BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

Pursuant to RCW 34.05.240 and WAC 480-09-230, Electric Lightwave, Inc., Fox Communications, Inc., International Telcom Ltd., and XO Washington, Inc. (collectively "Joint Petitioners") petition the Commission for a declaratory order on the impact of the Commission's orders in Docket Nos. UT-960369, *et al*., on the reciprocal compensation rates in Commission-approved interconnection agreements. In support of their Petition, Joint Petitioners state as follows:

DISCUSSION

1. Each of the Joint Petitioners is registered and classified as a competitive telecommunications company authorized to provide telecommunications services in the state of Washington.

2. Each of the Joint Petitioners is a Party to a Commission-approved interconnection agreement with Qwest Corporation, f/k/a U S WEST Communications, Inc. ("Qwest"), the rates, terms and conditions of which include the obligation to pay reciprocal compensation for the exchange of local traffic.

3. In June or July 2001, Qwest notified at least three of the Joint Petitioners that the Commission established generally applicable new rates in Docket No. UT-960369, *et al*., including rates for reciprocal compensation, and that Qwest is now applying those rates retroactively to

December 2, 2000, the date that Qwest's interconnection tariff became effective. Qwest further explained its position in a letter from Bob Couture, Senior Account Manager, to Mike Tyler, Director of Operations for International Telcom Ltd., which is attached as Exhibit A. Qwest has refused to pay recent invoices for reciprocal compensation. Qwest claims that the difference between the payments Qwest has made under the reciprocal compensation rate specified in the Parties' interconnection agreement and the payments that Qwest allegedly should have made using the rates Qwest claims were effective as of December 2, 2000, exceeds the amount of the recent bills.

4. The Joint Petitioners dispute Qwest's interpretation of the Commission's orders in Docket No. UT-960369, *et al*. Those orders did not establish rates for reciprocal compensation and have no impact on reciprocal compensation rates contained in existing interconnection agreements. None of the Commission's orders in the initial generic costing and pricing proceeding, Docket No UT-960369, *et al*., expressly establishes a per minute of use rate for reciprocal compensation. To the contrary, the Commission did not even establish a rate *structure* for reciprocal compensation, accepting only "in principle" the concept of a flat-rated form of reciprocal compensation and concluding that "the Commission, to the greatest extent possible, should arbitrate disputed issues and, where feasible, adopt a rate structure that is proposed by one of the parties." Seventeenth Supp. Order ¶¶ 421 & 424. Qwest's letter explaining its position virtually concedes this point by failing to identify any provision in any Commission order establishing a reciprocal compensation rate. Instead, Qwest provides only "a number of reasons for concluding that the local and tandem switching and transport rates are applicable to reciprocal compensation." Ex. A at 1.

5. The Commission's orders in the new cost proceeding, Docket No. UT-003013, support the lack of any intent by the Commission to establish generic per minute of use rates for reciprocal compensation. The Commission required parties to present evidence sufficient to enable the Commission to establish flat rate reciprocal compensation in the new docket. First Supp. Order ¶¶ 11

& 16. The Commission subsequently abandoned that position and – at Qwest's request – authorized the parties to propose any compensation plan for reciprocal compensation. Third Supp. Order ¶ 18. The Commission would not have authorized parties to propose a compensation plan if the Commission had already established a per minute of use rate for reciprocal compensation. Again, Qwest's explanatory letter concedes this point by observing that "in the new cost docket, UT-003013, Qwest's witness testified that it was *Qwest's view* that if the Commission continued a usage based mechanism for reciprocal compensation, then the switching rates that were already established would apply." Ex. A at 2 (emphasis added). No such testimony would have been necessary if the Commission had established rates, or even a methodology for calculating rates, for per minute of use reciprocal compensation.

6. The interconnection agreements themselves also fail to support Qwest's position. The agreement between Qwest and International Telcom Ltd., for example, is an adoption of the agreement between Qwest and MFS Intelenet of Washington, Inc. ("MFS Agreement"). Appendix A to the agreement lists end office and tandem rates for reciprocal compensation but does not explain how those rates were developed. Indeed, the agreement does not even include a rate for "local switching," one of the elements Qwest alleges is included in the reciprocal compensation rate calculations and for which the Commission established a rate as an unbundled network element in Docket No. UT-960369, *et al*. The Commission, having approved the MFS Agreement, obviously was aware of this rate structure. If the Commission intended to replace the reciprocal compensation rates in this and other similarly configured agreements, the Commission would have done so by establishing a specific and express reciprocal compensation rate to be substituted for the rates in those agreements.

