Exhibit ___-T (JFS-1T)

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

QWEST CORPORATION, Complainant, v. LEVEL 3 COMMUNICATIONS, LLC, *et al.*, Respondents.	DOCKET NO. UT-063038

RESPONSE TESTIMONY

OF

John F. Sumpter

On Behalf of

Pac-West Telecomm, Inc.

February 2, 2007

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

A. My name is John F. Sumpter. I am Vice President Regulatory of Pac-West Telecomm, Inc. ("Pac-West"). My business address is 4210 Coronado, Stockton, California 95204.

BACKGROUND

Q. **PLEASE DESCRIBE THE PARTY ON WHOSE BEHALF YOU ARE TESTIFYING.**

A. Pac-West is a competitive local exchange company ("CLEC") that is registered with, and authorized by, the Commission to provide intraexchange and interexchange telecommunications services in Washington. Pac-West is one of the named defendants in this proceeding.

Q. **WHAT ARE YOUR RESPONSIBILITIES WITH PAC-WEST?**

A. I am responsible for Pac-West's relations with government entities including compliance with regulatory law, advocacy in policy development, negotiating and establishing interconnection agreements with other carriers and resolving disputes with other carriers through negotiation or litigation.

Q. **PLEASE DESCRIBE YOUR WORK EXPERIENCE AND EDUCATION.**

A. I have over 35 years of experience in the telecommunications industry. Prior to Pac-West, I was employed with AT&T from 1984-1999, where I held several executive level regulatory and marketing positions, including Division Manager of Law and Government Affairs, District Manager of Switched Services Product Management, and District Manager of Marketing. In 1982, I co-wrote and taught the "Cost of Service" class for the

Bell System Center & Technical Education. I currently serve as Co-Chairman of the Board of CALTEL, the California Association of Competitive Telecommunications Companies, and I am a board member of COMPTEL, the national association of competitive carriers.

I received a B.S. in Business Administration and an M.B.A. (economics and accounting) from California State University at Los Angeles. I attended the Engineering Economics Seminar at Iowa State University in 1978 and the Berkley Executive Program at the University of California in 1994.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION ("COMMISSION")?

A. Yes. I have previously testified in Washington and before the Commissions in California, Colorado, Hawaii, Mississippi, Nevada, Oregon, Tennessee, and Utah on competition policy, access rates, service prices, long-run incremental cost issues and merger conditions.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. On November 20, 2006, Qwest filed testimony in this case purporting to explain, among other things,

- How is Foreign Exchange Service ("FX service") provided by Pac-West and other CLECs?
- What is the appropriate compensation scheme for FX traffic exchanged by carriers?

- Should the provision of FX service by CLECs be prohibited?

The purpose of my testimony is to answer the very same questions.

In its testimony, Qwest takes pains to convince the Commission that when a CLEC provides FX service, that service is not FX service but rather something else called "virtual NXX" or "VNXX" service. The two services are substitutes for each other, have the same market characteristics, are differentiated for competitive advantage and clearly fit within the compensation scheme established by law. I will use the two terms (FX and VNXX) interchangeably.

Q. WOULD YOU PLEASE EXPLAIN FX SERVICE?

A. I will explain FX and VNXX service by comparing it with non-FX service. I have attached several diagrams to my testimony that I will use describe and illustrate the nature of FX service.

In Attachment JFS-2, a local calling area is comprised of two rate centers "A" and "B." Each rate center is served by a different local exchange carrier ("LEC"). The time frame is set after the 1984 divestiture of the Bell System but before the effective date of the Telecommunications Act of 1996 ("96 Act" or "Act"). The historical time frame of the example is relevant for two reasons. First, the compensation scheme established in the 96

Act relies on the nature of compensation schemes prior to the effective date of the 96 Act. The second reason is that the access charge regime and equal access conditions were implemented after the 1984 divestiture. Both are relevant to a determination of the proper compensation scheme for any traffic exchanged between two carriers. It is also important for this example to include two Incumbent LECs ("ILECs") to show how compensation was applied to traffic exchanged between two carriers prior to the effective date of the Act. Qwest's testimony simply ignores the pre-Act compensation scheme applied to FX traffic exchanged between two ILECs. This is a fatal flaw in Qwest's testimony.

In attachment JFS-2, each ILEC serves customers physically located in its rate center. The two ILECs are interconnected (the red line) so that they may exchange traffic but they do not compete with each other. Each rate center has blocks of 10,000 telephone numbers (with the form NPA-NXX) assigned to it. The ILECs generally assign a telephone number to a customer so that the physical location of the customer is in the same rate center as the telephone number. There are exceptions to this practice, notably FX service.

Attachment JFS-3 shows the impact of one of the ILECs providing traditional FX service. A customer that is located physically outside rate center "A" requests a telephone number from that rate center. The ILEC installs a "long loop" using its private line service and thus connects the FX customer to the network. When the FX customer calls any of the other customers, the ILEC bills the FX customer local rates for the calls. When any of the other customers call the FX customer, those calls are also billed as local calls. If there were other FX customers with telephone numbers assigned to rate center "A" or "B," then calls between those customers and the rest of the customers would be treated as local calls.

The crucial point is that the two ILECs exchange locally dialed traffic between customers that are not physically located in the same local calling area. Yet the ILECs do not bill each other access charges for any calls exchanged between the customers in this example. That includes the FX customer. If the FX customer was served with a telephone number from that customer's "native" rate center, a call between that customer and any of the other customers in rate center "A" or "B" would be a toll call. For the FX customer, FX service is a substitute for toll service.

In Attachment JFS-4, Pac-West enters the market. Pac-West's switch may not be physically located in rate center "A" or "B" (it is, of course, in some rate center). Pac-West establishes interconnection with one of the incumbents (indicated by a blue line – typically, interconnection is established with the ILEC with a tandem switch serving the local calling area). The cost of the interconnection is shared by the two parties pursuant to the terms of the interconnection agreement ("ICA") between the parties. In this example, the first customer served by Pac-West is physically located in rate center "A" and is assigned a telephone number from an NPA-NXX assigned to rate center "A." Calls between Pac-West's customer and the existing ILEC customers, including the FX customer, are all local calls. Qwest claims that it will pay reciprocal compensation for local calls to Pac-West's customer. *Qwest charges Pac-West and Pac-West pays reciprocal compensation for calls made by Pac-West's customer to Qwest's FX customer.*

In Attachment JFS-5, Pac-West competes for the FX customer and wins that customer away from Qwest. Qwest disconnects the private line it was selling the FX customer. The customer's number is ported to Pac-West's switch. Pac-West installs a replacing loop to the customer's location. From the customer's point of view, it is receiving the exact same service, but from a different vendor and probably at a lower price.

