

Exhibit No. ___ T (RW-3T)
Docket No. UT-063038
Witness: Robert Williamson

BEFORE THE WASHINGTON 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 TELECOM, INC. d/b/a
ESCHELON TELECOM, INC., FOCAL
COMMUNICATIONS CORPORATION,
GLOBAL CROSSING LOCAL SERVICES,
INC., and MCI WORLDCOM
COMMUNICATIONS, INC.

Respondents.

DOCKET NO. UT-063038

REBUTTAL TESTIMONY OF

Robert Williamson

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

March 20, 2007

1 **Q. Please state your name and business address.**

2 A. My name is Robert Williamson, and my business address is 1300 South Evergreen
3 Park Drive Southwest, P.O. Box 47250, Olympia, Washington, 98504-7250. My
4 business e-mail address is bwilliam@wutc.wa.gov.

5
6 **Q. Have you previously submitted testimony in this proceeding?**

7 A. Yes, I submitted direct testimony in this case on November 20, 2006, on behalf of
8 Commission Staff.

9
10 **Q. What is the purpose of your rebuttal testimony?**

11 A. The purpose of my rebuttal testimony is to respond to claims made in the written
12 testimony submitted on February 2, 2007, on behalf of the various competitive local
13 exchange carrier (CLEC) respondents.

14 I will address the following three issues raised by the CLEC witnesses'
15 testimony:

16 1. Is VNXX permissible under applicable standards and rules?

17 a. Is it permissible, under applicable industry guidelines, for a carrier to
18 provide its customers with geographic telephone numbers that are associated
19 with a different local calling area than the one in which the customer is
20 physically located?

21 b. Is it permissible, under this Commission's rules, for a carrier, by
22 whatever method, to cause calls that are between customers in different local
23 calling areas to be rated and compensated as local, rather than toll, calls?

1 2. Must the Commission allow VNXX as a matter of competitive neutrality, so
2 that CLECs may compete in the market for foreign exchange service?

3 3. If the Commission decides to allow VNXX for ISP-bound traffic, should or
4 must the Commission apply the *ISP Remand Order's* inter-carrier compensation
5 scheme to that traffic?

6

7 **Q. Before addressing those issues, please review your understanding of prior UTC**
8 **decisions dealing with VNXX and how your understanding contrasts with Dr.**
9 **Blackmon's conclusions in his testimony on behalf of Level 3.**

10 A. I disagree with some of Dr. Blackmon's conclusion in regard to this Commission's
11 decisions in earlier dockets related to this case.

12 VNXX came to this Commission's attention with the Washington
13 Independent Telephone Association's (WITA's) petition for a declaratory ruling on
14 the propriety of VNXX arrangements in Docket UT-020667. In that docket, Level 3
15 asserted that it was a "necessary party" whose rights would substantially be
16 prejudiced by the declaratory order sought by WITA, and it indicated that it would
17 not consent in writing to a determination by a declaratory order. After concluding
18 that a declaratory ruling was not possible in UT-020667, the Commission
19 subsequently took up VNXX again in an informal process to develop a policy and
20 interpretive statement in UT-021569. Dr. Blackmon states that the Commission in
21 that proceeding concluded "that a general statement defining allowable uses of
22 VNXX arrangements was unnecessary." In fact, the Commission's conclusion in
23 UT-021569 was that the issue was *too complex for a policy statement*; the

1 Commission did not decide that such a statement *was unnecessary*, as Dr. Blackmon
2 states. After the completion of a VNXX workshop attended by Staff and members of
3 industry, and after reviewing written and oral comments of interested persons, the
4 Commission concluded that “the complex issues and diverse interests represented in
5 this docket cannot appropriately be addressed through the issuance of an interpretive
6 or policy statement. The Commission believes that these issues are *more*
7 *appropriately pursued in fact-specific disputes.*”¹ (Emphasis added.) It is apparent
8 that the Commission understood the difficulties in dealing with the complex issues
9 surrounding VNXX and, therefore, set aside any decision for a more formal fact-
10 finding proceeding — such as the complaint in this docket.

11 The Commission continued to consider those “complex issues and diverse
12 interests” in other dockets, as noted by Dr. Blackmon. Dr. Blackmon correctly
13 notes, for example, that in the CenturyTel-Level 3 arbitration in docket UT-023043,
14 the Commission interpreted the FCC’s *ISP Remand Order* and concluded that the
15 *Order* established the compensation structure for *all* calls to Internet service
16 providers, including those using VNXX arrangements. Its my understanding,
17 however, that three federal circuit courts of appeal have since concluded that the *ISP*
18 *Remand Order* is at least not clear enough on that point to preempt states from either
19 prohibiting VNXX practices, as some have done, or from applying their own forms
20 of compensation to ISP-bound VNXX calls, as still other states have done.² It
21 appears to me that, in the CenturyTel-Level 3 arbitration, the Commission didn’t

¹ UT-021569, Notice of Docket Closure, July 21, 2003.

