

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

PAC-WEST TELECOMM, INC.

Petitioner,

v.

QWEST CORPORATION,

Respondent.

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LEVEL 3 COMMUNICATIONS, LLC,

Petitioner,

v.

QWEST CORPORATION,

Respondent.

DOCKET NO. UT-053036

DOCKET NO. UT-053039

LARRY B. BROTHERSON'S DECLARATION  
IN RESPONSE TO THE MOTIONS FOR  
SUMMARY DETERMINATION OF ISSUES  
ON REMAND OF LEVEL 3 AND PAC-WEST

I, Larry B. Brotherson, declare as follows:

- 1 I am employed by Qwest Corporation (Qwest) as a Director Wholesale Advocacy in the Wholesale Markets organization. My business address is 1801 California Street, Room 2350, Denver, Colorado, 80202.
- 2 My qualifications are set forth in the affidavits that were filed in this matter on February 9, 2009.

3 I have reviewed the Motion for summary determination filed by Pac-West in this matter. Pac-West claims that Qwest and Pac-West established a “course of dealing” whereby Qwest paid it reciprocal compensation for “almost four years before Qwest objected to compensating Pac-West for terminating [VNXX] traffic.” (Pac-West Motion ¶ 21). Pac-West also claims that Qwest knew that Pac-West was using VNXX-routing for its traffic since 2001 and the extent to which it was doing so. That is not true. One of the significant problems that Qwest has had in dealing with the VNXX issue is the fact that CLECs like Pac-West have never disclosed to Qwest when they began using VNXX-routing to deliver traffic to their ISP customers. In the years following the issuance of the *ISP Remand Order*, Qwest became suspicious that CLECs might be using VNXX arrangements. To test its suspicions, Qwest developed some analytical tools to analyze the traffic of CLECs.

4 As Qwest developed data that it felt was accurate, it communicated to those CLECs that were using VNXX traffic. Mr. Sprague, in his affidavit of June 6, 2005 acknowledges that he was notified in December 2004 by Qwest that Pac-West was using VNXX and that Qwest would withhold payment for that traffic. (Sprague Affidavit ¶ 11 and Exhibit D to Sprague Affidavit).

5 At no time during this period, am I aware that Pac-West or any other carrier formally notified Qwest that it was using VNXX-routing of calls.

6 Qwest has consistently maintained that VNXX traffic, because it is not local traffic, is not subject to reciprocal compensation. Once Qwest was able to determine that a carrier was using VNXX, Qwest disputed bills for intercarrier compensation based on Qwest’s estimate of the amount of VNXX traffic.

7 As I noted in paragraph 10 of my Non-Confidential Affidavit, on January 27, 2005, Qwest mailed a letter to numerous CLECs who, based on Qwest’s analysis of their traffic, were

routing VNXX traffic and charging Qwest terminating compensation for such traffic. A form copy of the letter is attached as Exhibit G to my Non-Confidential Affidavit filed on February 9, 2009. I have determined, by examining the log of CLECs to whom this letter was sent, that it was sent to Pac-West. The letter, which was sent to Pac-West, notes that Qwest has not agreed to VNXX routing and that Qwest was initiating a dispute with the letter's recipients, including Pac-West. To the best of my knowledge, Pac-West never responded to the letter.

8 Pac-West's Motion implies that Qwest paid for all minutes that Pac-West billed from 2001 to 2004. This is not true. Pac-West's compensable ISP minutes were limited by the growth cap in the *ISP Remand Order*. As a result, Qwest paid Pac-West for ISP minutes only up to the cap. By 2003, the cap limited payment to only 16 percent of the ISP MOU billed by Pac West. Between 2001 and 2004, the amount of minutes of ISP traffic for which Qwest paid intercarrier compensation to Pac-West was always well below 50 percent of the minutes billed by Pac-West.

9 I have determined, based on network data available to me at this time, that Qwest and Pac-West interconnect at seven points of interconnection in Washington, which are generally located in the larger local calling areas.


10 I have also determined, based on network data available to me at this time, that Qwest and Level 3 interconnect at seven points of interconnection in Washington, which are generally located in the larger local calling areas.

11 I am familiar with the interconnection agreements between Qwest and the other two parties. In Qwest's responses to the motions of Level 3 and Pac-West, it makes reference to several specific provisions of those agreements. Qwest believes that the Commission can take administrative notice of the ICAs that have been filed with it. However, to ensure that those

portions of the agreements are in the record, I have attached hereto as Exhibit A, excerpts from the agreement with Level 3, and I have attached hereto as Exhibit B, excerpts from the agreement with Pac-West. These are true and correct copies of those excerpted provisions.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 20<sup>th</sup> day of March, 2009.

  
Larry B. Brotherson