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Seattle, Washington 98191  
(206) 345-1574  
Facsimile (206) 343-4040

**Lisa A. Anderl**  
Senior Attorney  
Policy and Law Department

January 29, 2001

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: Request for Approval of Adopted Interconnection Agreement between  
Qwest Corporation and PacWest Telecom, Inc.

Dear Ms. Washburn:

In accordance with the Order on Arbitration Procedure in Docket No. UT-960269, please find enclosed an original and five (5) copies of the Letter Agreement between Qwest Corporation ("Qwest"), and PacWest Telecom, Inc. ("PacWest"). PacWest has adopted, in its entirety, the previously approved Agreement between Qwest and Northwest Telephone, Inc. Also enclosed is a Request for Approval of Adopted Interconnection Agreement and any Associated Amendments.

Please note that this Agreement replaces, in its entirety the previous Agreement between Qwest and PacWest which was approved by this Commission on October 13, 1999 in Docket No. UT-990394.

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.

If you have any questions or need any further information, please do not hesitate to contact my paralegal, Elizabeth M. Weber at (206) 398-2504.

Sincerely,

Lisa A. Anderl

Enclosures

cc: Karen Dealy (with pleading, without agreement)  
John Sumpter at PacWest (with pleading, without agreement)

RECEIVED  
01 JAN 31 AM 11:33  
UTIL. DIVISION  
COMM. WA

UT-013009  
2-14-01  
NA

Via UPS

October 2, 2000

Pac-West Telecom, Inc.  
1776 W. March Lane  
Suite 250  
Stockton, CA 95207



Dear Mr. McCann :

We have received your request that, under Section 252(i) of the Telecommunications Act of 1996, Pac-West Telecom, Inc. ("CLEC") wishes to "Pick and Choose" in its entirety, the terms of the Interconnection Agreement and any associated amendments, if applicable, ("Agreement") between Northwest Telephone, Inc. and Qwest Corporation fka U S WEST Communications, Inc. ("Qwest") that was approved by the Commission as an effective agreement in the State of Washington. We understand you have a copy of the Agreement.

With respect to the aforementioned Agreement, Qwest and CLEC (" the Parties") understand and agree:

1. The Parties shall request the Commission to expedite its review and approval of this Agreement. This Agreement shall become effective upon such approval.
2. Notwithstanding the mutual commitments set forth herein, the Parties are entering into this Agreement without prejudice to any positions they have taken previously, or may take in the future, in any legislative, regulatory, or other public forum addressing any matters, including those relating to the types of arrangements contained in this Agreement. During the proceeding in which the Commission is to review and approve the Agreement, Qwest may point out that it has objected, and continues to object, to the inclusion of the terms and conditions to which it objected in the proceedings involving the approval of the Underlying Agreement.
3. This Agreement contains provisions based upon the decisions and orders of the FCC and the Commission under and with respect to the Act. Currently, court and regulatory proceedings affecting the subject matter of this Agreement are in various stages, including the proceedings where certain of the rules and regulations of the FCC are being challenged. In addition, there is uncertainty in the aftermath of the Supreme Court's decision in AT&T Corp, et al. v. Iowa Utilities Board. Based on that uncertainty, and the regulatory and judicial proceedings which will occur as a result of that decision, the Parties acknowledge that this Agreement may need to be changed to reflect any changes in law. The Agreement has not been corrected to reflect the requirements, claims or outcomes of any of the proceedings. Accordingly, when a final, decision or decisions are made in the proceedings that automatically change and modify the Underlying Agreement, then like changes and modifications will similarly be made to this Agreement. In addition, to the extent rules or laws are based on regulatory or judicial proceedings as a result of the recent Supreme Court decision, this Agreement will be amended to incorporate such changes. In the event of a Commission ruling in a generic cost docket that results in changes to the rates contained in this Agreement, the Agreement shall be automatically modified to reflect such change in rates.
4. Subsequent to the execution of this Agreement, the FCC or the Commission may issue decisions or orders that change or modify the rules and regulations governing implementing of the Act. If such changes or modifications alter the state of the law upon which the Underlying Agreement was negotiated

