

**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

**REBUTTAL TESTIMONY
OF LARRY B. BROTHERRSON
QWEST CORPORATION**

MARCH 20, 2007

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1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME**

3 A. My name is Larry B. Brotherson. I previously filed Direct Testimony in this docket
4 and have testified in several other dockets in Washington.

5

6 **II. PURPOSE OF TESTIMONY**

7 **Q. WHAT IS THE PURPOSE OF YOUR REPLY TESTIMONY?**

8 A. In the *Level 3 Complaint Order*, the Washington Utilities and Transportation
9 Commission (“Commission”) stated that it has not reached a final policy decision
10 on VNXX traffic: “[s]hould Qwest wish to pursue the broader issue of VNXX
11 generally, it may file its own complaint about specific carriers and their behavior
12 regarding intercarrier compensation methods.”¹ The Commission said the same
13 thing in its *Pac-West Complaint Order*.²

14 As a consequence, Qwest filed a complaint against the CLEC Respondents in this
15 docket seeking, among other things, resolution of the issue of whether Virtual NXX
16 (“VNXX”) numbering arrangements in Washington should be banned, or if
17 permitted, what rules and conditions should apply to VNXX traffic. The purpose
18 of my reply testimony is to respond to the testimony of witnesses for the
19 Respondents in this case filed on February 2, 2007. Specifically, I address the
20 erroneous arguments by several witnesses regarding FX service, and clearly

¹ Order No. 05, *Level 3 Communications LLC v. Qwest Corporation*, Docket No. UT-053039_¶ 40 (WUTC February 10, 2006) (“*Level 3 Complaint Order*”).

² Order No. 05, *Pac-West Telecomm, Inc. v. Qwest Corporation*, Docket No. UT-053036 ¶ 43 (WUTC February 10, 2006) (“*Pac-West Complaint Order*”).

1 distinguish a real FX service from the VNXX service provided by several of the
2 Respondents. My testimony on this point supplements Mr. Linse's Direct
3 Testimony on the same subject (Linse Direct at 7-11) and Mr. Linse's comments in
4 his Rebuttal Testimony. Consistent with Mr. Linse's testimony, I clarify what
5 VNXX traffic is and is not, and explain the policy problems that VNXX creates. I
6 also respond to several other arguments advanced by the various CLECs that are
7 using VNXX numbering as to why they should not be permitted to continue using
8 VNXX in the manner that they currently do. Some CLECs argue that what they are
9 doing is no different than certain Qwest offerings like Qwest's FX, Wholesale Dial,
10 One Flex, or Market Expansion Line services. Others argue that there is no such
11 thing as VNXX so long as the numbers for the called and calling parties are
12 associated with the same local calling area ("LCA"), and that they are using
13 numbers consistent with historic use and within the rules. Other Respondents
14 acknowledge that they use VNXX but argue that it is appropriate. Because several
15 CLECs have raised similar arguments, I have, to the extent possible, grouped their
16 arguments into categories so that I am able to respond to them once. In addition to
17 my testimony, Mr. Linse addresses technical issues raised by Respondents and Dr.
18 Fitzsimmons addresses economics issues, particularly cost causation issues, raised
19 by a few of the witnesses.

20
21 **Q. PLEASE PROVIDE A GENERAL SUMMARY OF THE ISSUES YOU**
22 **ADDRESS IN YOUR TESTIMONY.**

23 A. I address the following issues in my testimony:

- 24 • VNXX is not FX
- 25 • Definition of VNXX

- 1 • The Cost Argument
- 2 • Comparing VNXX to other Qwest Products
- 3 • The Complaint Decisions
- 4 • LATA-Wide Free Calling
- 5 • The MCI Settlement
- 6 • Deferring to the FCC
- 7 • Global Crossing Counterclaim

8

9

III. VNXX IS NOT FX

10 **Q. WHAT IS THE MOST COMMON THEME IN THE TESTIMONY OF THE**
11 **RESPONDENTS?**

12 A. The most common theme raised by five Respondents (ELI/Integra,³ Level 3, Pac-
13 West, and Global Crossing) is that VNXX is FX. While phrased differently in
14 some cases, the arguments are variations on the same theme: these CLECs claim
15 that all they are doing is providing foreign exchange (FX) service just like Qwest.
16 The apparent inference to be drawn from this testimony is that, because they are
17 providing “FX service,” all of their traffic is “local” and should therefore be subject
18 to reciprocal compensation for voice traffic or \$.0007 for traffic sent to ISPs. But
19 they present very few facts on just how they provision their “FX services.” Based
20 on my review of their testimony, it is clear that their “FX services” are merely re-
21 labeled VNXX service masquerading as FX service. In the testimony that follows,

³ Mr. Robins' testimony was filed on behalf of both ELI and Integra, although the rest of his testimony refers only to ELI.

1 I define the attributes of a true FX service and demonstrate that none of the CLECs
2 who claim to be providing FX service are in reality providing a service with those
3 attributes. In fact, what they are providing is VNXX service.

4

5 **Q. PLEASE DESCRIBE HOW QWEST MUST PROVISION AND THEN**
6 **CORRESPONDINGLY MUST PRICE FX SERVICE TO ITS FX**
7 **CUSTOMERS?**

8 A. In Washington, Qwest's FX is described in Section 5.1.4 of the WN U-40, Qwest's
9 Washington Exchange and Network Services Tariff. Qwest's FX service is
10 described as follows in the tariff:

11 Foreign Exchange (FX) Service is furnished within a
12 [LATA] *from an exchange* other than the exchange from
13 which the customer would normally be served. (Qwest
14 Tariff, Section 5.1.4.A). (Emphasis added).
15

16 Thus, the essence of the service is that a customer is not located within an exchange
17 (referred to as the "foreign exchange" or "FX" in the tariff) from which the service
18 emanates. Qwest's FX service for business customers is described the same way.