² *Verizon California, Inc. v. Peevey*, 462 F.3d 1142, 1158 (9th Cir. June, 2006); *Global NAPs, Inc. v. Verizon New England, Inc.*, 444 F.3d 59, 72 (1st Cir. April, 2006); *Global NAPs, Inc. v. Verizon New England, Inc.*, 454 F.3d 91, 99-101 (2nd Cir. July, 2006).

1 believe it had the discretion to apply a different form of compensation to such calls
2 than the FCC's compensation scheme for ISP-bound traffic.³ Also, at that time, the
3 compensation rate between the two affected carriers was zero — *i.e.*, “bill-and-keep”
4 — not the \$.0007 per minute terminating rate that is at issue here.⁴

5 One important Commission precedent that Dr. Blackmon refers to, but does
6 not comment on, is this Commission's February 2004 decision in Order No. 5 in
7 Docket UT-033035, an arbitration between AT&T and Qwest. In that case, the
8 Commission rejected AT&T's request to define local calls based on “the calling and
9 called NPA/NXXs.”⁵ The focus on the calling and called parties' NPA/NXXs, rather
10 than their physical location, would have opened the way for AT&T to use VNXX.
11 According to the Order, the “focus of AT&T's Petition, and its oral argument, was
12 the company's concern that it be able to offer a service that will compete with
13 Qwest's foreign exchange (“FX”) services.”⁶ Despite this argument, the
14 Commission noted with approval the arbitrator's concern that AT&T's definition “is
15 too sweeping in its potential effect and has potentially unacceptable consequences in
16 terms of intercarrier compensation.”⁷ The Commission, therefore, adopted language
17 for the parties' interconnection agreement that defines a local call based on the
18 physical routing points of a call and whether the call originates and terminates within

³ *In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC, and CenturyTel of Washington, Inc.*, Docket UT-023043, Seventh Supp. Order: Affirming Arbitrator's Report and Decision, at page 4 (February 28, 2003).

⁴ *Id.* at page 2.

⁵ *In the Matter of the Petition for Arbitration of AT&T Communications Of The Pacific Northwest and TCG Seattle with Qwest Corporation*, Docket UT-033035, Order No. 05; Final Order Affirming Arbitrator's Report and Decision; Approving Interconnection Agreement, at page 6 (February 6, 2004).

⁶ *Id.* at page 7.

⁷ *Id.* at page 8.

1 the same local calling area, but suggested that the parties could negotiate a mutually
2 acceptable way for AT&T to provide an FX-like service.⁸

3 It is also important to recall how Qwest’s complaint in this proceeding came
4 about. While ruling on compensation structure on calls to ISPs in the arbitration
5 proceedings in dockets UT-053039 and UT-053036, this Commission left open the
6 possibility of deciding, in a separate complaint proceeding, whether VNXX is
7 inappropriate under state law and policy:

8 It is not necessary for us to decide in this proceeding whether VNXX
9 arrangements generally, are appropriate or within the law. . . .

10
11 Should Qwest wish to pursue the broader issue of VNXX generally, it may
12 file its own complaint about specific carriers and their behavior regarding
13 intercarrier compensation methods.⁹

14
15 Qwest has filed that complaint, and the Commission is now presented with that
16 “fact-specific dispute.”

17 Staff’s position is that, although the Commission has addressed VNXX issues
18 in the past, it is not precluded from deciding, as a matter of state policy and based on
19 the facts developed in this case, whether or to what degree VNXX arrangements
20 should be allowed, and if so, what form of inter-carrier compensation should apply to
21 VNXX traffic.

22
23 **I. IS VNXX AN ACCEPTABLE PRACTICE**
24 **UNDER EXISTING STANDARDS AND RULES?**
25

26
27 **Q. Both ELI witness Mr. Robins and Level 3 witness Dr. Blackmon testify that**
28 **Staff makes too much of the “rules” found in the Central Office Code**

⁸ *Id.*
⁹ *Level 3 Communications, LLC v. Qwest Corporation*, Docket No. UT-053039, Order No. 05, para. 39, 40 (February 10, 2006); *Pac-West Telecomm, Inc. v. Qwest Corporation*, Docket No. UT-053036, Order No. 05, para. 42, 43 (February 10, 2006).

