

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

QWEST CORPORATION )  
 )  
 Complainant, ) DOCKET NO. UT-063038  
 )  
 v. )  
 )  
 LEVEL 3 COMMUNICATIONS, LLC; )  
 PAC-WEST TELECOMM, INC.; )  
 NORTHWEST TELEPHONE INC.; )  
 TCG-SEATTLE; ELECTRIC LIGHTWAVE, INC.; )  
 ADVANCED TELCOM GROUP, INC. D/B/A )  
 ESCHELON TELECOM, INC.; FOCAL )  
 COMMUNICATIONS CORPORATION; )  
 GLOBAL CROSSING LOCAL SERVICES INC; )  
 AND, MCI WORLDCOM COMMUNICATIONS, )  
 INC. )  
 )  
 Respondents. )

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**DIRECT TESTIMONY OF**  
**MARK NEINAST**  
**TCG SEATTLE**  
**February 2, 2007**

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**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Mark Neinast. My business address is 308 S. Akard Street, Room 710.A2, Dallas, Texas 75202.

**Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

A. I am employed by AT&T Operations as Area Manager-Network Regulatory.

**Q. WHAT ARE YOUR RESPONSIBILITIES AS AREA MANAGER-NETWORK REGULATORY?**

A. My primary responsibility is to represent network interests and policies on regulatory and wholesale market issues (specific to interconnection) that impact AT&T's network, including the network of AT&T's affiliate TCG Seattle. I am also responsible for representing the company's network organization in negotiations and arbitrations with other carriers throughout the United States.

**Q. PLEASE OUTLINE YOUR PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND.**

A. I have been employed by AT&T for over 30 years, primarily in the network organization. This includes seven years in non-management positions in central offices as a technician. I also spent two years as a training instructor for electronic switching systems and then four years managing technicians in central offices and a Network Operations Center ("NOC"). I also worked as a staff manager for the North Texas Network Operations Division for five years, where I supported NOC functions and managed major switching system projects, then as an Area Manager in a NOC Translations Center for over seven years, prior to moving into the regulatory organization. I have a Bachelor of Science in

1 Business Administration from the University of Texas at Dallas, with a double major of  
2 Management Information Systems and Behavioral Management.

3 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE REGULATORY**  
4 **COMMISSIONS?**

5 A. Yes, I have testified in the following various state proceedings:

- 6 • Connecticut Department of Public Utilities Control – Level 3/SNET  
7 interconnection agreement arbitration, Docket 04-06-04
- 8 • California Public Utilities Commission – Level 3/SBC interconnection  
9 agreement arbitration, California A.04-06-004
- 10 • Arkansas Public Service Commission – Level 3/SBC Arkansas  
11 interconnection agreement arbitration, Case No. 04-099-U
- 12 • Public Utilities Commission of Texas – T2A successor agreements  
13 arbitration, Docket 28821 (September, 2004)
- 14 • Arkansas Public Service Commission – TelCove/SBC Arkansas  
15 interconnection agreement arbitration, Docket No. 04-167-U
- 16 • State Corporation Commission of the State of Kansas – TelCove/SBC  
17 Kansas interconnection agreement arbitration, Docket No. 05-ABIT-  
18 507-ARB
- 19 • Public Utilities Commission of Ohio – TelCove/SBC interconnection  
20 agreement arbitration, Ohio Case No. 04-1822-TP-ARB
- 21 • Arkansas Public Service Commission – A2A successor agreements  
22 arbitration, Docket No. 05-081-U
- 23 • Corporate Commission of the State of Oklahoma – Complaint of  
24 Inventive vs. SBC Oklahoma, Cause No. PUD 200500229 (December,  
25 2005)

26  
27 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

28 A. My testimony first discusses why, given continued ambiguity and uncertainty in the  
29 industry for issues such as this Virtual NXX (VNXX) dispute, the Federal  
30 Communications Commission (FCC) is best positioned to address this issue as part of its  
31 on-going and comprehensive intercarrier compensation reform proceeding. Second, I  
32 describe the VNXX application currently used by TCG Seattle (“TCG”) in Washington,  
33 the public interests such applications support and explain my understanding that TCG’s  
34 VNXX offering is not prohibited by current numbering guidelines, Washington law, and