7. Qwest's own actions following the Commission's orders in Docket No. UT-960369, *et al*., further undermine Qwest's current position. Qwest's June 9, 2000, tariff filing in ostensible compliance with the Commission's Twenty-Fifth Supplemental Order in that proceeding included the

following terms for "Interconnection Service" in Section 2.1.1:

> For an interim period, local traffic will be terminated without charge, so long as the requesting Carrier terminates the local traffic of the Company without charge. *Otherwise, carrier Switched Access charges shall apply* as set forth in WN U-37.

(Emphasis added.) Qwest's contemporaneous interpretation of the Commission's orders was that the Commission had not established per minute of use rates for reciprocal compensation. To the contrary, Qwest believed that bill and keep would apply if the CLEC agreed but otherwise that Qwest's *switched access* charges – not the switching and transport unbundled network element ("UNE") prices that the Commission had just established – would be used as the per minute of use rates for reciprocal compensation.

8. The Commission nevertheless rejected Qwest's June 9, 2000, compliance filing. Specifically with respect to Section 2, the Commission concluded:

> The filed terms and conditions are not properly included as part of a compliance filing in the pricing phase of this proceeding. These terms and conditions were not requested in our Twenty-Fifth Supplemental Order. In our Fourteenth Supplemental Order we concluded that we would not consider tariff terms and conditions in the pricing phase of this proceeding. We therefore Order U S WEST to remove section two from its tariff and to refile in compliance with this Order.

Twenty-Sixth Supp. Order ¶ 78. Qwest's subsequent compliance interconnection tariff filings deleted Section 2, and the compliance interconnection tariff that the Commission finally approved does not include any rates for reciprocal compensation or associate any of the rate elements for which the Commission established prices with reciprocal compensation. The rate elements Qwest identifies in Exhibit A are listed under the heading "Access to Unbundled Elements," without any association with reciprocal compensation. Qwest Tariff WN U-42, Section 3.1 C, D & H. Indeed, the term "reciprocal compensation" does not even appear in the tariff.

9. Qwest, moreover, waited over six months after the tariff became effective before

notifying Petitioners that the reciprocal compensation rates had changed. Qwest has been billing competing local exchange companies ("CLECs") for UNEs and other services and facilities at the compliance tariff prices since shortly after they became effective. In addition, on information and belief, Qwest has not notified commercial mobile radio service ("CMRS") providers for which Qwest terminates more traffic than it originates of the alleged rate change, much less offered to refund past amounts those carriers have paid to Qwest based on the alleged rate change. Qwest, therefore, apparently is applying this alleged rate change selectively in order to reduce its payments to those carriers to which Qwest makes greater reciprocal compensation payments than it receives.

10. The Joint Petitioners and Qwest, therefore, dispute the impact of the Commission's orders in Docket No. UT-960369, *et al*., on the reciprocal compensation rates in the Joint Petitioners' interconnection agreements. This dispute has resulted in an actual controversy of broad application because the Joint Petitioners (and potentially additional CLECs) and Qwest are operating under their respective and conflicting legal interpretations of the Commission's orders. The dispute also adversely affects the Joint Petitioners because Qwest has refused to pay reciprocal compensation at the rates in the Joint Petitioners' interconnection agreements and insists on applying substantially lower rates. As a result, Qwest currently is not paying Petitioners any amount for reciprocal compensation. Accordingly, the Commission should resolve the dispute by clarifying the applicability of its orders in Docket No. UT-960369, *et al.*, to the reciprocal compensation rates in Commission-approved interconnection agreements.

PRAYER FOR RELIEF

WHEREFORE, the Joint Petitioners request the following relief:

A. That the Commission expeditiously issue an order clarifying that its orders in Docket No. UT-960369, *et al*., did not establish per minute of use rates for reciprocal compensation and that the reciprocal compensation rates in existing interconnection agreements remain in effect until the

Commission specifically establishes different per minute of use rates for reciprocal compensation in Docket No. UT-003013 or some other proceeding; and

B. Such other relief as the Commission deems fair, just, reasonable, and sufficient.

RESPECTFULLY SUBMITTED this _____ day of August, 2001.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Electric Lightwave, Inc.,
Fox Communications, Inc., International Telcom, Inc.,
and XO Washington, Inc.

By _____
Gregory J. Kopta
WSBA No. 20519