

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

LEVEL 3 COMMUNICATIONS, LLC,)	DOCKET UT-053039
)	
Petitioner,)	
)	ORDER 07
v.)	
)	
QWEST CORPORATION,)	ORDER STAYING PROCEEDING
)	
Respondent.)	
.)	
.....)	

1 **SYNOPSIS.** *In this Order, we stay consideration of the U.S. District Court’s remand of the Commission’s Order 05 in this proceeding until the complaint proceeding in Docket UT-063038 is complete.*

2 **NATURE OF PROCEEDING.** This proceeding involves a petition filed by Level 3 Communications, LLC (Level 3), pursuant to WAC 480-07-650, seeking enforcement of terms of its interconnection agreement with Qwest Corporation (Qwest) concerning compensation for traffic to Internet service providers (ISPs). Qwest filed counterclaims against Level 3 contesting compensation for ISP-bound traffic and the propriety of Level 3’s use of Virtual NXX, or VNXX¹, traffic under the parties’ interconnection agreement.

3 **APPEARANCES.** Gregg Strumberger and Victoria Mandell, Regulatory Counsel, Broomfield, Colorado, Arthur A. Butler, Ater Wynne, LLP, Seattle, Washington, and Rogelio E. Peña, Peña & Associates, Boulder, Colorado, represent Level 3. Lisa A. Anderl, Associate General Counsel, and Adam L. Sherr, Corporate Counsel, Seattle,

¹ “VNXX” or “Virtual NXX” refers to a carrier’s acquisition of a telephone number for one local calling area that is used in another geographic area. The call appears local based on the telephone number.

Washington, and Alex M. Duarte, Corporate Counsel, Portland, Oregon, represent Qwest.

DISCUSSION

- 4 On February 10, 2006, in Order 05 in this proceeding, the Commission resolved Level 3's petition on summary judgment, interpreting Level 3's interconnection agreement and the Federal Communication Commission's *ISP Remand Order*² as a matter of law to find that Qwest must compensate Level 3 for ISP-bound traffic, regardless of whether the traffic originated and terminated within the same local calling area.³ Having resolved the petition for enforcement as a matter of law, the Commission found that Qwest's counterclaims were outside of the scope of the proceeding and that Qwest could file a complaint against competitive local exchange companies (CLECs) addressing the legality of the CLECs' use of VNXX and intercarrier compensation methods.⁴
- 5 On May 23, 2006, Qwest filed a complaint in Docket UT-063038 against nine CLECs: Level 3, Pac-West Telecomm, Inc. (Pac-West), Northwest Telephone, Inc., TCG Seattle, Electric Lightwave, Inc., Advanced Telecom, Inc., Focal Communications Corporation (now known as Broadwing Communications, LLC), Global Crossing Local Services, Inc., and MCI Metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services. In its complaint, Qwest alleges that the CLECs' use of VNXX numbering arrangements violates Qwest's access tariffs, prescribed exchange areas, and state law, and is contrary to public policy, and seeking relief.

² *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98, CC Docket No. 99-68, (rel. April 27, 2001) [Hereinafter *ISP Remand Order*].

³ *Level 3 Communications LLC v. Qwest Corporation*, Docket UT-053039, Order 05, ¶ 25 (Feb. 10, 2006) [Level 3 Order].

⁴ Level 3 Order, ¶¶ 39-40; The Commission dismissed Qwest's counterclaims concerning the use of VNXX arrangements, "finding Qwest's claims about use of VNXX not material or necessary to deciding the issue of compensation for ISP-bound traffic under the FCC's *ISP Remand Order*." Level 3 Order, ¶ 6.

6 On July 10, 2006, Qwest sought review in federal district court of the Commission's orders in this docket and a related petition for enforcement filed by Pac-West in Docket UT-053036. On April 19, 2007, after submission of testimony and exhibits and just prior to hearings in the complaint proceeding in Docket UT-063038, a magistrate for the U.S. District Court for the Western District of Washington entered a decision rejecting the Commission's orders and remanding them for additional consideration.⁵ The federal court rejected the Commission's findings in Order 05 and remanded the case to the Commission:

[T]o reinterpret the *ISP Remand Order* as applied to the parties' interconnection agreements, and to classify the instant VNXX calls, for compensation purposes, as within or outside a local calling area, to be determined by the assigned telephone numbers, the physical routing points of the calls, or any other chosen method within the WUTC's discretion.⁶

7 On October 5, 2007, the assigned administrative law judge entered an Initial Order in the complaint proceeding, finding that VNXX traffic is not *per se* unlawful, but is lawful only if subject to appropriate compensation. The Initial Order also finds that VNXX traffic includes characteristics of both local and interexchange traffic, should be subject to a bill and keep mechanism, and that CLECs should pay for transport of VNXX traffic when using Qwest's facilities. After a number of parties sought review of the Initial Order, the matter is now pending entry of a final order.

8 Due to the commonality of issues in the proceedings, we now stay the Level 3 enforcement proceeding in this docket until the conclusion of the complaint proceeding, after which we will schedule a prehearing conference to establish a procedural schedule in the remanded proceedings.

ORDER

THE COMMISSION ORDERS:

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

⁶ *Qwest v. WUTC*, 484 F.Supp.2d at 1177.

- 9 The proceeding in Docket UT-053039 is stayed until the conclusion of the complaint proceeding in Docket UT-063038.

Dated at Olympia, Washington, and effective February 15, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN
Executive Secretary

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.