

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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|------------------------------|---|-------------------------|
| PAC-WEST TELECOMM, INC., |) | DOCKET UT-053036 |
| |) | <i>(consolidated)</i> |
| Petitioner, |) | |
| |) | ORDER 20 |
| v. |) | |
| |) | FINAL ORDER REQUIRING |
| QWEST CORPORATION, |) | REFUND AND COMPENSATION |
| |) | FOR VNXX TRAFFIC |
| Respondent. |) | |
| |) | |
| |) | |
| LEVEL 3 COMMUNICATIONS, LLC, |) | DOCKET UT-053039 |
| |) | <i>(consolidated)</i> |
| Petitioner, |) | |
| |) | ORDER 20 |
| v. |) | |
| |) | FINAL ORDER APPROVING |
| QWEST CORPORATION, |) | CONFIDENTIAL SETTLEMENT |
| |) | AGREEMENT |
| Respondent. |) | |
| |) | |

I. INTRODUCTION

- 1 **NATURE OF PROCEEDINGS.** In 2005, Pac-West Telecomm, Inc. (Pac-West) and Level 3 Telecommunications, LLC (Level 3) (collectively Competitive Local Exchange Carriers or CLECs) filed with the Washington Utilities and Transportation Commission (Commission) petitions for enforcement of their interconnection agreements with Qwest Corporation, which has now become Qwest Corporation d/b/a CenturyLink QC (Qwest). After the Commission’s 2006 final orders were challenged in federal court and remanded for decision, the Commission consolidated the proceedings and resolved the legal issues on remand. The Commission scheduled an evidentiary hearing for February 2013 to address the remaining factual issues.

- 2 **SETTLEMENT – LEVEL 3 AND QWEST.** On January 25, 2013, Level 3 and Qwest notified the Commission that they had reached a settlement agreement

resolving a variety of intercarrier compensation disputes in multiple jurisdictions, including all issues related to disputed Virtual NXX (VNXX) traffic raised in Docket UT-053039. On February 1, 2013, Level 3 and Qwest filed with the Commission a signed copy of the confidential settlement agreement and all required supporting documents.

- 3 **EVIDENTIARY HEARING.** The Commission convened an evidentiary hearing in this matter on February 7, 2013, before Administrative Law Judge Adam E. Torem. Qwest and Pac-West each presented one witness and a number of supporting exhibits. As a result of the above-noted settlement, Level 3 did not participate in the hearing.
- 4 The parties filed simultaneous opening post-hearing briefs on March 15, 2013, and simultaneous reply briefs on March 26, 2013.

II. MEMORANDUM

A. Background

- 5 The primary issue in this proceeding was whether the rates the Federal Communications Commission (FCC) established in its 2001 *ISP Remand Order*¹ apply only to calls to an Internet service provider (ISP) that originate and terminate within a local calling area, or whether those FCC rates apply to all ISP-bound calls, including calls identified as VNXX traffic.² Initially, the Commission interpreted the FCC's *ISP Remand Order* to apply to all ISP-bound calls, including VNXX traffic that originated and terminated in different local calling areas.³ As a result, the

¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket 99-68, Order on Remand and Report and Order, FCC 01-131, 16 FCC Rcd 9151 (2001) (*ISP Remand Order*).

² For a full explanation and definition of VNXX service, see *Qwest Corporation v. Level 3 Communications, LLC, et al.*, Docket UT-063038, Order 05, Initial Order (October 5, 2007) (*Initial VNXX Order*) and Order 10, Final Order Upholding Initial Order; Granting in Part and Denying in Part Petitions for Administrative Review; Modifying Initial Order, Approving Settlement, n.2 (July 16, 2008) (*Final VNXX Order*) (citing *Pac-West Telecom, Inc. v. Qwest Corporation*, Docket UT-053036, Order 05, Final Order Affirming and Clarifying Recommended Decision, n.1 (Feb. 10, 2006) and *Level 3 Communications, LLC v. Qwest Corporation*, Docket UT-053039, Order 05, Order Accepting Interlocutory Review; Granting, in Part and Denying, in Part, Level 3's Petition for Interlocutory Review, ¶ 10, n.4 (Feb. 10, 2006).

³ *Pac-West Telecom, Inc. v. Qwest Corporation*, Docket UT-053036, Order 05, Final Order Affirming and Clarifying Recommended Decision, ¶¶ 28-35 (Feb. 10, 2006) and *Level 3*

Commission ordered Qwest to pay Pac-West and Level 3 a significant amount for all ISP-bound traffic, including VNXX traffic that the CLECs directed across Qwest's network.⁴ In early 2006, Qwest made lump sum payments, with interest, to both CLECs for VNXX traffic exchanged between February 2004 and January 2006 and began making regular payments thereafter, but under protest.

6 Qwest appealed the Commission's decision to federal district court. On April 9, 2007, the court ruled that the Commission's 2006 orders were inconsistent with the FCC's *ISP Remand Order* and violated federal law.⁵

7 While the Commission's 2006 orders in this proceeding were pending on appeal, Qwest filed a complaint in Docket UT-063038 against nine CLECs concerning their use of VNXX arrangements. In July 2008, prior to addressing the district court's remand in these proceedings,⁶ the Commission issued its *Final VNXX Order*, resolving Qwest's VNXX complaint. In that order, the Commission found that VNXX service was lawful if accompanied by appropriate compensation provisions, and revisited its earlier conclusion that all ISP-bound calls were subject to the FCC's interim compensation scheme under the *ISP Remand Order*. Specifically, the Commission found that, while some ISP-bound calls were interstate, others, including many VNXX calls, were intrastate interexchange calls.

8 On remand, the Commission modified its earlier position to be consistent with our *Final VNXX Order*. The Commission interpreted the *ISP Remand Order* as applicable "only [to] ISP-bound calls from one LEC's end user customer to an ISP within the same calling area served by a competing LEC, not all ISP-bound calls or

Communications, LLC v. Qwest Corporation, Docket UT-053039, Order 05, Order Accepting Interlocutory Review; Granting, in Part and Denying, in Part, Level 3's Petition for Interlocutory Review, ¶¶ 25-30 (Feb. 10, 2006).

