

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

QWEST CORPORATION,

Complainant,

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

DOCKET NO. UT-063038

RESPONSE TESTIMONY
OF LARRY B. BROTHERRSON
ON BEHALF OF
QWEST CORPORATION

FEBRUARY 2, 2007

TABLE OF CONTENTS

	<u>Page</u>
I..... IDENTIFICATION OF WITNESS	1
II. PURPOSE OF TESTIMONY	1
III..... BREAKDOWN OF BROADWING CLAIM SUBPARTS.....	2
IV. DISPUTED VOLUMES OF LOCAL CALLS.....	5
V..... UNIVERSAL SERVICE FUND DISPUTE	11
VI. PRE CORE FORBEARANCE BILLING DISPUTE	12
VII..... POST CORE FOBEARANCE DISPUTE.....	21
VIII. VNXX DISPUTE	22
IX. ACCESS CHARGE DISPUTE	26

1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION**
3 **WITH QWEST.**

4 A. My name is Larry B. Brotherson. I am employed by Qwest Corporation (“Qwest”)
5 as a Director Wholesale Advocacy in the Wholesale Markets organization. My
6 business address is 1801 California Street, Room 2350, Denver, Colorado, 80202.
7 My background and qualifications are set forth in my Direct Testimony dated
8 November 20, 2006.

9
10 **II. PURPOSE OF TESTIMONY**

11 **Q. WHAT IS THE PURPOSE OF YOUR RESPONSE TESTIMONY?**

12 A. The purpose of my response testimony is to address the counterclaims filed by
13 Broadwing Communications, LLC (hereafter Broadwing) and Global Crossing in
14 this proceeding from both a factual and a policy perspective.

15
16 **Q. WHAT IS THE AMOUNT OF THE COUNTERCLAIM FILED BY GLOBAL**
17 **CROSSING?**

18 A. While Global Crossing asserted a counterclaim, it provided no information as to the
19 amounts claimed, or any other specific information related to the claim. In
20 addition, Global Crossing filed no testimony in support of its counterclaim. As a
21 result, Qwest is unable to respond to the Global Crossing counterclaim.

22
23 **Q. WHAT IS THE AMOUNT OF THE COUNTERCLAIM FILED BY**
24 **BROADWING?**

1 A. Broadwing filed a counterclaim in the amount of \$1,235,368.54 based on
2 Broadwing bills through October 28, 2006 for traffic exchanged in Washington
3 between Qwest and Broadwing. (McNeil Direct Testimony, page 8, lines 12-13).
4

5 **Q. DOES QWEST DISPUTE THE BROADWING COUNTERCLAIM?**

6 A. Yes. The counterclaim is comprised of several different components. Qwest's
7 basis for challenging the Broadwing counterclaim varies for each of the
8 components.
9

10 **III. BREAKDOWN OF BROADWING CLAIMS**

11 **Q. PLEASE COMMENT ON BROADWING'S COUNTERCLAIM AND THE**
12 **DISPUTED AMOUNTS IDENTIFIED WITHIN THE CLAIM?**

13 A. It has been difficult for Qwest to do a meaningful analysis of the total amount
14 claimed in Broadwing's counterclaim because Broadwing's testimony does not
15 provide sufficient detail for Qwest to determine all of the components of
16 Broadwing's \$1,235,368.54 claim. Broadwing's numbers have not been explained
17 in any detail and the dollar amounts do not match Qwest records. Therefore, the
18 Commission should, instead of focusing on the total \$1.235 million claim, give its
19 attention to each individual amount in the dispute as described hereafter, and the
20 resolution of the dispute should produce the correct result. In other words, the
21 Commission should address these issues from the bottom up, giving its attention to
22 the individual issues rather than relying on a total number that has not been justified.
23

24 **Q. BROADWING ALSO IDENTIFIED INTEREST CHARGES FOR THE**

1 **UNPAID AND DISPUTED CHARGES IDENTIFIED IN ITS COUNTER-**
2 **CLAIM. HOW WERE THOSE INTEREST CHARGES CALCULATED?**

3 A. Broadwing provided no supporting detail on how it calculated its interest charges
4 on the unpaid and disputed charges. Broadwing claims \$122,507.79 in interest, yet
5 provides no detail on whether these charges were associated with the dispute
6 regarding local traffic, access service, or VNXX—if interest has been charged on
7 all elements of Broadwing’s claim, Broadwing provides no information as to how it
8 has pro-rated its interest claim. Given that Broadwing has provided no information
9 as to interest rates and the application of those interest rates to principal amounts it
10 claims is owed, or any other specific information on the calculation of interest
11 charges, it is impossible for me to determine how much of this interest applies to
12 each disputed area.

13
14 **Q. BASED ON YOUR ANALYSIS, PLEASE DESCRIBE THE VARIOUS**
15 **COMPONENTS OF THE BROADWING COUNTERCLAIM AND THE**
16 **DISPUTED AMOUNTS ASSOCIATED WITH EACH PART.**

17 A. The claim can be first divided into three main categories. These categories are:

- 18 1) Local/Reciprocal Compensation disputes: \$817,654.80.
19 2) Intrastate Access Charge dispute: \$216,384.71.
20 3) Interest on the unpaid and disputed charges: \$122,507.79.

21 Thus, rather than the \$1.235 million claimed by Mr. McNeil, Qwest’s analysis
22 indicates that a more correct number for the amount really in dispute is about
23 \$1.157 million.

1 **Q. CAN THE \$817,654.80 DISPUTE OVER LOCAL CHARGES BE**
2 **SEPARATED FURTHER?**

3 A. Yes. There are several subparts to the local charges dispute:

4 1) Local Minute of Use (“MOU”) volume dispute: \$ 60,773.04. Qwest has
5 paid Broadwing terminating compensation at the voice rate for a certain
6 volume of calls. Broadwing has billed Qwest terminating compensation at the
7 voice rate for a different volume of calls. The difference between the volumes
8 Broadwing claims Qwest owes and the amount Qwest records show that
9 Qwest owes is \$60,773.04.