19 Qwest's FX service is a combination of two services. First, the FX customer must
20 purchase local exchange service *in the foreign exchange* (often called the "open
21 end" of the FX service) at the local exchange price established in the tariff for that
22 exchange. Thus, Qwest FX customer pays the same rate for local exchange service
23 in the foreign exchange that customers located in that exchange pay. This rate, of
24 course, is the rate for local service within that exchange. By paying these rates, the
25 Qwest FX customer thus compensates Qwest, at least in part, for the local loop

1 plant, distribution facilities, carrier systems, local installation and repair personnel,
2 the local Qwest switch, and the myriad other pieces of equipment and support
3 systems that are necessary in order to provide local service in that exchange.

4 Second, the Qwest FX customer must also pay rates for “interexchange channel
5 mileage, interexchange channel terminal and service function.” (Section
6 5.1.4.C.10). In other words, the FX customer pays for a private line service (at
7 retail private line rates) that transports the FX traffic from the FX exchange to the
8 exchange where the FX customer is actually located. The FX customer pays for
9 transport at retail rates and *not* at the significantly lower TELRIC rates. By paying
10 for retail private line service, the FX customer accepts full financial responsibility
11 for transporting the traffic between the FX exchange and the exchange where the
12 FX customer (often called the “closed end” of the FX service) is located.

13 Qwest's FX service follows the principles of cost causation discussed in Dr.
14 Fitzsimmons' testimony. The ultimate cost causer is the calling party, who acts as a
15 customer of the entity that purchases the FX service from Qwest. The entity that
16 purchases the FX service from Qwest includes toll free calling as a service to its
17 customers and, with the price it pays for FX service, bears full financial
18 responsibility for that interexchange service. Viable firms pass costs on to their
19 customers in the prices of goods and services, and presumably the purchasers of FX
20 service pass the cost of this service on to their customers.

21

1 **Q. PLEASE EXPLAIN THE IMPACT THAT THE SINGLE POINT OF**
2 **PRESENCE (“SPOP”) IN THE LATA DECISION HAS HAD ON FX**
3 **SERVICE.**

4 A. In about 2000, an issue that had been the subject of dispute for several years, which
5 was whether a CLEC needed to interface with an ILEC within each LCA or could
6 instead choose to interface at a single point in the LATA was finally resolved. The
7 decision was ultimately made that a CLEC could interface with an ILEC from a
8 single location in each LATA. Thus, ELI, for example, could locate a switch in
9 Tukwila in the Seattle LCA that serves all of its customers in the Seattle LATA.
10 (*See Robins Direct* at 3 and Exhibits DER-2 and DER-3).

11 This policy, which Qwest has termed Single Point of Presence (“SPOP”) in a
12 LATA, was intended to allow a CLEC, to provide *local exchange service* to end
13 users located in Olympia even though its switch was located in the Seattle LCA.
14 Under this arrangement, if a Qwest Olympia customer makes a *voice call* to an ELI
15 Olympia customer, Qwest would transport the call to a point of interconnection
16 (“POI”), most likely in the Seattle area, where the traffic would be handed off from
17 Qwest to ELI. ELI would switch the traffic in the Seattle area with its Tukwila
18 switch, then transport the traffic back to Olympia, and deliver the traffic to its end
19 user in Olympia on a loop. Qwest would bear the cost of delivering this local
20 traffic to ELI. ELI would bear the cost of delivering the local traffic to its
21 customer. Because each carrier supplied transport between Olympia and Seattle,
22 reciprocal compensation would apply. If the ELI end user later called the Qwest
23 end user, the reverse would apply symmetrically.
24

1 Thus, SPOP allows a CLEC to provide local service through the use of a single
2 switch in a LATA. But with this significant benefit to CLECs there is also created
3 some potential negatives for the CLEC, one of which is that the CLEC does not
4 have widely dispersed switches and interoffice facilities between LCAs and thus
5 lacks capability within each LCA that makes it impossible to provide certain
6 services (FX being one of them). In other words, by centralizing its switching
7 capabilities (and thus deriving all of the efficiencies created by that method of
8 operation), the CLEC does not have (and cannot pretend to have) FX capability in
9 every LCA. Further, the CLEC does not have the capability to route traffic onto
10 customer purchased interexchange facilities like private line, a component of FX
11 service.

12
13 **Q. IN HIS TESTIMONY, ELI WITNESS ROBINS STATES THAT QWEST IS**
14 **WRONG IN SUGGESTING THAT A SERVICE PROVIDER MUST HAVE**
15 **A PRESENCE IN THE FOREIGN EXCHANGE IN ORDER TO PROVIDE**
16 **FX SERVICE (ROBINS DIRECT AT 2). Level 3 witness Greene (Greene**
17 **Direct, at 18-20) makes similar points, though uses different language. DO YOU**
18 **AGREE WITH THEM?**

19 **A.** No. As I described it above, FX service (real FX service) requires that the FX
20 provider possess the network facilities (loops, carrier systems, feeder plant,
21 distribution facilities, and so on) and a switch in order to provide FX service.

22 I'll use Olympia as an example again. Qwest has built a local exchange network in
23 the Olympia area that ubiquitously provides connectivity to all (or nearly all)
24 businesses and residences in that area. Qwest has invested millions of dollars in

1 Olympia to create this network and billions of dollars statewide to create similar
2 networks in scores of other areas. Furthermore, Qwest has deployed switches in
3 each of the LCAs that it serves in Washington.