and agreed, and it reasonably appears that the parties to the Underlying Agreement would have negotiated and agreed to different term(s) condition(s) or covenant(s) than as contained in the Underlying Agreement had such change or modification been in existence before execution of the Underlying Agreement, then this Agreement shall be amended to reflect such different terms(s), condition(s), or covenant(s). Where the Parties fail to agree upon such an amendment, it shall be resolved in accordance with the Dispute Resolution provision of the Underlying Agreement which is being adopted pursuant to Section 252(i).

5. This Agreement shall continue in force and effect through the term of the Underlying Agreement. Thereafter, this Agreement can be terminated by either Party on thirty (30) days written notice, if another Interconnection Agreement will not replace the current Agreement. If there is a replacement Interconnection Agreement, one Party can notify the other Party that it is requesting Section 251/252 negotiations under the Federal Telecommunications Act of 1996 ("Act"). That notification will trigger the timeframes and procedures contained in Section 252 of the Act, or pursuant to the timeframes set forth by the appropriate state commission. In the event of such notice, the arrangements between our companies shall continue and be governed by the terms of the expired agreement until the new agreement is approved by the appropriate state commission.

6. This Agreement shall be interpreted in accordance with GTE Service Corp. v. Federal Communications Commission, No. 99-1176 (D.C. Cir. March 17, 2000). The Parties shall not be bound by any language in the Underlying Agreement, or any prior interpretation or performance under such language, that are inconsistent with the Court's decision in GTE Service Corp v. Federal Communications Commission. The Parties also recognize that certain provisions of the terms and conditions may be void or unenforceable as a result of the July 18, 1997 and October 14, 1997, decisions of the United States Eighth Circuit Court of Appeals. Additionally, this Agreement shall be interpreted in accordance with all other relevant judicial or regulatory decisions.

7. The Parties agree that Qwest's position has been, and continues to be, that Interconnection Agreements entered into pursuant to Sections 251 and 252 of the Act, including the reciprocal compensation provisions of those Agreements, apply only to local traffic. Local traffic is that traffic that originates and terminates in the same local calling area. Each company bears the burden of proof that the traffic being exchanged is in fact local in nature. "Pac-West's position has been, and continues to be, that local traffic does not necessarily exclude calls to internet service providers." "Qwest's position has been, and continues to be, that reciprocal compensation does not apply to internet traffic."

8. CLEC adopts the terms and conditions of the Northwest Telephone, Inc. Agreement for interconnection with Qwest and in applying the terms and conditions, agrees that Pac-West Telecom, Inc. be substituted in place of " Northwest Telephone, Inc. " throughout the Agreement wherever the latter appears.

9. Qwest requests that notice to Qwest Corporation as may be required under the Agreement shall be provided as follows:

To: Qwest Corporation  
Director Interconnection Compliance  
1801 California Street, Room 2410  
Denver, CO 80202

With copy to:  
Qwest Corporation Law Department  
Attention: General Counsel, Interconnection  
1801 California Street, 51st Floor  
Denver, CO 80202

CLEC requests that notice to CLEC as may be required under the Agreement shall be provided as follows:


To: Mart McCann  
Regulatory Dept.  
Pac-West Telecom, Inc.  
1776 W. March Lane, Suite 250  
Stockton, CA 95207  
Phone: 209-926-4224

10. CLEC represents and warrants that it is a certified provider of local dialtone service in the State of Washington, and that this Agreement will cover services in that state only.

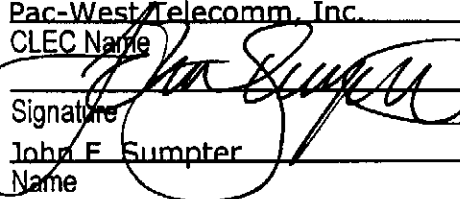
Please sign all three original copies of this letter; retain one copy, and overnight two copies to Debi Hartl at 7800 East Orchard Road, Suite 250, Englewood, CO 80111 by December 26, 2000. After December 26, 2000 Qwest may rescind its willingness to consider the Agreement's terms and conditions, and will consider that you have withdrawn from good faith negotiations.