10 2) Universal Service Fund (“USF”) dispute. Qwest does not believe that
11 there is a USF dispute and that Qwest has paid outstanding USF charges.
12 There is no detail provided in the summary bill for \$1,235,368.54 to show
13 what portion of that represents USF funds, but whatever that amount is Qwest
14 disputes it.

15 3) Charges for local MOUs that were exchanged prior to the date of the *Core*
16 *Forbearance Order*: \$317,630.97 (“Pre-*Core* Claims”).

17 4) Charges for MOUs from the date of the *Core Forbearance Order* to
18 October 28, 2006: \$48,789.45.

19 5) Disputed charges related to MOUs that Qwest claims are not subject to
20 terminating compensation (*i.e.*, VNXX minutes): \$390,461.34.

21 These five components collectively comprise the Local/Reciprocal compensation
22 claim of \$817,654.80. I will address each of the five components of this claim and
23 the Intrastate Access Charge dispute separately in the following testimony so that a
24 complete picture of all disputed amounts and the underlying reason for disputing

1 the claim is spelled out.

2

3

IV. DISPUTED VOLUMES OF LOCAL CALLS

4

Q. HOW DOES BROADWING BILL QWEST FOR TERMINATING MINUTES?

5

6

A. The *ISP Remand Order* developed a rule for determining how many minutes exchanged may be presumed to be ISP minutes, as opposed to more traditional voice traffic. It is called the “3:1 rule.” (*ISP Remand Order* ¶ 8). The rule is quite simple. Instead of performing an actual measure of ISP traffic, the rule creates a rebuttable presumption that the traffic exchanged between LECs that exceeds a 3:1 ratio of terminating to originating traffic is ISP traffic and subject to the compensation regime of the *ISP Remand Order*. (*Id.*) Under the 3:1 rule, Broadwing can bill a portion of the total minutes it terminates at the voice rate and the balance at the ISP rate of \$.0007. To determine the amount of minutes billed at the voice rate, Broadwing calculates the total local minutes terminated to Qwest and multiplies that number by three. For example, if in a given month 100 minutes was terminated from Broadwing to Qwest, that amount would be trebled to produce 300 minutes. If that same month, 500 local minutes were terminated to Broadwing from Qwest, 200 minutes (500 minus 300) would be presumed to be ISP minutes under the 3:1 rule.

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A problem, which I believe is the source of the dispute here, is that the application of this rule depends on agreement on the quantity of local minutes terminated. In this case, the difference between the number of local minutes that Broadwing claims its customers terminated with Qwest customers (which serve as the basis for

22

23

24

1 Broadwing's bills) are overstated. The difference is the minutes recorded by Qwest
2 and those recorded by Broadwing, after applying the 3:1 rule, results in Broadwing
3 overbilling Qwest by \$60,773.04 for the period in question. The effect of the 3:1
4 rule is that Broadwing's overstated numbers it claims are terminated to Qwest are
5 magnified threefold.

6
7 **Q. WHAT APPEARS TO BE THE BASIS FOR THE DISPUTE ON THIS**
8 **ISSUE?**

9 A. In determining the minutes that Broadwing terminates to Qwest, Qwest agrees that
10 Broadwing should include all local traffic that actually *terminates to Qwest*. In its
11 calculations of MOUs to apply the 3:1 ratio, however, Broadwing should not
12 include transit traffic (traffic that Broadwing sends to Qwest, but which transits a
13 portion of Qwest's network, and is actually terminated with another carrier) sent to
14 Qwest in that calculation. If it includes transit traffic or any traffic originating in
15 the Broadwing switch that does not terminate to Qwest customers, those minutes
16 are not Qwest's responsibility and must be removed from any 3:1 calculation.
17 Based on Qwest's analysis of traffic terminated to it from Broadwing and as
18 explained below, Qwest believes that is most likely what Broadwing has done.

19
20 **Q. PLEASE DESCRIBE THE QWEST PROCESS FOR DETERMINING**
21 **LOCAL MINUTES OF USE TERMINATED TO QWEST?**

22 A. For many years, Qwest has monitored and captured its data from the LIS trunk
23 groups using Call Recording Over Signaling System 7 ("CroSS7") software (the
24 recording system associated with LIS trunks) that enables Qwest to assign an

1 Operating Company Number (“OCN”) to that trunk, identify which end office the
2 calls are bound for, and the duration of the call. Qwest also utilizes the Trunk
3 Usage Measurement Set-Up (“TUMS”) database which is populated based on the
4 information provided by the CLEC on the Access Service Request (“ASR”) it
5 submits to Qwest. The purpose of TUMS is to automate the loading of trunk data
6 into the CroSS7 system, which is the system used to record usage on LIS trunks.
7 CroSS7 passes its raw usage files on to the Automatic Message Accounting (AMA)
8 system which processes the CroSS7 files and sends them through for billing.
9 Because Broadwing has apparently billed Qwest based on total minutes measured
10 from its switches, as compared to the total minutes that Qwest systems show
11 actually terminate to Qwest customers, Qwest suspects that Broadwing is
12 identifying and billing Qwest for *all* MOUs that originate at its switches destined
13 for the Qwest network. These MOUs more than likely include calls that, while they
14 are delivered to the Qwest network, are not terminated to a Qwest customer. In
15 other words, this kind of traffic—commonly known as “transit traffic”—merely
16 transits Qwest’s network but is actually delivered to another local exchange carrier
17 and is terminated to customers of that other carrier.

18
19 **Q. HOW DOES MS. MCNEIL CHARACTERIZE THE MEANS BY WHICH**
20 **BROADWING CAPTURES MINUTES FOR BILLING?**

21 A. Ms. McNeil states that Broadwing uses total minutes of use information from
22 Broadwing’s switches that is captured on a monthly basis, and then split into three
23 categories: (1) local traffic terminated by Broadwing, (2) toll traffic terminated by
24 Broadwing, and (3) local traffic originated by Broadwing. (McNeil Testimony,

1 page 4, lines 5-9). She provides no explanation for why Broadwing does not
2 calculate data for toll traffic originated by Broadwing nor is there any discussion of
3 local traffic originated by Broadwing bound for any local exchange carrier other
4 than Qwest.