4 CLECs, however, do things very differently. Based on their testimony, ELI, Global
5 Crossing, Pac-West, and Level 3 each have only one switch in Washington, each of
6 them apparently located somewhere in the Seattle LCA. None of them has a switch
7 in Olympia.

8 It is my understanding from other hearings, for example, that Level 3 has built no
9 loop plant in any LCA in Washington (with the possible exception of the Seattle
10 LCA). I am not sure whether Global Crossing, Pac-West, or ELI have built loop
11 plant in Olympia, but I am certain that, if they have, it is confined to areas where
12 businesses and government agencies are concentrated. None of them have
13 attempted to replicate Qwest's ubiquitous network (nor would they be expected to
14 do so).

15

16 **Q. WHAT IS THE SIGNIFICANCE OF A LACK OF FACILITIES IN LCAS**
17 **WHERE THESE COMPANIES PURPORT TO PROVIDE FX SERVICE?**

18 A. The fact that none of these companies has significant local facilities, any
19 interexchange facilities, nor switches in Olympia, has both practical and economic
20 consequences. The practical consequence is that if, for example, Level 3 purports
21 to provide FX service between Olympia and Seattle, it is a service that exalts form
22 over substance. Because neither Level 3 nor any other CLEC has a switch in
23 Olympia they cannot provide the local component of an FX service. Without a

1 switch a CLEC has no capability to receive and route traffic onto dedicated
2 facilities in Olympia (assuming they have interoffice facilities between Olympia
3 and other exchanges); thus the *only* way it can even pretend to provide FX service
4 between Olympia and Seattle is to ride on the back of Qwest's network. In other
5 words, any FX service provided by any CLEC in Olympia can exist only through
6 VNXX. This is because, by purporting to provide FX service, they have
7 represented to Qwest that they have a local Olympia customer, and as such ask
8 Qwest to deliver over Qwest facilities traffic originated from the Qwest end users to
9 Level 3 in another LCA.

10 To put this in context, when Qwest provides Olympia FX service for a Seattle
11 customer, Qwest can do so because it actually has an interexchange network and
12 switch in Olympia. The FX customer compensates Qwest for the use of those
13 facilities by paying for *Olympia local exchange service* and paying for the private
14 line transport to the customer location in another city. Thus, in Qwest's case, the
15 FX customer has access to and pays for its use of the local network in Olympia.
16 The FX customer has access to and pays retail rates for its use of the interexchange
17 network of Qwest to transport the traffic to the Seattle FX customer premises.
18 While CLECs may be able to transport some of their interexchange traffic on their
19 own network or purchase such transport from other carriers (including Qwest), they
20 apparently believe that assigning VNXX numbers relieves them of that
21 responsibility and relieves their customers, the ISPs, of paying for any private line
22 transport. Instead, they believe that they should be entitled to free use of Qwest's
23 network in Olympia so that they can provide a service to their customers that they
24 call "FX," but which only superficially resembles a true FX service.

1 My point is that the ability to provide a true FX service (the origination of calls in
2 one LCA and the transport of those calls to a specific end user in another LCA)
3 requires actual facilities and investment. Furthermore, cost causation principles
4 must be followed. If a carrier that claims to provide FX service feels it may do so
5 without bearing the origination costs (without which the FX service would be
6 impossible to provide) or without providing dedicated transport to their end user on
7 some type of CLEC provided private line service, it is not providing FX service.

8
9 **Q. IN LIGHT OF THE FOREGOING, WHAT DOES QWEST MEAN WHEN**
10 **IT TALKS ABOUT ITS FX CUSTOMERS BUYING A REAL FX SERVICE?**

11 A. It means, using Olympia again as the example, the Qwest FX customer pays Qwest
12 retail local exchange rates for use of both the local exchange network and the use of
13 the local end office switch in Olympia without which the service could not be
14 provided. By paying for local exchange service in the FX exchange and by paying
15 full private line rates to transport the traffic from Olympia (the open end) to Seattle
16 (the closed end), the FX customer literally pays its fair share of the Olympia
17 facilities without which the FX service could not be provided.(the customer literally
18 buys local service in Olympia). Another way of saying it is that the FX customer
19 pays exactly what any other local exchange customer pays for service in Olympia,
20 and pays retail transport. In that situation, traffic originating in Olympia to the FX
21 number is properly treated as local traffic. But when a CLEC, which pays nothing
22 for local connectivity in Olympia, and does not place the traffic onto private line
23 facilities bound for its customer's distant location, yet claims to provide Olympia
24 FX service to a customer in Seattle, its claim is simply not credible. And it

1 produces the bizarre result that Qwest receives no compensation for the facilities
2 that make the CLEC's "FX service" possible, yet the CLECs then demand that
3 Qwest compensate them for terminating the traffic. As Dr. Fitzsimmons discusses,
4 this reverses the proper cost causation.

5 Mr. Robins, while criticizing Qwest's position, acknowledges the foregoing facts
6 when he states, comparing Qwest's to ELI's network: "The most significant
7 differences are ELI's larger geographic footprint and *lack of ubiquitous distribution*
8 *plant.*" (Robins Direct, at 4; emphasis added). The problem is that ELI and several
9 of the other carriers want to be treated as though they have broadly-deployed
10 switches, interoffice transport, and local plant, but they have not done so. They are
11 certainly not required to do so, but if they make those elections then they lack the
12 ability to provide FX service in that LATA. And if they make that election, they
13 should not be allowed to avoid paying proper compensation (nor should they be
14 allowed to improperly receive compensation) based on the fiction that they offer
15 FX service. The CLECs are free to choose SPOP and gain the efficiencies of not
16 building a transport network between exchanges for their customers. I believe that
17 all of the CLECs in this case have chosen SPOP. Having done so, they are not
18 entitled to pretend that their network design looks like Qwest's, that they actually
19 have local facilities and switches, or that they are actually transporting FX traffic
20 between exchanges.