1 **Assignment Guidelines (COCAG), because they are mere guidelines and only**
2 **voluntary in nature. Do you agree?**

3 A. No, I do not agree. The FCC has recognized the importance of industry adherence to
4 the COCAG rules in its *Notice of Proposed Rulemaking, Developing a Unified*
5 *Intercarrier Compensation Regime*, FCC 01-132 (April 27, 2001), at paragraph 115:
6 “*We note that the Commission has delegated some of its authority to state public*
7 *utility commissions in order that they may order the North American Numbering*
8 *Plan Administrator (NANPA) to reclaim NXX codes that are not being used in*
9 *accordance with the Central Office Assignment Guidelines (COCAG).”*¹⁰ The FCC
10 could not have made a stronger statement about the inappropriate use of numbering
11 resources when it acknowledged that state commissions have the authority to reclaim
12 NXX’s that were not being used in accordance with the rules contained in the
13 COCAG.

14 Most *technical* standards used in the telecommunications industry are
15 voluntary in nature. The International Telecommunications Union based in
16 Switzerland, the National Emergency Number Association, the Internet Engineering
17 Task Force, and many other “standards organizations” set standards based on
18 cooperation and voluntary compliance from industry members. The difference

¹⁰The context for this statement was as follows (citations omitted):

We seek comment on the use of virtual central office codes (NXXs), and their effect on the reciprocal compensation and transport obligations of interconnected LECs. Commenters in this proceeding have indicated that some LECs are inappropriately using virtual NXXs to collect reciprocal compensation for traffic that the ILEC is then forced to transport outside of the local calling area. We note that the Commission has delegated some of its authority to state public utility commissions in order that they may order the North American Numbering Plan Administrator (NANPA) to reclaim NXX codes that are not used in accordance with the Central Office Code Assignment Guidelines. The Maine Public Utility Commission recently addressed the issue of virtual NXXs when it directed the NANPA to reclaim the NXX codes that Brooks Fiber used to provide “unauthorized interexchange service” as opposed to “facilities-based local exchange service.”

1 between technical standards and regulatory standards is that it is most often to a
2 company's disadvantage to choose not to follow a *technical* standard, because
3 technical standards are what enable one company's network to communicate with
4 other networks. Ignoring a *regulatory* standard, on the other hand, may advantage a
5 company by allowing it to exploit an arbitrage opportunity and, thereby,
6 disadvantage other companies that are forced to continue to meet those standards.

7
8 **Q. ELI witness Mr. Robins testified that the ATIS forum that deals with the**
9 **COCAG is limited to paid membership. He also stated that CLECs generally**
10 **have not been active participants in these forums, so the Guidelines reflect an**
11 **ILEC view and preserve an advantage they may enjoy. Do you agree?**

12 A. I disagree with his conclusion. The Alliance for Telecommunications Industry
13 Solutions' (ATIS) Industry Numbering Committee (INC) is the appropriate forum to
14 deal with COCAG issues. Although he is correct that INC is limited to paid
15 membership, the annual dues are hardly expensive. For a company with annual
16 revenues between \$250 million and \$1 billion, the dues were \$12,000 in 2006.¹¹ The
17 dues range from a high of \$19,800 to a low of \$1,450 per year. It seems unlikely that
18 dues alone would be enough of a hurdle to keep any LEC, or group of LECs, from
19 joining INC and having their say on what is arguably one of the most important
20 standard forums in the industry dealing with the use of telephone numbers.

21 In his testimony, Mr. Robins suggests that the ILECs have colluded to give
22 the Guidelines an ILEC view. He overlooks the fact that membership in INC is open
23 to all. In December 2006, INC listed 21 members including AT&T, Level 3, Qwest,

¹¹ <https://www.atis.org/inc/incinfo.asp>

1 Verizon (including MCI), ALLTEL, Evolving Systems, NeuStar, Telcordia,
2 Verisign, the VoIP provider Vonage, and others.¹² There is no limit on the number
3 of CLECs that can join.

4 ATIS has a number of other important industry committees that deal with
5 standards for such issues as network performance and quality of service, ordering
6 and billing, emergency services interconnection network reliability, and many others.
7 Membership in the ATIS organization includes many ILECs and CLECs, as well as
8 VoIP providers. AT&T, Broadcom, CenturyTel, Comcast, Pac-West Telecom,
9 Qwest, Global Crossing, Integra Telecom, Level 3 Communications, Vonage, and
10 XO Communications are only a few.

11

12 **Q. Dr. Blackmon states that the industry guidelines for the assignment of telephone**
13 **numbers to customers are found not in the COCAG but in a different ATIS**
14 **document, *Guidelines for the Administration of Telephone Numbers*. Do you**
15 **agree?**

16 A. No I do not agree. The *Guidelines for the Administration of Telephone Numbers*¹³
17 deals with a number of administrative responsibilities of carriers like: aging
18 numbers (intervals for disconnected numbers), reserved numbers (guidelines on
19 limiting the reservation of telephone numbers) and sequential number assignment
20 (which improves efficiency in utilizing numbering resources while meeting demand
21 for sequential numbers). These guidelines have little to do with the policy and
22 network design aspects of how NXXs are assigned to geographic rate centers.