1 FCC rules. Third, I address why the WUTC need not disrupt the status quo of current  
2 VNXX applications by imposing a new set of rules for VNXX traffic in advance of the  
3 FCC addressing the issue in its pending comprehensive reform proceeding. Finally, if the  
4 WUTC feels compelled to take action on this issue prior to the FCC's conclusion of its  
5 pending intercarrier compensation reform proceeding, the WUTC must proceed carefully  
6 to ensure that any outcome is competitively neutral and least disruptive to consumers. In  
7 such a case, it should find that carriers in the state of Washington exchange VNXX traffic  
8 on a bill and keep basis until the FCC can resolve the issue in its pending proceeding.

9 **Q. IS THE FCC CURRENTLY CONSIDERING THE VNXX ISSUE?**

10 A. Yes. This issue is currently under review by the FCC as part of an overall intercarrier  
11 compensation matter.<sup>1</sup> It is in large part due to the complexity of the issue that the FCC  
12 has not yet reached a decision in the rulemaking. However, the FCC is considering this  
13 issue within the context of an overall structure for intercarrier compensation that would  
14 reform the complex and convoluted system that is in place today. As a result, AT&T, in  
15 connection with other industry participants, has presented the FCC with a broad proposal  
16 for intercarrier compensation reform (called the "Missoula Plan") to resolve  
17 compensation and interconnection issues like this one. Ultimately, I believe the WUTC  
18 should wait to see what happens in the FCC's rulemaking before resolving Qwest's  
19 complaint in this proceeding, which depending on the WUTC's adopted resolution, could  
20 jeopardize the ability of Washington customers to receive dial-up internet service.

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22 **Q. HAVE YOU PREVIOUSLY TESTIFIED ABOUT THE NETWORK**  
23 **ATTRIBUTES OF VNXX TRAFFIC AND COMPENSATION?**

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<sup>1</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92.

1 A. I have provided testimony in other states regarding the network routing of VNXX traffic,  
2 in which I have taken positions on routing issues that are related to the positions Qwest is  
3 advancing in this complaint.

4 **Q. GENERALLY SPEAKING, WHAT IS A VIRTUAL NXX (VNXX) OR VIRTUAL**  
5 **FOREIGN EXCHANGE (VFX) ARRANGEMENT?**

6  
7 A. Virtual foreign exchange (VNXX) is an arrangement where the telephone number  
8 provided to the end user is assigned to a rate center associated with a local calling area  
9 that is different than the local calling area in which the end user is physically located.

10 **Q. PLEASE DESCRIBE YOUR GENERAL VIEW OF THE VNXX TRAFFIC AT**  
11 **ISSUE IN THIS PROCEEDING.**

12 A. While I understand the argument that a call to an internet service provider (“ISP”) using a  
13 VNXX arrangement might be considered “interexchange” in one sense, VNXX services  
14 have been widely deployed in recent years in order to allow “local” calling for customers  
15 of dial-up internet services. The deployment of these VNXX numbers has been very  
16 beneficial for dial-up internet subscribers, yet this is a very complex and thorny issue  
17 from a public policy standpoint.

18 **Q. WHAT ARE THE PUBLIC POLICY CONCERNS REGARDING VNXX**  
19 **TRAFFIC?**

20 A. Due to the relationships created by CLECs and ISPs, VNXX traffic has evolved to  
21 provide dial-up internet service for much of rural America. This is the result of  
22 concentrating the modem equipment for ISPs in a centrally located manner, rather than  
23 distributed in every local calling area.

24 Any major change to this service as a result of this proceeding may well alter or even  
25 possibly prevent many of these customers from continuing to enjoy the internet access

1 they use today. In an age of nearly ubiquitous internet access, these customers have  
2 come to rely on such services, which is why the Washington Commission must balance  
3 the public interest with the interests of service providers if the Commission chooses to  
4 take action on this issue prior to the FCC concluding its proceeding on intercarrier  
5 compensation. As my proposal below demonstrates, an interim resolution, if necessary,  
6 can be established that balances the interests of the CLECs and ILECs.