21
22 **Q. ARE YOU PROPOSING, AS DR. BLACKMON SUGGESTS (DIRECT AT**
23 **13-14) THAT CLECS MUST REPLICATE QWEST'S NETWORK?**

24 A. No. I am not suggesting that these CLECs must replicate Qwest's network. They

1 are free to make business choices that best meet their business needs. But I am
2 arguing that intercarrier compensation should not be based on the pretense that they
3 have done so. If they have placed no facilities to transport FX calls directly from a
4 particular exchange to their end user premises in a distant exchange, then they
5 should not be permitted to claim that is what they did, nor should they be entitled to
6 terminating compensation as if they had done so. The CLECs in this case are fully
7 capable of operating without replicating Qwest's network—but there are economic
8 consequences of doing so, the most significant being that they should not be
9 allowed to receive compensation based on the false premise that they have built
10 anything resembling an FX network. Offering local service in multiple towns
11 through a single Seattle switch is permissible under SPOP. Yet some CLECs
12 appear to have no loops whatsoever returning calls to customers in those towns
13 such as Olympia. The only “local” service that is offered by some CLECs in the
14 state of Washington is their so-called FX service, where they assign various VNXX
15 numbers outside of the Seattle LCA to ISP customers located in Seattle or in
16 another state.

17
18 **Q. MR. ROBINS SUGGESTS THAT QWEST VACILLATES ON ITS**
19 **POSITION IN THIS CASE (ROBINS DIRECT, AT 7). PLEASE ADDRESS**
20 **HIS CONCERN.**

21 A. Mr. Robins' apparent confusion stems from a misunderstanding of Qwest's position
22 and a misunderstanding of the historical relation between FX traffic and typical
23 interexchange traffic.

24 As described above, FX is a long-recognized, legitimate service. To the best of my

1 recollection, FX service long predated the beginning of my career in
2 telecommunications, which began nearly 30 years ago. I believe that regulators
3 allowed FX service because the FX customer pays full local exchange rates in the
4 FX exchange just like any other customer located in that exchange, thus assuring
5 that the customer contributes to the costs of building, maintaining, and upgrading
6 the local network in the FX exchange. In my opinion, the second reason that
7 regulators allowed FX service was that the FX customer assumed full financial
8 responsibility for transporting the traffic from the FX exchange to their location in
9 the exchange where the traffic is delivered to the FX customer. Through the
10 combination of accepting full financial responsibility for paying for both local
11 service and private line transport, the FX customer fully compensates Qwest for its
12 status as a “local customer” in the FX exchange.

13 Mr. Robins apparently believes that Qwest’s view of call rating in Washington,
14 which focuses on relative customer physical location, is inconsistent with FX
15 service. In fact, the two concepts are entirely compatible. Because the FX
16 customer pays local exchange rates and retail transport rates to their location, the
17 traffic is properly treated as local traffic, even though the FX customer physically
18 answers the telephone in another exchange. Further, FX is an atypical
19 arrangement. In fact, Qwest has only 4,047 FX lines in service in Washington,
20 which represents less than 1 percent, or about .22 of one percent of the over 1.8
21 million lines served by Qwest in Washington.

22 In the typical toll service situation, the called party has neither paid local exchange
23 rates in a distant exchange nor has it paid for a private line to transport traffic to or

1 from the distant exchange. In that case, when a customer decides to call another
2 customer in a distant exchange, there is no alternative compensation arrangement in
3 place that would replace the normal call rating system, which rates the call based
4 on the relative physical locations of the parties. Thus, for the typical toll call,
5 because the customers are located in different exchanges, the traffic is
6 interexchange in nature and subject to the compensation regime that applies to
7 interexchange traffic.

8 Mr. Robins' criticism of Qwest's testimony fails to take these long-standing
9 principles into account. Mr. Robins also fails to recognize that courts and
10 regulators view FX as being significantly different from VNXX. VNXX uses the
11 Public Switched Telephone Network ("PSTN") to route and terminate calls to end
12 users connected to the PSTN in another LCA. In all respects, except the number
13 assignment, the call is routed and terminated as any other toll call. Qwest's FX
14 product, on the other hand, delivers the FX calls within the LCA with which the
15 number is geographically associated because a Qwest FX customer actually
16 purchases a local service connection in the LCA associated with the telephone
17 number in the same manner and at the same rate as all other local exchange
18 customers. With FX, the calls are then switched to facilities that are dedicated to
19 that individual customer and transported on what is, in effect, the end user's private
20 network (private line) to another location. Several of the CLECs in this case, by
21 contrast seek to avoid all financial responsibility for origination costs and the cost
22 of transport to the distant location. The issue of financial responsibility for
23 origination and transport is at the heart of the most significant difference between
24 VNXX and FX. Several of the CLECs in this case simply use the assigned

1 telephone numbers to disguise calls that would otherwise be toll calls. To allow
2 CLECs to simply assign local numbers to customers with no real connection to the
3 exchange with which the number is associated would bring chaos to a numbering
4 system that has worked well for decades. CLEC VNXX is not FX service.

5
6 **Q. YOU MENTIONED THAT COURTS AND REGULATORS HAVE**
7 **RECOGNIZED THE DIFFERENCE BETWEEN FX AND VNXX. PLEASE**
8 **PROVIDE EXAMPLES.**

9 A. In Vermont, the Vermont Board rejected the argument that FX is the same as
10 VNXX in a case involving Global Naps, a CLEC. On appeal, the federal district
11 court upheld the Vermont board's ban on VNXX, and specifically rejected the
12 CLEC argued that banning VNXX would unlawfully discriminate against VNXX
13 traffic because the ILEC offered FX service, which the CLEC characterized as
14 "functionally identical to VNXX." The court recognized the same point I am
15 making here when it stated: "When VNXX numbers are assigned, *neither Global*
16 *nor its customers purchase any equipment, nor do they pay the costs of*
17 *transporting the call.* Instead Global [the CLEC] relies on Verizon [the ILEC], to
18 transport the calls, in accordance with Verizon's obligation to provide
19 interconnecting services."