⁴ *Pac-West Telecom, Inc. v. Qwest Corporation*, Docket UT-053036, Order 05, ¶¶ 36-38 and Docket UT-053039, Order 05, ¶¶ 19, 30, 52-53 (Feb 10, 2006); *see also Pac-West Telecom, Inc. v. Qwest Corporation*, Docket UT-053036, and *Level 3 Communications, LLC v. Qwest Corporation*, Docket UT-053039 (consolidated), Order 15, Order Denying Qwest's Petition for Enforcement, ¶ 22 (June 22, 2012).

⁵ *Qwest Corporation v. Wash. State Utils. & Transp. Comm'n*, 484 F. Supp. 2d 1160 (W.D. Wash. 2007).

⁶ On February 15, 2008, the Commission stayed proceedings in the remanded Dockets UT-053036 and UT-053039 pending issuance of the *Final VNXX Order*. *See Pac-West*, Order 07 and *Level 3*, Order 07.

VNXX traffic.”⁷ Given this amended interpretation of the *ISP Remand Order*, the Commission concluded in 2011 that “VNXX traffic does not originate and terminate within the same local calling area and is thus *either* intrastate interexchange traffic subject to Commission determined compensation and not subject to section 251(b)(5) of the Act, *or* interstate interexchange traffic subject to the FCC’s jurisdiction.”⁸

9 The Commission established the legal classification of VNXX traffic under state and federal law and determined, as a matter of policy, that CLECs that engaged in VNXX arrangements should bear the cost of transporting such traffic from Qwest’s network to serve their customers. The Commission denied Qwest’s post-remand petition seeking refunds of its prior payments to the CLECs, stating that the following material facts remained in dispute: (1) the amount of VNXX traffic exchanged between the parties; (2) the nature of that traffic; (3) the amounts owed, if any, for transport and termination of such traffic; and (4) the location of the CLECs’ switches and modems used in managing the traffic.⁹ Upon conclusion of a hearing and submission of briefs by the remaining parties to the proceeding, we are now prepared to address all remaining issues in these dockets.

10 Because Level 3 and Qwest resolved all disputes between the two parties in this proceeding, the following issues are relevant only to Pac-West and Qwest: (1) the amount of VNXX traffic Pac-West transported over Qwest’s networks; (2) Qwest’s demand for a refund, with interest, of the reciprocal compensation payments it made to Pac-West as a result of the Commission’s 2006 order; and (3) Qwest’s claim for compensation for transport of Pac-West’s VNXX traffic. We also separately address the implications of Pac-West’s recent bankruptcy petition and consider the proposed settlement between Qwest and Level 3.

⁷ *Pac-West Telecom, Inc. v. Qwest Corporation*, Docket UT-053036, and *Level 3 Communications, LLC v. Qwest Corporation*, Docket UT-053039 (consolidated), Order 12, Final Order, ¶ 132 (Nov. 14, 2011).

⁸ *Id.* ¶ 136.

⁹ *Pac-West Telecom, Inc. v. Qwest Corporation*, Docket UT-053036, and *Level 3 Communications, LLC v. Qwest Corporation*, Docket UT-053039 (consolidated), Order 15, Order Denying Qwest’s Petition for Enforcement, ¶ 24, 26 (June 22, 2012) (emphasis added); *see also Pac-West Telecom, Inc. v. Qwest Corporation*, Docket UT-053036, and *Level 3 Communications, LLC v. Qwest Corporation*, Docket UT-053039 (consolidated), Order 12, Final Order, ¶¶ 96, 142 (Nov. 14, 2011).

B. Character and Amount of VNXX Traffic

- 11 Because Qwest and Pac-West have agreed to the time period in dispute, the first factual question we must resolve is how much of the traffic Pac-West exchanged with Qwest is VNXX in nature. The parties agree that the dispute began in 2004, when Qwest started to withhold payments, and ended in 2009, when the parties entered into a new interconnection agreement (ICA). At hearing, Pac-West further stipulated that it maintained modems and related equipment in Tukwila, Washington, from 2004 until late 2007, at which time Pac-West removed all of its telecommunications equipment from Washington.¹⁰
- 12 As to the nature of the traffic exchanged, Qwest performed extensive studies of the traffic exchanged with Pac-West between 2004 and late 2007 to determine the relevant percentage of that traffic presumed to be VNXX-related. For the period after Pac-West removed its equipment from Washington, from late 2007 until December 2009, Qwest asserts that all traffic exchanged between Pac-West and Qwest was VNXX traffic.¹¹
- 13 Qwest's traffic studies relied on information obtained from its Call Recording Over Signaling System 7, Business Intelligence and Trunk Usage Measurement Set-Up traffic analysis systems to calculate the percentage of traffic that it considered to be VNXX traffic.¹² Mr. William Easton, Wholesale Staff Director for CenturyLink/Qwest, testified about the technical aspects of Qwest's traffic studies. He described that Qwest started by identifying the Local Interconnection Service (LIS) trunk lines capable of carrying VNXX traffic and reviewed the Common Language Location Identifier codes associated with each trunk group to determine whether Qwest and Pac-West switches were located in the same local calling area (LCA).¹³ Qwest then examined the balance of originating and terminating minutes-of-use (MOU) on each trunk group where switches were not in the same LCA, which enabled identification of disproportionately high terminating MOU to Pac-West's equipment.¹⁴ Finally, Mr. Easton explained how Qwest calculated the difference in

¹⁰ Pac-West Initial Brief ¶ 4; *see also* Shiffman, Exh. SS-1T, 4:4-12 and Easton, Exh. WRE-1T, 20:9 – 21:2.

¹¹ Easton, Exh. WRE-1T, 23:3-11.

¹² *Id.*, 13:22 – 20:7.

¹³ *Id.*, 17:22 – 19:5.