¹² <http://www.atis.org/inc/members.asp>

¹³ <http://www.atis.org/inc/docs/finaldocs/TN-Administration-Guidelines-Final-Document-8-15-03.doc>

1 The COCAG is the document that deals with the assignment of NXXs and
2 their relationship to rate centers.

3

4 **Q. The CLECs claim that there are examples of Voice over Internet Protocol**
5 **(VoIP) providers assigning telephone numbers to customers whose premises are**
6 **not within the geographic boundaries of the rate centers for the NXX's. They**
7 **suggest that this makes it less important to follow the COCAG rules for other**
8 **services. Do you agree?**

9 **A.** No I do not agree. In its *Vonage* order¹⁴, the FCC ruled that states cannot regulate
10 VoIP services provided by Vonage and other providers of similar IP voice services.
11 CLECs are providing telephone numbers to unregulated providers of IP voice
12 service. Because the FCC in the *Vonage* order seemed to condone this, I agree that
13 state commissions probably have no way to ensure that these numbers are being used
14 judiciously. However, in contrast to the VNXX issue, the North American Number
15 Council's (NANC) Future of Numbering Working Group (FoN) has been studying
16 the issue of IP Voice and published a report and recommendation titled "VoIP
17 Service Providers' Access Requirements for NANP Resource Assignments." In that
18 document, the FoN quotes from FCC Order 05-20 (CC Docket No. 99-200) released
19 February 1, 2005, where the FCC granted SBC Internet Services a waiver of section
20 52.15(g)(2)(i) of the FCC's rules. Under that section, an applicant for initial
21 numbering resources must be authorized to provide service in the area for which the

¹⁴ *In the matter of Vonage Holdings Corporation*, Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC-03-021 (September 22, 2003).

1 numbering resources are being requested. That ruling will apply until the FCC
2 adopts numbering rules regarding IP-enabled services.

3

4 **Q. The CLEC witnesses, including Verizon witness Mr. Price and TCG witness**
5 **Mr. Neinast, all testify that VNXX service is permissible under paragraph 2.14**
6 **of the Central Office Code Administration Guidelines (COCAG), either because**
7 **it is FX service or because it is an exception contemplated by the “for example”**
8 **phrase. Do you agree?**

9 A. No, I do not agree. Section 2.14 of the COCAG states that “... from a wireline
10 perspective . . . CO codes/blocks allocated to a wireline service provider are to be
11 utilized to provide service to a customer’s premise physically located in the same
12 rate center that the codes/blocks are assigned. Exceptions exist, for example tariffed
13 services such as foreign exchange service.” I interpret the COCAG “exceptions” to
14 mean exceptions that have been considered, deliberated upon and affirmatively
15 endorsed by the appropriate decision-making body (or allowed to go into effect, in
16 the case of a tariffed service). The Commission probably could endorse VNXX as
17 an exception to the access charge system, but it has not and should not do so unless
18 and until a new and narrow variant is proposed that decreases or eliminates arbitrage
19 opportunities.

20 FX service is a narrow exception to the general rule that numbers are to be
21 assigned based on the physical location of the customer. Because of the way FX
22 service is provisioned by the ILECs, FX service is expensive for subscribers and
23 often proves less cost-effective than 800- service. The expense of the service for

1 customers has prevented it ever amounting to a significant “loophole” in the access
2 charge system; there has never been any concern that traditional FX would result in
3 any significant erosion of access charges and Universal Service. If this Commission
4 were to accept the notion that a LEC may assign NPA/NXXs in any way it wishes, or
5 without the understanding that the customer must pay for the cost of extending a
6 private line from the serving switch to each foreign exchange in which the customer
7 wants to be able to make and receive “local calls,” the result would likely be a much
8 larger hole in the access charge regime.

9
10 **Q. Are there numbers in the North American Numbering Plan that are specifically**
11 **set aside to be used in a non-geographic manner?**

12 A. Yes there are, as I explained in my direct testimony. The most common are “800”
13 toll free numbers that allow the terminating customer to pay all charges so that the
14 “calling” party makes the call toll free. Non-geographic numbers are listed in the
15 COCAG in section 4 (as well as in the “Numbering and Dialing Plan Within the
16 United States,” ATIS-0300076, para. 4.8.2), and they include, along with 800 toll
17 free service, 500, 700 and 900 numbers as well as numerous N11 codes (911, 811,
18 411, etc.). Since they are non-geographic in nature, they are not assigned in a
19 geographic manner and do not have to match LCAs.