20 In two recent cases before the Iowa Utilities Board, CLECs also argued that their
21 VNXX was simply a type of FX. In both cases, the Board held that VNXX and FX
22 are not the same. The Iowa Board recognized the critical distinctions when it
23 stated: "Sprint and Level 3 are proposing to provide a service that is generically
24 described as virtual NXX service (VNXX), *which is not the same as FX or DID,*

1 *and does not compensate the LECs for the use of their networks.”* And in another
2 case where a CLEC attempted the argument that VNXX is FX, the Board
3 responded that (virtual NXX (VNXX) calls, which appear to be included in the
4 ‘FX-like’ calls at issue here, “*are not local services but interexchange in nature.*”)

5 VNXX provides the CLEC with free access to the Qwest local exchange network
6 that is essential for the origination of traffic and, at least based on the advocacy of
7 some carriers, would require Qwest to transport the traffic for free.⁴ Qwest’s FX
8 offering is significantly different than any of the FX offerings of the other CLECs
9 and its existence in no way justifies VNXX, nor sham versions of FX service.

10
11 **Q. PAC-WEST WITNESS SUMPTER TESTIFIES THAT YOUR TESTIMONY**
12 **ON ORIGINATION COSTS IS WRONG. DO YOU AGREE WITH HIM?**

13 A. No. Mr. Sumpter makes the following statement: “Mr. Brotherson is improperly
14 comparing what a *CLEC* pays Qwest when the CLEC is providing FX service with
15 what the *retail customer* pays Qwest when Qwest is providing such service. Such a
16 comparison is meaningless.” (*Sumpter Direct* at 8; emphasis in the original).

17 Mr. Sumpter misses my point. The issue is one of cost causation and cost recovery.
18 I’ll use Olympia again as my example. In Olympia, Qwest has a switch and it has a
19 local exchange network that provides connectivity to all customers in the Olympia
20 LCA. As I understand it, Pac-West has a single switch in Washington located in
21 the Seattle area. Pac-West does not have a switch in Olympia. However, Pac-West

⁴ In the current Level 3 arbitration, Level 3 denies all responsibility for any costs on Qwest’s side of the POI. In other words, its “FX service” is nothing more than a sham product since nearly all of the costs of providing it are costs incurred by Qwest and not by Level 3.

1 can still switch local Olympia traffic out of its single Washington switch and bring
2 the calls back to Olympia customers on a long loop under their SPOP agreement.
3 But if Pac-West has no customer in Olympia, and has no interexchange facilities to
4 transport calls to its VNXX customer in Seattle, then one can only wonder what, if
5 anything, Pac-West's local Olympia service consists of. Pac-West has nothing
6 resembling a local exchange network in Olympia.

7
8 **Q. WHAT IS YOUR BASIS FOR CONCLUDING THAT PAC-WEST AND**
9 **OTHER CLECS DO NOT HAVE A NETWORK TO SUPPORT FX**
10 **SERVICE IN WASHINGTON?**

11 A. A simple review of the relative traffic exchanged with Pac-West is instructive. I'll
12 use relative numbers for Pac-West, Level 3, ELI, and Global Crossing to illustrate
13 my point. Because these companies may consider this relative use information to
14 be confidential, I am including it in separate confidential exhibits. The Pac-West
15 information is in Exhibit LBB-25; the Level 3 information is in Exhibit LBB-26;
16 the ELI information is in Exhibit LBB-27; and the Global Crossing information is
17 in Exhibit LBB-28. As can be seen from these exhibits, the relative numbers range
18 from highly imbalanced to effectively 100 percent one-way traffic. The
19 implications of those percentages are quite obvious. Some of these CLECs serve
20 ISPs (located perhaps in Seattle, but likely in other states) almost exclusively. If
21 they provided any meaningful amount of local exchange service, one would
22 reasonably expect some semblance of balance in the traffic. The imbalanced and in
23 some cases essentially one-way nature of the traffic demonstrates that these CLECs
24 have built or leased little, if any, facilities to provide local exchange service in

1 Olympia. I am unaware of anything to indicate that the two companies with the
2 greatest traffic imbalances have built any interexchange facilities to Olympia or
3 loop facilities within the Olympia LCA. They simply give out Olympia telephone
4 numbers to ISPs in Seattle (or elsewhere) with no intention of offering local
5 Olympia telephone service.

6 So where does that leave us? Neither one of these CLECs has a switch in Olympia
7 and nothing remotely resembling a local network. But they claim to provide FX
8 service in Olympia. Given these facts, the only way callers in Olympia can
9 generate traffic bound to one of their FX customers (i.e., likely an ISP served by
10 them) is through the use of Qwest's local network and Olympia switch.

11 To get around these facts, Pac-West witness Sumpter creates a false distinction—
12 his claim that Qwest erroneously compares a retail service to a CLEC service—
13 when the real issue is how Qwest serves Pac-West as a CLEC. But the fact is that
14 Pac-West has created a sham FX service that it could not provide without declaring
15 the traffic local and using Qwest's LEC-to-LEC network, or LIS trunks back to the
16 SPOI for local traffic. Pac-West's FX service is really VNXX service, as are the
17 FX services of Level 3, ELI, and Global Crossing.