¹⁴ *Id.*, 19:7-16.

terminating MOU and then used that figure to calculate a percentage of suspected VNXX traffic.¹⁵ In other words, Qwest divided the amount of traffic originated and carried over trunks outside the Seattle LCA by the total amount of traffic delivered to Pac-West to determine the VNXX traffic percentage.¹⁶

- 14 Pac-West and Qwest stipulated to the amount of VNXX traffic exchanged between February 2004 and February 2006.¹⁷ For the period between February 2006 and December 2007, the period during which Qwest paid Pac-West under protest, Qwest's traffic studies estimated the percentage of intrastate VNXX calls delivered by Qwest to Pac-West each month.¹⁸
- 15 In contrast to Qwest, Pac-West did not submit its own traffic studies or any other detailed evidence to quantify the amount of VNXX traffic in dispute.¹⁹ During discovery, Pac-West requested that Qwest provide call detail records (CDRs) as a tool for geographically sorting the traffic into pools of local, intrastate, and interstate calls. However, asserting that they only show the callers' assigned area codes and provide no information concerning the actual routing and facilities used to exchange traffic, Qwest did not produce the CDRs.
- 16 At hearing, Mr. Sam Shiffman, Executive Vice President of UniPoint Holdings, Inc.,²⁰ testified that he reviewed Pac-West's business records and determined that "[s]ubstantially all of the VNXX traffic originating from Qwest's customers and terminating to Pac-West's customers was ISP-bound traffic."²¹ This testimony addressed Pac-West's argument regarding compensation for ISP-bound traffic.

¹⁵ *Id.*, 19:12-22.

¹⁶ Qwest's Post-Hearing Opening Brief ¶ 38.

¹⁷ Qwest's Post-Hearing Opening Brief ¶ 39, n.27; *see also* Exh. WRE-16C. This period directly corresponds to the payment Qwest made to Pac-West in compliance with Order 05.

¹⁸ Exh. WRE-8C (*see* column labeled "VNXX %"). The parties identified the actual percentage of traffic as confidential information.

¹⁹ Easton, WRE-1T, 21:22 – 24:17 and Exh. WRE-4C; *see also* Shiffman, Exh. SS-2T, 12:18 – 13:6.

²⁰ UniPoint Holdings, Inc., is a holding company. UniPoint and Pac-West entered into a merger agreement in September 2011.

²¹ Shiffman, Exh. SS-1T, 3:10 – 4:2.

17 **Commission Decision.** Given that the parties have stipulated to the amount of VNXX traffic between 2004 and February 2006, and because the evidence in the record indicates that all traffic between December 2007 and 2009 was VNXX traffic,²² we must determine the amount of VNXX traffic only for the period between February 2006 and December 2007.

18 We find persuasive Qwest's evidence on the calculation of VNXX traffic for this period of time. In the context of VNXX traffic, we agree with Qwest that CDRs are irrelevant to determining a caller's actual geographic location for purposes of identifying VNXX traffic. Mr. Easton's testimony presents a logical methodology for evaluating the percentage of calls during this period crossing into the Seattle LCA that were VNXX in nature rather than originating and terminating in the Seattle LCA as genuine local traffic. Further, this methodology is consistent with the methodology the parties used to support their stipulation of the amount of VNXX traffic exchanged between February 2004 and February 2006.²³ Pac-West offered no alternative methodology, and Mr. Shiffman's testimony provided no meaningful rebuttal to Qwest's studies.

19 The Commission adopts Qwest's calculations as summarized in Exh. WRE-8C with regard to the amount of VNXX traffic the parties exchanged between February 2006 and December 2007.

C. Qwest's Refund Claim

20 The next issue we must resolve is whether Qwest is due compensation for the exchange of VNXX traffic and the amount of the compensation. Under the Commission's 2006 order in this proceeding, Qwest was required to pay Pac-West reciprocal compensation for VNXX traffic (\$0.0007 per minute of use) for which Qwest had previously withheld payment.²⁴ According to the parties, in March 2006,

²² Because Pac-West had no equipment located in Washington from late 2007 to late 2009, *all* traffic exchanged with Qwest during this time is interstate traffic. However, because the caller dialed a number that appeared to be local to the Seattle LCA in Washington, we determine these calls to be VNXX in nature. The Commission's jurisdiction to set appropriate compensation for these calls comes from interpreting the parties' ICA, not by independently establishing an interstate rate.

²³ Qwest's Post-Hearing Opening Brief ¶ 39, n.27; *see also* Exh. WRE-16C.

²⁴ *Pac-West Telecom, Inc. v. Qwest Corporation*, Docket UT-053036, Order 05, Final Order Affirming and Clarifying Recommended Decision, ¶¶ 36-38 (Feb. 10, 2006).

Qwest made a lump sum payment of \$930,000 to Pac-West for VNXX traffic exchanged between February 2004 and January 2006, which included an amount for interest accrued at an annual rate in excess of 12 percent.²⁵ Thereafter, Qwest paid Pac-West under protest a total of \$677,307 for ongoing VNXX traffic exchanged between February 2006 and December 2007.²⁶

21 Qwest now seeks a full refund of the \$1,607,307 it paid, plus accrued interest (totaling \$1,284,180 as of December 2012), for a total refund of \$2,891,487. Qwest's request is ongoing, so the company seeks all additional interest continuing to accrue in 2013.²⁷ Qwest argues that despite the fact the Commission reversed its February 2006 ruling in November 2011, Pac-West has continued to retain and control funds that rightfully belong to Qwest.²⁸

22 Pac-West asserts that no retroactive compensation is due and payable to Qwest.²⁹ Pac-West does not dispute that Qwest made the payments through December 2007, but instead raises anew several contract interpretation and public policy arguments to deflect Qwest's claim for payment, positions the Commission previously rejected in the order on remand.

23 First, Pac-West contends that a proper and contextual reading of its ICA with Qwest must result in a conclusion that the parties intended for all ISP-bound traffic, including VNXX traffic, to be subject to reciprocal compensation until they entered a new ICA in 2009.³⁰ The company states that after Pac-West opted into its ICA with Qwest in 2000, the parties entered into an ISP Amendment in 2002 that Pac-West contends was applicable to all ISP-bound traffic, including VNXX traffic.³¹ According to Pac-West, Qwest's "acceptance" and payment of Pac-West invoices

²⁵ Qwest's Post-Hearing Opening Brief ¶¶ 6, 47. *See also* Easton, Exh.WRE-1TC, 26:10-15. At hearing, Qwest presented evidence setting out detailed calculations behind Qwest's original payment, including interest rate calculations. *See* Easton, Exh. WRE-16C.

²⁶ Qwest's Post-Hearing Opening Brief ¶ 47; *see also* Easton, Exh. WRE-1TC, 26:17 – 28:12; Exh. WRE-8C.

