

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

QWEST CORPORATION,	)	
	)	DOCKET UT-063038
Complainant,	)	
	)	PAC-WEST MOTION FOR
v.	)	CLARIFICATION AND/OR
	)	PETITION FOR
LEVEL 3 COMMUNICATIONS, LLC,	)	RECONSIDERATION OF ORDER 10
<i>et al.</i> ,	)	FINAL ORDER
	)	
Respondents.	)	
.....	)	

1. Pursuant to WAC 480-07-835 and/or WAC 480-07-850, Pac-West Telecomm, Inc. (“Pac-West”) submits this Motion for Clarification and/or Petition for Reconsideration of Order 10 Final Order Upholding Initial Order (“Final Order”).

**MOTION/PETITION**

**A. The Commission Should Clarify that Qwest May Charge Only for Transport from the Local Tandem to the Point of Interconnection When Delivering VNXX Traffic for Termination.**

2. The Final Order “uphold[s] the Initial Order’s findings regarding transport compensation for VNXX traffic,” Final Order ¶ 224, including the “Initial Order determin[ation] that the appropriate rates for the use of Qwest’s transport facilities to provide VNXX services must be cost-based using TELRIC principles.” *Id.* ¶ 217. Neither the Initial Order nor the Final Order, however, specifies the nature and extent of the transport charges that Qwest is authorized to impose. Unfortunately, Qwest may use this lack of specificity to impose unwarranted and unjustified charges for such transport.

3. Qwest took just such action in Arizona in response to a recent Arizona Commission decision requiring carriers who terminate VNXX traffic from Qwest to compensate Qwest at TELRIC-based rates to transport that traffic from the local calling area of the calling party to the point of interconnection (“POI”). Qwest sent an invoice to Pac-West for over \$100,000 *in addition* to the amounts Qwest had been billing Pac-West for local interconnection service (“LIS”) transport in that state. Qwest seeks to charge Pac-West for the dedicated transport that Qwest calculated would be needed to carry VNXX traffic from each end office where the traffic originates to the local tandem. In addition, Qwest included charges for the cross-connects within the Qwest wire center that would be required to link the fictitious dedicated end office transport to the actual LIS trunking over which Qwest and Pac-West currently exchange traffic. Almost \$35,000 of Qwest’s proposed charges represent non-recurring charges to install dedicated facilities that either are unnecessary or have been in operation for years.

4. The Final Order authorizes Qwest to charge for LIS trunking used to transport VNXX traffic *between* the local calling area and the POI, not *within* the local calling area. The California Commission recognized this distinction by authorizing the incumbent local exchange carrier (“ILEC”) to impose a transport charge on VNXX traffic if the ILEC must transport that traffic beyond the *tandem* switch that serves the local calling area where the call originates and to which the telephone numbers are rated.<sup>1</sup> By way of illustration, attached to this motion is a map that indicates the location of the Qwest local tandems in Washington. Paying Qwest the TELRIC-based rate for the

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<sup>1</sup> *E.g., In re Order Instituting Rulemaking on the Commission’s Own Motion Into Competition for Local Exchange Service, et al.*, Rulemaking 95-04-043, *et al.*, Decision 07-02-031, Opinion Regarding Treatment of Virtual NXX Calls With Respect to Small Local Exchange Carriers at 17-18 (Feb. 15, 2007).

transport between these tandems and a POI in Seattle is more than sufficient compensation to accomplish the policy goals established in the Final Order.

5. By requiring competitive local exchange carriers (“CLECs”) to terminate VNXX traffic from Qwest on a bill and keep basis and to pay for the transport from the local calling area to the POI, the Commission has severely reduced the financial viability of providing dial up Internet access to the majority of Washington rate centers. Permitting Qwest to impose hundreds of thousands of dollars in additional transport charges to each end office would render uneconomic CLEC provisioning of service to ISPs outside of the major metropolitan areas of the state, further diminishing consumer choice and ability to access the Internet, particularly for those consumers who are least likely to have alternatives such as broadband and for low income consumers who rely on the lower cost of dial-up access. The Commission, therefore, should clarify the Final Order to authorize Qwest to charge CLECs only the TELRIC-based rate for transport from the tandem serving the local calling area where the VNXX traffic originates to the POI.

**B. The Commission Should Clarify that the Location of an ISP Modem or Server Determines Where the Customer Is Located for Purposes of Inter-carrier Compensation for ISP-Bound Traffic.**

6. The Commission found, consistent with the Initial Order description, that “VNXX traffic arrangements occur when a carrier assigns a telephone number from a rate center in a local calling area different from the one where the customer is physically located.” Final Order ¶ 308 (Finding of Fact (12)). The Commission further agreed with the Initial Order that CLECs use VNXX predominantly to serve ISPs, *id.* ¶ 311 (Finding of Fact (15)), but neither the Final Order nor the Initial Order define how to determine the

physical location of an ISP for purposes of establishing whether calls to the ISP are “local” or “VNXX.”