18 Once you get past their rhetoric, these companies feel that Qwest should make its
19 local network and switch available to them for free, that Qwest should pay for all
20 transport, and, to turn cost causation on its head, that Qwest should then pay them
21 terminating compensation for all the VNXX traffic the rides freely on Qwest's
22 network.

23

1 **Q. IS PROVIDING INTEROFFICE (SWITCH-TO-SWITCH) TRANSPORT**
2 **SUFFICIENT TO CREATE A REAL FX SERVICE?**

3 A. No. Mr. Robins apparently believes that Qwest takes the position that the only
4 thing required for FX is a private line (Robins Direct, at 22, lines 4-6). Mr.
5 Greene's testimony is ambiguous on this point, but he appears to subscribe to the
6 same view (Greene Direct, at 25). If indeed that is their position, I disagree with it.
7 I won't belabor a point already made above, but merely transporting traffic from the
8 switch in one exchange to the switch in another is not FX service. A call that is
9 open-ended on both ends, meaning any Qwest caller in the Olympia exchange can
10 reach any CLEC end user in the Seattle exchange, because the traffic is not on
11 dedicated facilities to a specific end user, is no different than switched
12 interexchange traffic. Neither Mr. Robins nor Mr. Greene take that fact into
13 account.

14
15 **Q. DOES MR. ROBINS' TESTIMONY CONFIRM YOUR VIEW THAT ELI'S**
16 **FX SERVICE DIFFERS SIGNIFICANTLY FROM QWEST'S FX**
17 **SERVICE?**

18 A. Yes, it does. Pages 9 and 10 of Mr. Robins' Direct Testimony are illuminating. In
19 that testimony, Mr. Robins describes how a local call is routed. But if ELI provides
20 a "local" Olympia number to one of its customers (an ISP, for example) that is
21 physically located in another exchange, Mr. Robins is also describing VNXX. Mr.
22 Robins refers to the fact that the "receiving Central Office" switch will check
23 "translation tables" in order to route the call. (Robins Direct at 9, lines 7-10). But
24 as I read his testimony, the "receiving Central Office" is not ELI's switch in

1 Tukwila—it is Qwest’s switch in Olympia (i.e., the Qwest end office switch in the
2 originating LCA). And the traffic can only get to Qwest’s switch, in most cases,
3 over the local exchange network built and paid for by Qwest. Thus, ELI appears to
4 acknowledge that ELI must use Qwest’s switch. But there is no indication by Mr.
5 Robins that ELI should compensate Qwest for the use of Qwest’s local network and
6 switch. On page 10 of his direct testimony, Mr. Robins says that ELI determines
7 the routing of traffic at the ELI switch servicing the FX LCA—in this case, he is
8 referring to ELI’s switch located in Tukwila. That is true. This fact alone
9 demonstrates that ELI’s “FX service” is not the same as Qwest’s. With Qwest’s
10 service, the routing is determined in the originating LCA because the FX customer
11 buys local service *in that exchange*. The ultimate routing to the FX customer is
12 made over a dedicated private line. In ELI’s case, totally aside from the fact that
13 cost responsibility issues discussed above, the routing of its supposed FX traffic is
14 not made in the FX exchange, but in Tukwila. The reality is that ELI’s FX service
15 is simply a relabeled version of VNXX, which is an interexchange service.

16
17 **Q. CAN DIAL-UP ISP TRAFFIC EXIST WITHOUT VNXX?**

18 A. Certainly. In his testimony, Mr. Robins makes the statement that “FX is a necessity
19 for the dial-up ISP business” (Robins at 6). I have two general comments on this
20 point. Based on how ELI provisions its so called “FX service,” I believe a more
21 accurate translation of Mr. Robins’ testimony is that he is really saying that “VNXX
22 is necessary for the dial-up business.” I dispute that claim. As I will discuss below,
23 QCC, Qwest’s affiliate, has been able to provision an ISP service via PRIs and
24 private line service. If, on the other hand, Mr. Robins is saying that the absence of

1 VNXX could require ISP dial-up for callers to pay toll charges or CLECs to pay
2 access, I don't really dispute that fact (such an approach is fully consistent with cost
3 causation principles and avoids subsidization of dial-up by all customers, a result
4 clearly forbidden by the *ISP Remand Order's* statement that "[t]here is no public
5 policy rationale to support a subsidy running from all users of basic telephone
6 service to those end-users who employ dial-up Internet access.") (*ISP Remand*
7 *Order* ¶ 87).

8 My second point, however, is that there are other alternatives. The recent
9 settlement with MCI (that I will discuss below) is one example where neither toll
10 nor access charges are mandated. Thus, to the extent that VNXX is "necessary" for
11 the continued provision of dial up access to the internet (a contention I disagree
12 with), there are ways in which that dialing pattern may be preserved. But another
13 approach was adopted last week by the Oregon Commission in the Level 3/Qwest
14 Oregon Arbitration. In that case, the Commission adopted a recommended
15 decision that resolved the VNXX issue by granting a limited exception to the
16 Oregon Commission's ban on VNXX service. The limited exception is based on
17 three conditions: (1) VNXX can be used solely for the exchange of "*dial-up ISP*
18 *traffic*" (thus, it cannot be used for voice traffic); (2) Level 3 must pay for transport
19 at private line rates (as opposed to TELRIC rates); and (3) the terminating
20 compensation rate for VNXX ISP traffic is zero (in effect creating a bill and keep
21 compensation regime for ISP VNXX traffic.⁵

⁵ Order, *In the Matter of Level 3 Communications, LLC, Petition for Arbitration of an Interconnection Agreement with Qwest Corporation, Pursuant to Section 252(b) of the Telecommunications Act*, Docket ARB 665, at 4 & Appendix A at 27, 31 (OPUC, March 14, 2007). This decision may be viewed at <http://edocs.puc.state.or.us/orders/2007ords/07-098.pdf>.