²⁷ Qwest's Post-Hearing Opening Brief ¶ 47 and Confidential Appendix A; *see also* Qwest's Post-Hearing Reply Brief ¶ 3, Easton, Exh. WRE-1TC, 27:4-5; Exh. WRE-8C.

²⁸ Qwest's Post-Hearing Opening Brief ¶ 7.

²⁹ Pac-West Initial Brief ¶¶ 2, 20; *see also* Pac-West's Reply Brief ¶¶ 1, 11-12.

³⁰ Pac-West Initial Brief, ¶ 7.

³¹ *Id.* ¶¶ 8, 11-13.

over two initial years of the ICA demonstrates Qwest's acquiescence to inclusion of all VNXX ISP-bound traffic in those invoices. This, Pac-West contends, is clear evidence of the true context of the parties' ICA and the ISP Amendment.³²

- 24 Next, Pac-West contends that its VNXX offerings supported the broad state telecommunication policy of "promoting diversity in the supply of telecommunications services and products" in markets across the state by allowing rural customers to reach urban ISPs without incurring toll charges.³³ Pac-West also raises the equitable defenses of laches, waiver and estoppel as obstacles to requiring any repayment to Qwest.³⁴ Pac-West contends that it relied, to its apparent detriment, on Qwest's payment of prior invoices and was not afforded a reasonable opportunity to revise its customer contracts or network architecture to better reflect alterations in the compensation arrangements that are now being imposed retroactively.³⁵
- 25 Responding to Pac-West's renewed arguments, Qwest argues that the 2002 ISP Amendment to the parties' ICA only required payment of reciprocal compensation for ISP-bound traffic as that term is used in the *ISP Remand Order*. Given the Commission's rulings in the *Final VNXX Order* and on remand in this case, Qwest argues that Pac-West's interpretation of the ISP Amendment is factually erroneous.³⁶ Further, Qwest denies ever knowingly paying Pac-West reciprocal compensation for VNXX traffic and creating a basis for reliance.³⁷ Qwest contends that Pac-West's adoption of a VNXX numbering scheme through assignment of local telephone numbers prevented Qwest from identifying the true scope of the interexchange or non-local nature of the traffic being routed across its network.³⁸
- 26 **Commission Decision.** When the Commission entered Order 12 in this proceeding on remand, it became necessary to consider whether Qwest appropriately paid reciprocal compensation to Pac-West for VNXX traffic. There is no dispute concerning the actual amounts Qwest paid to Pac-West as a result of the

³² *Id.* ¶ 28.

³³ *Id.* ¶ 25, citing RCW 80.36.300(5).

³⁴ *Id.* at 17, ¶ 8.

³⁵ *Id.* at 17-19.

³⁶ Qwest's Post-Hearing Reply Brief ¶¶ 14-15.

³⁷ *Id.* ¶¶ 16-17.

³⁸ *Id.* ¶ 17.

Commission's 2006 ruling in this docket. The only question is whether Pac-West should refund any of the payments to Qwest.

- 27 Pac-West raises no compelling arguments that warrant revisiting the Commission's previous orders regarding VNXX traffic.³⁹ Pac-West's contract law argument would require us to interpret the parties' ICA in "context," as though both Qwest and the CLECs intended all ISP-bound traffic to be subject to reciprocal compensation. The company's position would require us to ignore the portions of Order 12 where the Commission has determined that VNXX numbering arrangements are an attempt to avoid intrastate access charges and that such arrangements would only be lawful if the carrier paid for transporting VNXX calls directed across Qwest's network.⁴⁰ Here, Pac-West's arguments continue to ignore the Commission's interpretation of the ISP Amendment to the parties' ICA as requiring compensation only for ISP-bound traffic that originates and terminates within a local calling area.⁴¹
- 28 The Commission has previously dismissed Pac-West's contentions that the industry trend shifting away from dial-up to broadband Internet access requires any special consideration.⁴² We are certainly aware that the telecommunications and broadband markets reflect constant change as new technologies and service arrangements are deployed to meet the varying demands of consumers. However, our role at this stage of the proceeding is not to revisit the overall policies pertaining to state and federal intercarrier compensation or to interpret provisions of the FCC's *ISP Remand Order*. Rather, we are tasked with interpreting the various provisions of the parties' ICA in the context of state and federal law.
- 29 As to Pac-West's claims of detrimental reliance and surprise, we reject such arguments as specious.⁴³ Qwest's payments of Pac-West's invoices for reciprocal compensation did not knowingly encompass non-local VNXX traffic. The record is clear that Qwest began withholding payment for suspected VNXX traffic as early as 2004, which prompted Pac-West to initiate this proceeding. Qwest's actions clearly had the effect of placing Pac-West on notice that VNXX traffic arrangements were in

³⁹ Order 12 ¶ 45, n.61. The Commission made it clear in the ruling on remand that the determination with regard to VNXX traffic would be applied retroactively.

⁴⁰ *Id.* ¶¶ 76-77.

⁴¹ See Qwest's Post-Hearing Reply Brief ¶¶ 18-22; nn.7-10.

⁴² Order 13 ¶ 11-12.

⁴³ See Order 12 ¶ 77; see also *Final VNXX Order* ¶ 196.

dispute. Additionally, the federal district court's April 2007 ruling should have provided Pac-West additional warning against the perils of continuing to rely on reciprocal compensation for VNXX traffic. Finally, the October 2007 initial order and the July 2008 Final VNXX Order in the VNXX complaint case in Docket UT-063038 should have left no doubt that reliance on reciprocal compensation for VNXX traffic, including ISP-bound traffic, was unfounded.

30 Having rejected Pac-West's contract and public policy arguments, we turn to the question of the amount due to Qwest as a refund of the amounts paid to Pac-West. In the recent hearing, Pac-West provided no evidence to suggest that any of the disputed VNXX traffic should be categorized and compensable as ISP-bound traffic within the meaning of the FCC's *ISP-Remand Order*. Further, Qwest established at hearing that it does not owe Pac-West any *additional* reciprocal compensation for calls originating and terminating within an LCA for the time period between 2004 and 2009. Pursuant to the findings in Order 12, we determine that Pac-West no longer has any claim to the amount Qwest paid in compliance with our 2006 order nor to the amount Qwest paid under protest from February 2006 to December 2007. Accordingly, we conclude that Qwest is entitled to a full refund of the entire amount it previously paid to Pac-West for VNXX traffic, subject to additional interest we require, as discussed below.