Please note that Qwest will file this letter with the appropriate state commission for approval; however, some state commissions will not approve the letter until the CLEC is certified by the state commission. You may want to contact the appropriate state commission to determine the requisite filing guidelines.

Sincerely,

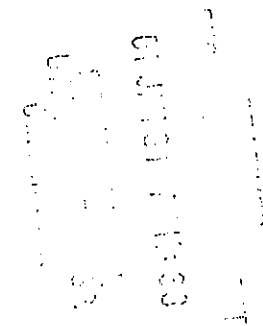
  
Qwest Corporation  
Elizabeth J. Stamp  
Director - Interconnect  
1801 California, Room 2410  
Denver, CO 80202

I agree to all terms and conditions contained in this letter as indicated by my signature below:

Pac-West Telecomm, Inc.  
CLEC Name  
  
Signature  
John F. Sumpter  
Name  
Vice President - Regulatory  
Title  
November 10, 2000  
Date

Pac-West's signature on this document does not indicate its concurrence with Qwest's position on reciprocal compensation or with any other terms that did not appear in the Underlying Agreement being adopted, or which would purport to modify in any way the terms of the Underlying Agreement. Pac-West's signature indicates only that it is adopting the Underlying Agreement in its entirety, as Pac-West is permitted to do pursuant to Section 252(i) of the Communications Act of 1934, as amended, 47 U.S.C. §252(i). Pac-West will of course abide by any final determination as to the parties' obligations under the Underlying Agreement pursuant to state requirements, FCC rules, or other applicable requirements of judicial or regulatory authorities with jurisdiction.

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Request for Approval of	)	
Adopted Interconnection Agreement and any	)	Docket No. UT-
Associated Amendments under the	)	
Telecommunications Act of 1996 Between	)	REQUEST FOR APPROVAL OF
Pac-West Telecom, Inc. and Qwest Corporation	)	ADOPTED INTERCONNECTION
	)	AGREEMENT AND ANY
	)	ASSOCIATED AMENDMENTS
	)	

I. INTRODUCTION

Pursuant to Section III of the Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements under the Telecommunications Act of 1996 ("Interpretive and Policy Statement") issued by this Commission in Docket No. UT-960269, Qwest Corporation ("Qwest") and Pac-West Telecom, Inc. ("PacWest") hereby submit for approval by the Washington Utilities and Transportation Commission ("Commission" or "WUTC") the attached Letter Agreement executed on October 2 and November 10, 2000 (the "Agreement"). PacWest and Qwest have agreed that PacWest will adopt, in its entirety, the previously negotiated and approved Interconnection Agreement and any associated Amendments

REQUEST FOR APPROVAL  
OF ADOPTED AGREEMENT

**Qwest**  
1600 7th Ave., Suite 3206  
Seattle, WA 98191  
Telephone: (206) 398-2500  
Facsimile: (206) 343-4040

1 (the "underlying Agreement") between Northwest Telephone, Inc. ("Northwest") and Qwest  
2 which was approved by the Commission on September 29, 1999 in Docket No. UT-990379.  
3 The only alterations to the underlying Agreement and any associated Amendments are: the name  
4 and addresses for notification of Northwest should be replaced by those for PacWest; and, the  
5 effective date of the Letter Agreement with PacWest is the date of this Commission's approval of  
6 the Letter Agreement. The term of the Agreement will be the same as that noted in the  
7 underlying Agreement which is due to expire on August 1, 2001, but can continue on a monthly  
8 basis as agreed upon by the parties.

9 This agreement replaces, in its entirety, the agreement between Qwest and PacWest  
10 which was previously approved by the Commission on October 13, 1999, in Docket No. UT-  
11 990394.

