

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	
	)	DOCKET NO. UT-013073
ELECTRIC LIGHTWAVE, INC.,	)	
FOX COMMUNICATIONS, INC.,	)	QWEST'S STATEMENT OF
INTERNATIONAL TELCOM LTD and	)	FACT AND LAW
XO WASHINGTON, INC.	)	
	)	
for a Declaratory Order On Reciprocal	)	
Compensation Rates	)	

---

Pursuant to the Commission's Notice of August 27, 2001 Qwest Corporation (Qwest) hereby files the following statement of fact and law with regard to this petition.

**INTRODUCTION**

On August 10, 2001 Electric Lightwave, Inc., Fox Communications, Inc., International Telcom, Inc., and XO Washington, Inc. (Joint Petitioners) filed a petition with the Commission for a declaratory order on reciprocal compensation rates. Essentially, Joint Petitioners claim that through two separate cost dockets and five years of proceedings, the Commission has never established a reciprocal compensation rate for the exchange of local traffic. Qwest disagrees. Qwest believes that the Commission's orders in Docket Nos. UT-960369, et al., established rates for local and tandem switching that apply as termination rates for purposes of reciprocal compensation in circumstances where the carriers have a usage-based (as opposed to bill-and-keep) compensation scheme in place.

The Joint Petitioners have requested that the Commission issue an order clarifying that its orders in Docket Nos. UT-960369, et al., did not establish per-minute-of-use rates for reciprocal compensation

1 and that the rates in the existing agreements remain in effect until the Commission specifically orders  
2 otherwise. The Commission has asked interested persons to respond to the petition by submitting a  
3 statement of fact and law and by including therein the response to four separate questions.

4 For the reasons set forth herein, Qwest is opposed to the result requested by this petition and  
5 asks the Commission to affirm that it did indeed establish rates for reciprocal compensation when it  
6 established end office and tandem switching rates in the cost dockets. However, Qwest does not object  
7 to this matter being decided in a declaratory proceeding, which is an appropriate procedural vehicle for  
8 resolution of the parties' dispute, subject to the discussion below in response to the Commission's  
9 questions on this issue.

10 **DISCUSSION**

11 There are a number of reasons for concluding that the Commission-ordered local and tandem  
12 switching rates for Qwest in Docket Nos. UT-960369 et al., are applicable to reciprocal compensation.<sup>1</sup>  
13 First, Qwest believes that it is clear from the various Commission orders in the arbitrations and the original  
14 generic proceeding that transport and termination rates would be considered in the generic docket. Thus,  
15 it does not make any sense to assert (as Joint Petitioners do) that the "interim" rates established in  
16 arbitrations in 1996 are still in place. Second, this result is consistent with Commission policy that like  
17 services should be priced in a like manner. Third, this result is consistent with FCC pricing guidance  
18 under the Act. Finally, there is nothing in Docket No. UT-003013 that is inconsistent with the use of rate  
19 elements from UT-960369 et al., for reciprocal compensation. Each of these points will be discussed  
20 more fully below.

21 **A. End Office and Tandem Switching Rates for Reciprocal Compensation Were**

22 <sup>1</sup> Qwest has calculated a new reciprocal compensation rate (\$0.00297 per minute of use) based on these orders and has  
23 notified affected CLECs of the rate. Qwest intends to apply the rate to all interconnection agreements that are not on a  
24 bill and keep plan. Joint Petitioners' assertions that Qwest has self-servingly failed to apply the changed rate to  
wireless carriers is simply incorrect. The Qwest-proposed rate is calculated as follows:

Local Switching	\$0.0120
Tandem Switching	\$0.0141
Tandem Trans.	\$0.0010 (Which is \$.00001 * 10 miles)
Tandem Trans.	<u>\$0.0026</u> Fixed
Total	\$0.0297

1 **Determined in Docket Nos. UT-960369, et al.**

2 On November 21, 1996, the Commission entered an “Order Instituting Investigations” (Order) in  
3 consolidated Dockets UT-960369, 960370, and 960371. Those dockets were established for the  
4 express purpose of considering “cost methodology and pricing for interconnection, unbundled network  
5 elements, transport and termination, and wholesale and resale discounts.” (Order at p. 2). The  
6 Commission went on to state that it expected that the prices or price ranges resulting from the docket  
7 would be applied in future arbitrations and that “parties will reform their contracts to adopt the  
8 Commission-approved prices.” (Id. at p. 3). By the time the Order was entered on November 8, 1996,  
9 Commission-appointed arbitrators had already issued two Decisions under the Act, each of which  
10 expressly considered reciprocal compensation issues.<sup>2</sup> Further, in final orders approving the resulting  
11 arbitrated agreements, the Commission expressly noted that the approved rates would be interim, pending  
12 the completion of the generic proceeding.<sup>3</sup>