D. Interest on Refund

31 When the Commission required Qwest to pay the CLECs reciprocal compensation in 2006, Pac-West demanded interest of 1.5 percent per month, or 18 percent per year; after negotiation, Qwest paid Pac-West at an annual rate in excess of 12 percent.⁴⁴ Qwest argues that it is similarly entitled to recover interest on the payments it was improperly required to make to Pac-West pursuant to the Commission's 2006 ruling.⁴⁵ According to Qwest, prejudgment interest is always appropriate for "liquidated" claims, defined as those that can be computed to some degree of exactness.⁴⁶

⁴⁴ Easton, TR. 342:25 – 343:13; *see also* Easton, TR. 396:3-17; *see also* Exh. WRE-16C (e-mail of February 24, 2006 from Pac-West to Qwest contains a demand for payment plus interest); Qwest's Post-Hearing Opening Brief ¶ 6.

⁴⁵ Qwest's Post-Hearing Reply Brief ¶ 5; *see also* Qwest's Post-Hearing Opening Brief ¶¶ 47-48.

⁴⁶ Qwest's Post-Hearing Opening Brief ¶ 49, nn.44-45.

32 Qwest claims the ICA provision on interest due on disputed payments entitles it to collect interest on any disputed payments improperly withheld by Pac-West.⁴⁷ Although the ICA does not specify an interest rate for such disputes, Qwest seeks 12 percent interest, the Washington statutory post-judgment interest rate and the prejudgment interest rate generally used for contract claims.⁴⁸

33 Pac-West argues that the ICA provision does not apply here because Pac-West has not withheld payments from Qwest or disputed any invoices.⁴⁹ Pac-West also questions whether Qwest's claims can be considered "liquidated" because the matter of compensation for VNXX traffic has never been clear.⁵⁰ Finally, Pac-West contends that Washington law ordinarily precludes interest when a lower tribunal's award is reversed on review.⁵¹

34 **Commission Decision.** Prejudgment interest compensates a claimant for the "use value" of damages incurred from the time of a loss until the date of a judgment.⁵² In this case, Qwest has been unable to make use of \$1,607,307 it paid to Pac-West in 2006 and 2007. Qwest has not had access to or control of these funds for over five years.

35 The benchmark rate for prejudgment interest in Washington is 12 percent, the same rate as the statutory judgment interest rate. We previously ordered Qwest to pay the CLECs with interest and Qwest eventually paid Pac-West at an annual rate in excess of 12 percent. We see no reason to treat Pac-West differently, particularly when the parties' ICA itself requires interest payments in a reciprocal fashion.⁵³

⁴⁷ *Id.* ¶ 48, citing Section (A)3.4.2 of the parties' ICA.

⁴⁸ *Id.* ¶ 49, n.43.

⁴⁹ Pac-West's Reply Brief ¶ 14.

⁵⁰ *Id.* ¶ 15.

⁵¹ *Id.* ¶ 16, citing *Sintra, Inc. v. City of Seattle*, 96 Wn. App. 757, 763, 980 P.2d 796, 799 (1999).

⁵² *Hansen v. Rothous*, 107 Wn.2d 468, 473, 730 P.2d 662 (1986); *Prier v. Refrigeration Eng'g Co.*, 74 Wn.2d 25, 32, 442 P.2d 621 (1968).

⁵³ On August 23, 2012, the parties filed with the Commission a stipulation regarding the effective terms of their ICA. The ICA provision regarding payment of interest on disputed billings (Section (A)3.4.2) states:

Should the dispute be resolved in Northwest's favor and the resolved amount did not appear as a credit on Northwest's invoice from USW, USW will reimburse Northwest the resolved amount plus interest from the date of payment. The amount of interest will be calculated using the late payment factor that would have applied to such amount had it

36 We find Qwest's demand for 12 percent interest equitable and legally defensible. We require Pac-West to refund to Qwest \$1,607,307, the amount Qwest paid to Pac-West from 2004 through December 2007, subject to an annual simple interest rate of 12 percent.

E. Compensation Rate for Intrastate or Interstate VNXX Traffic

37 On remand, the Commission found that under the parties' ICA, the VNXX traffic in question was IntraLATA Toll or Toll-like traffic and potentially subject to access charges.⁵⁴ However, due to disputes about the amount and type of traffic at issue, the Commission did not then attempt to determine which traffic was subject to Commission jurisdiction and potentially subject to such toll rates. With the evidentiary hearing complete, the remaining question is whether Qwest should receive compensation for the VNXX traffic it exchanged with Pac-West from late 2007 until December 2009 either (1) pursuant to its tariffs as intrastate or interstate traffic, or (2) for the cost of transportation of the traffic.

38 Qwest does not seek compensation for transporting Pac-West's VNXX traffic prior to December 2007.⁵⁵ However, in a counterclaim, Qwest does seek compensation for VNXX traffic carried between December 2007 and December 2009. Qwest presents two alternative approaches for calculating this amount.

39 First, based on the Commission's characterization of VNXX traffic as interexchange, Mr. Easton testified that, switched access compensation rules should apply.⁵⁶ Mr. Easton relies on the same sections of the ICA the Commission cited in Order 18 that refer to IntraLATA toll traffic. He further specifies the applicable rates set out in Qwest's tariffs.⁵⁷ Mr. Easton concludes that between December 2007 and December

not been paid on time. Similarly, in the event Northwest withholds payment for a disputed charge, and upon resolution of the matter it is determined that such payments should have been made to USW, USW is entitled to collect interest on the withheld amount, subject to the above provisions.

⁵⁴ Order 12, ¶¶ 92, 95-96.

⁵⁵ Qwest's Post-Hearing Reply Brief ¶ 4.

⁵⁶ Easton, Exh. WRE-1T, 29:1-4; *see also* Order 12 ¶¶ 92, 95, 139.

⁵⁷ Easton, Exh. WRE-1T, 30:13 – 31:11.

