

**REVISED INTER-CARRIER COMPENSATION MECHANISM
AMENDMENT**

to the

INTERCONNECTION AGREEMENT

between

QWEST CORPORATION

and

FOCAL COMMUNICATIONS CORPORATION OF WASHINGTON

This Amendment is made this ____ day of _____, 2002, by and between Qwest Corporation (“Qwest”) (f/k/a/ U S West Communications Corporation) Focal Communications Corporation of Washington (“Focal”). (Qwest and Focal may be referred to individually as a "Party" and collectively as the "Parties").

WITNESSETH:

WHEREAS, Qwest and Focal have previously entered into an Interconnection Agreement, specifically, Focal’s adoption of an agreement between Electric Lightwave, Inc. and Qwest, which was filed and approved by the Washington Utilities and Transportation Commission (Docket UT-990313) (the “Agreement”); and

WHEREAS, on April 27, 2001, the Federal Communications Commission issued its Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98 and 99-68, which was published in the Federal Register on May 15, 2001, and became effective on June 14, 2001 (the “ISP Order”); and

WHEREAS, the ISP Traffic Order was appealed to the United States Court of Appeals for the District of Columbia Circuit (*WorldCom, Inc. v. FCC* (D.C. Cir., Docket No. 01-1218)); and

WHEREAS, by a decision issued May 3, 2002, the Court subsequently remanded the ISP Order back to the FCC for further proceedings but did not vacate the ISP Order; and

WHEREAS, Section XXXIV, subsections G and S, and the further understandings set forth at paragraph iv, page 78 of the Focal-Qwest agreement for the state of Washington generally provide that the Agreement must be amended to reflect changes in applicable law; and

WHEREAS, unless it is vacated or reversed on appeal, the ISP Order constitutes a change of law that affects material terms of the Interconnection Agreement; and

WHEREAS, Qwest has elected to adopt the federal intercarrier compensation regime for ISP-Bound traffic, and has offered to terminate all Section 251(b)(5) and ISP-Bound traffic in Washington with all carriers in Washington at the rates for ISP-Bound traffic described in the ISP Order; and

WHEREAS, the Parties desire to amend the Interconnection Agreement to reflect the interim rates and structure for ISP-Bound traffic described in the ISP Order;

NOW, THEREFORE, in consideration of the promises and mutual agreements herein contained, the Parties agree to amend the Agreement as follows:

Revised Intercarrier Compensation and Reciprocal Compensation Arrangements

1. Definitions

For the purposes of this Amendment, the following terms are defined as follows:

“Effective Date” means the date this Amendment is deemed approved by the Washington Utilities and Transportation Commission (“Commission”).¹

“ISP-bound Traffic” is all traffic transported by a carrier to the Receiving Party and then delivered by the Receiving Party to an Internet service provider.

“Intercarrier Compensation” means the compensation received by one Party (the “Receiving Party”) to recover its costs for transporting and terminating traffic that originates on the network of another carrier (the “Originating Party”).

“Reciprocal Compensation” is the arrangement for recovering, in accordance with Section 251(b)(5) of the Act, the ISP Order, and other applicable FCC orders and FCC Regulations, costs incurred for the transport and termination of telecommunications traffic originating on one Party’s network and terminating on the other Party’s network.

“Switched Exchange Access Service” means the offering of switched access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services, as defined by law.

The word “termination” as used in this Amendment, includes delivery of Information Services Access Traffic to an Information Service Provider, including an Internet service provider.

¹ The rate-affecting provisions of this Amendment will become effective June 14, 2001, the effective date of the ISP Order. For purposes of resolving this dispute, Focal does not take a position regarding when an amendment to an interconnection agreement becomes or should become effective. Focal in no way waives its right to advocate a position on these issues in any future or other matter or proceeding.
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2. Identification of ISP-Bound Traffic. All traffic transported by a carrier to the Receiving Party and then delivered to customers of the Receiving Party that exceeds a 3:1 ratio of terminating minutes to originating minutes is presumed to be ISP-Bound traffic.

3. Intercarrier Compensation for ISP-Bound traffic. Except as limited by Section 4 below, the Parties shall pay each other Intercarrier Compensation for the transport and termination of ISP-Bound traffic. Intercarrier Compensation for the transport and termination of ISP-Bound traffic shall be paid at the lower of the State ordered rate or the following rates:

A. For traffic exchanged during the period from June 14, 2001 to and including December 14, 2001: \$.0015 per minute of use.