1 The Oregon decision demonstrates that there are other approaches to the VNXX
2 issue that allow dial-up ISP traffic from distant exchanges to continue without
3 creating the fiction of a local call to trigger free transport and local termination
4 charges. The Oregon order does not, in my view, fully follow cost causation
5 principles in that it does not allow Qwest to recover origination costs. To be
6 compensated for the switch origination costs it incurs, Qwest should be permitted
7 to assess originating access charges. Consistent with principles of cost causation,
8 CLECs can recover those costs from their ISP customers. With respect to
9 termination costs, (where Oregon adopts a zero rate) and on transport (where
10 private line rates are prescribed), the order does apply cost causation principles. On
11 both issues, the Oregon Commission refused to succumb to Level 3's arguments
12 that VNXX traffic is really local; instead, the commission found that it is
13 "interexchange traffic,"⁶ and that it should not be subject to terminating
14 compensation. And, because it is interexchange traffic, it should not be subject to
15 the TELRIC-based transport rates that were created for the exchange of "local"
16 traffic.

17
18 **Q. GLOBAL CROSSING WITNESS PETERS CLAIMS THAT ITS FX**
19 **SERVICE IS A LEGITIMATE FX SERVICE BECAUSE IT IMPOSES AN**
20 **ADDITIONAL CHARGE ON ITS END USERS (PETERS AT 4). DO YOU**
21 **AGREE THAT THE IMPOSITION OF THAT CHARGE TURNS GLOBAL**
22 **CROSSING'S SERVICE INTO A REAL FX SERVICE?**

23 A. No. Global Crossing's argument misses the point. As discussed above, the most

⁶ *Id.* Appendix A, at 27.

1 significant problem with the so-called FX services offered by some of the
2 Respondents is the fact they do not have the facilities in each LCA to legitimately
3 offer a real FX service. They rely on Qwest's network, not their own. Thus, the
4 extra charge that Global Crossing imposes generates revenue for Global Crossing
5 for the use of Qwest's switching and network facilities. In other words, Qwest
6 incurs the costs to provide the service, while Global Crossing gets the revenue. The
7 result is inconsistent with allowing cost recovery from the company that incurs the
8 cost, while the company that *does not* incur the cost receives the revenue. It's hard
9 to conceive of a better business plan than for a company to receive the revenues
10 from a service that can exist only because another company has made the
11 investment and provides the extra service for which they apparently impose the
12 extra charge.

13
14 **Q. LEVEL 3 WITNESS GREENE CHALLENGES YOUR VIEW THAT VNXX**
15 **IS SIMILAR TO 1-800 SERVICE (GREENE DIRECT AT 25-26). IS HE**
16 **CORRECT?**

17 A. In offering VNXX service, Level 3 and other CLECs function as long distance
18 carriers, in a manner very similar to a 1-800 service. (Mr. Linse addresses this issue
19 in his reply testimony from a technical perspective, including providing an
20 illustrative exhibit). My point is that CLECs who use VNXX offer their ISP
21 customers a service that allows dial-up callers to place long distance calls for free.
22 They do this by assigning telephone numbers to ISP customers so that long distance
23 calls appear to be "local" calls. Again, this is an issue I have followed and I am
24 aware that the Vermont Board and South Carolina Commission have characterized

1 this use of VNXX as equivalent to an incoming 1-800 service.⁷ Mr. Ken Wilson, a
2 witness for Level 3 in the Washington arbitration proceeding, agreed in the hearings
3 that with a 1-800 service, the terminating carrier is treated as the originating carrier
4 for intercarrier compensation purposes.⁸ To the end user making the call that may
5 appear to be true but in all other respects there are very important differences. 1-
6 800 service is another variation of long distance service, where the called party (the
7 1-800 service customer) has purchased a service whereby it pays the per minute toll
8 charges instead of the calling party. By using VNXX numbers and claiming the
9 call is local, toll charges are avoided and CLECs obtains free interexchange
10 transport from Qwest from the various LCAs back to the POI or POIs between
11 Qwest and the CLEC. With an 800 product, Qwest would be compensated by the
12 IXC for the use of its local network to originate interexchange calls. By using
13 VNXX numbers, CLECs pay nothing for the facilities in the LCA used to originate
14 the calls (some CLECs try to tiptoe around this issue by claiming that Qwest is
15 compensated by its local subscriber through its local exchange rates for the
16 interexchange calls, a proposition that simply is not true, as Dr. Fitzsimmons points
17 out). With an 800 product, the called party (the ISP) would bear any costs of
18 delivering the dial up end users traffic to them. With an 800 product, the IXC
19 would compensate the CLEC for any terminating charges, and ultimately the ISP

⁷ *Petition of Global NAPs, Inc. for Arbitration Pursuant to §252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England*, Docket No. 6742, 2002 Vt. PUC LEXIS 272, pp. *41-*42 (Vt. PSB 2002) (“In effect, a CLEC using VNXX offers the equivalent of incoming 1-800 service, without having to pay any of the costs associated with deploying that service”); *Order Ruling on Arbitration, In re Petition of MCI Metro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative*, 2006 S.C. PUC LEXIS 2, p. *35 (S.C. PUC, January 11, 2006) (“Virtual NXX calls . . . are no different from standard dialed long distance toll or 1-800 calls”).

⁸ Mr. Wilson stated: “[W]ith 800 type calls . . . the calling party is not the originator, but generally the terminating customer. So if I dial a 1-800 call from home, I don't pay the toll charges on that. The person I am calling pays the toll charges.” (Washington Transcript, 10-25-06, at 591).