5
6 **Q. MS. MCNEIL STATES THAT BROADWING'S SWITCH DATA WAS**
7 **EXAMINED BY KPMG AS PART OF A SARBANES-OXLEY**
8 **COMPLIANCE PROCESS. SHE ALSO STATES THAT THE RESULT**
9 **WAS "THAT SWITCH DATA WAS CORRECTLY PROCESSED."**
10 **(MCNEIL TESTIMONY, PAGE 2). PLEASE COMMENT.**

11 A. Other than one reference to the KPMG work, Ms. McNeil provided no other
12 information as to what was being examined by KPMG and there certainly is no
13 information to suggest that KPMG was attesting to the accuracy of Broadwing's
14 individual bills to other carriers. Qwest suspects that the issue here relates to the
15 misbilling to Qwest of transit traffic. This transit traffic is traffic that Broadwing
16 sends to Qwest that is ultimately terminated to end users of other local providers.
17 What that means is that the switch data could very well be completely accurate but
18 that Broadwing, instead of billing the carrier to which the local transit traffic is
19 actually terminated, billed Qwest instead. Thus, while the total minutes calculated
20 by Broadwing's switches could have been accurate down to the minute, if the
21 minutes are billed to the wrong carrier, the billing is nonetheless wrong. Nothing in
22 Ms. McNeil's testimony suggests that KPMG made any attestation as to that
23 common billing problem in its Sarbanes-Oxley work. It is also worth nothing that
24 Ms. McNeil states that KPMG said that the overall switch data was passed through

1 to the Broadwing “billing module.” However, there is nothing in Ms. McNeil’s
2 testimony that indicates that KPMG examined, let alone attested to accuracy of the,
3 billing module itself.

4
5 **Q. HAS QWEST’S CROSS7 SYSTEM BEEN INDEPENDENTLY EXAMINED?**

6 A. Yes. CroSS7 has been the system that records minutes of use data from LIS
7 interconnection trunks. In 2001, Telcordia (formerly Bellcore) did an extensive test
8 of CroSS7. It found, based on looking at over 400,000 records, that 98.21 percent
9 of all records are initially correct in matching the originating telephone number and
10 the terminating telephone number (as process necessary to calculate local minutes
11 of use). However, further analysis resolved virtually all of the initial discrepancies
12 resulting in 99.85 percent of all records being accurate. The 0.15 percent of
13 unresolved records falls well below the standard that indicates that a 1 percent error
14 is deemed to be acceptable. Telcordia was not the developer of CroSS7. The
15 executive summary of the Telcordia analysis is attached as Exhibit LBB-23.

16 The point is that CroSS7, which has been in use by Qwest for many years to record
17 local minutes of use, has been attested—in a study focusing on accuracy of
18 recording minutes in the manner necessary to corroborate the actual amount of
19 local terminating traffic—as being accurate to a very high degree accuracy and well
20 within the level of acceptable error. That, of course, is not to say that billing
21 disputes do not occasionally occur, but the fact is that CroSS7 has been in use by
22 Qwest for many years, it has been proven to be accurate through years of use, and I
23 believe that most CLECs likewise have confidence in its results.

1 The bottom line here is that Broadwing is attempting to bill a large number of
2 minutes to Qwest by assuming that these minutes relate to traffic Qwest terminated.
3 Yet that level of terminating minutes not been recorded by CroSS7. Broadwing has
4 provided nothing except its bills as any kind of evidence that its bills should be
5 accepted in the place of Qwest's CroSS7 records.

6
7 **Q. PLEASE EXPAND ON YOUR SUSPICION THAT BROADWING IS**
8 **BILLING QWEST FOR TRANSIT TRAFFIC?**

9 A. Broadwing states: "Broadwing provides the *total* minutes of use through a central
10 office for a particular carrier separated out into local terminating minutes, toll
11 terminating minutes, and Broadwing originating minutes" (McNeil Testimony, page
12 6, lines 11-13); emphasis added). When Broadwing bills for these *total* minutes,
13 Qwest suspects that Broadwing is billing Qwest not only for the traffic that is
14 terminated to Qwest customers, but is also including all originating traffic that is
15 transiting Qwest's network destined for other local exchange carriers. Broadwing
16 sends to Qwest, as a transit provider, traffic originating from its switches destined
17 for other local exchange carriers (CLECs, ILECs, WSPs) that, for a variety of
18 reasons, do not interconnect directly with Broadwing. It is also possible that transit
19 services for calls associated with a number that may have been ported, but where
20 the originating carrier has not performed a Local Number Portability ("LNP") dip,
21 is also incorrectly sent to Qwest. If any terminating charges apply for traffic that is
22 transited the Qwest network and not terminated to Qwest end user customers, those
23 charges must be billed to the carrier the calls are terminated to, not to Qwest. And,
24 just as important, these minutes should not be used in the 3:1 calculations to

1 establish how many minutes Qwest must pay Broadwing at the voice rate.

2
3 **Q. HAS QWEST NOTIFIED BROADWING THAT IT SUSPECTS THAT**
4 **TRANSIT TRAFFIC IS BEING INCORRECTLY BILLED TO QWEST AS**
5 **QWEST LOCAL MOUS?**

6 A. Yes. Qwest has notified Broadwing that the MOUs billed to Qwest did not match
7 the tracking systems Qwest uses to validate billing and that Qwest suspected that
8 the differences may be attributable to transit traffic. Broadwing is also aware that
9 Qwest provides transit services for Broadwing to interconnect with other carriers, as
10 it has been billed by Qwest for these transit services and has paid those bills.