13 Commission orders in Docket Nos. UT-960369 et al., and other dockets, address transport and  
14 termination (reciprocal compensation) using the same language (i.e., transport, tandem switching, etc.) as  
15 used when discussing the UNEs. Additionally, multiple Commission orders in the generic docket make it  
16 clear that the Commission understood that there were usage based compensation mechanisms in place in  
17 a number of interconnection agreements. See, for example, the 10th Supplemental Order, paragraph 27,  
18 discussing “transport termination” through paragraph 38, and the 14th Supplemental Order, paragraph  
19 48, ordering a rate for “tandem switched local transport – termination”.

20 \_\_\_\_\_  
21 <sup>2</sup> See, In the Matter of the Petition for Arbitration of an Interconnection Agreement between MFS and U S WEST  
22 Communications, Inc., Pursuant to 47 U.S.C. Section 252, Docket No. UT-960323, and In the Matter of the Petition for  
23 Arbitration of an Interconnection Agreement between TCG Seattle and U S WEST Communications, Inc., Pursuant to  
24 47 U.S.C. Section 252, Docket No. UT-960326. The MFS Report and Decision adopted per-minute-of-use rates and held  
25 that the MFS switch should be compensated at the tandem rate and the TCG Report and Decision adopted bill and  
26 keep. Both were issued November 8, 1996. International Telecom, one of the Joint Petitioners, opted in to the MFS  
27 agreement, which makes references to call termination using the same terminology as is used in reference to the  
transport and switching UNEs, for example, Section V.D.3.c. states:

c. For traffic terminated at a USWC or International Telcom tandem switch, the tandem call termination  
rate in Appendix A shall apply. The tandem call termination rate provides for end office call termination,  
tandem switched transport and *tandem switching*.

<sup>3</sup> *TCG Seattle*, Docket No. UT-960326, Commission Order, January 29, 1997. [1997 Wash. UTC LEXIS 9].

1 The Commission has also heard at least two contested cases between Qwest (or its predecessor,  
2 U S WEST) and CLECs regarding the issue of whether the CLEC could “opt-in” to the reciprocal  
3 compensation provisions in the MFS agreement, and clearly understood that those provisions included  
4 per-minute-of-use rates.<sup>4</sup> Further, in at least one arbitrated agreement, the Commission found that when  
5 the end-office rate to be paid to the CLEC was in dispute, Qwest’s (then U S WEST) proposed *local*  
6 *switching rate* in the generic cost docket was a reasonable approximation of the CLEC’s costs in  
7 terminating the call.<sup>5</sup> The Commission stated that the use of that interim rate was subject to the  
8 Commission’s final determination of rates in the generic cost proceeding, leading to the conclusion that the  
9 Commission did intend to address that issue in the generic docket.<sup>6</sup> Again, Joint Petitioners’ assertion  
10 that the Commission did not do so simply does not make sense.

11 **B. End Office and Tandem Switching as UNEs are the Same Function as End Office**  
12 **and Tandem Switching for Reciprocal Compensation.**

13 As a matter of fact which Qwest does not believe to be disputed by Joint Petitioners, the  
14 “switching” and “transport” UNEs and the transport and termination referenced in connection with  
15 reciprocal compensation are functionally the same. Indeed, even the terminology is similar, if not identical,  
16 in discussing the two. For example, “tandem switching” is both an unbundled network element and a rate  
17 element that must be determined for purposes of reciprocal compensation. The usage-sensitive  
18 component of switching is exactly the same, both functionally and from a cost standpoint, whether it is  
19 designated as “local” or “end office” switching or as an element of call transport and termination.<sup>7</sup>

20 <sup>4</sup> Docket Nos. UT-990307 (Nextlink), and UT-993003 (ATG).

21 <sup>5</sup> *In the Matter of the Petition for Arbitration of an Interconnection Agreement between AirTouch Paging and*  
22 *U S WEST Communications, Inc., Pursuant to 47 U.S.C. Section 252*, Docket No. UT-990300, Commission Order, July  
23 1, 1999. [1999 Wash. UTC LEXIS 199].