B. For traffic exchanged during the period from December 15, 2001 to and including June 14, 2003: \$.001 per minute of use.

C. For traffic exchanged during the period from June 15, 2003 through the end of the Term of the Agreement, unless otherwise ordered by the FCC: \$.0007 per minute of use.

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

4. Growth Ceiling. A Party may be compensated for ISP-Bound traffic only up to the cap in minutes of use determined as follows:

A. For the year 2001:

- (1) determine the number of terminating minutes in excess of three times the number of originating minutes exchanged between the Parties between January 1, 2001 and March 31, 2001 in Washington;
- (2) multiply the result from (1) above by 4;
- (3) multiply the result from (2) above by 1.10.

B. For the period from January 1, 2002 through and including December 31, 2002, an amount equal to the ISP-Bound minutes for which the Party was entitled to compensation under that Agreement in 2001, multiplied by 1.10.

C. For the period from January 1, 2003 through and including December 31, 2003, an amount equal to the ceiling for 2002, set forth in B above.

5. Compensation for other Traffic. Each Party² shall compensate the other for the transport and termination of traffic other than ISP-Bound Traffic pursuant to this Section 5.

² Focal does not agree that this section necessarily reflects the FCC's ISP Traffic Order with respect to the mirroring of rates. Nevertheless, for the purpose of resolving this dispute, Focal accepts the language of this Amendment, but in no way waives its right to advocate an alternative construction of the mirroring rule in any forum.
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5.1 Each Party shall compensate the other for the transport and termination of traffic that would be rated for Qwest end users as local/EAS traffic in accordance with Section 251(b)(5) of the Act, based on actual terminating usage, at the Reciprocal Compensation rates set forth in the Pricing Schedule (Appendix A). Focal shall charge Qwest the Commission approved rates. Qwest shall charge Focal the applicable rate elements, depending on whether Focal delivers the traffic to a Qwest end office or tandem switch.

5.2 Transport and termination of the following types of traffic shall not be subject to the Reciprocal Compensation arrangements set forth in this Amendment, but instead shall be treated as described or referenced below:

- (a) IntraLATA Traffic originating with a third party carrier and delivered by Qwest to Focal shall continue to be treated as Transit Traffic under Section V(F) of the Interconnection Agreement.
- (b) Switched Exchange Access Service and InterLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable Tariffs and, where applicable, by a Meet-Point Billing arrangement in accordance with the Interconnection Agreement.
- (c) No Reciprocal Compensation shall apply to special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party's circuit-switched public telephone network. Any other traffic not specifically addressed in this Amendment shall be treated as provided elsewhere in this Agreement, or if not so provided, as required by the applicable Tariff of the Party transporting and/or terminating traffic.

6. *Subsequent Change of Law.* Pursuant to the change of law provisions of the Agreement, upon issuance of any FCC Order on Remand from the May 3, 2002 decision of the District of Columbia Circuit Court of Appeals, or other change in law, the parties shall utilize reasonable best efforts to effect any true-up that may be required.

7. *Scope of Amendment.* The Parties agree that this Amendment addresses only the compensation obligations between the Parties regarding the transport and termination of ISP-Bound traffic. All other rights and obligations between the Parties as described in the Interconnection Agreement, including but not limited to rights and obligations regarding interconnection, unbundled network elements, and network configuration, remain in full force and effect after the Effective Date hereof.

8. *Conflict between this Amendment and the Interconnection Agreement.* This Amendment shall be deemed to revise the terms and provisions of the Interconnection Agreement only to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Interconnection Agreement, this Amendment shall govern, *provided, however*, that the fact that a term or provision appears in this Amendment but not in the Interconnection Agreement, or in the Interconnection Agreement but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 8.

9. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.

10. Captions. The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or provision of this Amendment.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed and delivered by their duly authorized representatives as of the date first set forth above.

**FOCAL COMMUNICATIONS
CORPORATION OF WASHINGTON**

QWEST CORPORATION.

By: _____

By: _____

Printed: John Barnicle

Printed: L.T. Christensen

Title: President and COO

Title: Director – Business Policy

Date: _____

Date: _____