20
21 **Q. Dr. Blackmon asserts in his testimony that there is no relevant provision in**
22 **WAC 480-120-021 that restricts local calling to the physical location of the user.**
23 **Do you agree?**

1 A. No, I do not agree. Dr. Blackmon is incorrect that the WAC 480-120-021 definition
2 of “local calling area” is irrelevant. That section states that a “local calling area
3 means one or more rate centers within which a customer can place calls without
4 incurring long-distance (toll) charges.” The definition is silent about the assignment
5 of telephone numbers — but there is no reason for it to mention the assignment of
6 numbers. The definition speaks to the geographic physicality of the customer and
7 whether calls remain physically within the local calling area’s “one or more rate
8 centers.” That is what differentiates local calling from toll.

9

10 **Q. Do the CLEC’s local calling areas match the local calling areas of the**
11 **Incumbent LEC?**

12 A. Yes, the CLECs local calling areas (LCAs) do match the local calling areas
13 of the ILECs, even though Dr. Blackmon is correct that there is no *rule* that
14 specifies that they must. CLECs can make LCAs for their own customers
15 whatever size they choose. However, the picture changes when CLECs
16 connect to existing incumbent LEC networks. In their negotiated
17 interconnection agreements approved by this Commission, all of the CLECs
18 have agreed to match the serving ILECs LCAs for the purpose of rating calls
19 as “toll” or “local.” Examples of language from those agreements are as
20 follows:

21 ”Exchange Service” or ‘Extended Area Service (EAS)/Local Traffic’
22 means traffic that originated and terminated within the local calling
23 area determined by the Commission.” (Excerpt from Level 3’s
24 interconnection agreement with Qwest, approved 04/06/2003.)
25

1 "Extended Area Service (EAS)/Local Traffic)" (Exchange Service)
2 means traffic that is originated by an end user of one Party and
3 terminates to an end user of the other Party as defined in accordance
4 with Qwest's then current EAS/local service areas, as determined by
5 the Commission. (Excerpt from ELI's interconnection agreement with
6 Qwest, approved 8/14/2002, Docket UT-023037.)
7

8 "Traffic Type" is the characterization of intraLATA traffic as "local"
9 (local includes EAS), or "toll" which shall be the same as the
10 characterization established by the effective tariffs of the incumbent
11 local exchange carrier as of the date of this agreement. (Excerpt from
12 Broadwing's interconnection agreement with Qwest, approved
13 3/10/1999, Docket UT-990313.)
14

15 Eschelon, Global Crossing, MCI (Verizon), Northwest Telephone, and TCG have
16 similar provisions in their Interconnection Agreements.
17

18 **II. MUST VNXX BE PERMITTED IN ORDER TO ENSURE** 19 **COMPETITIVE NEUTRALITY BETWEEN ILECS AND CLECS?** 20

21
22 **Q. Some CLEC witnesses suggest that it would be discriminatory for the**
23 **Commission to require CLECs to provide FX the way ILECs have traditionally**
24 **provided it – by extending a private line to the foreign exchange – because they**
25 **say it is either impossible or inefficient for CLECs to do so. Is there an**
26 **acceptable way, in Staff's view, for CLECs to provide FX service?**

27 A. I think the size of the market for voice foreign exchange service has been somewhat
28 overstated. Other witnesses have noted that the VNXX traffic at issue here is almost
29 exclusively ISP-bound. The Commission could consider a separate proceeding to
30 decide the particulars of how a CLEC might provide FX, but in this case the
31 commission is asked to rule on whether VNXX — not FX — is allowed.

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Q. Should CLECs be required to use the same architecture as ILECs in order to provide FX service?

A. Mr. Robins says that requiring CLECs to use the same network architecture as ILECs in order to provide FX service would be like making drivers leave I-90 at North Bend and drive through the downtown, because that’s what people had to do before the interstate was built. ILECS and CLECs do use somewhat different network architectures, but Mr. Robins’ analogy is incomplete.

I would offer this alternative analogy. The CLECs are like truckers that have found a way to leave the interstate and take the local surface roads in order to bypass a weigh station where they would otherwise be assessed a toll that helps pay for the construction and maintenance of the highway and keeps taxes lower than they would be otherwise. Having been found out, the trucker asserts: “But I’m not creating any more cost for construction and maintenance of the surface streets than the local traffic does, and my shippers and consignees will have to pay more if I am forced to pay the toll.” The trucker’s arguments are unpersuasive. If you are a trucker, you have to pay the toll. Likewise, if a call is between local calling areas, then access charges should apply.

Dr. Blackmon makes a different kind of argument. He says that CLECs are carrying a type of cargo (ISP-bound “data”) that did not exist at the time the charge was put in place, and, therefore, carriers who carry that type of cargo should be allowed to bypass the controls while the carrier of the more traditional types of cargo (voice) should continue to pay the toll. This is a more moderate argument but, in my view, still unpersuasive.

