

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

In the Matter of the Petition of)	
)	
)	DOCKET NO. UT-013073
ELECTRIC LIGHTWAVE, INC., FOX)	
COMMUNICATIONS, INC.,)	
INTERNATIONAL TELCOM LTD, AND XO)	
WASHINGTON, INC.)	
)	
For Declaratory Order on Reciprocal)	
Compensation Rates)	
)	

**LEVEL 3 COMMUNICATIONS, LLC’S RESPONSE TO
QWEST AND VERIZON’S STATEMENTS OF FACT AND LAW**

INTRODUCTION

The main argument raised by both incumbent local exchange carriers (“LECs”) to the petition for declaratory Order brought by Electric Lightwave, Inc., Fox Communications, Inc., International Telecom Ltd., and XO Washington, Inc. is that the Commission has approved permanent reciprocal compensation rates for the transport and termination of local traffic in the initial generic costing proceeding, UT-960369, *et. al.* The orders in that proceeding show the contrary; the Commission did not enter a final order addressing reciprocal compensation in that proceeding. Moreover, this argument by the incumbent LECs is undermined by the fact that the Commission is addressing reciprocal compensation in Docket UT-003013.

Verizon’s argument that all rates in interconnection agreements are subject to true-up is simply unworkable. The Commission has never ordered that rates approved in

either Docket UT-960369, *et. al.* or Docket UT-003013 are subject to true-up. Were this the case, parties to interconnection agreements – including expired interconnection agreements presumably – would have to go back and re-calculate all costs addressed in those agreements at the conclusion of Docket UT-003013. Such a proposal must be rejected by the Commission.

ARGUMENT

A. The Commission did not establish permanent reciprocal compensation rates in Docket UT-960369, *et.al.*

Both Qwest and Verizon argue that the Commission has already established permanent rates for reciprocal compensation in Docket UT-960369, *et. al.* Qwest Statement of Position, pg. page 3; Verizon Statement of Fact and Law, pg. 2. Both incumbents are wrong because they go beyond the express language of the Commission's orders in that proceeding and because they overlook the Commission's further consideration of reciprocal compensation issues in Docket UT-003013.

Level 3 agrees with Staff that the Commission did not adopt permanent reciprocal compensation rates in Docket UT-960369, *et.al.*, and that the Commission should do so in Phase B the new costing proceeding, UT-003013. Commission Staff Statement of Fact and Law, pg. 7. The Commission's orders in Docket UT-960369, *et. al.* show, Qwest and Verizon arguments to the contrary, that the Commission has not concluded its investigation of the issue of reciprocal compensation. In the 17th Supplemental Order issued in Docket UT-960369, *et.al.*, the Commission accepted the concept of a flat-rate capacity charge in principle, but did not agree with Staff that the Qwest (then U S West) and Verizon (then GTE) per-minute costs should be used to estimate the switching capacity costs. 17th Supplemental Order, ¶¶ 421 & 422.

The orders issued by the Commission in the new costing proceeding, UT-003013, also show that the issue of reciprocal compensation continues to be before the Commission for consideration. In fact, in one of the earliest orders in this new costing proceeding, the Commission noted that the issue of reciprocal compensation was an issue for consideration. First Supplemental Order, ¶ 16. Moreover, in notifying the parties that they would no longer be required to present evidence regarding Staff's proposed flat-rated reciprocal compensation mechanism, it authorized the parties "to propose any compensation plan." Third Supplemental Order, ¶ 18. Clearly, if the issue of reciprocal compensation had been resolved in Docket UT-960369, *et. al.*, the Commission would not have allowed parties to propose reciprocal compensation plans in UT-003013. As noted by Staff, consistent with the intent of the Commission's directives to the parties in Docket UT-003013, the Commission should address the issue in Phase B of the proceeding and reject the incumbent LEC arguments here.

Moreover, in rejecting Staff's proposal that the flat-rate capacity charge apply as a default whenever parties are unable to jointly reach agreement on a rate, the Commission concluded that, to the extent possible, the Commission should adopt the rate structure proposed by one of the parties to arbitration.¹ Docket UT-960369, 17 Supplemental Order, ¶ 424. In addition to not adopting final and definitive reciprocal compensation rates in Docket UT-960369, *et.al.*, the Commission also noted that, only if the public interest or prevailing law required, would it adopt a rate structure not sponsored by either party. Docket UT-960369, 17 Supplemental Order, ¶ 424, fn 40. Thus, even after the Commission approves reciprocal compensation rates in Docket UT-003013, the Commission has noted that it will consider the rate proposals sponsored by parties in

¹ The Commission is referring to arbitrations brought under the Telecommunications Act of 1996.

arbitrations brought to the Commission via 47 U.S.C. § 252. This decision to leave open questions relating to reciprocal compensation undermines the incumbent LECs' argument that the Commission established "permanent" reciprocal compensation rates in Docket UT-960369, *et al.*

B. Nothing in Docket UT-960369, *et. al.* suggests that Commission-adopted rates are subject to true-up.

Verizon argues that all rates in arbitration agreements are interim and subject to true-up. Verizon Statement of Fact and Law, Footnote 3. As Staff noted in its September 7th Response of Staff to Commission's Notice of Receipt of Petition for Declaratory Order ("September 7th Response"), once permanent reciprocal compensation rates are established in Docket UT-003013, those rates will apply on a *going-forward* basis. September 7th Response, pg. 3, § 4. What Verizon is asking the Commission to order would cause havoc in the already tenuous competitive telecommunications marketplace. Parties to arbitration agreements – potentially even expired agreements that are no longer in effect – would have to go back and re-calculate all costs contained in those agreements. Such a finding is not workable and, moreover, not what the Commission has ordered in any of its decisions in Docket UT-960369, *et.al.* or Docket UT-003013. The more reasonable solution is that proposed by Staff – once permanent reciprocal compensation rates are adopted, those rates will apply on a going-forward basis.

C. The FCC contemplates that state commissions will adopt reciprocal compensation rates for inclusion in interconnection agreements.

Qwest also argues that the FCC contemplates that local tandem switching rates are applicable to reciprocal compensation, and since the Commission has addressed switching in Docket UT-960369, *et.al.*, reciprocal compensation rates have been

determined. Qwest Statement of Fact and Law, pg. 5. Level 3 does not dispute that the FCC has authorized state commissions to adopt reciprocal compensation rates for the transport and termination of local traffic. What Qwest, and Verizon, continue to ignore is that the Commission has simply not issued a final ruling on reciprocal compensation. The Commission has always seen reciprocal compensation as an issue distinct from the other UNE rates considered in Docket UT-960369, *et. al.*. Only after reciprocal compensation is addressed and final orders issued in Docket UT-003013 will such rates be in effect and can Qwest and Verizon move to amend then existing interconnection agreements.

CONCLUSION

For the reasons stated above, Level 3 moves that the Commission reject Qwest and Verizon arguments, and order that its orders in Docket UT-960369, *et. al.* did not establish permanent reciprocal compensation rates and that the reciprocal compensation rates in existing interconnection agreements remain in effect until the Commission specifically addresses the issue in Docket UT-003013.

Dated: October 15, 2001.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the original and 19 copies of the foregoing Level 3 Response to Qwest and Verizon's Statements of Fact and Law was sent via Federal Express on this 15th day of October, 2001, addressed to the following:

Carole J. Washburn, Executive Secretary
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and a true and correct copy was deposited into the United States Mail, postage prepaid, on this 15th day of October, 2001, and via e-mail to the following designated representatives on the 16th day of October, 2001, addressed to the following:

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