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June 3, 2009

*Via E-mail and
Overnight Mail*

Mr. David Danner, Executive Director/Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Consolidated
Docket No. UT-053036 – PacWest Complaint
Docket No. UT-053039 – Level 3 Communications Complaint
Qwest Supplemental Authority

Dear Mr. Danner:

Pursuant to the discussion at the status conference on May 27, 2009, Qwest submits two briefs filed by the FCC in proceedings before the D.C. Circuit. These briefs support Qwest's position that the FCC's *ISP Remand Order* and *ISP Mandamus Order* did not hold that VNXX ISP traffic is subject to reciprocal compensation under Section 251(b)(5) of the Act. This authority supports Qwest's recommendation that this matter should not be held in abeyance pending federal court rulings, as it is unlikely that the existing law on this issue will change.

First, in a brief filed with the United States Court of Appeals for the D.C. Circuit (Tab 1), the FCC states that VNXX is not addressed in the *ISP Remand Order* and was not considered in the remand underlying the *Mandamus Order*: "VNXX-related issues, therefore, are not within the scope of the *WorldCom* remand," and "the *ISP Remand Order* did not purport to address VNXX calls" ¹

Second, the FCC's brief in *Core Communications, Inc. v. FCC* (Tab 2) describes the interim pricing rules established in the *ISP Remand Order* as applying only to traffic involving "two LECs [that] collaborate to deliver calls to an ISP within a local calling area" ² The brief explains that the *Mandamus Order* is limited to the traffic at issue in that proceeding (calls to an ISP in the same LCA), stating that arguments relating to other types of traffic "may have implications in other cases involving other types of traffic, but the Commission has not applied its interpretation [of §251(b)(5)] to those other cases." ³

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa A. Anderl", is written over the typed name.

Lisa A. Anderl

LAA/lw

Enclosures

cc: All parties of record (w/encl.) (via e-mail and U.S. mail)

¹ Tab 1 at 26 and n. 22.

² Tab 2 at 21 (emphasis added).

³ Id. at 45