1 In the telecommunications industry, just like in the trucking industry, CLECs
2 do not get to decide unilaterally which compensation charges, weigh stations and
3 tolls they have to pay. The rules of the road apply equally to all, until those rules
4 have been changed by the appropriate entities.

5
6 **Q. Should the numbering *Guidelines* be interpreted or applied in a manner that**
7 **results in barriers to entry for competitive services as Dr. Blackmon has asked**
8 **in his testimony?**

9 A. I agree that they should not. However, I disagree with Dr. Blackmon’s
10 characterization of what is fair. The numbering guidelines should be applied fairly
11 and in a neutral manner for all carriers, no matter the network design used. In his
12 testimony at page 11, Dr. Blackmon quotes from 47 C.F.R. § 52.9(b): “ ...
13 numbering administration exists to: (1) facilitate entry into the communications
14 marketplace; (2) not unduly favor or disfavor any particular industry segment or
15 group of communications consumers; and (3) not unduly favor one technology over
16 another.” However, the Code of Federal Regulations goes on to state in §52.13 (b)
17 that the North American Numbering Plan Administrator (NANPA) “... shall assign
18 and administer in an efficient, effective, fair, unbiased, and non-discriminatory
19 manner *consistent with industry-developed guidelines* and Commission regulations.”
20 (Emphasis added.) Further, in § 52.13(b)(3), the FCC states that NANPA shall
21 perform its duties while “complying with guidelines of the North American Industry
22 Numbering Committee (INC) ... related industry documentation ... all of which may
23 be modified by industry fora or other appropriate authority ...”

1 If one industry segment is allowed to unilaterally bypass “industry-developed
2 guidelines,” such as those created by the INC, then that industry segment can obtain
3 unfair advantage over the other industry segments that must continue to follow those
4 guidelines and regulations. Allowing one segment of the industry to ignore the
5 standards that the other segments must follow may create unfair arbitrage. I believe
6 that would be the case if CLECs were allowed, in the interest of competing in the
7 market for “FX-like services,” to simply assign numbers as they choose without
8 regard to customer location. This would not just be a leveling of the playing field. It
9 would most likely give CLECs a significant advantage over other LECs that have no
10 alternative but to continue to provide FX service in the same manner they
11 traditionally have done. Additionally, as the Commission previously decided in the
12 Qwest/AT&T arbitration discussed above, a rule that would define calls as local
13 simply based on “the calling and called NPA/NXXs” would be “too sweeping in its
14 potential effect and [would have] potentially unacceptable consequences in terms of
15 intercarrier compensation.”

16 The COCAG provides an exception to geographic number assignment for
17 “tariffed services such as foreign exchange service” but not for VNXX. If
18 technology advances such that the standards and regulations become obsolete, then
19 the standards and regulations must be changed for all segments of the industry, not
20 ignored by some, so that the North American Numbering Plan resources can truly be
21 administered in a “... fair, unbiased, and non-discriminatory manner consistent with
22 industry-developed guidelines and Commission regulations” for all companies.

1 **III. IF VNXX IS ALLOWED FOR ISP-BOUND TRAFFIC,**
2 **SHOULD THE ISP REMAND ORDER'S COMPENSATION**
3 **SCHEME APPLY TO THAT TRAFFIC?**
4
5

6 **Q. Are Qwest's costs any greater if a CLEC with modem banks or servers in each**
7 **local calling area moves that equipment to a central location?**

8 A. No, I don't believe they are. I agree with CLEC witnesses Mr. Sumpter, Mr. Kell
9 and Mr. Price that the cost incurred by Qwest when it transports a call from its
10 customer to the CLEC's point of interconnection is the same whether the CLEC
11 transports that call back to the same LCA for completion of a local call or simply
12 hands it off to a customer located in a different LCA. The point I was trying to make
13 in my direct testimony was that, because these calls are properly classified as inter-
14 local calling area calls and not local calls, they should never have been carried as
15 local traffic to begin with. This Commission has allowed LECs to collect access
16 charges that exceed the LEC's cost of terminating a call as a means of keeping local
17 service rates lower than those rates would have had to be otherwise. The important
18 point is that, if a call is between customers located in different local calling areas,
19 access charges should apply until the Commission has authorized an exception or the
20 access charge regime itself is ended.

21
22 **Q. Do you agree with Dr. Blackmon and others' point that requiring ISPs to locate**
23 **modems or servers in each local calling area would prevent efficient network**
24 **design?**

25 A. Yes, most likely it would, but there are ways to facilitate the efficiency of centralized
26 servers or modem banks that don't require ignoring the rule that numbers are based

1 on geography. 800- numbers are a possibility, as is a statewide data-call overlay.
2 The question of what compensation should apply to such calls is different than the
3 question of how the call should be dialed.

