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February 6, 2013

Mr. Dave Danner
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Consolidated
Docket No. UT-053036 – PacWest Complaint
Docket No. UT-053039 – Level 3 Communications Complaint
Qwest’s Comments and Objections

Dear Mr. Danner:

In accordance with the schedule adopted by Judge Torem, and the five minute extension granted telephonically, Qwest hereby files its comments and objections on the use of the testimony of Level 3’s Mack Greene by Pac-West at the upcoming hearing. In order to formulate its position on this issue, Qwest has discussed the issues with counsel for Pac-West.

In general, Qwest objects to the inclusion of Mr. Greene’s testimony, with specific exceptions discussed below. The basis for these objections is threefold.

First, Qwest is prejudiced by the admission of Level’s testimony on behalf of Pac-West because Qwest has not had the opportunity to ask Pac-West discovery questions on this testimony. Since it was not sponsored by or offered on behalf of Pac-West, Qwest did not ask Pac-West any discovery questions on the Level 3 testimony that it now seeks to adopt.

Second, Pac-West could not have relied on Level 3’s reply testimony, as reply testimony was filed simultaneously by all parties, with no subsequent filings. Thus, while Pac-West may argue that it did not include certain testimony in its reply filing because Level 3 had already addressed it on direct, such an argument does not support reliance on any of the Level 3 reply testimony.

Third, Qwest is prejudiced by Pac-West's reliance on Level 3 testimony because Pac-West wants to include only those portions of the Level 3 testimony that are adverse to Qwest, such as Mr. Greene's criticisms of the VNXX calculations, while excluding Mr. Greene's testimony stating that he does not dispute the actual numbers. Pac-West wishes to rely on testimony that may be beneficial to its interests, without making the same significant and material concessions that Mr. Greene does in his testimony. For example, Pac-West did not ask to include page 49 of Mr. Greene's direct testimony. There, he agrees with Qwest's numbers - both as to the dollar amounts and the amount of VNXX traffic. We believe that if Pac-West wants to rely on sections of the Level 3 testimony, and on the testimony regarding the interest rate, a similar concession from Pac-West with regard to the dollar amounts and the amount of traffic is warranted.

The most critical question that Qwest posed to Pac-West's counsel was whether the testimony was offered "for the truth of the matters asserted, or merely as illustrative/background information." Qwest has not received a specific response to this question. Thus, until Qwest is able to know which pieces are actually offered, probably during the hearing itself, Qwest will hold specific objections for each piece.

Qwest does not object to the inclusion of the following portions of Mr. Greene's direct testimony:

Page 10, lines 1-6;
Page 24, lines 3-11;
Pages 33-34;
Pages 38-40;
Page 47 lines 1-20.

The cited testimony is specifically referenced in Mr. Shiffman's reply testimony, and in Qwest's view may legitimately be made a part of the record, even without Level 3 sponsoring a witness.

Qwest also does not object to the admission of Mr. Greene's testimony regarding interest rates, pages 51, line 8-52, line 7, so long as Qwest is permitted to offer testimony at the hearing that is specific to Pac-West on that same topic.

Sincerely,



Lisa A. Anderl

LAA/ldj
Enclosures
cc: All Parties of Record