11
12 **Q. PLEASE SUMMARIZE QWEST'S POSITION ON THIS ISSUE.**

13 A. Other than unsubstantiated bills, Broadwing has provided nothing to demonstrate
14 that Qwest owes Broadwing for this traffic. Qwest's own system used to record
15 terminating local minutes does not corroborate that Qwest has not fully
16 compensated Broadwing. Broadwing's claim should be denied.

17
18 **V. UNIVERSAL SERVICE FUND DISPUTE**

19 **Q. WHAT IS THE BASIS OF THE UNIVERSAL SERVICE FUND DISPUTE**
20 **AND HOW MUCH OF THE TOTAL BROADWING CLAIM IS RELATED**
21 **TO UNIVERSAL SERVICE FUND CLAIMS?**

22 A. Qwest cannot tell the amount of the claim that relates to the Universal Service Fund
23 because Broadwing does not provide any specific numbers. It apparently claims a
24 charge of \$150.16 for one month, but it is unclear if there are other claims for other

1 months. Notwithstanding the lack of total amounts, Qwest believes all Universal
2 Service Fund amounts have been paid.

3
4 **VI. PRE *CORE FORBEARANCE* BILLING DISPUTE**

5 **Q. DOES A PORTION OF THE BROADWING COUNTERCLAIM INVOLVE**
6 **A DISPUTE OVER MINUTES OF USE PRIOR TO THE ISSUANCE OF**
7 **THE *CORE FORBEARANCE ORDER*?**

8 A. Yes. As noted in Broadwing's testimony (McNeil Testimony, page 11, lines 20-23
9 to page 12, lines 1-8), on February 4, 2005, Broadwing issued a special invoice for
10 new charges not previously billed totaling \$317,630.97. We have already addressed
11 the lack of detail provided by Broadwing in their bill—that problems exists on this
12 issue as well.

13 The invoice is attached to Ms. McNeil's testimony as Exhibit RJEM-7. Ms.
14 McNeil also attached the transmittal letter that accompanied that invoice (Exhibit
15 RJEM-6). While it is not completely clear from either the letter or the invoice, this
16 invoice appears to represent a backbilling to Qwest for the period from January 1,
17 2004 to October 8, 2004 (the effective date of the *Core Forbearance Order*). Ms.
18 McNeil states that this billing was rendered in compliance with the June 20, 2002
19 Amendments to the ICA between the parties dated June 20, 2002, and states
20 specifically that "Section 4 of the Amendments did not contain a growth ceiling (or
21 cap in minutes of use) for any time period after December 31, 2003. Consequently,
22 all ISP-bound traffic exchanged between the parties after that date was
23 compensable at the rate of \$.0007/minute." (McNeil Testimony, page 12, lines 3-
24 6). In other words, Ms. McNeil believes that under the parties' Amendments the

1 growth caps were eliminated on January 1, 2004. Other than that cursory
2 statement, Ms. McNeil does not explain the justification for billing Qwest as
3 though the growth caps had been removed beginning on January 1, 2004
4 (particularly in light of the fact that the FCC order that eliminated the growth caps,
5 the *Core Forbearance Order*, did not become effective until October 8, 2004).

6 For ease of reference, I will refer to this claim as Broadwing's "Pre-*Core* Claims."
7

8 **Q. DOES QWEST AGREE THAT IT HAS ANY LIABILITY TO BROADWING**
9 **FOR THESE PRE-CORE CLAIMS?**

10 A. No. It is Qwest's position that this claim is unjustified and should be denied by the
11 Commission (including denying any interest that Broadwing may claim is owed on
12 the principal amount of \$317,630.97). Qwest has no liability for these minutes
13 because they exceeded growth caps established in the *ISP Remand Order*, which
14 remained unaltered until the *Core Forbearance Order*. Until it decided to bill
15 Qwest for these pre-*Core* minutes in February 2005, over a year after the first of
16 them were exchanged in January 2004, Broadwing, to the best of my knowledge,
17 had never made a claim that the growth caps ended on January 1, 2004. As
18 evidenced by the fact that it did not attempt to bill for these minutes until 13 months
19 after the growth caps allegedly disappeared, it is obvious that Broadwing did not
20 view them as billable minutes at the time the traffic was exchanged. Had
21 Broadwing believed this was billable traffic, presumably it would have billed Qwest
22 for them beginning with its February 2004 bill.

23
24 **Q. DOES QWEST AGREE THAT BROADWING IS ENTITLED TO BACK**

1 **BILL MINUTES OF USE UNDER THE 2002 AMENDMENTS TO THE**
2 **ICA?**

3 A. No. In her testimony, Ms. McNeil states that the billing was justified because of the
4 Amendments that the parties executed in June 20 of 2002. (The Amendments are
5 attached to Mr. Meldazis's testimony as Exhibit DEM-3). In other words, her
6 testimony suggests that Broadwing's claim that the growth caps ended on January
7 1, 2004 is purely contractual and has no relationship to the timing of the *Core*
8 *Forbearance Order*.

9
10 **Q. WHAT IS QWEST'S POSITION ON THIS ISSUE?**

11 A. Stated simply, Qwest's position is that Broadwing's position is without substance.
12 In the end, this issue is primarily legal in nature. As such, it will be addressed in
13 detail in briefs. However, to assist the Commission, I will place the Amendments
14 in context, and provide a brief outline of Qwest's position from a policy
15 perspective. Qwest's brief will, of course, address the issue from a legal
16 perspective and will likely include legal arguments in addition to the policy
17 positions discussed hereafter.

18
19 **Q. PLEASE PROVIDE SOME HISTORICAL CONTEXT FOR THIS ISSUE.**

20 A. The key event relating to this issue was the FCC's issuance of the *ISP Remand*
21 *Order* in April 2001. After several years of disputes over compensation for traffic
22 delivered by CLEC's to ISPs, the FCC's order, even though it has not provided an
23 ultimate resolution to the ISP traffic issue, brought some much-needed clarity to the

1 issue. In the *ISP Remand Order*, the FCC ruled that “ISP-bound traffic”¹ is not
2 governed by the reciprocal compensation rules of Section 251(b)(5) of the Act—
3 instead, the FCC created a completely separate compensation scheme for ISP-
4 bound traffic.