12 The underlying Agreement sets forth terms, conditions and prices under which Qwest  
13 agrees to provide services for resale and certain Unbundled Network Elements, Ancillary  
14 Functions and additional features in each LATA in which both Qwest and Northwest operate  
15 within the state of Washington. The underlying Agreement also has terms, conditions and prices  
16 under which the parties agree to provide interconnection and reciprocal compensation for the  
17 exchange of local traffic for the purpose of offering telecommunications services. The  
18 underlying Agreement also provides that the pricing for these services is subject to the outcome  
19 of the Commission's determination in the Generic Pricing Docket, UT-960369, et al.

20 This Letter Agreement adopting the underlying Agreement is submitted for approval  
21 pursuant to Section 252(e) of the Communications Act of 1934, as amended by the  
22  
23

1 Telecommunications Act of 1996 (the "Act") and the requirements of the Commission's  
2 Interpretive and Policy Statement.

3 **II. REASONS FOR APPROVAL**

4 Section 252(e)(2) of the Act directs that a state commission may reject an Agreement  
5 reached through negotiation and/or arbitration only if the Commission finds that:

- 6 1) The Agreement (or portions thereof) discriminates against a  
7 telecommunications carrier not a party to the Agreement; or  
8 2) The implementation of such Agreement or portion is not consistent with the  
9 public interest, convenience and necessity.

9 Qwest and PacWest respectfully submit that the Letter Agreement provides no basis for  
10 either of these findings and thus request that the Commission approve the Agreement  
11 expeditiously. First, the Agreement does not discriminate against any other telecommunications  
12 carrier. There is no finding that the terms of this Agreement are more favorable than terms  
13 provided to other carriers.

14 Second, the Agreement is consistent with the public interest as identified in the pro-  
15 competitive policies of the state of Washington, the WUTC, the U.S. Congress and the Federal  
16 Communications Commission. The Agreement will enable PacWest to enter the local exchange  
17 market and provide customers with increased choices among local exchange services.  
18 Expeditious approval of this Agreement will facilitate immediate competition in Qwest's local  
19 exchange service areas in Washington. In addition, because the Agreement does not discriminate  
20 against any other telecommunications carrier, state law policies prohibiting unreasonable  
21 discrimination are preserved by approval of this Agreement.

1 Furthermore, the Agreement is consistent with the WUTC's interconnection order as  
2 reflected in the "preferred outcomes" in Appendix B to the Interpretive and Policy Statement.  
3 None of the provisions of this Agreement are inconsistent with any of the "preferred outcomes"  
4 recited in Appendix B.

5 For the foregoing reasons, Qwest and PacWest submit that approval of the Agreement is  
6 warranted because it satisfies the state and federal criteria for approval.

### 7 III. UNDERSTANDING AND AGREEMENT OF PARTIES

8 With respect to the Agreement, the Parties understand and agree:

9 1) They shall request the Commission to expedite its review and approval of this  
10 Agreement. The Agreement shall become effective upon Commission approval.

11 2) Notwithstanding the mutual commitments set forth herein, the Parties are entering  
12 into this Agreement without prejudice to any positions they have taken previously, or may take  
13 in the future, in any legislative, regulatory, or other public forum addressing any matters,  
14 including those relating to the types of arrangements contained in this Agreement. During the  
15 proceeding in which the Commission is to review and approve the Agreement, Qwest may point  
16 out that it has objected, and continues to object, to the inclusion of the terms and conditions to  
17 which it objected in the proceedings involving the approval of the Underlying Agreement.