4 At the very least, the Commission should limit non-geographic assignment of
5 geographic numbers (*i.e.*, VNXX) to ISP-bound traffic only. Dr. Blackmon argues
6 that allowing VNXX for ISP-bound traffic does not erode access charges because
7 dial-up ISP “data” calls are a use of the public switched telephone network that did
8 not exist at the time the access charge system came about. This is a fair point and
9 might be a reason for allowing VNXX arrangements for the limited purpose of
10 accessing ISPs.

11

12 **Q. If this Commission were to allow non-geographic assignment of geographic**
13 **numbers, *e.g.*, for the limited purpose of dial-up ISP Traffic, would it have to**
14 **follow that Qwest must pay reciprocal compensation on that traffic?**

15 A. No, I don’t believe so. As I mentioned earlier, it is my understanding that federal
16 courts have upheld state commission decisions that prohibit VNXX, as well as
17 decisions that allow VNXX for ISP-Bound traffic, but impose some form of
18 compensation other than strict terminating compensation.¹⁵ Many states have said
19 that bill-and-keep applies and other states, like California, have allowed the ILEC to
20 charge an offsetting call origination charge.

¹⁵ *Verizon California, Inc. v. Peevey*, 462 F.3d 1142, 1158 (9th Cir. June, 2006); *Global NAPs, Inc. v. Verizon New England, Inc.*, 444 F.3d 59, 72 (1st Cir. April, 2006); *Global NAPs, Inc. v. Verizon New England, Inc.*, 454 F.3d 91, 99-101 (2nd Cir. July, 2006).

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Q. Having now reviewed the direct testimony of all the parties, what does Staff recommend?

A. The main point of my testimony has been that the CLECs should never have begun assigning numbers to ISPs (and, perhaps, other customers) for geographically distant local calling areas as a means of bypassing access charges. I understand the CLECs to argue that the *ISP Remand Order* gave them a right to be compensated by Qwest for all ISP-bound traffic terminated to them, regardless of the location of the ISP server or modem bank, at the *ISP Remand Order's* \$.0007 rate. I don't see that the *ISP Remand Order* was clear on this point. Again, I understand that courts have upheld state commission orders that either prohibit VNXX (ISP-bound or otherwise) or allow ISP-bound VNXX subject to a form of compensation that better addresses the arbitrage problems that the FCC identified regarding ISP-bound traffic.

It is my own view that the FCC did not intend to allow LECs to ignore, for ISP-bound traffic, the state-established local calling areas and the COCAG number assignment provisions that reinforce them. I also recognize, however, that this Commission has concluded otherwise in previous arbitrations. In any case, I believe the practice of assigning geographic telephone numbers in a non-geographic manner for this purpose should have been vetted through the North American Numbering Council, and brought before this Commission in some timely and appropriate context.

Staff understands that a prohibition of VNXX or requiring CLECs to pay Qwest originating access charges (instead of receiving terminating charges) could have serious consequences for the CLECs, their ISP customers and the ISP's end

1 users. Staff also understands that Verizon and Qwest have a proposal before the
2 commission to exchange VNXX traffic at a rate of zero — that is, subject to bill-and-
3 keep.

4 Given these practical realities, it is Staff’s recommendation that the
5 Commission enter an order prohibiting the use of VNXX with a limited exception:
6 VNXX service can be used for the exchange of dial-up ISP-bound traffic with a
7 Commission-set reciprocal compensation rate of zero, until such time that the FCC
8 completes its intercarrier compensation proceeding. Other exceptions could be
9 considered in future proceedings.

10 Staff’s recommendation is an interim approach only and is meant to address
11 the inequity of existing compensation charges for dial-up ISP-bound VNXX traffic
12 by replacing them with bill-and-keep. Staff would recommend that the Commission
13 strongly encourage industry members to take the VNXX standards issues addressed
14 in this case to the appropriate standards bodies, there to be opened as active items
15 and when resolved to update the appropriate industry standards.

16
17 **Q. Why are you recommending a reciprocal compensation rate of zero (bill-and-
18 keep)?**

19 **A.** In the *ISP Remand Order*, the FCC was particularly concerned with problems that
20 had arisen due to reciprocal compensation payments ordered by state utility
21 commissions under the *ISP Declaratory Ruling*. The FCC found that ISP dial-up
22 access distorted the market and “created the opportunity to serve customers with
23 large volumes of *incoming* traffic.” *ISP Remand Order* at para. 69 (emphasis in

1 original). The record before the FCC at that time showed that CLECs terminated 18
2 times more calls than they originated, leading to the receipt of net reciprocal
3 compensation payments amounting to nearly \$2 billion annually at the time of the
4 Order. *Id.* at para. 70. The FCC, therefore, found that because of this type of
5 regulatory arbitrage, reciprocal compensation had "undermine[d] the operation of
6 competitive markets." *Id.* at para. 71. The FCC believed that a "bill-and-keep"
7 regime, under which each carrier collected its own costs from its own customers and
8 not another carrier, would be a viable compensation approach to dial-up ISP-bound
9 traffic. *ISP Remand Order*, para. 74. The FCC decided not to employ a "flash cut"
10 (that is, an immediate transition) to bill and keep, however. Instead, it adopted a
11 transition period to avoid rate shock and upsetting "the legitimate business
12 expectations of carriers and their customers." *Id.* at para. 77.