Attachment JFS-6 simply shows the expansion of Pac-West's FX service. Some of Pac-West's customers are taken from Qwest (or the other ILEC), some are new to the market – but if Pac-West were absent, they would be ILEC customers.

Q. ARE THERE SIMILARITIES OR DIFFERENCES BETWEEN THE FX SERVICE PROVIDED BY QWEST AND PAC-WEST?

A. There are both similarities and differences, just as there are similarities and differences between mid-sized sedans sold by Ford and Toyota. The differences serve to distinguish how Pac-West physically provisions the service from how Qwest provides the service on its network. The similarities demonstrate that the services are competitive substitutes.

Attachment JFS-7 is a table of similarities and differences. The table demonstrates that the service provided by Pac-West is essentially identical to the service provided by Qwest. Both services provide a foreign exchange number, both services allow a customer to be physically located where the customer desires yet be a part of the community of interest represented by the local calling area. Both services allow the FX customer to receive and make locally-dialed calls with other customers that are physically located in the local calling area.

There are four noticeable differences between Pac-West's service and Qwest's service. First, the vendor is different. Either Pac-West or Qwest provides the service. If Pac-West is the vendor, the FX customer pays Pac-West for the service and does not pay Qwest. Second, because Pac-West's network architecture is different than Qwest's, Pac-West serves many rate centers with one switch. Third, the price charged by Pac-West is likely lower than the price charged by Qwest. Fourth, Pac-West will allow the customer to obtain its long-loop from a third party carrier – in effect unbundling the loop/transport from the rest of the FX service.

Q. DOES QWEST, IN ITS TESTIMONY, ADDRESS ALL THE SIMILARITIES AND DIFFERENCES THAT YOU'VE IDENTIFIED?

A. No. In Mr. Brotherson's testimony at page 38, he presents a table with only three rows, all alleged differences. I'll address each of Qwest's three issues in turn.

The first item in Mr. Brotherson's table is labeled "Local Origination Costs." He claims, "The CLEC pays nothing to compensate Qwest for the use of Qwest's local network," while "The Qwest FX customer buys local exchange service at tariffed rates." Mr. Brotherson is improperly comparing what a *CLEC* pays Qwest when the CLEC is providing FX service with what the *retail customer* pays Qwest when Qwest is providing such service. Such a comparison is meaningless.

Properly comparing "apples to apples," the CLEC's customer pays the CLEC for the network facilities that the CLEC uses to provide the FX service, just as Qwest's customer pays Qwest for the "loops, switches, etc." that Qwest uses to provide FX service. Accordingly, *neither the CLEC nor Qwest pay each other for the network facilities specifically used by the other carrier to provide FX service to their customers*. If the CLEC's customer originates a call to a Qwest customer – whether or not the Qwest customer has FX service – the CLEC incurs the cost of delivering that call to Qwest and expects to recover that cost through its retail rates, including the payment of reciprocal compensation to Qwest. The same is true if a Qwest customer originates a call to a

CLEC customer, regardless of whether that CLEC customer obtains FX service. Qwest is responsible for the costs of originating that call and recovers those costs from its customer. That's the way the industry has worked for a century. The calling party pays.

The second issue identified by Mr. Brotherson is transport cost. Again, Mr. Brotherson inappropriately compares what a CLEC pays Qwest with what Qwest's retail customer pays Qwest. Properly comparing what retail customers pay to their FX service provider, as shown in Attachment JFS-7, if the FX customer is Pac-West's customer, then the customer will pay Pac-West (or a third party if the customer desires) for the transport from Pac-West's switch to the customer location, just as the Qwest FX customer pays Qwest for private line transport. The carriers, on the other hand, do not compensate each other for providing transport from their respective switches to their customers' locations. Rather, they are responsible for compensating each other for the interconnection facilities between their respective switches over which traffic between their customers is exchanged, regardless of whether those customers subscribe to FX service. Both carriers' obligations are identical.

The third issue raised by Qwest deals with what Mr. Brotherson calls "Termination Costs." Once again, Qwest is confusing intercarrier compensation with retail rates. A CLEC FX customer does not pay reciprocal compensation any more than a Qwest FX customer. The customers pay only the FX service rates charged by their providers. With respect to intercarrier compensation, calls to FX customers are treated the same as calls to any other customer with a telephone number assigned to the same local calling area. If a CLEC customer places a call to a Qwest FX customer and the telephone numbers are rated to the same local calling area, the CLEC pays Qwest reciprocal compensation for that call. The reverse is equally true. And if the CLEC's FX customer is an Internet Service Provider ("ISP"), Qwest pays the CLEC the $0.0007 per minute of use rate established by the FCC and incorporated into the Parties' interconnection agreement. Again, both carriers' obligations are exactly the same.

Q. MR. BROTHERSON QUOTES DEFINITIONS OF VNXX BY THIS COMMISSION AND BY THE FCC. DO YOU AGREE WITH THOSE DEFINITIONS?

A. Yes, because the definitions cover both FX and VNXX service. This Commission said that "'VNXX' or 'Virtual NXX' refers to carriers acquisition of a telephone for one local calling area that is used in another geographic area. The call appears to be local based on the telephone number." The FCC's definition is essentially the same. That is an accurate definition of FX service. FX and VNXX services are the same service.

Previously I described some differences between FX and VNXX service, but noted that the differences were not of a nature to categorize FX and VNXX as *different* services. The Commission and the FCC apparently agree, as they did not rely on any of the differences when establishing these definitions. The aspects of FX and VNXX that are the same are precisely the basis for both definitions.

