BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PAC-WEST TELECOMM, INC.,)	
)	Docket No. UT-
Petitioner,)	
)	AFFIDAVIT OF ETHAN SPRAGUE
v.)	IN SUPPORT OF PETITION FOR
)	ENFORCEMENT OF
QWEST CORPORATION,)	INTERCONNECTION AGREEMENT
)	
Respondent.)	

I, Ethan Sprague, state as follows:

1.   I am Director, Regulatory affairs for Pac-West Telecomm, Inc. ("Pac-West"), the

Petitioner in the above-captioned proceeding. I have personal knowledge of the facts set forth in

this Affidavit, and if called to testify thereto I could and would do so.

2.   Pac-West is a competitive local exchange ("CLEC") and interexchange ("IXC")

carrier. Pac-West provides basic local exchange service to customers in Washington. The

Washington Utilities and Transportation Commission ("WUTC") granted Pac-West's application

to provide competitive local exchange services in Docket No. UT-981407 on November

25, 1998.

3.   Pac-West and Qwest are parties to the Local Interconnection Agreement Between

Qwest Corporation f/k/a U S WEST Communications, Inc. ("Qwest") and Pac-West Telecomm,

Inc., for Washington. ("Interconnection Agreement"). The Interconnection Agreement is the

result of Pac-West's request, pursuant to 47 U.S.C. § 252(i), to opt into the Commission-

approved Local Interconnection Agreement Between Qwest and Northwest Telephone, Inc., for

Washington. The Commission approved the Interconnection Agreement on February 14, 2001, in Docket No. UT-013009.

4.   Pac-West and Qwest exchange traffic pursuant to the Interconnection Agreement and have done so since the Agreement became effective. In pertinent part the Interconnection Agreement provides the underlying terms, conditions and prices under which the parties agree to provide interconnection and reciprocal compensation for the exchange of local traffic for the purposes of offering telecommunications services. Relevant provisions of the Interconnection Agreement are attached to this Affidavit as Exhibit A.

5.   On May 24, 2002 the Parties signed an Internet Service Provider ("ISP") Bound Traffic Amendment ("ISP Amendment") to incorporate the Federal Communications Commission's ("FCC's") Order on Remand and Report and Order in CC Docket Nos. 96-98 (Local Competition) and 99-68 (Intercarrier Compensation for ISP-Bound Traffic), FCC 01-131 (April 27, 2001). The Commission approved the ISP Amendment on March 12, 2003 in Docket No. UT-013009, which is attached to this Affidavit as Exhibit B.

6.   In early 2004, Qwest started withholding payment on Pac-West's invoices alleging that Pac-West had exceeded the growth ceilings for ISP traffic described in section 3.2.2 of the ISP Amendment. Pac-West disagreed, contending that the growth ceilings provision of the ISP Amendment does not apply to traffic exchanged beginning in January 2004.

7.   Pursuant to the dispute resolution provisions of the interconnection agreement Pac-West and Qwest agreed to a private arbitration to resolve this issue (AAA Case #77Y181-00385-02 (JAG Case No. 221368)).

AFFIDAVIT OF ETHAN SPRAGUE - 2

8. Prior to the conclusion of the arbitration, the FCC released the Core Order on October 8, 2004, (WC Docket No. 03-171, FCC 04-241). In the Core Order the FCC found that the growth ceilings were no longer in the public interest and forbore from applying them.

9. On December 2, 2004, the Arbitrator concluded that the growth ceilings in the ISP Amendment expired at the end of 2003. The Arbitrator determined that Pac-West was entitled to compensation beginning January 1 2004, without application of the ceilings and that Pac-West continues to be so entitled. A copy of the Arbitrator's Decision is attached as Exhibit C.

10. Qwest has not appealed the Arbitrator's decision.

11. On December 29, 2004, Qwest officially notified me for the first time that it intended to withhold compensation for alleged "VNXX" traffic. A copy of this notification is attached as Exhibit D. Qwest attempts to distinguish between foreign exchange ("FX") service offered by Qwest or another incumbent local exchange company ("ILEC") and a similar service offered by Pac-West or other competitive local exchange companies ("CLECs"). Qwest calls the traffic that the CLEC FX service generates as "VNXX" traffic, for which Qwest contends it is not required to compensate Pac-West for terminating.

12. Pursuant to Qwest's notification I engaged in numerous communications with Dan Hult, Qwest Director of Carrier Relations. The purpose of those communications was to discuss Pac-West's view that this "Virtual NXX" or "VNXX" dispute was, or should have been, resolved in the prior arbitration. Dan Hult responded on January 12, 2005, that Qwest did not agree this was an overlaid dispute and that we were required to follow the ICA dispute provisions. A copy of this e-mail communication is attached as Exhibit E.

AFFIDAVIT OF ETHAN SPRAGUE - 3
38936\22\00185.COM/6.6.05
Seattle

13.   Pac-West did not, and has not, conceded that Qwest's so-called "VNXX" dispute is a new dispute and not an attempt to re-impose the growth ceilings through other means. Pac-West nevertheless attempted to negotiate resolution of this dispute with Qwest.

14.   The Parties have been unable to resolve this issue through negotiations. A copy of the correspondence between the Parties is attached as Exhibit F.

15.   Qwest's notified Pac-West by letter dated April 25, 2005 that it has decided to withhold 68.3% of the "billed ISP minutes" in Washington in the second quarter of this year. A copy of this letter is attached as Exhibit G.
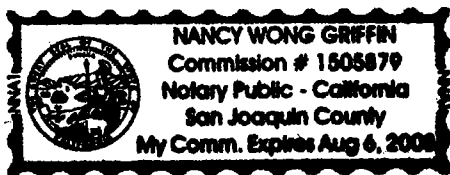
16.   Qwest has withheld $637,389.80 for usage since January 1, 2004 through March 31, 2005, based only on Qwest's belief that this amount represents compensation for FX or "VNXX" traffic.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

_____
ETHAN SPRAGUE

SUBSCRIBED AND SWORN to before me this _6th_ day of June, 2005.

_____
NOTARY PUBLIC in and for the State of
California, residing at _313 MISSION RIDGE_.
My appointment expires _8-6-2008 MANTECA_
Print Name _NANCY GRIFFIN_

AFFIDAVIT OF ETHAN SPRAGUE - 4