2009 (when the parties' new ICA went into effect), Pac-West's VNXX numbering scheme allowed it to avoid \$6,367,200 in switched access charges.⁵⁸

40 Second, and as an alternative, Mr. Easton calculated a "transport-only" rate of compensation for the disputed VNXX traffic. Instead of pricing through Total Element Long Run Incremental Cost rates using a Relative Use Factor, Qwest applied the special access rate from its Washington and FCC tariffs and determined the cost of transporting Pac-West's VNXX traffic between December 2007 and December 2009 was \$947,437.⁵⁹

41 Pac-West offered no substantive calculation of what it might owe to Qwest for the disputed VNXX traffic. Instead, Pac-West argues that the ICA cannot be applied retroactively and contains no true-up provisions.⁶⁰ Alternatively, Pac-West claims that Qwest's demand for access charges would result in unjust, unreasonable and discriminatory rates in violation of key principles of the federal Telecommunications Act of 1996.⁶¹

42 **Commission Decision.** We recognize that the parties' ICA may allow imposition of access charges for interexchange traffic, including VNXX traffic. Access charges are a longstanding method state and federal regulators use to ensure local telephone companies are compensated for the use of their facilities by other telecommunications companies that originate and terminate interexchange traffic on the local telephone company's network. As discussed in Order 12, the Commission could interpret the terms of the parties' ICA to allow imposition of access charges for the disputed VNXX traffic that the Commission previously has held to be interexchange traffic. As discussed below, we decline to do so.

43 Although the ICA does incorporate by reference the parties' tariffs, including but not limited to Qwest's state and federal access tariffs, we do not find the language sufficiently unequivocal to impose a substantial and new access charge liability on Pac-West. We are aware of the long and tortured history of this proceeding regarding what the parties intended and their competing interpretations of ambiguous provisions

⁵⁸ Easton, Exh. WRE-1T, 32:2 – 33:18; *see also* Exh. WRE-11C; *see also* Qwest's Post-Hearing Opening Brief ¶ 11 and its Confidential Appendix A.

⁵⁹ Easton, Exh. WRE-1T, 34:1 – 36:10; *see also* Exh. WRE-13C and Qwest's Post-Hearing Opening Brief ¶ 11 and its Confidential Appendix A.

⁶⁰ Pac-West's Reply Brief ¶¶ 11-12.

⁶¹ *Id.* ¶¶ 17-19.

in their ICA. We also take note of the lack of clarity in the several FCC decisions concerning the scope of ISP-bound traffic, including the *ISP Remand Order*, that has only served to prolong disputes across the country between telecommunications carriers about compensation for ISP-bound traffic.

44 Although we believe that the parties' ICA allows us to impose access charges on the disputed VNXX traffic that Pac-West directed across Qwest's network, we choose not to do so. Instead, as we set forth in our *Final VNXX Order*, we apply a "bill and keep" approach for VNXX traffic as a reasonable and sensible means to resolve a longstanding dispute about abstruse contract provisions and equivocating federal law.

45 Simply stated, we are reluctant to require Pac-West to pay Qwest access charges in this case because it would result in a disproportionate and substantial impact on a single provider adversely subjected to the vagaries of and fluctuating interpretations of law. Such a result is unnecessary and would be undesirable.

46 Even so, as Qwest points out, the application of the bill and keep approach set forth in the *Final VNXX Order* still requires some level of compensation from Pac-West. The company argues that Pac-West should have "to pay for facilities they have already received the benefit of" for transporting VNXX calls to and from Pac-West between local calling areas. Further, Qwest argues that requiring some level of compensation for transport is consistent with the Commission's previous conclusions in the *Final VNXX Order*.⁶²

47 Given the Commission's prior determinations in this area and Qwest's concession that reimbursement of transport cost would be an acceptable resolution to compensation for the disputed traffic, we find such an outcome to be a rational and judicious outcome to this dispute. In Exhibit WRE-13C, Qwest's witness Mr. Easton provided a detailed calculation of the potential liability that arises from Pac-West's use of Qwest's transport facilities for VNXX traffic during the period that followed our ruling in the *Final VNXX Order*. Pac-West did not dispute Mr. Easton's calculations either at hearing or in the briefing that followed. Accordingly, we find Mr. Easton's calculations persuasive and require Pac-West to pay Qwest \$947,437 for the transport of VNXX traffic for the period between December 2007 and December 2009, as set forth in Exhibit WRE-13C.

⁶² *Final VNXX Order* (Docket UT-063038, Order 10) ¶ 168; *see also* Order 12 ¶ 77.

F. Pac-West's Bankruptcy Filing

- 48 On March 28, 2013, Pac-West filed a voluntary petition in the United States Bankruptcy Court for the Western District of Texas, Austin Division, seeking relief under Chapter 11 of the United States Bankruptcy Code.⁶³ On April 5, 2013, Pac-West notified the Commission of this filing and, pursuant to the automatic stay provision of 11 U.S. Code Section 362, asked the Commission to refrain from entering a final order in this case for six months.⁶⁴
- 49 Qwest opposed Pac-West's request.⁶⁵ Qwest distinguished the refund it is due for past payments to Pac-West from the transport compensation it seeks via counterclaim. According to Qwest, the automatic stay provision should apply, at most, only to its counterclaim against Pac-West.⁶⁶
- 50 **Commission Decision.** In our view, the automatic stay provision of the United States Bankruptcy Code does not preclude entry of this order. As Qwest correctly observes,⁶⁷ by its terms the automatic stay generally applies to proceedings "against the debtor."⁶⁸
- 51 Moreover, application of the automatic stay requires assessing each claim individually such that "claims asserted by the debtor" are allowed to continue while claims "against a debtor will be suspended even though [the claims are] closely

⁶³ Pac-West's bankruptcy petition in Texas is Case No. 13-10571-hcm.

⁶⁴ Pac-West Telecomm, Inc. Notice of Suggestion of Bankruptcy (April 5, 2013).

⁶⁵ Qwest's Comments Regarding Pac-West Bankruptcy Filing ¶¶ 15-16 (April 19, 2013).

⁶⁶ *Id.* ¶ 11.

⁶⁷ *Id.* ¶ 8.

⁶⁸ 11 U.S.C. § 362(a) provides, in pertinent part: "Except as provided in subsection (b), a [bankruptcy petition] operates as a stay, applicable to all entities, of: (1) the commencement or continuation ... of a[n] ... administrative ... proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title."

related.”⁶⁹ The nature of a claim is determined when a proceeding is initiated, not at a later stage of the case when a filing of a bankruptcy petition may occur.⁷⁰

52 Here, Pac-West, the debtor, initiated this proceeding by filing its petition in this matter, leading to the Commission’s 2006 order requiring Qwest to compensate Pac-West. Accordingly, each of Pac-West’s claims is “by the debtor,” not “against the debtor,” and thus they are not subject to the automatic stay.