7 **Q. DOES VNXX TRAFFIC SEEM TO BE A GROWING CONCERN?**

8 A. No, in fact due to the deployment of broadband services, such as DSL and Cable  
9 Modems, dial-up internet service has been steadily declining. Once the outside plant in  
10 rural America can be upgraded to support broadband service, which will take time,  
11 market demand will diminish the need for dial-up internet service.

12 **Q. AS AN INITIAL MATTER, SHOULD VNXX TRAFFIC BE PROHIBITED, AS**  
13 **QWEST HAS REQUESTED?**

14 A. No. Although I am not offering a legal opinion, it does not appear to me that VNXX  
15 arrangements are precluded by the Central Office Code Assignment Guidelines  
16 (“COCAG”), WAC 480-120-021, or FCC rules. I have reviewed the COCAG and find  
17 no prohibition of VNXX. While Section 2.14 of the COCAG “assumes from a wireline  
18 perspective that CO codes/blocks allocated to a wireline service provider are to be  
19 utilized to provide service to a customer’s premise physically located in the same rate  
20 center that the CO codes/blocks are assigned,” it also recognizes that “exceptions exist,  
21 for example tariffed services *such as* foreign exchange service.” (Emphasis added).  
22 Section 2.14 clearly contemplates that FX service is only one *example* of an exception,  
23 not the only exception.

1 The VNXX service provided by TCG is the functional equivalent of Qwest's foreign  
2 exchange service, as was recognized by the Arbitrator in TCG's last interconnection  
3 arbitration with Qwest. The Arbitrator recognized that Qwest's FX service and AT&T's  
4 ISP local number presence are "functionally equivalent," and lumped the two services  
5 together when discussing "exceptions" to the COCAG assumption.<sup>2</sup>

6 WAC 480-120-021 similarly does not prohibit VNXX arrangements. That section simply  
7 defines a local calling area as one within which a customer can place calls without  
8 incurring long-distance (toll) charges. That section by its terms contemplates that a local  
9 calling area could include multiple rate centers. It does not require that the calling and  
10 called parties be physically located in the local calling area. Certainly it does not  
11 definitionally require the Washington Commission to prohibit the use of VNXXs and  
12 likely shut down dial-up internet service for many customers using it.

13 Finally, I know of no FCC rule that prohibits VNXX arrangements. Indeed, the debate  
14 on this issue at the FCC has not been over whether VNXX should be allowed, but over  
15 what, if any, intercarrier compensation should apply to VNXX arrangements.<sup>3</sup>

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18 **Q. HAS THE WASHINGTON COMMISSION ADDRESSED THE VNXX ISSUE**  
19 **FOR QWEST AND TCG BEFORE?**

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<sup>2</sup> *In Re AT&T Communications of the Northwest and TCG Seattle*, UT-033035, Order No. 4, Arbitrator's Report, §32 (Dec. 1, 2003).

<sup>3</sup> The FCC, in its amicus brief filed March 13, 2006 at the First Circuit Court of Appeals, highlighted ambiguity on this issue when it stated the following: "The Court has asked us to address whether the ISP Remand Order was intended to preempt states from establishing the compensation regime that governs a call placed by an ILEC customer in one exchange to a CLEC-served ISP located in a different exchange using a VNXX number assigned to the ISP by the CLEC. The ISP Remand Order does not provide a clear answer to this question."

1 A. Yes. The VNXX issue was raised in an arbitration proceeding before this Commission  
2 involving Qwest and AT&T/TCG.<sup>4</sup> As it does in this proceeding, Qwest advocated the  
3 premise in that proceeding that “exchange service” and “local traffic” include only traffic  
4 in which the physical location of the originating and terminating callers must be in the  
5 same “local calling area.” As a consequence, Qwest contended that AT&T should be  
6 subject to access charges for VNXX calls to ISPs. AT&T, on the other hand, advocated  
7 that “exchange service” and “local traffic” should include any call in which the  
8 originating and terminating callers have the same NPA/NXX, regardless of their  
9 respective physical locations. Using that definition, AT&T argued that Qwest should pay  
10 AT&T reciprocal compensation for VNXX calls.