Q. MR. BROTHERSON CLAIMS THAT HIS DEFINITION OF VNXX IS COMPLETELY CONSISTENT WITH THE DEFINITIONS PROVIDED BY BOTH COMMISSIONS. IS THAT CORRECT?

A. No, it is a serious mischaracterization. The Commission and FCC definitions describe a service that can be provided by any carrier. In fact, this Commission's definition uses the term "carrier's" without further limitation. According to the Commission and the FCC, any LEC can provide FX/VNXX service. In contrast, Mr. Brotherson's definition explicitly and arbitrarily limits VNXX service to CLECs. In Mr. Brotherson's mind, if FX service is provided by a CLEC then it is VNXX service. The difference is based on the carrier providing the service, not the underlying characteristic of the service. That is a significant difference between Mr. Brotherson's arbitrary self-serving definition and the non-discriminatory definitions provided by this Commission and the FCC.

Q. DO YOU AGREE WITH QWEST'S USE OF THE TERMS "LOCAL," "INTEREXCHANGE," AND "LONG DISTANCE"?

A. No. Qwest attempts to continue the great canard that the distinction between local and long distance is the basis for applying either reciprocal compensation or access charges to a call. That is not true. The basis for the assignment of the proper compensation scheme is laid out in two sections of the 96 Act, Sections 251(b)(5) and 251(g). Neither section uses or relies on those terms.

Q. WHAT IS THE BASIS FOR DETERMINING WHEN TRAFFIC IS SUBJECT TO RECIPROCAL COMPENSATION OR ACCESS CHARGES?

A. The basis for making that determination is contained in the 96 Act – and with respect to ISP-bound traffic, the FCC's *ISP Remand Order*,[1] and the D.C. Circuit's decision on appeal of that order.[2] None of these authorities rely on the terms "local," "interexchange," or "long distance" for the purpose of distinguishing between access charges and reciprocal compensation.

The proper analysis starts with the standards in the 96 Act, which Qwest's witnesses simply ignore. Section 251(b)(5) states that carriers have an obligation to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." In the ISP Remand Order, the FCC found that

> Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of all telecommunications traffic, -- i.e., whenever a local exchange carrier exchanges telecommunications traffic with another carrier. Farther down in section 251, however, Congress explicitly exempts certain telecommunications services from the reciprocal

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[1] *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 F.C.C. Rcd. 9151, 2001 WL 455869 (Apr. 27, 2001).

[2] *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

compensation obligations.[3]

The Act does not reference local, toll or any other categorization for the applicability of reciprocal compensation. But the FCC goes on to note that there is a limitation on reciprocal compensation contained in Section 251(g) of the Act.

Q. MR. BROTHERSON CLAIMS THAT SECTION 251(G) OF THE ACT APPLIES TO LONG DISTANCE TRAFFIC. IS THAT CORRECT?

A. Some long distance traffic might be subsumed in the traffic covered by 251(g), but not *because* it is long distance traffic. Long distance is not the basis for inclusion in 251(g). That section of the Act is a temporary limited carve out of traffic from 251(b)(5). The requirements for the carve-out are very specific. For traffic to be deemed 251(g) it must have the following characteristics:

- each local exchange carrier, to the extent that it provides wireline services,
- shall provide exchange access, information access, and exchange services for such access
- to interexchange carriers and information service providers
- in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation)
- that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996

[3] *ISP Remand Order*, paragraph 32.

- under any court order, consent decree, or regulation, order, or policy of the Commission,
- until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.

To categorize traffic as 251(g) and apply access charges, such traffic must meet these seven standards.

Q. DOES LOCALLY DIALED FX OR VNXX TRAFFIC MEET THESE STANDARDS?

A. No, and for that reason, locally dialed FX/VNXX traffic is subject to Section 251(b)(5) reciprocal compensation obligations.

Q. WHY DOESN'T LOCALLY DIALED FX/VNXX TRAFFIC FALL UNDER SECTION 251(G) IF IT IS PROPERLY DESCRIBED AS "LONG DISTANCE" OR "INTEREXCHANGE?"

A. The proper questions are:

- Is the traffic exchanged by a LEC with another LEC or with an IXC?
- Did the same traffic, exchanged with an IXC, exist prior to the effective date of the 96 Act?
- If the traffic meets the two requirements above, was the traffic subject to equal access and non-discriminatory interconnection obligations (including compensation obligations) that existed prior to the Act?
- Were those obligations the result of a court order or a decision of the FCC?

Simply calling such traffic "interexchange" doesn't demonstrate that the traffic meets the requirements of Section 251(g). In order for traffic to qualify for 251(g), the answers to the four questions above must be

- The traffic is exchanged with an IXC
- Yes, the traffic existed prior to 1996
- Yes, the traffic was subject to equal access obligations
- Yes, the obligations were the result of an FCC decision or court order

According to Mr. Brotherson, VNXX traffic is different than FX service because it is only provided by CLECs. If that were true, such traffic did not exist prior to the effective date of the Act since CLECs are a creation of the Act. Under those conditions, VNXX cannot qualify as 251(g) because traffic subject to 251(g) must have been exchanged by the LEC with an IXC prior to the Act. There were no CLECs prior to the effective date of the Act. If VNXX and FX service is the same (as it is), then locally-dialed FX traffic did exist prior to the Act and was exchanged by LECs prior to the Act – but as explained above, the LECs did not charge each other access charges for locally-dialed FX traffic prior to the Act.

Locally-dialed FX/VNXX traffic fails to meet the 251(g) test because it is not subject to pre-Act equal access obligations and it is not exchanged by a LEC with an IXC, it is exchanged with another LEC. Locally-dialed FX/VNXX traffic is subject to 251(b)(5) reciprocal compensation obligations.

Q. WHAT ABOUT TOLL-DIALED CALLS FROM AND TO AN FX CUSTOMER?

A. Such traffic did exist before the Act. Such traffic is subject to equal access obligations. Such traffic is exchanged with an IXC. Such traffic is now subject to access charges. It's that simple.

Q. HOW DOES THE FCC'S *ISP REMAND ORDER* WORK WITH THE RELEVANT SECTIONS OF THE 96 ACT?

A. Once the locally-dialed and toll-dialed traffic is identified, the locally-dialed traffic is included in the FCC's ISP rate plan, along with all 251(b)(5) traffic. That plan operates as follows:

- If the ILEC has not made the mirroring offer, all 251(b)(5) traffic exchanged between the ILEC and CLEC is subject to the state approved reciprocal compensation rate.
- If the ILEC has made the mirroring offer, then the CLEC may accept or reject the offer.
- If the CLEC accepts the offer, then the ILEC and CLEC will exchange all 251(b)(5) traffic at the FCC rate, currently $0.0007.
- If the CLEC rejects the mirroring offer, then the carriers will apply the 3:1 ratio process to identify "presumed ISP bound" traffic. That traffic will be billed at the

FCC rate. All other 251(b)(5) traffic will be billed at the state approved reciprocal compensation rate.

Q. DR. FITZSIMMONS DISCUSSES COST CAUSATION. HOW IS THAT RELEVANT TO DETERMINING THE PROPER COMPENSATION SCHEME FOR FX TRAFFIC?

A. The intercarrier compensation scheme for the industry is based on the concept of "calling party pays" for the call. This concept is based on cost causation. The costs of a call do not occur unless a customer decides to make a call. It is true that both customers on a call receive benefit for the call, but only one of the customers made the decision to initiate the call. It is that decision that creates the cost. That's why the calling party pays. Even for 8YY traffic, the calling party is the cost causer. But in that case, the called party has agreed in advance to pay for the calls received, in effect subsidizing the calling party.

Dr. Fitzsimmons' testimony is correct up to line 18 on page 3. Up to that point, his general discussion of the importance of aligning cost causation with customer payment is correct. However, at that point he forgets that the calling customer is the cost causer and reverses the universe by claiming that ISPs are cost causers when they receive calls.[4] Even though the calling customer has a relationship with the ISP, it is still true that the costs of a call to the ISP will not be incurred unless the calling party decides to make the call.

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[4] Fitzsimmons Direct at 9, line 8.

Q. DR. FITZSIMMONS CLAIMS THAT THE CLEC IS ACTING AS AN IXC WHEN IT PROVIDES SERVICE TO AN ISP. IS THAT CORRECT?

A. No. In fact, the D.C. Circuit explicitly found that when a LEC exchanges a call with a CLEC and the call is delivered to an ISP, no IXC is involved.[5] Dr. Fitzsimmons does not discuss the requirements of Section 251(g) as described above, and simply ignores the presence or absence of equal access as a necessary component of 251(g). Unless he claims that the terms of the Act are trumped by his economic analysis, Dr. Fitzsimmons' testimony is irrelevant to determining what compensation scheme applies to any set of traffic.

Q. DR. FITZSIMMONS CLAIMS THAT QWEST IS NOT THE COST CAUSER. DO YOU AGREE?

A. Actually, yes. Neither Qwest nor Pac-West is the cost causer. The costs of service are caused by customer demand. The calling party is "demanding" the call and is the cost causer. But I disagree with his subsequent claim that the ISP on the receiving end of a call is the cost causer. Dr. Fitzsimmons' analysis would, if accepted, justify declaring all businesses "cost causers" for the calls they receive, which is fundamentally at odds with how costs are considered to be caused and how rates have been established accordingly.

Q. DO YOU HAVE ANY COMMENTS REGARDING MR. LINSE'S TESTIMONY?

A. Mr. Linse discusses his belief as to the nature of local traffic, and the supposed

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[5] *WorldCom, Inc. v. FCC*, 288 F.3d 429, 434 (D.C. Cir. 2002) ("LECs' services to other LECs, even if en route to an ISP, are not 'to' either an IXC or to an ISP").

inappropriateness of VNXX traffic. The relevant Sections of the Act do not rely on the local/non-local distinction to determine the appropriate compensation scheme. The FCC itself made a rare admission of error in the ISP Remand order when it said:

> Upon further review, we find that the Commission erred in focusing on the nature of the service (i.e., local or long distance) and in stating that there were only two forms of telecommunications services -- telephone exchange service and exchange access -- for purposes of interpreting the relevant scope of section 251(b)(5).[6]

As a result, Mr. Linse's testimony is irrelevant as to the proper compensation scheme.

Q. DO YOU HAVE ANY RESPONSE TO COMMISSION STAFF'S TESTIMONY?

A. In his direct testimony, Mr. Williamson, like Mr. Brotherson, distinguishes FX service provided by ILECs from "VNXX" service provided by CLECs based on how the services are physically provisioned. Mr. Williamson has clarified in response to subsequent discovery requests that Staff takes the position that a CLEC's provision of FX service is permissible if the CLEC FX customer, like an ILEC FX customer, pays for a dedicated connection to the local calling area to which its telephone number is rated, or the CLEC otherwise establishes a "physical presence" in that local calling area. Staff apparently is concerned that Qwest is somehow required to incur costs to deliver calls from its customers to CLEC FX customers that CLECs do not incur when delivering calls to ILEC customers. This concern is misplaced.

As an initial matter, I have already explained that how the FX service provider provisions – or what the customer pays – for that service provides no legitimate basis for distinguishing between ILEC and CLEC FX service. More specifically, however, CLECs incur the same costs to deliver traffic to ILECs for termination to their FX customers as ILECs incur to deliver traffic to CLEC FX customers.

By way of example, assume both Qwest and a CLEC have customers who are physically located in Olympia, but the CLEC has deployed a single switch in Seattle to serve all of its Washington customers. Calls between the Qwest and CLEC customers in Olympia would be exchanged over interconnection facilities between the CLEC switch in Seattle and the Qwest switch in Olympia. Assume that one of the Qwest customers moves to Seattle but decides to keep its Olympia phone number by obtaining FX service from Qwest. Calls between the CLEC's Olympia customers and the Qwest FX customer would continue to be routed over the Olympia-Seattle interconnection facilities, just as they were before. Neither carrier's costs have increased to exchange the traffic – they are exactly the same – and the customer compensates Qwest for the additional costs incurred

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[6] *ISP Remand Order*, paragraph 26.

to provide the FX service. The same result occurs if the customer moving to Seattle obtains FX service from Pac-West. Qwest's costs to deliver the Olympia locally dialed traffic to Pac-West for termination are exactly the same, making the actual physical location of the customer irrelevant.

As a practical matter, moreover, that is how Pac-West interconnects with Qwest in Washington. Pac-West has established local interconnection facilities between its switch and almost all Qwest switches serving local calling areas in which Pac-West has assigned telephone numbers to its customers. Whether or not the customer is physically located within that local calling area has no bearing whatsoever on the costs that Qwest incurs to deliver traffic from its customers in those local calling areas to the single Pac-West switch for termination to its customers. As Pac-West understands Commission Staff's testimony, therefore, Pac-West's FX service complies with applicable Washington requirements.

Q. DOES FX/VNXX SERVICE VIOLATE ANY STATUTE, COMMISSION RULE OR INDUSTRY STANDARD?

A. No. Qwest claims that FX service, when provided by a CLEC, violates some rule or statute or industry practice.[7] However, there is no citation to a specific state statute that would prohibit this service. With regard to industry numbering guidelines, they explicitly

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[7] Brotherson Direct at 2, line13; Linse Direct at 14, line 17.

allow for FX service. I am unaware of any statute, Commission rule or industry guideline that would prohibit such service. Calling the service "VNXX," rather than "FX" does not change that analysis.

Q. DOES CLEC PROVISION OF FX/VNXX SERVICE PROVIDE AN UNFAIR ADVANTAGE TO CLECS?

A. Mr. Brotherson claims that CLECs are ignoring some rules to their advantage. The same rules apply to all carriers. If a CLEC provides a service that meets the test in Section 251(g), then access charges will apply to that service. The same rules apply to Qwest. There is nothing that prevents Qwest from providing FX service on a competitive basis by matching CLEC pricing and service characteristics. However, it seems Qwest would rather find a way to "outlaw" a CLEC service than simply compete for the customer by lowering prices and improving service.

Q. IS THERE A COMPETITIVE IMPACT CAUSED BY PAC-WEST'S PROVISION OF FX/VNXX SERVICE?

A. Yes there is. For every FX customer served by Pac-West, Qwest has one less customer, one less private line to bill for. Qwest's complaint is really about competitive loss.

Q. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?

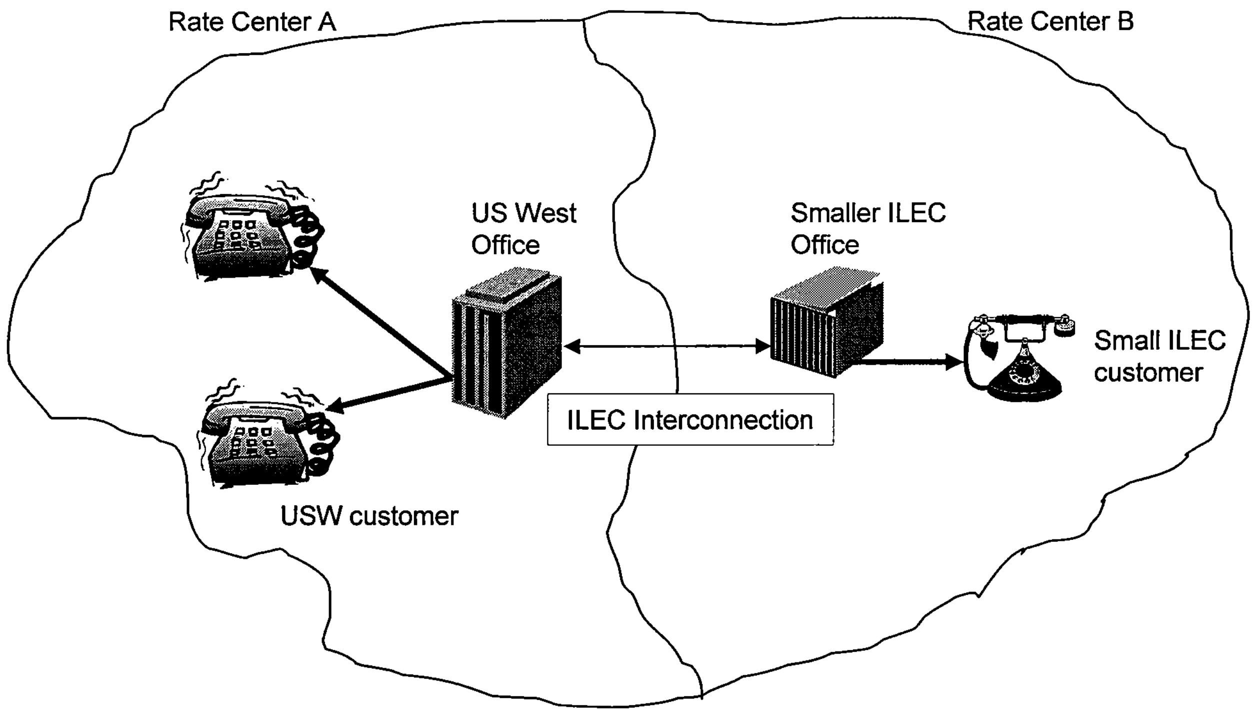
A. What Qwest calls VNXX service is nothing other than FX service provided by a CLEC. Such service is not in violation of any statute, rule or standard unless the ILECs' FX service is similarly defective. The locally-dialed traffic exchanged between LECs is subject to 251(b)(5) reciprocal compensation obligations, because such traffic does not meet the requirements of 251(g). All of the other issues raised by Qwest are irrelevant and serve only to confuse the issues presented to the Commission.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

Comparison of FX and VNXX services

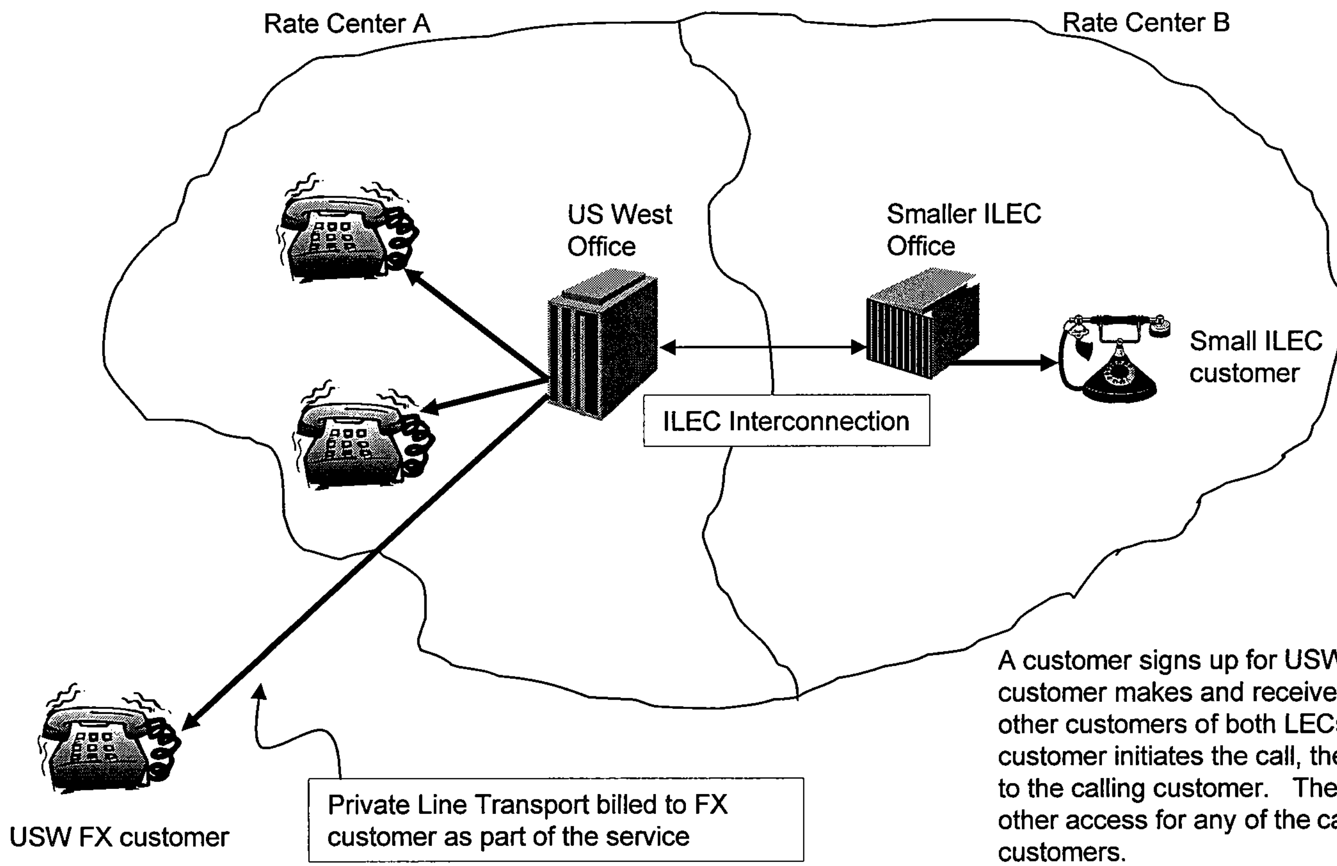
A single local calling area in **1985** comprised of two rate centers, each served by a different ILEC



If the USW customer calls the small ILEC customer, the call is rated as local to the calling customer. Neither of the LECs bills the other for access

Comparison of FX and VNXX services

A single local calling area in **1985** comprised of two rate centers, each served by a different ILEC

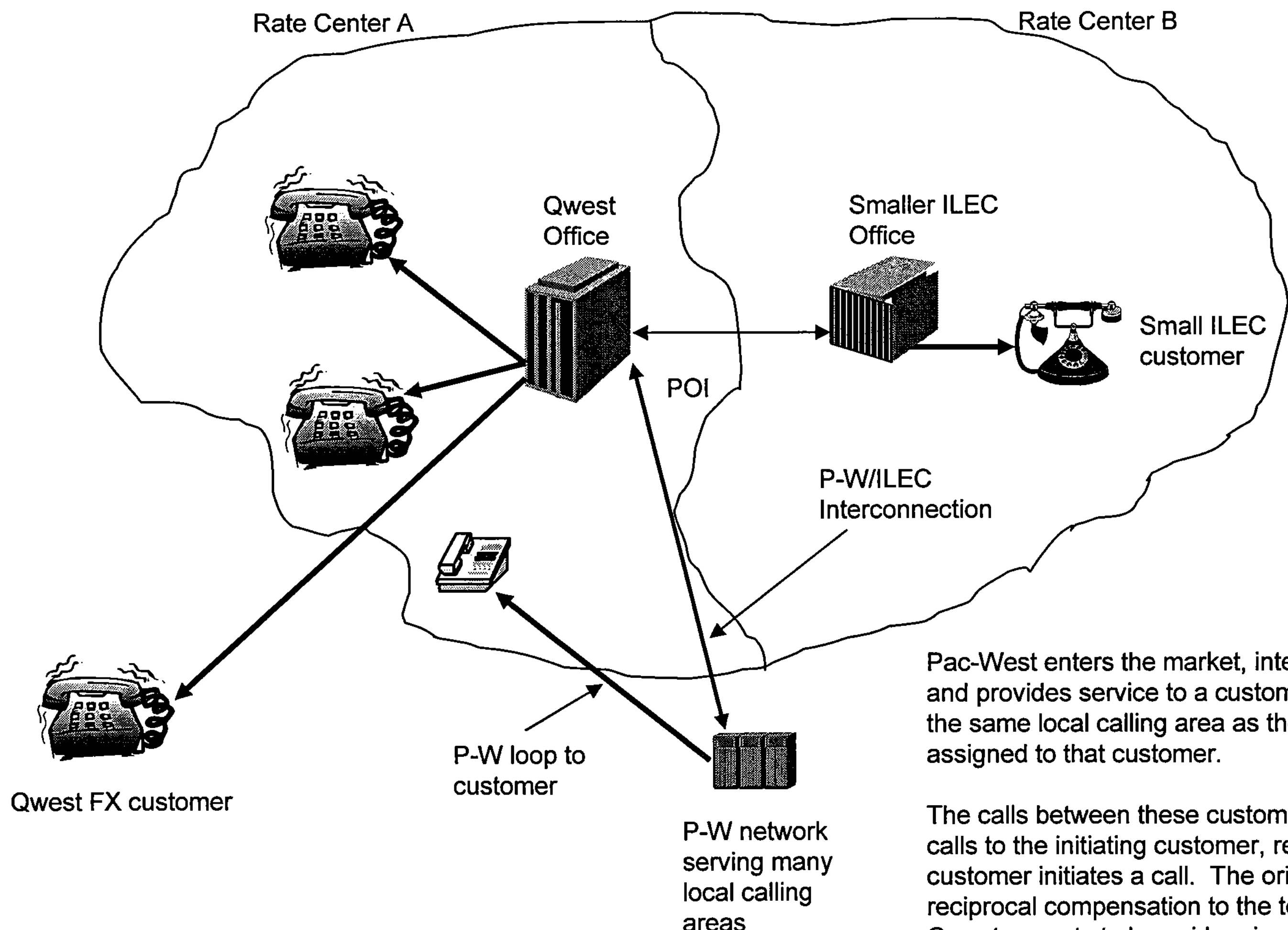


A customer signs up for USW FX service. The new customer makes and receives "locally dialed calls" to the other customers of both LECs. Regardless of which customer initiates the call, the call is rated as a local call to the calling customer. The LECs do not bill each other access for any of the calls between these customers.

But for the ILEC FX service, the calls between the FX customer and the other customers would be toll calls. Access charges would apply.

Comparison of FX and VNXX services

The same local calling area after **1996** served by two ILECs and Pac-West. US West is now Qwest

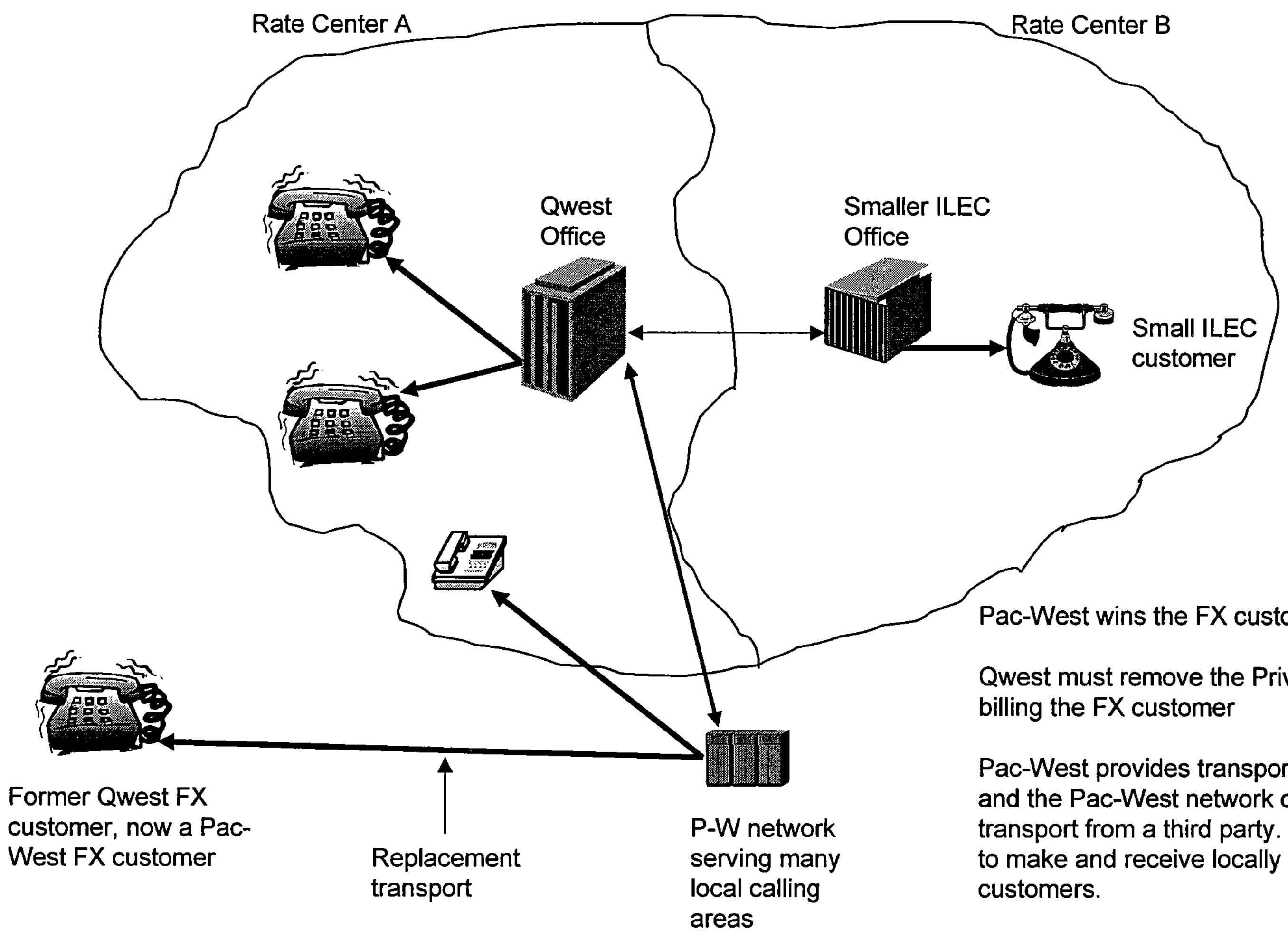


Pac-West enters the market, interconnects with Qwest and provides service to a customer physically located in the same local calling area as the telephone number assigned to that customer.

The calls between these customers are rated as local calls to the initiating customer, regardless of which customer initiates a call. The originating carrier pays reciprocal compensation to the terminating carrier. Qwest expects to be paid reciprocal compensation for locally-dialed calls delivered to its FX customer

Comparison of FX and VNXX services

The same local calling area after **1996** served by two ILECs and Pac-West. US West is now Qwest



Pac-West wins the FX customer away from Qwest.

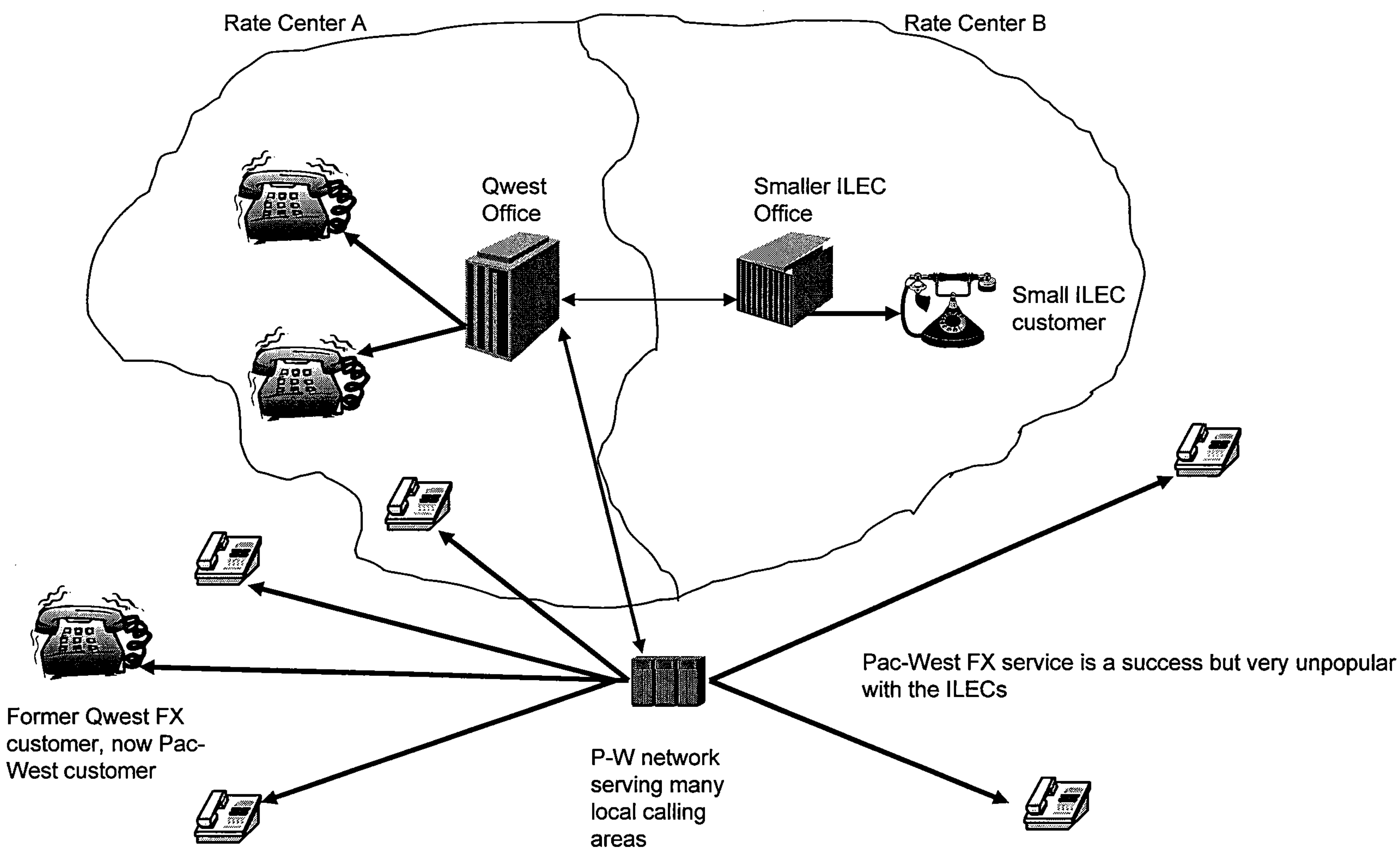
Qwest must remove the Private Line transport and stop billing the FX customer

Pac-West provides transport between the FX customer and the Pac-West network or the customer obtains transport from a third party. The FX customer continues to make and receive locally dialed calls with the other customers.

The ILECs pretend Pac-West's service is not FX service and call it "VNXX." The ILECs dispute any reciprocal compensation payment to Pac-West for VNXX calls

Comparison of FX and VNXX services

The same local calling area in **2007** served by two ILECs and Pac-West



Attachment JFS 7

COMPARISON OF PAC-WEST'S FX SERVICE TO QWEST'S FX SERVICE

	Characteristic	Pac-West Service	Qwest Service
1	Does the service include a transport connection between the customer's location and the carrier's network (that is, the carrier providing the FX service)?	YES – but it can be unbundled and purchased by the customer from a 3d party if the customer desires.	YES
2	Does the customer pay its carrier for the transport?	YES – if the customer obtains its transport from Pac-West	YES
3	Can the customer make "locally-dialed" calls to other customers?	YES	YES
4	Can the customer make "toll-dialed" calls to other customers?	YES	YES
5	Are toll-dialed calls subject to equal access requirements	YES	YES
6	Are locally-dialed calls subject to equal access requirements	NO	NO
7	Is 8YY dialing required to call the customer	NO[1]	NO
8	Is the vendor's switch located in the same physical rate center as the NPA-NXX served by that switch?	Not necessarily	?
9	Are locally-dialed FX calls exchanged over the same interconnection facilities as locally-dialed non-FX calls?	YES	YES
10	Are the interconnection costs different for locally-dialed FX calls compared to locally-dialed non-FX calls	NO	NO

[1] The customer may optionally purchase 8YY service from a carrier and direct the calls to the FX number, but the 8YY service is separate from the FX service. Pac-West ssumes the same is true for Qwest's 8YY service.

CERTIFICATE OF SERVICE
Docket No. UT-063038

I hereby certify that on the date given below the original and 7 true and correct copies of Response Testimony of John F. Sumpter was sent via email and overnight (Monday) delivery to:

Ms. Carole J. Washburn, Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250
E-mail: records@wutc.wa.gov

On the same date, true and correct copies were sent by regular U.S. Mail, postage prepaid, and by email to interested parties listed below:

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DATED February 2, 2007.

By: Mary A. Scarsorie
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