53 The court’s remand order made clear that the Commission’s original ruling in favor of Pac-West was not correct, and likely would need to be modified, subject to the results of an evidentiary hearing. Nonetheless, under established bankruptcy law, the proceeding as to debtor Pac-West’s original claims is allowed to continue forward to its conclusion in this order, because when this proceeding was initiated, these were claims by the debtor. In other words, Pac-West’s bankruptcy filing does not preclude the Commission from entering this order requiring Pac-West to refund Qwest’s prior payments, with interest, because the refund is not the result of a claim against the debtor.

54 Qwest’s answer to Pac-West’s petition alleged counterclaims that Qwest apparently believes must be allowed to languish before the Commission until the bankruptcy stay is lifted. Typically, such a claim against the debtor would be stayed, but because of the unique procedural posture of this proceeding, we conclude that non-debtor respondent Qwest should be allowed to obtain a ruling on its counterclaims, too.⁷¹

⁶⁹ *Maritime Electric Co. v. New Jersey Bank*, 959 F.2d 1194, 1204-05 (3rd Cir. 1991); *see also* Qwest’s Comments Regarding Pac-West Bankruptcy Filing, ¶ 8.

⁷⁰ *Cathey v. Johns Manville Sales Corp.*, 711 F.2d 60, 62 (6th Cir. 1983), *cert. denied*, 478 U.S. 1021, 106 S.Ct. 3335, 92 L.Ed. 2d 740 (1986); *Marcus, Stowell & Beye Gov’t Sec. v. Jefferson Inv. Corp.*, 797 F.2d 227, 230 n.4 (5th Cir. 1986).

⁷¹ *See In re Overmyer*, 32 B.R. 597 (S.D.N.Y. 1983). In that case, Mr. Overmyer brought claims as a plaintiff in an Ohio bankruptcy case that involved a six week trial with approximately 2,000 exhibits and approximately 6,000 pages of transcript. Four days after closing arguments in Ohio, Mr. Overmyer filed a bankruptcy petition in New York. Four months later, the Ohio bankruptcy court issued its decision and judgment. Mr. Overmyer sought to declare the Ohio bankruptcy court’s decision null and void as against him because it was issued after he filed for bankruptcy. The New York bankruptcy court disagreed, noting that the concept of judicial economy did not require the bankruptcy court to disregard a final judgment only because it was entered after the filing of a bankruptcy petition. 32 B.R. at 601. The New York bankruptcy court concluded that “[a] non-debtor defendant against whom a debtor plaintiff has fully tried a suit in another forum should be free to assert and obtain a ruling on whatever counterclaims might be available to the non-debtor defendant.” *Id.*

After eight years of motions, hearings, an appeal, a remand, more motions, and another hearing, Pac-West's bankruptcy petition would otherwise bar the only remaining step: entry of this final order by the Commission. However, the fact that this case was *sub judice* at the time Pac-West filed its bankruptcy petition allows the Commission to enter this order without violating the automatic stay provision.⁷²

55 In sum, Pac-West's bankruptcy filing does not require the Commission to delay reaching a final decision in this matter. This order, by itself, does not affect debtor Pac-West or its property. Although Pac-West's bankruptcy filing may impact Qwest's ability to collect the refund and other compensation we award in this order, that matter is between Qwest and Pac-West and is a question for the bankruptcy court.⁷³

G. Qwest – Level 3 Settlement Agreement

56 On January 29, 2013, Qwest and Level 3 filed a Joint Motion for Approval of Settlement Agreement and Dismissal of Proceedings with Prejudice. The confidential settlement agreement resolves all claims for intercarrier compensation between Qwest and Level 3 in multiple jurisdictions, including claims unrelated to VNXX traffic.⁷⁴ Of particular interest to the Commission, the agreement addresses all of Qwest's claims for refunds and access charges raised in Docket UT-053039.⁷⁵

57 Consistent with the Commission's *Final VNXX Order*, the parties agree in the settlement to adopt a bill and keep regime for VNXX traffic in Washington and

⁷² “Manifestly, it would not further the concept of judicial economy to disregard the 6,000 pages of transcript and the 2,000 exhibits that were employed during six weeks of a trial that took place before the automatic stay went into effect. A final judgment (if it is ultimately sustained on the merits) should not be lightly disregarded merely because the case was *sub judice* at the time one of the plaintiffs filed a bankruptcy petition.” *In re Overmyer, supra*, 32 B.R. at 601.

⁷³ The *Overmyer* court made a similar distinction, noting that the “[Ohio] court’s decision alone did not affect the debtor or the property of his estate” but that the automatic stay would apply to any attempt to enforce the judgment against the debtor. *Id.* at 602.

⁷⁴ In addition to resolving “VNXX disputes” in Washington, Oregon, and Arizona, the agreement also resolves other “Usage Disputes,” including Voice over Internet Protocol (VoIP) traffic disputes and jurisdictional billing disagreements. Additionally, the agreement resolves a separate “Facilities Disputes” over other billings and a “Discrimination Dispute” that was under litigation in New York and California.

⁷⁵ Settlement Agreement at 1-2; Joint Motion ¶¶ 5-6.

commit to amending the Qwest-Level 3 ICA to reflect this billing arrangement.⁷⁶ The settlement requires Level 3 to pay Qwest a certain amount to resolve the dispute and, in turn, requires Qwest to apply sufficient credit to bring certain Level 3 billing account numbers (BANs) to a zero balance.⁷⁷ The settlement agreement does not specify how much of this payment addresses intrastate VNXX traffic in Washington, nor does it explain which BANs, if any, relate to the parties' disputes in Docket UT-053039. The settlement requires Qwest and Level 3 not to disclose its terms and to keep all provisions confidential.⁷⁸

58 The settlement contains summary recitations of the parties' previous disputes regarding non-local ISP-bound traffic, but does not directly address the specific claims or related time periods in dispute before the Commission in Docket UT-053039. Instead, the parties state their intent to cease ongoing litigation, save further expense, and resolve all issues raised in this docket. Of additional significance, Level 3 agrees to withdraw its pending appeal of the Commission's *Final VNXX Order* in Docket UT-063038.