13 It is important to recognize that, at the time of the *ISP Remand Order*, the
14 FCC's understanding was that "ISP end-user customers typically access the Internet
15 through an ISP server located in the same local calling area." *Id.* at para. 10. As I
16 earlier testified, prior to the *ISP Remand Order*, CLECs put modem banks in each
17 local calling area to enable dial-up data users to place local (toll free) calls to their
18 ISPs. I understand the CLECs' main argument to be that the FCC's decision in the
19 *ISP Remand Order* eliminated the need to place modems in each local calling area,
20 thereby allowing CLECs to centrally locate a single modem bank (or server) in the
21 same location as their switch. The CLECs believed that they were entitled to
22 transport ISP-bound calls of over local trunks as well as receive compensation from

1 the ILECs at the FCC's new rate caps, even when such calls would previously have
2 been toll calls.

3 Ironically, the CLECs' theory appears to be that the FCC meant to gradually
4 reduce to zero the reciprocal compensation that the CLECs were receiving for local
5 ISP-bound traffic, while at the same time allowing the use of VNXX to open a new
6 way for CLECs to provide dial-up ISP access at significantly lower costs while still
7 receiving reciprocal compensation. If that theory is correct, then there is no reason
8 why the bill-and-keep regime, which the FCC said it preferred, should not
9 immediately apply to this new, more efficient means of providing dial-up ISP
10 service.

11
12 **Q. Why are you recommending that VNXX be prohibited except for ISP-bound**
13 **traffic?**

14 A. I mentioned before that the traffic in this case appears to largely be ISP-bound.
15 However, there also appears to be many questionable uses for VNXX numbers. In
16 Dr. Blackmon's testimony, he mentions "international callback" and destination
17 numbers for fax-to-e-mail (eFax) as two examples of services that that may be using
18 VNXX. Such services are not covered by any FCC ruling such as the *ISP Remand*
19 *Order*.

20 The New Hampshire PUC has been studying VNXX issues since October
21 2000. It has made a number of rulings in the matter, and in its latest investigation¹⁶,
22 its staff found areas of concern:

¹⁶ *State of New Hampshire, Inter-Department Communication, Investigation Into Whether Certain Calls Are*

1 Some CLECs are assigning out-of-state customers telephone numbers
2 associated with a New Hampshire exchange in which neither the
3 CLEC nor its customers have a physical presence. Calls to the number
4 are delivered to the CLEC's point of interconnection, in an exchange
5 in which the customer again has no physical presence.
6

7 Some CLECs are providing out-of-state companies with telephone
8 numbers which the company assigns to end users, very similar to the
9 eFax situation. In Order No. 23,454 the Commission denied future
10 numbering requests for the purpose of providing eFax and other email
11 delivery services.
12

13 Some CLECs are assigning toll provider customers with telephone
14 numbers that allow end users to make prepaid toll calls. Neither the
15 toll provider nor the CLEC have a physical presence in most
16 exchanges associated with the telephone numbers. The end user is
17 directed to call one of the numbers locally, enter an identification
18 code, and then is able to make long distance calls over the network of
19 the toll provider. Staff believes this is prohibited by the FCC and by
20 previous orders of the Commission.
21

22 Beyond the use of VNXX for ISP access, the New Hampshire staff discovered that at
23 least one CLEC is using VNXX numbers for toll bypass, both through prepaid
24 calling cards that it issues and for interexchange carriers. The staff also found that,
25 out of a total of 66 customers that one CLEC reported having in the state of New
26 Hampshire, 26 were actually located in other states, primarily California and Florida.
27 None were New Hampshire-based companies.

28 The New Hampshire report continues: "Staff is also concerned about the use
29 of numbers as a substitute for 800- service. 800- service allows a carrier to pay for
30 the cost of carrying a call, so the end user does not have to pay toll charges. ... it
31 appears that at least some of Level 3's customers are using VNXX as an interstate
32 CLEC FX service, which the Commission did not consider as an acceptable use of
33 VNXX."

1 There is no reason to believe that that the situation in Washington is different
2 than New Hampshire. Given the wide range and the questionable nature of some of
3 the uses of telephone numbers in other states such as New Hampshire, Staff believes
4 that VNXX should be limited to dial-up ISP-bound traffic.

5

6 **Q. Does this complete your testimony?**

7 A. Yes, it does.