11 The Arbitrator did not find that either of the proposed results was appropriate. The  
12 Arbitrator observed that Qwest’s FX service and AT&T’s VNXX service for ISP-bound  
13 traffic were functionally equivalent, and that Qwest’s proposal to treat AT&T’s VNXX  
14 service as interexchange toll service subject to access charges, while not treating Qwest’s  
15 own FX service as interexchange toll traffic, was “anticompetitive and should not be  
16 allowed.”<sup>5</sup>

17 The Arbitrator, however, also found AT&T’s proposal to charge Qwest reciprocal  
18 compensation for VNXX traffic was inappropriate. The Arbitrator encouraged the parties  
19 to agree upon, and seek Commission approval of, an alternative that avoided both of

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<sup>4</sup> *In Re AT&T Communications of the Northwest and TCG Seattle*, UT-033035, Order No. 4, Arbitrator’s Report (Dec. 1, 2003).

<sup>5</sup> *Id.* at §33.



1 these results.<sup>6</sup> Interestingly, one option advanced by the Arbitrator was a bill and keep  
2 intercarrier compensation requirement.<sup>7</sup>

3 The Commission affirmed the Arbitrator's decision and "approve[d] of the Arbitrator's  
4 efforts to encourage the parties to avoid such potential disputes by further negotiation, . . .  
5 to ensure implementation of their Interconnection Agreement in a manner consistent with  
6 the procompetitive principles discussed in the Arbitrator's Report."<sup>8</sup> The Commission  
7 also acknowledged that the principles in the Arbitrator's report, including the Arbitrator's  
8 suggested options for implementation, were dicta and not binding on the Commission.<sup>9</sup>

9 **Q. HAVE OTHER STATE COMMISSIONS RULED ON THIS ISSUE?**

10 A. Yes. Several other states have reviewed this issue. One of the most comprehensive, but  
11 varied, decisions was in Texas, where the State Commission went from allowing CLECs  
12 to receive reciprocal compensation, to allowing ILECs to receive originating access, to  
13 ultimately ordering a bill and keep compensation scheme.<sup>10</sup> Similarly, the Arkansas<sup>11</sup>,  
14 Illinois<sup>12</sup>, and Missouri<sup>13</sup> Commissions have determined that bill and keep is appropriate  
15 for VNXX traffic.

16 **Q. ARE QWEST AND TCG CURRENTLY EXCHANGING VNXX TRAFFIC?**

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<sup>6</sup> Id. at §38.

<sup>7</sup> Id. at §35.

<sup>8</sup> *In Re AT&T Communications of the Northwest and TCG Seattle*, UT-033035, Order No. 5, Final Order, §16 (Feb. 6, 2004).

<sup>9</sup> Id.

<sup>10</sup> PUCT Docket 24015, Order on Clarification: "This Order clarifies the Order on Reconsideration to specify that bill and keep applies to ISP-bound FX traffic." (Jan. 4, 2005; footnote omitted).

<sup>11</sup> A2A Successor Agreement, Docket 05-081-U (Oct. 31, 2005).

<sup>12</sup> MCI Metro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., and Intermedia Communications Inc. Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket 04-0469.

<sup>13</sup> M2A Successor Agreement, Case No. TO-2005-0336 (Final Arbitrator's Report Jun. 21, 2005).

1 A. Yes. The parties are exchanging VNXX traffic via a bill and keep compensation scheme  
2 pursuant to the Qwest/TCG Seattle ICA.

3 **Q. HOW DO YOU RECOMMEND THE COMMISSION RULE IN THIS MATTER?**

4 A. If the Commission decides that it must rule at this time, it should reject Qwest's claim  
5 that VNXX arrangements should be prohibited and, instead, rule that intercarrier  
6 compensation for such traffic be made on a bill and keep basis. That resolution is  
7 balanced for Qwest and TCG and, most importantly, preserves dial-up customers' ability  
8 to access the internet.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 A. Yes.