5
6 **Q. BASED ON YOUR REVIEW OF THE POLICY ISSUES RAISED BY THE**
7 **FCC IN THE *ISP REMAND ORDER*, WHAT WERE THE DRIVING**
8 **POLICY CONCERNS OF THE FCC IN THE ORDER?**

9 A. The FCC’s new ISP compensation regime was driven by several interrelated policy
10 concerns that were succinctly summarized in the last sentence of paragraph 87 of
11 the *ISP Remand Order*: “There is no public policy rationale to support a subsidy
12 running from all end users of basic telephone service to those end-users who
13 employ dial-up Internet access.”

14 As a matter of policy, the FCC recognized that “Internet consumers may stay on the
15 network much longer than the design expectations of a network engineered
16 primarily for voice communications.” (*ISP Remand Order* ¶ 19). The FCC also
17 noted that “[t]raditionally, telephone carriers would interconnect with each other to
18 deliver calls to each other’s customers” and that it “was generally assumed that
19 traffic back and forth on these interconnected networks would be relatively
20 balanced.” (*Id.* ¶ 20)

¹ An ongoing issue has been whether the term “ISP-bound traffic,” as used in the *ISP Remand Order*, refers to all traffic to ISPs (including interexchange ISP traffic) or only to local ISP traffic (where the calling party and the ISP are physically located within the same local calling area). This too is an issue for the briefs, but Qwest’s position, which I understand to be supported by several recent federal circuit court decisions (including one from the Ninth Circuit), is that the *ISP Remand Order* applies only to local ISP traffic, and that the term “ISP-bound traffic,” as used in the *ISP Remand Order* refers only to such local ISP traffic. Qwest’s position on this issue will also be addressed in the briefs

1 In the FCC’s view, “Internet usage has distorted the traditional assumptions
2 because traffic to an ISP flows exclusively in one direction, creating an opportunity
3 for regulatory arbitrage and leading to uneconomical results.” (*Id.* ¶ 21) This
4 situation led to

5 classic regulatory arbitrage that had two troubling effects:
6 (1) it created incentives for inefficient entry of LECs intent
7 on serving ISPs exclusively and not offering viable local
8 telephone competition, as Congress had intended to
9 facilitate with the 1996 Act; (2) the large one-way flows of
10 cash made it possible for LECs serving ISPs to afford to
11 pay their own customers to use their services, potentially
12 driving ISP rates to consumers to uneconomical levels.
13 (*Id.*)

14 The FCC thus stated “that intercarrier payments for ISP-bound traffic have created
15 severe market distortions.” (*Id.* ¶ 76). The FCC stated that its “goal in this Order
16 is decreased reliance by carriers upon carrier-to-carrier payments and an increased
17 reliance upon recovery of costs from end-users. (*Id.* ¶ 7). It was on the basis of
18 these policy concerns and conclusions that the FCC adopted the compensation
19 regime for ISP-bound traffic regime designed eventually to move to a bill and keep
20 regime.

21
22 **Q. PLEASE DESCRIBE THE COMPENSATION REGIME ADOPTED BY THE**
23 **FCC.**

24 A. The key elements that are relevant to this docket are:

25 (1) A phase-down of terminating compensation rates to \$.0007 until further
26 action by the FCC. However, the FCC noted that its ultimate goal was to
27 move to a bill and keep mechanism for ISP-bound traffic: “The rate caps are
28 designed to provide a transition toward bill and keep.” (*Id.* ¶ 8).

1 (2) The imposition of caps on compensable ISP-bound minutes. For 2001,
2 the cap was based on compensable minutes for the first quarter of 2001, plus a
3 10 percent growth factor. For 2002, the cap was the 2001 level plus 10
4 percent. For 2003, the cap remained at the 2002 level. (*Id.*). The order is
5 silent on the issue growth caps after 2003.
6

7 **Q. HOW DID THE AMENDMENT TO THE ICA ADDRESS THE GROWTH**
8 **CAP ISSUE?**

9 A. First, the recitals to the Amendment are clear that the purpose of the Amendment
10 was to implement the *ISP Remand Order*. Virtually every recital mentions the *ISP*
11 *Remand Order*, and one of the recitals states that “the Parties desire to amend the
12 Interconnection Agreement to reflect the interim rates and structure for ISP-Bound
13 traffic described in the ISP Order.” (Exhibit DEM-3). Thus, it appears to me that
14 the sole driving force behind the Amendments was solely to implement the terms of
15 the *ISP Remand Order*.

16 Second, with regard specifically to growth caps, Section 4 of the Amendment
17 states:

18 **4. Growth Ceiling.** A Party may be compensated for ISP-
19 Bound traffic only up to the cap in minutes of use
20 determined as follows:

21 A. For the year 2001: (1) determine the number of
22 terminating minutes in excess of three times the number of
23 originating minutes exchanged between the Parties between
24 January 1, 2001 and March 31, 2001 in Washington; (2)
25 multiply the result from (1) above by 4; (3) multiply the
26 result from (2) by 1.10.

27 B. For the period from January 1, 2002 through and
28 including December 31, 2002, an amount equal to the ISP-
29 Bound minutes for which the Party was entitled to

1 compensation under that Agreement in 2001, multiplied by
2 1.10.

3 C. For the period from January 1, 2003 through and
4 including December 31, 2003, an amount equal to the
5 ceiling for 2002, set forth in B above.”

6 Consistent with the intent evidenced by the recitals, this provision precisely tracked
7 the FCC’s ruling in the *ISP Remand Order* on growth caps.

8

9 **Q. WITH THAT BACKGROUND, WHAT DO YOU UNDERSTAND**
10 **BROADWING’S POSITION TO BE?**

11 A. Based on Ms. McNeil’s testimony, I understand that Broadwing’s position is that,
12 because the Amendment did not mention growth caps after December 31, 2003, all
13 growth caps were eliminated effective on January 1, 2004. Thus, Broadwing claims
14 that Qwest is legally responsible to pay \$.0007 on all ISP traffic thereafter.

