

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

PAC-WEST TELECOMM, INC.,)	DOCKET UT-053036
)	
Petitioner,)	
)	ORDER 11
v.)	
)	
QWEST CORPORATION,)	ORDER ESTABLISHING
)	BRIEFING SCHEDULE
Respondent.)	
.....)	
)	
LEVEL 3 COMMUNICATIONS, LLC,)	DOCKET UT-053039
)	
Petitioner,)	ORDER 11
)	
v.)	
)	ORDER ESTABLISHING
QWEST CORPORATION,)	BRIEFING SCHEDULE
)	
Respondent)	
.....)	

1 **NATURE OF PROCEEDINGS.** Dockets UT-053036 and UT-053039 involve petitions for enforcement of interconnection agreements. Pac-West Telecomm, Inc. (Pac-West) and Level 3 Communications, LLC (Level 3), filed petitions for enforcement of terms of their interconnection agreements with Qwest Corporation (Qwest) relating to payment for terminating traffic. The disputes center primarily on whether Pac-West and Level 3 are entitled to compensation for “VNXX”¹ traffic.

¹ The Commission has previously defined “VNXX” or “Virtual NXX” in these proceedings to refer 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.” See *Pac-West Telecomm, Inc. v. Qwest Corporation*, Docket UT-053036, Order 05, Final Order Affirming and Clarifying Recommended Decision, n.1 (Feb. 10, 2006).

2 Qwest sought judicial review of the final orders of the Washington Utilities and
Transportation Commission (Commission) in these proceedings and on April 19,
2007, a magistrate judge for the United States District Court for the Western District
of Washington entered an order reversing and remanding the cases to the Commission
for decision.² The cases are now before the Commission on remand and are
consolidated for hearing and decision.

3 **CONFERENCE.** The Commission convened a status conference in this docket at
Olympia, Washington on June 16, 2010, before Administrative Law Judge Ann E.
Rendahl.

4 **APPEARANCES.** Gregory J. Kopta, Davis Wright Tremaine, LLP, Seattle,
Washington, represents the petitioner, Pac-West. Gregory Rogers, Regulatory
Counsel, Broomfield, Colorado, and Lisa Rackner, McDowell & Rackner, Portland,
Oregon, represent Level 3. Lisa Anderl, In-house Attorney, Seattle, Washington, and
Thomas Dethlefs, In-house Attorney, Denver, Colorado, represent the respondent,
Qwest.

5 **STATUS OF THE PROCEEDINGS.** During the conference, the presiding
administrative law judge noted that the proceedings had been on hold pending related
litigation in the federal courts and asked the parties to discuss the status of this
litigation and to state how the Commission should proceed in these cases.

6 Counsel for Level 3 stated that the United States Court of Appeals for the District of
Columbia had entered a decision upholding the Federal Communications
Commission's decision on compensation for Internet Service Provider, or ISP, bound
traffic.³ Counsel for Level 3 also noted that the Ninth Circuit Court of Appeals had
determined that Level 3's appeal of an Arizona Corporation Commission decision
similar in posture to these cases was not ripe and remanded the case back to the

² *Qwest Corp. v. Washington Utils. & Transp. Comm'n*, 484 F.Supp.2d 1160 (Apr. 9, 2007).

³ *Core Communications, Inc. v. Federal Communications Commission*, 592 F.3d 139 (D.C. Cir., 2010).

Arizona Commission.⁴ Finally, Level 3 stated that its appeal of the Commission's decision in the VNXX complaint proceeding in Docket UT-063038 has been stayed in the federal district court of Western Washington pending a decision in these proceedings. Based on the status of these related cases, Counsel for Level 3 urged the Commission to schedule additional briefing to refresh the record, and decide the pending motions for summary determination in these cases.

7 Counsel for Pac West concurred in Level 3's description of the status of related litigation and in the request to proceed to a decision in these cases. Counsel for Qwest had no objection to the suggestion to refresh the record.

8 **PROCEDURAL SCHEDULE.** After hearing from the parties, the presiding judge agreed that it was appropriate for the parties to present additional briefs or provide supplemental authority to refresh the record in these proceedings. The parties agreed on the following briefing schedule:

Simultaneous Initial Briefs and Supplemental Authority, as appropriate **Tuesday, July 20, 2010**

Simultaneous Responsive Briefs **Tuesday, August 10, 2010**

9 **WAIVER OF INITIAL ORDER.** During the conference, the parties agreed to waive their rights under RCW 34.05.461 to an initial order by the presiding administrative law judge, and proceed to a final order by the Commission. The parties agreed to file letters with the Commission stating their waiver of the statutory right.

10 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file with the Commission an original plus **six (6)** copies of all pleadings, motions, briefs, and other prefiled materials. These materials must conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

⁴ *Qwest Corporation v. Arizona Corporation Commission, et al.*, No. 08-15887 (9th Cir., filed

- 11 All filings must be mailed or delivered to the Commission's Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 12 An electronic copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to records@utc.wa.gov. Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files. **Electronic documents that are redacted versions that mask confidential information, should be filed exclusively in "read only" .pdf format.**
- 13 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Parties may submit documents electronically to the Commission on the filing deadline to expedite the filing process, but must file an original, plus **six (6)** paper copies, of the documents with the Commission by 12:00 noon on the first business day following the filing deadline established in the procedural schedule. *WAC 480-07-145(6)*. Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail to records@utc.wa.gov. Finally, to perfect filing, parties must simultaneously provide e-mail courtesy copies of filings to the presiding administrative law judge at arendahl@utc.wa.gov and the Commission's telecommunications policy advisor at bthomas@utc.wa.gov as well as to the parties to the proceeding.

14 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective June 18, 2010.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge