

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

PAC-WEST TELECOMM, INC.,)	
)	
Petitioner,)	DOCKET UT-053036
)	
v.)	
)	
QWEST CORPORATION,)	
)	
Respondent.)	
.....)	
)	
LEVEL 3 COMMUNICATIONS, LLC,)	
)	
Petitioner,)	DOCKET NO. UT-053039
)	
v.)	
)	
QWEST CORPORATION,)	PAC-WEST RESPONSE TO QWEST
)	MOTION TO STRIKE OR FOR LEAVE
Respondent.)	TO REPLY
)	
.....)	

1. Pursuant to WAC 480-07-375(4), Pac-West Telecomm, Inc. (“Pac-West”) provides the following Response to the Motion of Qwest Corporation (“Qwest”) to Strike Portions of Pac-West’s Response, or, in the Alternative, for Leave to File a Reply (“Motion to Strike”). Qwest has offered no legitimate basis on which any portion of Pac-West’s Response to Qwest’s Motion for Summary Determination (“Pac-West Response”) should be stricken, but Pac-West does not object to the Commission granting Qwest’s request to file the limited reply it has offered.¹

¹ Pac-West takes no position on the motion with respect to Qwest’s request to strike or reply to portions of Level 3’s response.

ARGUMENT

2. Pac-West's Response includes a discussion of Qwest's Market Expansion Line ("MEL") service, including applicable provisions of Qwest's product catalog and marketing information on MEL service, in direct response to issues Qwest raised in its Motion for Summary Determination. Qwest claimed that Pac-West was acting as an interexchange carrier ("IXC") when providing VNXX service.² Pac-West responded by pointing out that Qwest cannot plausibly make that claim because Qwest is holding itself out as a local exchange carrier ("LEC") when it provides functionally indistinguishable services – including not just foreign exchange ("FX") but MEL service.³ Qwest also contended that its tariffs definitively limit local calling to parties physically located within the same local calling area.⁴ Pac-West responded by demonstrating that not only does Qwest's tariff language fail to support that contention but that Qwest offers services – including MEL – that permit customers to make and/or receive "local" calls when they are *not* physically located within the same local calling area.⁵

3. Qwest nevertheless argues that Pac-West cannot address Qwest's MEL service because Qwest did not specifically refer to its MEL service in its Motion for Summary Determination and MEL was not at issue in the district court proceedings. Whether or not Qwest expressly mentioned MEL, however, is irrelevant. Pac-West has every right to respond to Qwest's broad conclusory statements by demonstrating that Qwest's own services are inconsistent with its statements, regardless of whether Qwest expressly

² Qwest Memo in Support of Motion for Summary Determination ("Qwest Memo") ¶ 71.

³ Pac-West Response ¶ 8.

⁴ Qwest Memo ¶ 49.

⁵ Pac-West Response ¶¶ 17-18.

mentions each of those services. Qwest cannot attempt to maintain its pose as the all-knowing Wizard of Oz by asking the Commission to “pay no attention to the man behind the curtain” and ignore what Qwest is actually doing.

4. Nor can Qwest legitimately claim that Pac-West’s discussion of Qwest’s MEL service is any kind of unfair surprise. In response to Pac-West’s evidence and arguments in the VNXX complaint proceeding, the Commission expressly acknowledged Qwest’s provisioning of MEL service in the final order on which Qwest places great reliance in its Motion for Summary Determination.⁶ The Commission further recognized that “Qwest offers several services which, from a telephone number assignment and traffic routing perspective, are similar in nature to the VNXX services offered by CLECs.”⁷ Pac-West cited to this portion of the VNXX Order in its own Motion for Summary Determination in support of the point that “[c]alls from CLEC customers to subscribers of Qwest’s FX and VNXX-like services with telephone numbers rated to the same local calling area are considered Section 251(b)(5) traffic for which the CLEC must pay Qwest reciprocal compensation to terminate, even though the Qwest subscriber is not physically located within that local calling area.”⁸ Qwest cannot plausibly claim that it could not anticipate a discussion of its MEL service given the history of the Commission’s consideration of this issue any more than Qwest could expect to avoid such a discussion by simply refusing to mention the service. Nor can Qwest reasonably contend that the VNXX Order is binding on Pac-West but that Qwest can insist that the Commission disregard aspects of the order that Qwest does not like.

⁶ *Qwest v. Level 3, et al.*, Docket No. UT-063038, Order 10, Final Order ¶ 234.

⁷ *Id.* ¶ 237.

⁸ Pac-West Motion for Summary Determination ¶ 20 & n.29.

5. Qwest, therefore, has provided no basis on which the Commission could strike the portions of Pac-West's Response that include a discussion of Qwest's MEL service. Pac-West, however, does not object to the Commission accepting Qwest's proposed reply on that issue, despite Qwest's attempts to hide the ball by trying to ignore its MEL service in its Motion for Summary Determination. Pac-West nevertheless observes that Qwest's proposed reply fails to address, much less refute, the purpose for which Pac-West brings Qwest's MEL service to the Commission's attention – that from an *intercarrier* compensation perspective (which is the issue in this remand proceeding), Qwest charges reciprocal compensation for calls that Pac-West customers place to Qwest VNXX-like service customers who are not physically located within the same local calling area.

CONCLUSION

6. The Commission, therefore, should deny Qwest's Motion to Strike.

Dated this 8th day of April 2009.

PAC-WEST TELECOMM, INC.

By: 

Gregory J. Kopta