15

16 **Q. WHAT PROBLEMS DO YOU SEE WITH THAT POSITION?**

17 A. Broadwing’s position is based on the belief that, because the Amendment is silent
18 on growth caps after December 31, 2003, all ISP-bound traffic is compensable
19 thereafter. If that were correct, then effective January 1, 2004 the growth caps in
20 the *ISP Remand Order* would have been eliminated. But that is not how the *ISP*
21 *Remand Order* has been interpreted nor is it consistent with the underlying policy
22 of the order, which was to eliminate subsidies and to “decrease[] reliance by
23 carriers upon carrier-to-carrier payments and . . . increase[] reliance upon recovery
24 of costs from end-users. (*ISP Remand Order* ¶ 7). Instead, the order has been
25 interpreted by Qwest and others in the industry as retaining the growth caps in place
26 at the 2003 levels for 2004.

1 Broadwing's interpretation is also inconsistent with the very existence of the *Core*
2 *Forbearance Order*. The Forbearance petition was filed on July 14, 2003 (less than
3 six months before the end of 2003). (*Core Forbearance Order* ¶ 11). The Petition
4 requested several areas of relief, but one of the specific ones was for the FCC to
5 "forbear from applying the . . . growth caps of the *ISP Remand Order*." (*Id.*)
6 Notable by its absence from the list of arguments advanced by the petitioner was
7 any claim that the growth caps would simply end on January 1, 2004. (*Id.* ¶ 12). A
8 variety of parties filed comments both for and against the petition. (*Id.* ¶¶ 13-14).
9 It does not appear that any of them argued that the growth caps would simply end
10 on January 1, 2004. (*Id.*).

11 After considering all the arguments, the Commission ruled that the growth caps are
12 no longer in the public interest. In so doing, the FCC focused on changes in the
13 market, particularly its perception that expansion of dial-up traffic was unlikely,
14 and was in fact declining. (*Id.* ¶ 20). In rendering its ruling, the FCC focused on
15 the underlying policy issues: "[W]e now conclude that the policies favoring a
16 unified compensation regime outweigh any remaining concerns about the growth of
17 dial-up Internet traffic." (*Id.*). Once again, notable by its absence was any
18 suggestion in the *Core Forbearance Order*, which was entered into by the FCC in
19 October 2004 (more than nine months after the growth caps allegedly disappeared
20 as a matter of law under Broadwing's theory), that the growth caps were no longer
21 in effect—to the contrary, the entire premise of the order is that the growth caps
22 remained in effect and that specific action by the FCC was necessary to end them.

23 Broadwing's position is thus based on the belief that the *Core Forbearance Order*

1 is completely superfluous, and that the growth caps ended of their own accord on
2 January 1, 2004. If that were the case, one can only ask why the petitioner in *Core*
3 felt a need to seek forbearance from application of growth caps that were to end in
4 less than six months? Further, if Broadwing's interpretation of the *ISP Remand*
5 *Order* is correct, then wouldn't one expect that some of the CLEC parties in the
6 *Core* docket would have asked the FCC to confirm that the growth caps would
7 simply go away on January 1, 2004, instead of asking the FCC to eliminate the
8 caps? It does not appear to me that any party made such a suggestion. And,
9 finally, if Broadwing's theory were correct, wouldn't the FCC, when it entered its
10 order, have stated that it had no need to eliminate the growth cap because it expired
11 on December 31, 2003? The FCC clearly did not do so in its *Core Forbearance*
12 *Order*.

13 The fact that none of those things happened convinces me that Broadwing's theory
14 has no merit and is simply an after-the-fact effort to eliminate caps that continued
15 under the *ISP Remand Order* and under the amended ICA between Broadwing and
16 Qwest.

17 As noted, the parties will address this issue more completely from a legal
18 perspective in briefs.

19
20 **Q. HOW MUCH DID BROADWING IMPROPERLY BILL QWEST IN PRE**
21 **CORE FORBEARANCE CHARGES?**

22 A. In Ms. McNeil's testimony (page 12, line 6), \$317,630.97 was billed to Qwest on a
23 special invoice (Ex. RJEM-7). Qwest presumes a portion of the interest charge is

1 also attributable to this amount, but Broadwing has provided no information on
2 either the interest rate, the period of time for which interest is claimed, or the total
3 amount of interest claimed by Broadwing on this issue.
4

5 **VII. POST CORE FOBEARANCE DISPUTE**

6 **Q. IS THERE AN ADDITIONAL AMOUNT IN DISPUTE INVOLVING THE**
7 ***CORE FORBEARANCE ORDER*?**

8 A. Yes. Between the date that the *Core Forbearance Order* was issued on October 8,
9 2004, and January 2005, Broadwing submitted bills to Qwest for MOUs that exceed
10 the cap of MOUs that were established by the *ISP Remand Order*. Broadwing
11 contended that all MOUs including those above the cap were compensable once the
12 Core order was signed. Qwest contends that until the amendment to the agreement
13 is signed adopting the change of law that the cap on new minutes remained in place.
14 The dispute involving Post *Core* MOUs above the cap for this period involved and
15 additional \$99,594.60 in charges has been disputed by Qwest.
16

17 **Q. WERE THESE THREE MONTHS THE ONLY POST *CORE* MOUS THAT**
18 **QWEST DISPUTES?**

19 A. Following the *Core* order, Qwest began excluding VNXX MOUs. Prior to the *Core*
20 decision, VNXX was not an issue because the minutes were excluded because of
21 the *ISP Remand Order* growth cap and by the new markets limitation. Since none
22 of these minutes were compensable because of the growth caps and the new
23 markets rules, it was unnecessary to exclude VNXX traffic (since they were not
24 billed to Qwest). However, commencing February 2005, after CLECs began billing

1 large amounts of ISP minutes as a result of the *Core* order, it became clear to Qwest
2 that many of these minutes were VNXX minutes and Qwest therefore excluded
3 VNXX MOUs and refused to pay compensation on them. With the exclusion of
4 VNXX minutes the amounts above the growth cap MOUs were subsumed into the
5 VNXX exclusion and are reflected in the amount discussed in the next section,
6 which deals with the VNXX dispute section. The result of this process is that
7 minutes for November and December of 2004 and January 2005 were excluded
8 because they exceeded the growth cap. The amount of this dispute is \$99,594.60.
9 Qwest continues to take the position that the removal of the growth caps ordered by
10 the FCC should not become effective until the amendment is approved by the
11 Commission.

13 VIII. VNXX DISPUTE

14 **Q. IS QWEST DISPUTING ANY OTHER CHARGES SUBMITTED BY**
15 **BROADWING?**

16 A. Yes. As Qwest addressed in the recent Pac-West and Level 3 complaint dockets
17 (and which was briefed extensively in the pending Level 3/Qwest arbitration
18 docket), it is Qwest's position, based on several recent federal circuit court cases,
19 that the *ISP Remand Order* applies only to local ISP traffic (where the calling party
20 and the ISP are physically located in the same local calling area). Thus, for VNXX
21 ISP traffic, the Amendments discussed above were designed to implement the
22 compensation regime of the *ISP Remand Order*. That being the case, it is Qwest's
23 position that the Amendments, by definition, only require Qwest to pay \$.0007 for
24 local ISP traffic. Furthermore, to the extent that Broadwing is attempting require

1 the payment of reciprocal compensation on VNXX voice traffic, it is Qwest's
2 position that Broadwing's request for such compensation violates Washington call
3 rating rules (which I discussed in my Direct Testimony at pages 14-17) and the
4 access charge regime that applies to interexchange traffic.

5
6 **Q. WHAT IS VNXX TRAFFIC?**

7 A. Rather than repeat my Direct Testimony, I address this issue at length in that
8 testimony at pages 5-12 and Exhibits LBB-2 and LBB-3 attached to my Direct
9 Testimony.

10
11 **Q. HOW IS THE PRINCIPLE OF VNXX APPLIED BY BROADWING?**

12 A. Virtual NXX or VNXX refers to a situation where a CLEC, such as Broadwing, has
13 obtained an assigned block of local telephone numbers for a LCA, but the CLEC
14 does not have end-user customers located in that LCA. The CLEC uses its numbers
15 for its ISP customers, who also have no physical presence in the LCAs associated
16 with those telephone numbers. The traffic directed to those numbers is routed to
17 one of the CLEC's points of interconnection with Qwest and is then delivered to
18 Broadwing's ISP customers or to Broadwing's voice customers. However,
19 reciprocal or terminating compensation principles only apply when these calls are
20 routed to a CLEC retail customer who is located in the same LCA in which the call
21 originated.

22 VNXX undercuts the principle of geographic synchronization between telephone
23 numbers and customer location because it results in a carrier-assigned NXX
24 associated with a particular central office, but where the carrier has no customers

1 physically located. Instead, these telephone numbers are assigned to a customer
2 physically located outside the LCA associated with the particular NXX.

3 With VNXX, the physical location of the CLEC's customer is in most cases in a
4 LCA that would require a toll call from the LCA with which the telephone number
5 is associated. This scheme requires the assignment of a "virtual" NXX. The NXX
6 is labeled "virtual" because it is an assigned number that tells callers that it is in the
7 calling party's LCA, rather than the called party's local calling. In other words, a
8 call to the "virtual" NXX does not result in a local call within the LCA that the
9 VNXX number appears to be assigned, but in reality the call is terminated in a
10 different LCA, and perhaps even in a different state.

11
12 **Q. DID THE ORIGINAL ICA OR THE 2002 AMENDMENTS MAKE VNXX**
13 **TRAFFIC SUBJECT TO TERMINATING COMPENSATION?**

14 A. No. In order to successfully claim that calls to a Broadwing customer located in an
15 LCA different than the LCA from which the call was originated, Broadwing must
16 either establish that VNXX calls are actually local calls and fall within the
17 definitions of the parties existing ICA, or in the alternative successfully argue that
18 the FCC has preempted the Washington Commission on this issue and therefore
19 that the Commission can require Qwest to pay terminating compensation on
20 interexchange traffic. Neither of those things has occurred.

21
22 **Q. WHAT DOES THE CURRENT CONTRACT BETWEEN AND QWEST SAY**
23 **ABOUT TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION?**

24 A. Reciprocal Compensation is addressed in Section V. of the ICA (attached to Mr.

1 Meldazis's testimony as Exhibit DEM-2). That agreement makes it clear that the
2 only traffic subject to reciprocal compensation is "local traffic." See, § V.D.
3 regarding reciprocal compensation and III pp, which defined "local traffic" in
4 accordance with Qwest's (then US West) tariffs. This issue has been explained in
5 detail in my direct testimony.

6
7 **Q. ASSUMING VNXX TRAFFIC IS EXCLUDED UNDER THE CONTRACT,**
8 **WHAT IS THE DOLLAR AMOUNT IN DISPUTE AT ISSUE WITH**
9 **REGARD TO VNXX TRAFFIC?**

10 A. Qwest is disputing payment in the amount of \$390,461.34 for traffic that is VNXX
11 traffic. This traffic is not local and is not subject to either reciprocal compensation
12 or the \$.0007 rate for ISP traffic.

13
14 **Q. HOW IS QWEST ABLE TO TELL THAT SOME TRAFFIC IS VNXX**
15 **TRAFFIC AS OPPOSED TO LOCAL TRAFFIC?**

16 A. When Level 3 orders LIS trunks the information is tracked by Qwest in the TUMS
17 system. For each trunk the TUMS information shows, among other things, the
18 CLEC that ordered the trunk, the LATA, the trunk type the location name of the
19 site, (Central Office or switch) and the CLLI of the CLEC switch. Qwest tracks
20 MOU in CroSS7. Qwest uses the CroSS7 Two Six Code ("TSC") and matches it to
21 the information in TUMS to determine where the CLEC switch is located. Based
22 on the data in TUMS and CroSS7, Qwest is able to tell whether or not Level 3's
23 traffic originated and terminated within the same LCA.

