

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In re the Matter of the Petition of

ELECTRIC LIGHTWAVE, INC.,  
FOX COMMUNICATIONS, INC.,  
INTERNATIONAL TELECOM LTD, and  
XO WASHINGTON, INC.

For Declaratory Order on Reciprocal  
Compensation Rates

DOCKET NO. UT-013073

COMMISSION STAFF STATEMENT OF  
FACT AND LAW

**INTRODUCTION**

The Petition for Declaratory Order filed in this case asks the Commission to clarify the impact of the Commission's orders in Docket UT-960369, et al, on reciprocal compensation rates. Namely, petitioners ask whether the Commission in those orders set permanent rates that should replace the rates contained in existing interconnection agreements. Petitioners argue that, contrary to Qwest's interpretation, the Commission did not set reciprocal compensation rates in those proceedings. Commission Staff has reviewed the history of the proceedings, the positions advanced by the parties, the Commission's orders, and the parties' actions in response to those orders.

Based on this review, Staff is unable to clearly determine that the Commission decided upon reciprocal compensation rates to replace the interim rates contained in interconnection agreements. While one might argue that the Eighth and Ninth Supplemental Orders in Docket UT-960369 evince an intent to apply the costs (and by extension, rates) determined for switching unbundled network elements to reciprocal compensation as well, Staff notes that the

Commission never stated such an intent in any of its orders, even though it had several opportunities to do so.

Staff also notes that Qwest's own actions are not consistent with its current claim that the Commission decided reciprocal compensation rates. To the contrary, Qwest's compliance filing, made in response to the Commission's Twenty-Fifth Supplemental Order in that proceeding, does not include any rates for reciprocal compensation or any reference to reciprocal compensation. While Qwest filed rates for transport, it did not file any rates for local switching. Nor did Qwest take any action for six months to notify either the Commission or other parties of its present contention that the Commission set new reciprocal compensation rates in Docket UT-960369. Thus, it clearly was not immediately obvious to Qwest that the Commission did what Qwest now contends it did.

Staff thus believes that the Commission in Docket UT-960369 did not intend to set reciprocal compensation rates. Staff reaches this conclusion reluctantly, as Staff has consistently advocated that the "interim" rates in many interconnection agreements should be adjusted because they substantially overstate cost. But given this conclusion, Staff believes it is even more incumbent for the Commission to address reciprocal compensation in Docket UT-003013 (Phase B). It is essential that reciprocal compensation rates on a going-forward basis be properly based upon cost.

Staff's review and analysis of the Commission's prior orders, and the parties' responses to those orders, is set forth below.

### **DOCKET UT-960369 -- PHASE I DECISION**

The Commission initiated the first generic cost proceeding, Docket UT-960369, to resolve cost and price issues that were arising in interconnection arbitrations. In establishing the

generic cost proceeding, the Commission determined that all prices established through arbitration would be interim, and that permanent prices would be established in the generic cost proceeding. Reciprocal compensation or transport and termination was one of the items for which permanent prices were to be determined.

The cost phase of the generic cost proceeding resulted in the Commission's Eighth Supplemental Order (April 16, 1998), which by its own terms "accomplishes the Commission's goals of establishing a cost methodology and costs for use [in establishing] prices or price ranges." Order, Summary section, p. 2. The question is whether the Eighth Supplemental Order actually established costs for reciprocal compensation, i.e., transport and termination.

While the Eighth Order generally establishes costs, the section specifically addressing "Interconnection/Transport and Termination" does not appear to address termination costs. With respect to transport, the order states, "Currently, transport termination is handled through a bill-and-keep procedure." Order, ¶ 443. The order concludes that, if the Commission retains the bill-and-keep structure, there would be no need to examine transport costs. The Commission would, according to the Order, require GTE and U S WEST to file modified cost studies only if in Phase II it adopted an alternative to bill-and-keep compensation. This would suggest that the Commission did not establish reciprocal compensation costs in Phase I of Docket UT-960369, and instead deferred cost determination until it had decided whether to move away from bill and keep. That conclusion is supported by other language in this section of the Eighth Order. Paragraphs 437 through 443 refer only to "transport," but not "termination." There is no discussion or explicit decision in that section as to the costs of termination. (The order includes an appendix with definitions, but none of the terms at issue here -- "interconnection," "transport," or "termination" -- are included.)

The Eighth Order does discuss at some length the cost of switching, and makes cost determinations for switching as an unbundled network element. Order, ¶¶ 275-320. One plausible explanation for the Order's silence on the question of "termination" costs within reciprocal compensation might be that the Commission addressed those issues in deciding on switching cost. This would be a reasonable approach for the Commission to take, since the switching function that the Commission addressed is same function that a company provides when it terminates an interconnecting competitor's calls at its end office. However, the Commission did not expressly indicate anywhere in the Order that this was its intent.

#### **DOCKET UT-960369 -- PHASE I RECONSIDERATION**

Nextlink, TCG, and AT&T sought clarification of the Eighth Order on several points, including the "costs of interconnection and local call termination and transport." As these parties said in their petition:

The Commission's discussion of the costs of interconnection and transport and termination of local traffic does not address interconnection or call termination but is restricted to interoffice transport, for which the Commission establishes no cost.

