchange Service) means traffic that is originated by an end user of one party and terminates to an end user of the other party as defined in accordance with Qwest's then current EAS/local serving areas, as determined by the Commission.

Section (C)2.3.4.1.1 of the ICA further provides:

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

6. Part C of the ICA details the way reciprocal compensation is to be paid by the Parties. Section (C)2.3.8.1 provides:

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

According to Paragraph (C)2.3.8.2.1, Qwest will presume traffic delivered to ELI that exceeds a 3:1 ratio of terminating (Qwest to ELI) to originating (ELI to Qwest) traffic is ISP bound traffic. Attached as Exhibit A are the pertinent sections of the ICA.

7. Prior to 2005, Qwest had paid ELI for terminating local and ISP bound traffic under the terms of the ICA. In January of 2005, Qwest began to withhold payments for reciprocal compensation to ELI claiming that reciprocal compensation was

not due to ELI on traffic that Qwest deemed to be "Virtual NXX" (VNXX) traffic. Attached as Exhibit B is a letter from Qwest dated January 27, 2005 initiating the dispute. ELI's response to the Qwest letter of January 27, 2005 and Qwest's reply to ELI's response are attached as Exhibits C and D respectively. ELI is not certain how Qwest concludes that VNXX traffic does not qualify as "local" traffic under the ICA or how it concluded the ELI traffic in dispute was VNXX. However, ELI believes that what Qwest calls VNXX traffic is of the same nature as Foreign Exchange traffic that Qwest and the industry generally have always treated as local. As of the date of this Complaint, Qwest has withheld \$280,360.12 of reciprocal compensation due to ELI under its theory that the disputed traffic is VNXX and that such traffic is not local. The Affidavit of Dennis Robins is attached as Exhibit E in support of the Petition.

8. Paragraph (A)3.17 of the ICA requires the Parties to follow a binding escalation process. ELI has discussed the dispute with Dan Hult, Qwest Director for Carrier Relations and the parties have agreed to waive further application of Paragraph (A) 3.17 to this dispute. Attached as Exhibit F is an e-mail from Qwest confirming this waiver.

9. ELI sent Qwest a Notice of Intent to File Petition on August 25, 2005 as required by WAC 480-07-650(1)(c). A copy of the Notice is attached to this Petition as Exhibit G.

10. Although Qwest paid ELI reciprocal compensation on what it now calls "VNXX" traffic from June of 2002 until January of 2005, Qwest now refuses to pay ELI reciprocal compensation under the ICA for this very same traffic. It now appears Qwest is disputing that the traffic is "local" under the terms of the interconnection agreement.

Qwest's interpretation of what constitutes local traffic under the ICA has apparently changed midstream. Qwest's refusal to pay reciprocal compensation for such traffic is particularly troubling since ELI pays Qwest reciprocal compensation on Foreign Exchange originated from ELI. Given Qwest's inconsistent interpretation of the ICA, the Commission should estop Qwest from changing its definitions of the terms in the ICA where it only benefits Qwest.

11. ELI's network configuration is different than many Competitive Local Exchange Carriers in Washington. While ELI is able to efficiently provide service in Washington by using only one switch in each LATA, ELI does have facilities and customers in the rate centers it serves. In other words, ELI does not rely on the use of Qwest's network to provide Foreign Exchange like service. ELI either uses its own facilities or those leased from other providers (including Qwest) to reach its customers. Given ELI's network configuration, ELI believes Qwest's definition of "VNXX" is irrelevant in any case.

12. The Commission previously decided the VNXX issue on similar facts in UT-053036. In Order No.5, the Commission held that the FCC's *ISP Remand Order*¹ required Qwest to compensate Pac-West Telecomm, Inc. (Pac-West) for ISP bound traffic under the terms of their Interconnection Agreement regardless of the point of origin and point of termination of the traffic. Since terms of ELI's interconnection agreement are substantially the same as Pac-West's, the Commission's decision in UT-0530036 is applicable to ELI's dispute with Qwest.

¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP Bound Traffic, Order on Remand and Report and Order, CC Docket Nos. 96-98, 99-68, FCC 01-131 (rel. April 27, 2001).*

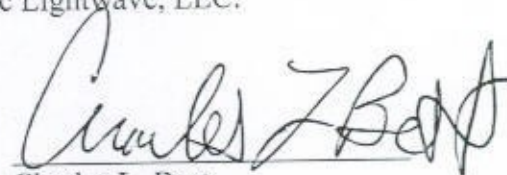
RELIEF SOUGHT

13. ELI seeks an Order from the Commission rejecting Qwest's arguments that VNXX traffic is not local and estopping Qwest from changing its definition of compensable traffic during the term of the agreement. The Commission should issue an Order requiring Qwest to compensate ELI for terminating local and ISP bound traffic as required by the ICA plus interest on the amounts improperly withheld from January 2005 until fully paid.

Dated this 30th day of May, 2006.

Electric Lightwave, LLC.

By:



Charles L. Best
Associate General Counsel
WSBA No. 31943