24

1 **IX. ACCESS CHARGE DISPUTE**

2 **Q. IS BROADWING ALSO DISPUTING ACCESS CHARGES IN ITS**
3 **COUNTERCLAIM?**

4 A. Yes. Based on Broadwing's counterclaim, it claims that Qwest owes it \$216,384.71
5 in access charges. Once again, because Broadwing did not provide specific
6 documentation, Qwest is unable to determine what specific traffic types this dispute
7 involves.

8
9 **Q. PLEASE DESCRIBE THE TYPES OF TRAFFIC THAT CAN ORIGINATE**
10 **AND TERMINATE BETWEEN BROADWING AND QWEST.**

11 A. There are four main types of traffic between Qwest and Broadwing:
12 1) InterLATA and intraLATA toll traffic routed through Feature Group D
13 Service;
14 2) Qwest traditional intraLATA terminating toll traffic;
15 3) Wireless (cellular) traffic to Broadwing landline customers that originated
16 on cell phones within the Metropolitan Trading Area which the FCC has
17 deemed local or outside of the Metropolitan Trading Area;
18 4) Wireline local traffic between Broadwing end user customers within the
19 same local calling area as other local telephone company end users.

20
21 **Q. WHICH TYPES OF TRAFFIC RELATE TO THE ACCESS CHARGE**
22 **DISPUTE?**

23 A. Again, because Broadwing provided no supporting detail, qwest is unable to
24 determine which traffic types are involved. Qwest assumes that this dispute relates
25 to terminating access charges applicable to Qwest (QC) as an intraLATA toll

1 provider in Washington.

2

3 **Q. PLEASE DESCRIBE HOW QWEST PROVIDES INTRALATA TOLL**
4 **SERVICE IN WASHINGTON.**

5 A. Qwest provides intraLATA toll service to its customers in Washington to customers
6 that are located within Qwest local territories and purchase local service from
7 Qwest.

8

9 **Q. HOW IS QWEST INTRALATA TRAFFIC THAT ORIGINATES FROM**
10 **QWEST END USERS RECORDED AND BILLED?**

11 A. All Qwest intraLATA toll traffic from Qwest end offices is recorded at the
12 originating end office. These records are then used to bill the end user for their toll
13 calls. The call detail is collected in the Qwest Toll Usage Tracking (“TUT”)
14 database system. The end user billing data shows the ‘to’ number, thus identifying
15 the exchange and the duration of the call. From the data that is created for these
16 calls, the necessary information for other LECs to bill terminating access is created
17 on a TUT report. This report is created by looking at the actual toll calls billed to
18 the end user and matching the terminating number to an ILEC or CLEC exchange.

19

20 **Q. IS THE TUT REPORT ACCURATE AND RELIABLE?**

21 A. Yes. The TUT report is accurate and is a reliable source for terminating access
22 billing. Qwest pays terminating access for all qwest intraLATA calls originating
23 from Qwest exchanges and terminating to other local exchange carriers. There is a
24 record for each and every call by qwest toll customers to those exchanges and

1 Qwest pays the other companies for these calls.

2

3 **Q. SHOULD QWEST BE BILLED FOR ITS INTRALATA TOLL TRAFFIC?**

4 A. Yes. When Qwest is the designated IntraLATA Toll provider for traffic from its
5 own end users, Qwest will be responsible for payment of *APPROPRIATE* usage
6 charges. Qwest pays access on intraLATA toll traffic for which Qwest is the retail
7 toll provider, however Qwest should not pay intraLATA toll access charges for
8 terminating traffic that is not Qwest's.

9

10 **Q. ARE ALL OF THE ACCESS CHARGES BILLED BY BROADWING**
11 **PROPERLY IDENTIFIED?**

12 A. No. Because Broadwing provides no detail regarding its access charges, Qwest is
13 unable to match its records to Broadwing charges. Qwest believes that Broadwing
14 has included access charges in the Qwest bill for traffic that should not be billed to
15 Qwest. Traffic that would not be subject to access charges to Qwest would include
16 wireless traffic, where calls from within the 'local' Major Trading Area would not
17 fall under traditional access tariffs, and traffic that transits the Qwest network
18 destined for other local exchange carriers. In its role as a transit provider, Qwest's
19 tandem simply connects switches to other switches. Thus, another carrier can
20 deliver calls from its switch to a tandem and that tandem can route or forward the
21 call on to any end office that "homes" or is connected to that tandem. The tandem
22 provider is not the originator of the traffic, and therefore has no end user customers
23 it bills. It simply switches calls between switches.

24

1 **Q. SHOULD QWEST BE FINANCIALLY RESPONSIBLE FOR ALL TRAFFIC**
2 **THAT ROUTES THROUGH ITS TANDEMS?**

3 A. Clearly not. The carriers that originate the traffic (those carriers that hand it to the
4 Qwest tandem for termination to other companies) should be responsible for
5 compensating the terminating company. In seeking to make Qwest financially
6 responsible for any transit or “unidentified” traffic it receives, Broadwing places
7 liabilities on the tandem provider for the actions of the originator of the traffic. As I
8 understand it, the FCC and other states have rejected this approach. Tandems
9 provide a service to the network; however, the tandem provider is not responsible
10 for access charges applicable to the originating carrier.

11

12 **Q. WHAT IS THE AMOUNT IN DISPUTE INVOLVING ACCESS CHARGES?**

13 A. Bases upon Qwest records Broadwing has overbilled Qwest for \$216,384.71 in
14 terminating access charges for toll calls that did not originate from Qwest
15 customers.

16

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

18 A. Yes.

19