59 **Commission Decision.** WAC 480-07-750(1) states in part: "The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

1. Whether any aspect of the proposal is contrary to law;
2. Whether any aspect of the proposal offends public policy, and
3. Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must approve the proposed settlement without condition, approve the proposed settlement subject to conditions, or reject the proposed settlement.

60 As the Commission has resolved all the major legal and policy aspects of this proceeding in prior decisions, we recognize that at this point in the proceeding, the

⁷⁶ Settlement Agreement ¶ 8B; Joint Motion ¶ 6.

⁷⁷ Settlement Agreement ¶ 1; Exhibits 3-4 (listing of BANs to be reduced to zero balance).

⁷⁸ Settlement Agreement ¶ 18.

dispute between Qwest and Level 3 is more akin to a private contractual matter than a broad policy examination. In other words, the dispute is now purely monetary. Given the evidence in the record over this lengthy proceeding, as well as the legal analysis and decisions in this proceeding and the Qwest VNXX complaint in Docket UT-063038, we find that the evidence supports the parties' settlement, that the settlement is not contrary to law or public policy, and that the settlement results in an acceptable outcome with regard to VNXX traffic sent from one carrier's network to another carrier's network.

61 As a result of the Commission's original ruling, Qwest paid Level 3 a certain sum in May 2006; Qwest paid Level 3 additional amounts under protest to address VNXX traffic between April 2006 and April 2007.⁷⁹ Although the settlement does not fully explain the basis for the substantial lump sum payment from Level 3 to Qwest, the payment appears to be of a size and scale sufficient to account for a full refund of Qwest's prior payments, plus interest, and potentially includes some compensation to Qwest for Level 3's use of its transport facilities. Most importantly, Level 3 is making this payment voluntarily and in exchange for Qwest's reduction to zero of certain accounts receivable balances.

62 The proposed settlement resolves a longstanding dispute. Level 3 initiated Docket UT-053039 in June 2005. For the last eight years, the parties and the Commission have dedicated significant resources to litigating VNXX traffic disputes in this matter, Qwest's VNXX complaint and the Commission's *Final VNXX Order*. We are pleased to accept a final disposition in the case, particularly one agreed upon by the parties, that is consistent with the Commission's previous rulings on the proper characterization of VNXX traffic. In addition, Level 3 has agreed to withdraw its appeal of the *Final VNXX Order* in Docket UT-063038.⁸⁰

63 The Commission adopts and approves the settlement without condition. No aspect of the settlement is contrary to law or the public interest. The settlement resolves the parties' dispute consistent with the Commission's approach to VNXX traffic in Docket UT-063038 and other orders entered in this proceeding. We accept the settlement between two private parties who have voluntarily resolved a monetary dispute and that has no direct impact on customer payments or other issues that could

⁷⁹ Easton, Exh. WRE-1TC, 25:1 – 26:2; *see also* Exhibit WRE-5C.

⁸⁰ Qwest's Post-Hearing Opening Brief ¶ 4.

otherwise prejudice Washington consumers. We conclude that approving the settlement is in the public interest.

III. FINDINGS OF FACT

64 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:

- 65 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.
- 66 (2) Qwest is engaged in the business of furnishing telecommunications services including, but not limited to, providing basic local exchange service to the public for compensation within the state of Washington.
- 67 (3) Level 3 and Pac-West, are competitive local exchange carriers within the definition of 47 U.S.C. § 153(26), providing local exchange telecommunications service to the public for compensation within the state of Washington, or are classified as competitive telecommunications companies under RCW 80.36.310-.330.
- 68 (4) Pac-West and Qwest stipulate that the disputed VNXX traffic began in February 2004 and ended in December 2009.
- 69 (5) As required by Order 05, Qwest paid Pac-West a lump sum, with interest, for terminating VNXX traffic that occurred between February 2004 and March 2006, and then continued monthly payments to Pac-West, under protest, until December 2007.
- 70 (6) Pac-West maintained telecommunications equipment in Tukwila, Washington, until December 2007, when it removed this equipment from Washington.
- 71 (7) Pac-West directed VNXX traffic across Qwest's networks and has not compensated Qwest for use of its network facilities.

- 72 (8) Qwest and Level 3 have entered into a proposed settlement agreement resolving all remaining usage disputes between the parties with regard to VNXX traffic.

IV. CONCLUSIONS OF LAW

73 Having discussed in this Order all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:

- 74 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 75 (2) The Commission is designated under the Telecommunication Act of 1996 as the agency responsible for arbitrating, approving and enforcing interconnection agreements between telecommunications carriers, pursuant to sections 251 and 252 of the Act.
- 76 (3) The rationale supporting Order 05 in this proceeding that required Qwest to compensate Pac-West for traffic exchanged across its network is no longer valid. *Order 12.*
- 77 (4) Pac-West must refund Qwest's previous payments for VNXX traffic exchanged between February 2004 and December 2007, with interest.
- 78 (5) Pac-West must compensate Qwest for transport of VNXX traffic exchanged between December 2007 and December 2009.
- 79 (6) The settlement agreement between Qwest and Level 3 is supported by the evidence in the record, is not contrary to the law, and does not violate public policy and should be approved and adopted without condition.

V. ORDER

THE COMMISSION ORDERS:

- 80 (1) Pac-West must refund to Qwest all \$1,607,307 paid between 2004 and late
2007 as a result of Order 05 in Docket UT-053036.
- 81 (2) Pac-West must pay Qwest interest on the refunded sum in the amount of
12 percent per year.
- 82 (3) Pac-West must compensate Qwest \$947,437 for the cost of transporting
VNXX traffic over Qwest's network from December 2007 to December 2009,
as calculated in Exhibit WRE-13C.
- 83 (4) The Settlement Agreement between Qwest and Level 3 is approved without
condition. The Settlement Agreement is attached as Exhibit A to, and
incorporated into, this Order and adopted as the final resolution of the disputed
issues between Qwest and Level 3 in Docket UT-053039.
- 84 (5) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective June 6, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.

Exhibit A

Confidential Settlement Agreement

Between

Qwest and Level 3

Docket UT-053039

(Redacted Version)