24 <sup>6</sup> Qwest’s research on this point has revealed one potential issue that may need further development and discussion.  
25 While Qwest believes that it is clear that the Commission-ordered switching rates should apply for reciprocal  
26 compensation, reciprocal compensation actually consists of two functions, transport and termination. Transport is  
27 usually considered to be both the interoffice transport component and tandem switching, while termination is limited to  
the end-office, or local switching function. The Commission appears to have clearly ruled that transport is to be  
ubiquitously handled on a bill and keep basis. See, Docket Nos. UT-960369, et al., 8th Supplemental Order, paragraph  
443. It is not clear that any party has ever affirmatively proposed a change to this ruling. If this is the case, Qwest will  
have to recalculate its proposed reciprocal compensation rate to reflect only the local switching rate, not the tandem  
switching or transport components. This would result in a reciprocal compensation rate of \$0.00120 per minute of use.

<sup>7</sup> It seems as though telecom as an industry is especially full of multiple names for the same thing. For example,

1 Functionally, switching as a UNE or switching to transport and terminate a call, in both instances is the  
2 switching of a call through a carrier’s end office or tandem switch.

3 Joint Petitioners point out that there is a difference in words between “end office termination”  
4 (used in the MFS agreement) and “local switching” (used in Qwest’s interconnection tariff, WN U-42)  
5 (Petition at ¶ 6). From these comments it is clear that Joint Petitioners believe that this difference is  
6 dispositive. However, while there is some terminology difference between the MFS agreement and  
7 Qwest’s tariff, Qwest does not believe that those differences are determinative that the rates from the  
8 tariff do not apply. Additionally, Joint Petitioners fail to discuss the absolute parallel between the MFS  
9 rate sheet and the Qwest tariff when both documents discuss the tandem switching element. The simple  
10 fact is that tandem switching is an element of reciprocal compensation, and the Commission has clearly  
11 ordered an applicable rate for the tandem switching function.

12 **C. FCC Decisions Contemplate that Local and Tandem Switching Rates are**  
13 **Applicable to Reciprocal Compensation.**

14 The FCC provided valuable guidance on the question presented in this docket in the Local  
15 Competition First Report and Order.<sup>8</sup> There, the FCC discussed reciprocal compensation at paragraphs  
16 1027–1118. In paragraph 1040, the FCC clarified that “termination” means “the *switching* of traffic . . .  
17 at the terminating carrier’s end office switch. . . .” Thus, it appears clear that termination is the same  
18 function as local switching. Additionally, when the FCC established proxy prices, it established the same  
19 proxy rates for the “termination” part of reciprocal compensation as it did for local switching.<sup>9</sup> This was  
20 not a coincidence, as the FCC explicitly stated that the default price range for termination was based on  
21 the same proxies that apply to local switching. (Id. at ¶ 1060).

---

22 DS1 and T-1 both mean high capacity circuits at 1.544 mbps. The terms “private line” and “special access” are often  
23 used interchangeably. Similarly, in the practice of law there are often multiple ways to refer to the same thing. For  
24 example, a constitutional law case might refer interchangeably to “a violation of the 4th amendment” or “an unlawful  
25 search and seizure”. Thus, Qwest believes that the reference to “end office call termination” in the MFS agreement is  
26 essentially interchangeable with “local switching” as that term is used in Qwest’s interconnection tariff filed as a result  
27 of the Commission’s orders in UT-960369 et al.

<sup>8</sup> First Report and Order, *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, No. 96-98, 11 FCC Rcd 21905, 1996 FCC LEXIS 4312, (rel. Aug. 8, 1996) (*First Report and Order*)

<sup>9</sup> Compare paragraphs 815 and 1060, showing proxy rates of \$0.002 to \$0.004 for both local switching and call termination.

1 The FCC's discussion of the statutory standard for pricing transport and termination also states  
2 that the methodology for determining costs and prices for transport and termination should be the same as  
3 for the TELRIC standard ordered for UNEs. (Id. at ¶ 1054). The FCC goes on to hold that States have  
4 three choices for determining appropriate rate levels for transport and termination – they can undertake a  
5 cost proceeding; they can use the proxy prices; or, they can order bill and keep. (Id. at ¶ 1055). In  
6 Washington, the Commission chose a combination of options one and three, in some instances ordering  
7 bill and keep and in some instances approving interconnection agreements with interim per-minute-of-use  
8 rates, to be fully resolved in the generic proceeding. Qwest believed those interim rates would be  
9 changed in the cost docket, consistent with the Commission's prior orders.

