

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

PAC-WEST TELECOMM, INC.

Petitioner,

v.

QWEST CORPORATION,

Respondent.

DOCKET NO. UT-053036

NON-CONFIDENTIAL AFFIDAVIT OF  
LARRY B. BROTHERRSON IN SUPPORT  
OF QWEST CORPORATION'S MOTION  
FOR SUMMARY DETERMINATION

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LEVEL 3 COMMUNICATIONS, LLC,

Petitioner,

v.

QWEST CORPORATION,

Respondent.

DOCKET NO. UT-053039

STATE OF COLORADO )

) :ss

COUNTY OF DENVER )

I, Larry B. Brotherson, being first duly sworn, depose and state as follows:

1. I am employed by Qwest Corporation (Qwest) as a Director Wholesale Advocacy in the Wholesale Markets organization. My business address is 1801 California Street, Room 2350, Denver, Colorado, 80202.

2. I received a Bachelor of Arts degree from Creighton University in 1970 and a Juris Doctor degree from Creighton in 1973.

3. I joined Northwestern Bell Telephone Company in 1979. Since then, I have held several positions within Northwestern Bell, U S WEST Communications, and Qwest. Most of my responsibilities and assignments have been within the Law Department. For years, my legal duties included being a state regulatory attorney in Iowa, a general litigation attorney, and a commercial attorney supporting several organizations within Qwest's predecessor companies. My responsibilities also included advising the company on legal issues, drafting contracts, and addressing legal issues that arise in connection with specific products. With the passage of the Telecommunications Act of 1996 (the Federal Act), I took on responsibility for providing legal advice and support for Qwest's Interconnection Group. In that role, I was directly involved in working with competitive local exchange carriers (CLECs). I negotiated interconnection agreements with CLECs that implemented various sections of the Act, including the Act's reciprocal compensation provisions. In 1999, I assumed my current duties as director of wholesale advocacy. My current responsibilities include coordinating the witnesses for all interconnection arbitrations and for hearings involving disputes over interconnection issues. In addition, I regularly testify in commission and court cases involving interconnection issues of all kinds, including billing issues related to interconnection agreements. I have personal knowledge of the facts set forth below.

4. As part of my duties, and with the assistance of others in the Wholesale Markets organization at Qwest, I have reviewed information as to the types of traffic exchanged between Qwest and Level 3 Communications LLC ("Level 3") and Qwest and Pac-West Telecomm, Inc.

("Pac-West"). I have also reviewed information as to the payments that Qwest had made to Level 3 and Pac-West for Internet Service Provider ("ISP") traffic, traffic that constitutes well over 99 percent of the traffic exchanged between Qwest and Level 3 and Qwest and Pac-West.

5. As part of my duties, I also have access to the interconnection agreements that Qwest has entered with companies like Level 3 and Pac-West. I also have access to and am aware of communications between Qwest and parties to interconnection agreements.

6. Concurrent with the filing of this non-confidential Affidavit, I filed a Confidential Affidavit that contains information in the affidavit and in its three confidential exhibits that may be confidential in nature. The three exhibits were designated as Exhibits A through C. In order to avoid confusion, the non-confidential exhibits attached to this non-confidential affidavit will begin with Exhibit D.

#### **RELEVANT INTERCONNECTION AGREEMENT PROVISIONS**

7. On May 24, 2002, Qwest and Pac-West entered into an amendment to their ICA, a copy of which is attached hereto as Non-Confidential Exhibit D.

8. On October 2, 2002, Qwest and Level 3 entered into an amendment to their ICA, a copy of which is attached hereto as Non-Confidential Exhibit E.

9. On April 6, 2003, the Commission approved a new interconnection agreement between Level 3 and Qwest (signed on March 4, 2003) governing their relationship in Washington. A copy of the cover page and the page containing sections relevant to the issues in this case from that interconnection agreement are attached hereto as Non-Confidential Exhibit F.

#### **COMMUNICATIONS WITH PAC-WEST**

10. On January 27, 2005, Qwest mailed a letter to numerous CLECs who, based on Qwest's analysis of their traffic, were routing VNXX traffic and charging Qwest terminating

compensation for such traffic. A form copy of the letter is attached hereto as Non-Confidential Exhibit G. I have determined, by examining the log of CLECs to whom this letter was sent, that it was sent to Pac-West. The letter notes that Qwest has not agreed to VNXX routing and noting that Qwest was initiating a dispute with the letter's recipients, including Pac-West. To the best of my knowledge, Pac-West never responded to the letter.

11. On May 1, 2008, following a conference between representatives of Qwest and Pac-West, Qwest sent the letter attached hereto as Non-Confidential Exhibit H, wherein Qwest stated that based on oral communications between Qwest and Pac-West, Pac-West had acknowledged that all Pac-West ISP traffic originated in Qwest territory (which includes the state of Washington), was being terminated to ISPs located outside Qwest territory, and that Qwest would therefore not pay any terminating compensation on any Pac-West ISP traffic. The letter is undated, but I have confirmed by reviewing the email to which the letter was attached that it was sent to Pac-West on May 1, 2008. To the best of my knowledge, Pac-West did not respond to this letter.

DATED this \_\_\_ day of February \_\_\_, 2009

\_\_\_\_\_  
Larry B. Brotherson

Subscribed and sworn to before me this \_\_\_\_\_ day of February, 2009.

\_\_\_\_\_  
NOTARY PUBLIC

Residing at \_\_\_\_\_

My Commission expires: \_\_\_\_\_