18 3) The Agreement contains provisions based upon the decisions and orders of the  
19 FCC and the Commission under and with respect to the Act. Currently, court and regulatory  
20 proceedings affecting the subject matter of the Agreement are in various stages, including the  
21 proceedings where certain of the rules and regulations of the FCC are being challenged. In  
22 addition, there is uncertainty in the aftermath of the Supreme Court's decision in AT&T Corp, et



1 al. v. Iowa Utilities Board. Based on that uncertainty, and the regulatory and judicial  
2 proceedings which will occur as a result of that decision, the Parties acknowledge that this  
3 Agreement may need to be changed to reflect any changes in law. The Agreement has not been  
4 corrected to reflect the requirements, claims or outcomes of any of the Proceedings.  
5 Accordingly, when a final decision or decisions are made in the Proceedings that automatically  
6 change and modify the Underlying Agreement, then like changes and modifications will  
7 similarly be made to this Agreement. In addition, to the extent rules or laws are based on  
8 regulatory or judicial proceedings as a result of the recent Supreme Court decision, the  
9 Agreement and Amendments will be amended to incorporate such changes. In the event of a  
10 Commission ruling in a generic cost docket that results in changes to the rates contained in this  
11 Agreement, the Agreement shall be automatically modified to reflect such change in rates.

12 4) Subsequent to the execution of this Agreement, the FCC or the Commission may  
13 issue decisions or orders that change or modify the rules and regulations governing implementing  
14 of the Act. If such changes or modifications alter the state of the law upon which the Underlying  
15 Agreement was negotiated and agreed, and it reasonably appears that the parties to the  
16 Underlying Agreement would have negotiated and agreed to different term(s) condition(s) or  
17 covenant(s) than as contained in the Underlying Agreement had such change or modification  
18 been in existence before execution of the Underlying Agreement, then this Agreement shall be  
19 amended to reflect such different terms(s), condition(s), or covenant(s). Where the parties fail to  
20 agree upon such an amendment, it shall be resolved in accordance with the Dispute Resolution  
21 provision of this Agreement which is being adopted pursuant to Section 252(i).

1           5)     This Agreement shall continue in force and effect until terminated by either Party.  
2     The Agreement can be terminated on thirty (30) days written notice, if another Interconnection  
3     Agreement will not replace the current Agreement. If there is a replacement Interconnection  
4     Agreement, one party can notify the other party that it is requesting Section 251/252 negotiations  
5     under the Federal Telecommunications Act of 1996 ("Act"). That notification will trigger the  
6     timeframes and procedures contained in Section 252 of the Act. In the event of such notice, the  
7     arrangements between the companies shall continue and be governed by the terms of the expired  
8     agreement until the new agreement is approved by the appropriate state Commission.

9           6)     This Agreement shall be interpreted in accordance with GTE Service Corp. v.  
10    Federal Communications Commission, No. 99-1176 (D.C. Cir. March 17, 2000). The Parties  
11    shall not be bound by any language in the underlying Agreement, or any prior interpretation or  
12    performance under such language, that are inconsistent with the Court's decision in GTE Service  
13    Corp. v. Federal Communications Commission. The Parties also recognize that certain  
14    provisions of the terms and conditions may be void or unenforceable as a result of the July 18,  
15    1997 and October 14, 1997 decisions of the United States Eighth Circuit Court of Appeals.  
16    Additionally, the Agreement shall be interpreted in accordance with all other relevant judicial or  
17    regulatory decisions.

18           7)     The Parties agree that Qwest's position has been, and continues to be, that  
19    Interconnection Agreements entered into pursuant to Sections 251 and 252 of the Act, including  
20    the reciprocal compensation provisions of those Agreements, apply only to local traffic. Local  
21    traffic is that traffic that originates and terminates in the same local calling area. Each company  
22    bears the burden of proof that the traffic being exchanged is in fact local in nature.

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**IV. CONCLUSION**

For the foregoing reasons, Qwest and PacWest respectfully request expeditious approval of the Letter Agreement. Both Parties request approval earlier than the 90 day time period allowed for by the Interpretive and Policy Statement, in order to facilitate the immediate availability of local exchange competition between Qwest and PacWest.

Respectfully submitted this 30<sup>th</sup> day of January, 2001.

Qwest

  
\_\_\_\_\_  
Lisa A. Anderl, WSBA No. 13236