10 Further discussing pricing methodology, the FCC stated definitively that the cost of call  
11 termination consists of the traffic-sensitive component of *local switching*. (Id. at ¶ 1057). Thus, the  
12 FCC clarified that the component of local switching costs that should apply for reciprocal compensation  
13 was only the per-minute rate for local switching, not the flat-rated port charge for local switching. This is  
14 exactly the pricing structure that Qwest has used in calculating its proposed transport and termination  
15 rates.

16 Finally, the FCC made it clear that the reciprocal compensation rates are to be symmetrical, and  
17 the ILEC's costs and prices will establish those symmetrical rates absent a showing by a CLEC that the  
18 CLEC incurs higher costs. (Id. at ¶¶ 1085-9). No CLEC has made any such showing in the generic cost  
19 dockets. Thus, Qwest's rates are presumptively applicable to the CLECs as the appropriate rate Qwest  
20 must pay the CLEC to terminate its calls on the CLEC network.

#### 21 **D. Responses to the Commission's Questions**

22 The Commission asked parties to respond to four specific questions, which Qwest answers  
23 below.

##### 24 **1. Do parties consent to the declaratory order process?**

25 Qwest does consent to this process, provided that if disputed factual issues arise, the Commission  
26 should provide a reasonable opportunity for parties to present evidence on the issues. Qwest is not  
27

1 aware of any such issues at this time.

2 **2. What other carriers may be affected by a declaratory order?**

3 Qwest believes that a declaratory order will, in principle, affect all carriers who have a reciprocal  
4 compensation mechanism that contains a per-minute-of-use rate as opposed to bill-and-keep. As such,  
5 this declaratory order proceeding may not proceed unless all such carriers have consented in writing.  
6 RCW 34.05.240(7) (“An agency may not enter a declaratory order that would substantially prejudice the  
7 rights of a person who would be a necessary party and who does not consent in writing to the  
8 determination of the matter by a declaratory order proceeding.”). More specifically, the Commission has  
9 held that all companies whose revenue streams may potentially be impacted by a requested declaratory  
10 order are, as a matter of law, necessary parties from whom written consent is required under RCW  
11 34.05.240(7).

12 Prejudice to the Company; consent required. An order with PERCC's  
13 requested result could find the company's tariff unable to support a  
14 deficiency charge that could otherwise provide it with revenue.  
15 Consequently, it is possible that the company's rights could be prejudiced  
16 within the apparent meaning of RCW 34.05.240(7). The Commission  
17 will require the company's consent in writing to entry of a declaratory  
18 order, as a condition to proceeding further.

19 Because PERCC is the moving party, the burden is on PERCC to see  
20 that the required consent is provided. A copy shall be served on each of  
21 the necessary and desirable parties identified on Appendix A, to reach  
22 the parties at the time the document is filed with the Commission. If the  
23 Commission receives no consent by March 18, 1994, the petition will be  
24 rejected under RCW 34.05.240(5)(d).

25 *In re Petition of Partnership for Equitable Rates for Commercial Customers for a Declaratory*  
26 *Order*, UG-940326, Decision Conditionally Accepting Filing/Notice of Petition for Declaratory  
27 Order/Schedule for Responses, March 9, 1994 [1994 Wash. UTC LEXIS 25], at 1-2.

28 If the Commission requests, Qwest can research its library of interconnection agreements and  
29 compile a list of those CLECs with whom Qwest has interconnection agreements containing per-minute-  
30 of-use reciprocal compensation mechanisms. Qwest notes that the Commission will also have to request  
31 such a list of carriers from Verizon to ensure that all potentially-affected companies are given the

1 opportunity to consent to the Commission’s determination of the petition. Additionally, the Commission  
2 should determine that Joint Petitioners bear the burden of obtaining the necessary written consents.

3 **3. Should the Commission convert the petition to a complaint?**

4 Qwest is unsure what reasons the Commission would have for doing so, and is therefore unable  
5 to address any particular concerns the Commission may have that prompted this question. However, as  
6 discussed above, since the consent of carriers not yet parties to the proceeding is necessary for entry of a  
7 declaratory order, and Joint Petitioners may be unable to obtain all necessary consents, the Commission  
8 may wish to convert the docket to a complaint proceeding so that carriers who are parties may obtain  
9 resolution of the issue raised in the petition.

