

JUL 29 2002

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Request for
Approval of the Negotiated Agreement
Under the Telecommunications Act of
1996 Between

FOCAL COMMUNICATIONS
CORPORATION OF WASHINGTON

and

QWEST CORPORATION, f/k/a U S
WEST COMMUNICATIONS, INC.

DOCKET NO. UT-990313

ORDER APPROVING
NEGOTIATED THIRD AMENDED
AGREEMENT REVISING
INTERCARRIER
COMPENSATION AND
RECIPROCAL COMPENSATION
ARRANGEMENTS

BACKGROUND

1 This matter comes before the Washington Utilities and Transportation Commission (Commission) for approval of a negotiated third amended agreement (Amended Agreement) under the Telecommunications Act of 1996 (Telecom Act). The Amended Agreement is between Focal Communications Corporation of Washington (Focal), and Qwest Corporation (Qwest), f/k/a U S WEST Communications, Inc. The Commission approved an interconnection agreement between the parties on March 10, 1999, a first amended agreement on August 30, 2000, and a second amended agreement on June 13, 2001. The Commission ordered that in the event the parties amended their agreement, the amended agreement would be deemed a new agreement under the Telecom Act and must be submitted to the Commission for approval. The parties filed a joint request for approval of a third amendment on July 9, 2002.

MEMORANDUM

2 The Amended Agreement between Focal and Qwest was brought before the Commission at its regularly scheduled open meeting held on July 26, 2002, at its offices in Olympia, Washington. The Commission granted its approval of the Amended Agreement as negotiated and requested by the parties.

FINDINGS OF FACT

3 The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.

4 Section 252(e)(1) of the Telecom Act requires parties to a negotiated agreement to submit the agreement to the Commission for approval. Section 252(e)(2)(A) states that the Commission may only reject an agreement (or any portion thereof) adopted by negotiation if it finds that:

- 5 (i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- 6 (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

7 Qwest is engaged in the business of furnishing telecommunications services, including, but not limited to, basic local exchange service within the state of Washington.

8 Focal is authorized to provide telecommunications services to the public in the state of Washington.

9 The Commission approved an interconnection agreement between the parties on March 10, 1999, a first amended agreement on August 30, 2000, and a second amended agreement on June 13, 2001. The Commission ordered that in the event the parties amended their agreement, the amended agreement would be deemed a new agreement under the Telecom Act and must be submitted to the Commission for approval.

10 On July 9, 2002, the parties filed with the Commission a joint request for approval of a third amendment to the previously approved interconnection agreement, pursuant to the Telecom Act.

11 Focal and Qwest voluntarily negotiated the entire amendment.

12 The Amended Agreement does not discriminate against any other telecommunications carrier.

13 The Amended Agreement will facilitate local exchange competition in the state of Washington by enabling Focal to expand its presence in the local exchange market and increase customer choices for local exchange services.

CONCLUSIONS OF LAW

14 The Commission has jurisdiction over the subject matter and all parties to this proceeding.

- 15 The Amended Agreement is consistent with the public interest, convenience, and necessity.
- 16 The Amended Agreement meets the requirements of Sections 251 and 252 of the Telecom Act, including Section 252(e).
- 17 The laws and regulations of the State of Washington and Commission orders govern the construction and interpretation of the Amended Agreement. The Amended Agreement is subject to the jurisdiction of the Commission.

ORDER

THE COMMISSION ORDERS:

- 18 The Amended Agreement between Focal Communications Corporation of Washington and Qwest Corporation, f/k/a U S WEST Communications, Inc., which the parties filed on July 9, 2002, is approved and effective as of the date of this order.
- 19 In the event that the parties revise, modify, or amend the agreement approved herein, the revised, modified, or amended agreement will be deemed to be a new negotiated agreement under the Telecom Act and must be submitted to the Commission for approval, pursuant to 47 U.S.C. § 252(e)(1) and relevant provisions of state law, prior to taking effect.
- 20 The laws and regulations of the State of Washington and Commission orders govern the construction and interpretation of the Amended Agreement. The Amended Agreement is subject to the jurisdiction of the Commission.

DATED at Olympia, Washington, and effective this 26th day of July, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



MARILYN SHOWALTER, Chairwoman



RICHARD HEMSTAD, Commissioner



PATRICK J. OSHIE, Commissioner

Qwest
1600 7th Avenue, Room 3206
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(206) 398-2507
Facsimile (206) 343-4040

Adam L. Sherr
Attorney
Policy and Law Department



*Via E-mail and
Overnight Delivery*

July 8, 2002

Ms. Carole J. Washburn, Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7254

Re: Docket No. UT-990313
Request for Approval of Amendment to the Interconnection Agreement between
Qwest Corporation and Focal Communications Corporation of Washington

Dear Ms. Washburn:

In accordance with the Interpretive and Policy Statement issued on June 28, 1996 in Docket No. UT-960269, please find enclosed an original and two (2) copies of the Revised Inter-Carrier Compensation Mechanism Amendment to the Interconnection Agreement between Qwest Corporation and Focal Communications Corporation of Washington.

The enclosed Amendment does not discriminate against non-party carriers. It is consistent with the public interest, convenience, and necessity. It is also consistent with applicable state law requirements, including Commission orders regarding interconnection issues. Qwest respectfully requests that the Commission approve this Amendment expeditiously.

The Order on Arbitration Procedure also requests that a proposed order accompany the filing. Qwest requests a waiver of that requirement, and is not providing one with this filing, as the Commission has, in the past, used its own format for Orders. If this is not satisfactory to the Commission, please contact me and I will forward a proposed order immediately.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam L. Sherr", with a long horizontal flourish extending to the right.

Adam L. Sherr

ALS/ilw
Enclosures

cc: Mary Sullivan (without enclosure)
Director, Regulatory Affairs at Focal Communications (without enclosure)

**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.

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.
June 13, 2002/Focal Communications Corp of WA.doc
Amendment to CDS-990114-0031/C

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: *John Barnicle*

By: *L.T. Christensen*

Printed: John Barnicle

Printed: L.T. Christensen

Title: President and COO

Title: Director - Business Policy

Date: 6/17/02

Date: 6/20/02