7. The Commission should clarify the Final Order to state that, at a minimum, an ISP is physically located in any local calling area in which the ISP’s modem or server is physically located. The Initial Order observes that “the FCC and the courts chiefly addressed the issue of ISP-bound calls that were traveling between an ILEC end-user customer and an ISP server or modem also located in the same geographic local calling area as the end-user customer.” Initial Order ¶ 20. The Final Order similarly states that “the FCC focused only on ISP-bound traffic that terminates locally, *i.e.*, originates and terminates within a local calling area, as most ISP calls were at that time made to an ISP modem located within a local calling area.” Final Order ¶ 26. Consistent with federal law, therefore, the Commission should make clear that the FCC’s *ISP Remand Order* continues to govern compensation for ISP-bound traffic when the calling party and the ISP server or modem are physically located in the same local calling area.

#### **REQUEST FOR RELIEF**

8. WHEREFORE, Pac-West respectfully requests that the Commission clarify and/or reconsider the Final Order and grant the following relief:
  - (1) Clarify that the compensation for transport authorized in the Final Order is limited to TELRIC-based rates for transport between the tandem serving the local calling area in which the calling party is located and the POI;
  - (2) Clarify that the compensation scheme established in the Final Order does not apply to ISP-bound traffic when the calling party and the ISP server or modem are physically located in the same local calling area; and

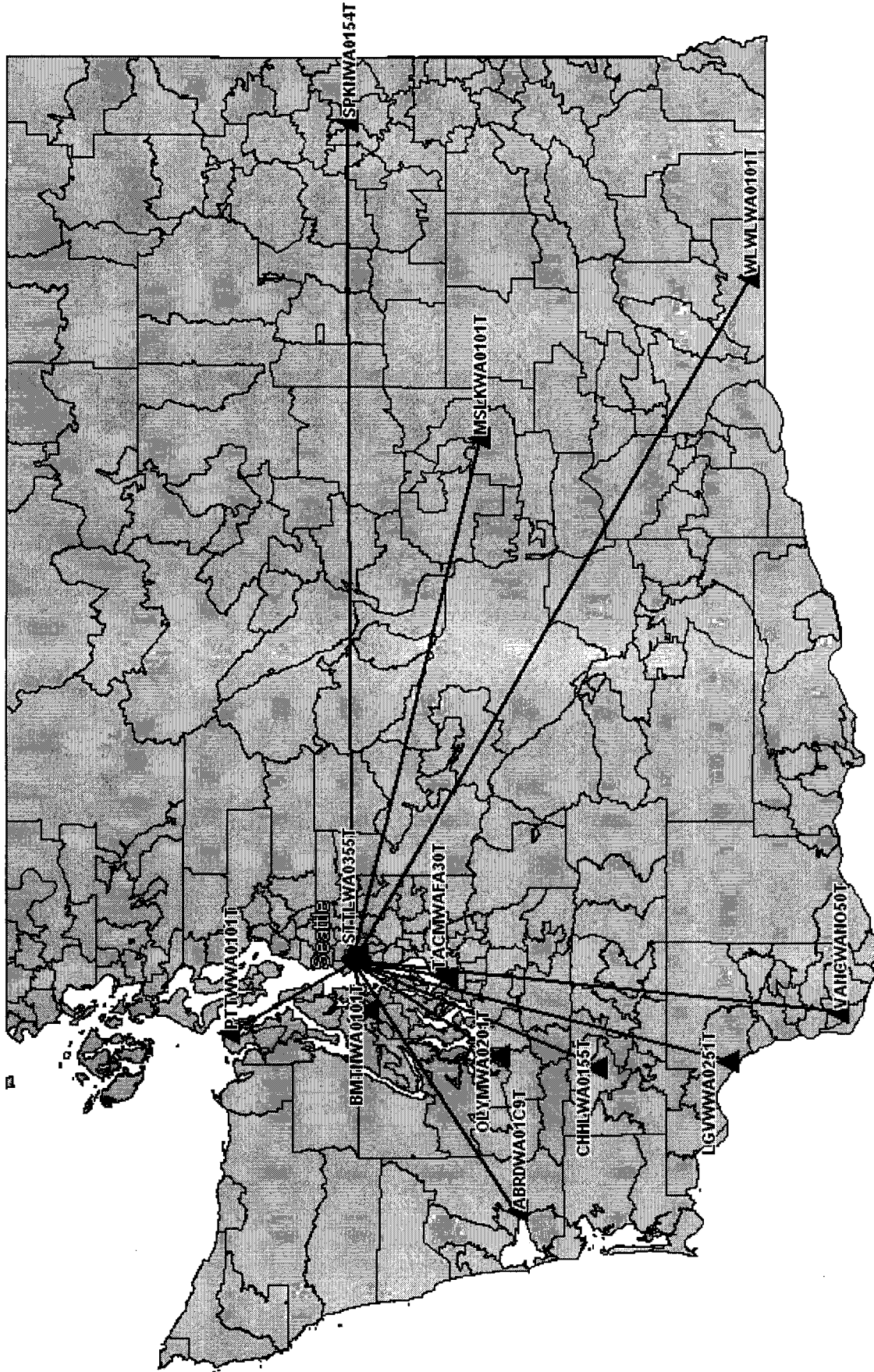
- (3) Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

DATED this 28th day of July, 2008.

DAVIS WRIGHT TREMAINE LLP  
Attorneys for Pac-West Telecomm, Inc.

By  \_\_\_\_\_  
Gregory J. Kopta  
WSBA No. 20519

# Qwest Local Tandems



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— VNIXX Transport