10 **4. Are issues raised in the petition also being addressed in UT-003013?**

11 Qwest does not believe the issues raised in the petition are being addressed in the new generic  
12 cost proceeding, Docket No. UT-003013. Reciprocal compensation generally was addressed as an  
13 issue in Part B of the new generic proceeding. The primary issues for consideration were the applicability  
14 of the tandem switching rate, and the inclusion or exclusion of ISP-bound traffic from reciprocal  
15 compensation. Qwest does not believe that any party challenged the two basic reciprocal compensation  
16 schemes that have long been established, which are per-minute-of-use or bill-and-keep, depending upon  
17 the interconnection agreement the particular carrier has. Thus, the use of either of those plans remains in  
18 place.

19 Further, it is only the rate elements for the per-minute-of-use scheme that Qwest believes were  
20 affected by the Commission’s prior orders establishing switching costs, not the compensation mechanism  
21 itself. Those rate elements were not directly at issue in Part B, except for the fact that Qwest did state in  
22 testimony (as of August 4, 2000) that it was Qwest’s belief that the previously-established rates would  
23 apply. (Docket No. UT-003013(B), exhibit T-1001, p. 18, lines 7-9). To the best of Qwest’s  
24 knowledge, no party disputed that assertion, nor did any party propose a different rate. Qwest’s August  
25 4, 2000 testimony did not assert that the rates were already in effect, because those were not effective  
26 until December 2, 2000. Thus, Joint Petitioners are incorrect that “no such testimony would have been  
27



1 necessary if the Commission had established rates” for per-minute-of-use compensation. (Petition at ¶  
2 5). Quite to the contrary, the testimony was necessary in order to address the issue of reciprocal  
3 compensation, and one would think that Joint Petitioners would have responded to that testimony if they  
4 wished to present a different view.

5 Joint Petitioners correctly note that the Commission originally required parties to present evidence  
6 regarding a flat-rated plan but later abandoned that requirement, and permitted parties to propose any  
7 compensation plan. (Petition at ¶ 5). However, Joint Petitioners incorrectly conclude that the  
8 “Commission would not have authorized parties to propose a compensation plan if the Commission had  
9 already established a per-minute-of-use rate for reciprocal compensation.” (Id.) This statement is not  
10 supported by any citation to any Commission order. Simply because parties were authorized to propose  
11 a new plan does not mean that the per-minute-of-use scheme was eliminated, and does not mean that the  
12 Commission had not previously issued orders establishing per-minute-of-use rates. Indeed, it was  
13 precisely because there were Commission orders on this issue that created the need for additional  
14 authorization to propose a new mechanism in the new docket, i.e., a change from what was already in  
15 place.

16 Qwest’s advocacy in Docket No. UT-003013 focused on the applicability of the tandem rate,  
17 and the ISP-bound traffic issue. Qwest did not propose a change to the use of either bill-and-keep or  
18 per-minute-of-use, accepting, for purposes of this proceeding, that the Commission would approve either  
19 plan, depending upon the interconnection agreement between the parties. However, the per-minute-of-  
20 use plan still requires rates, and Qwest’s testimony clearly stated its position that the Commission had  
21 already established those rates in the prior docket. While any party could have addressed that issue in  
22 Docket No. UT-003013(B), Qwest does not believe that it was a contested issue in that proceeding.  
23 While the Commission could issue an order in Part B clarifying that Qwest’s position regarding the  
24 switching rates is correct, it is not clear that that issue was ever presented squarely for decision.

### 25 CONCLUSION

26 In conclusion, Qwest submits that if the necessary written consents are obtained by Joint  
27

1 Petitioners, a declaratory order should be issued confirming that the end office and tandem switching rates  
2 as ordered by the Commission in Docket Nos. UT-960369 are applicable as the reciprocal  
3 compensation rates that should be included in the interconnection agreements between Qwest and  
4 CLECs whose interconnection agreements contain per-minute-of-use reciprocal compensation  
5 mechanisms.

6           Respectfully submitted this 7th day of September, 2001.

7   Qwest

8  
9   \_\_\_\_\_  
10   Lisa A. Anderl, WSBA No. 13236  
  Adam L. Sherr, WSBA No. 25291

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27