Nextlink Petition for Clarification, at ¶ 3; *see generally* ¶¶ 3-7. Commission Staff concurred in this request for consideration. Staff's Petition for Clarification, at ¶ 5 (May 6, 1998). The Nextlink/TCG/AT&T petition raises the question, at least implicitly, of whether the cost standard for reciprocal compensation is the same as the cost standard for unbundled network elements. Even if the two functions are exactly the same, their petition suggests that the "cost" standard for unbundled network elements in 252(d)(1) differs from the "additional cost" standard for transport and termination in 252(d)(2). The petition also suggested that it would be impossible to proceed with rate structure proposals in Phase II without cost determinations.

The Commission issued a Phase I clarification order, the Ninth Supplemental Order (June 1998), in which it said, "We do not understand NEXTLINK, TCG, and AT&T's statement that they need additional information on how these costs should be calculated." Order, ¶ 32. The Ninth Order also said, "We believe the [Eighth] Order is clear on its face. If it becomes necessary to model transport costs, the GTE and U S WEST cost models should be used." Order, ¶ 33. As with the Eighth Order, only "transport" is specifically mentioned.

The Commission did, however, establish in the Ninth Order a cost for tandem switching as an unbundled network element. Order, ¶ 36. The Commission in the Tenth Supplemental Order confirmed the end office and tandem switching costs that it had established in the Eighth and Ninth Orders, but there was no further discussion of reciprocal compensation.

Staff is unsure how to interpret the Commission's rejection of the Nextlink petition in the Ninth Order. The petition claimed that reciprocal compensation costs had not been determined, and the Commission rejected that petition. This may indicate at least, that the GTE and U S WEST cost models should be used in determining costs. Once again, however, the Commission did not directly say that it had established reciprocal compensation costs.

### **DOCKET UT-960369 -- PHASE II DECISION**

In Phase II of Docket UT-960369, the Commission included transport and termination pricing in the scope of the case. In its Phase II Order (Seventeenth Supplemental Order), the Commission said:

One of the issues the Commission must resolve in this proceeding is what specific rates, including the rate structure, will apply when companies cannot agree on a reciprocal compensation method, i.e., a mechanism for compensating each other for the exchange of traffic under interconnection agreements.

Order, ¶ 408.

The Seventeenth Order then proceeds to discuss the parties' positions on rate design, i.e., whether a flat-rated or per-minute charge is more appropriate. It notes that Staff recommended a capacity charge to be calculated from the end office and tandem switching costs submitted by GTE and U S WEST. In its decision, the Commission rejected this proposal to use the company's costs, citing its rejection of the companies' switching costs in the Eighth Order and its determination of a tandem switching cost in the Ninth Order based only in part on the company's own cost. Order, ¶ 422.

Staff is unsure as to the effect of the Commission's Phase II decision. The Commission accepted *in principle* the position of Staff and TCG that a flat-rated capacity charge should be established for reciprocal compensation. Order, ¶ 421. However, it rejected the specific charge recommended by Staff. (TCG did not offer a specific recommended charge.) The Seventeenth Order is not clear, however, about whether the effect of rejecting the capacity charge is that rates established in arbitrations will continue to be effective, or that per-minute rates based on the Commission's Phase I decision are to be implemented.

The Commission's Eighteenth Supplemental Order addressed Phase II reconsideration issues. The Eighteenth Order resolved a question about the circumstances in which a flat-rated capacity charge would be applied, but it did not address the question of what rates should apply in the absence of a Commission decision on rate design for reciprocal compensation.

#### **DOCKET UT-003013 (Part B)**

When the Commission initiated a second generic cost proceeding, it included "flat-rate reciprocal compensation" as an issue to be addressed. The prehearing conference order noted the parties' reluctance to prepare evidence on the issue, given that "none of the parties have stated a willingness to use such a rate if it is developed," but it nonetheless required parties to provide

evidence. Docket No. UT-003013, First Supplemental Order; Prehearing Conference Order, ¶¶ 10-11. The issue was included in Part B of the proceeding.

The parties submitted testimony on reciprocal compensation rate structure in Part B. All parties' testimony appears to address rate design issues and the question of jurisdiction over Internet-bound calls, rather than cost issues. The Part B brief of the Joint CLECs (AT&T, Electric Lightwave, Focal, XO) advocates continuation of "the existing minutes of use compensation," rather than adopting the rate structure advocated by Staff in which the per-minute rate would be separated into per-call and per-minute components. The Joint CLECs argue that the Part B record is not sufficient to establish specific rates under this structure.

### **CONCLUSION**

Based on its review of the Commission's decisions in the two generic cost proceedings, Staff is unable to conclude that the Commission decided the question of reciprocal compensation rates to replace the interim rates in interconnection agreements. While one might argue that it is reasonable for the costs (and by extension, rates) determined for switching unbundled network elements to apply to reciprocal compensation rates as well, the Commission never explicitly stated its intent to do so, even though the issue was raised a number of times by various parties. Rather, it appears that the Commission did not intend in the Eighth Supplemental Order to replace the interim reciprocal compensation rates until an unspecified later date. Under this theory the Nextlink petition was rejected, not because the Commission had already established costs, but rather because it was not yet establishing these costs.

As previously noted, Staff reaches this conclusion reluctantly, as Staff has consistently advocated that the "interim" rates in many interconnection agreements should be adjusted because they substantially overstate cost. But given this conclusion, Staff believes it is even

more incumbent for the Commission to address reciprocal compensation in Docket UT-003013 (Phase B). It is essential that reciprocal compensation rates on a going-forward basis be properly based upon cost.

DATED this 8<sup>th</sup> day of October 2001.

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