1 that pays the IXC would bear the terminating costs in the price of the 800 service.
2 But by assigning VNXX numbers, Level 3 attempts to charge Qwest for its
3 terminating expense as a local termination charge. The similarities that Mr. Wilson
4 sees between VNXX and 800 services are very real. But Level 3 and other CLECs
5 try to avoid having their traffic treated like 800 service traffic. By using VNXX in
6 an effort to transfer all the expenses from the ISP to Qwest for dial-up traffic, they
7 turn the compensation and cost coverage responsibilities on their head. The use of
8 VNXX for dial-up ISP traffic is clearly an improper effort to gain the functionality
9 of an 800 service without paying for them as an 800 customer does. Given the
10 differences between VNXX and a properly offered 800 service it is no wonder that
11 Level 3 has garnered 50 to 60 percent of the dial-up market as Level 3 witness
12 Greene has testified in the technical conference in the Qwest/Level 3 arbitration
13 proceeding in Minnesota. (Transcript, OAH Docket No. 3-2500-17117-2, 2-6-07, at
14 67, Testimony of Mack Greene (“we estimate that we [Level 3] control around 50
15 to 60 percent of the dial-up marketplace.”)).

16
17 **Q. PLEASE CONTRAST THE POSITIONS TAKEN BY BROADWING AND**
18 **TCG TO THE POSITIONS OF PAC-WEST, LEVEL 3, ELI AND GLOBAL**
19 **CROSSING?**

20 A. While I disagree with the testimony of their witnesses on several points, neither of
21 these CLECs attempt to claim that they are providing an FX service like Qwest’s.
22 Broadwing witness Kell, for example, discusses how calls are routed between
23 Qwest and Broadwing, but makes no pretense that this is FX service. (Kell Direct
24 at 2-3). TCG witness Nienast acknowledges the existence of VNXX traffic and

1 makes no attempt to deny that TCG uses VNXX. Instead, he suggests that a bill
2 and keep compensation scheme should be adopted (which means that no
3 terminating compensation would be required for any VNXX traffic). (Neinast
4 Direct at 3, 7-9). Given that MCI and Qwest have reached a settlement in this case,
5 I will not comment on the testimony of Mr. Price.

6
7 **IV. THE DEFINITION OF VNXX**

8 **Q. MR. ROBINS CLAIMS THAT HE IS NOT SURE WHAT THE PROPER**
9 **DEFINITION OF VNXX IS AND THEN ACCUSES QWEST OF USING**
10 **THE TERM LOOSELY TO DESCRIBE WHAT ELI CONSIDERS TO BE**
11 **FX SERVICE (ROBINS DIRECT PAGE 13-14). PLEASE COMMENT.**

12 A. Mr. Robins' indication that he is "not sure" what constitutes VNXX is curious,
13 particularly given the fact that, as I pointed out in my Direct Testimony, the
14 Commission has itself defined the term in recent orders (Brotherson Direct at 8-9).
15 I have already commented above on Mr. Robins' claim that ELI's service is really
16 FX service.

17 Any lack of clarity of the meaning of the term VNXX was also addressed in the
18 Arbitrator's Report and Decision ("*Arbitrator's Decision*") in the current
19 Qwest/Level 3 Arbitration, where Judge Rendahl recommends that Qwest' VNXX
20 definition "should be included in the proposed agreement."⁹ That definition is
21 consistent with my earlier testimony, with the Commission's definitions, with the

⁹ Order No. 10, Arbitrator's Report and Decision, *In the Matter of the Petition of Level 3 Communications for Arbitration . . . with Qwest Corporation*, Docket No. UT-063006 ¶ 41 (Judge Rendahl, March 12, 2007). ("*Arbitrator's Decision*").

1 FCC's definition (See Brotherson Direct at 9-12):

2 VNXX Traffic" is all traffic originated by the Qwest End
3 User Customer that is not terminated to CLEC's End User
4 Customer physically located within the same Qwest Local
5 Calling Area (as approved by the state Commission) as the
6 originating caller, regardless of the NPA-NXX dialed and,
7 specifically, regardless of whether CLEC's End User
8 Customer is assigned an NPA-NXX associated with a rate
9 center in which the Qwest End User Customer is physically
10 located.

11 It is also worth noting that other witnesses do not appear to share Mr. Robins'
12 confusion as to the meaning of the term. Dr. Blackmon's working definition of
13 VNXX is similar to the Commission's prior definitions and to the definition
14 recommended in the *Arbitrator's Decision*. (Blackmon Direct at 4). Mr. Neinast
15 likewise states a definition that is consistent with the Commission's definition.
16 (Neinast Direct at 4). Mr. Robins' confusion appears, at least to me, to stem from
17 the fact that, under the accepted definitions of VNXX, that is precisely what ELI
18 offers through its so-called FX service.

19
20 **Q. DR. BLACKMON SUGGESTS THAT YOUR TESTIMONY**
21 **INAPPROPRIATELY CHARACTERIZES VNXX WITH PROVOCATIVE**
22 **TERMS LIKE "FOOLS" AND "DISGUISED." PLEASE COMMENT ON**
23 **HIS CLAIM.**

24 A. It is certainly true that I use those terms to describe VNXX. Dr. Blackmon's
25 suggestion that these words are provocative (and thus inappropriate) is incorrect.
26 The fact is that those words are not my words, but are descriptions of VNXX by
27 regulators and federal courts. For example, the Second Circuit Court of Appeals in
28 *Global NAPs v. Verizon New England*, 454 F.3d 91, 102, 103 (2nd Cir. 2006) stated

1 that “Global wants to use virtual NXX to *disguise* the nature of its calls-that is, to
2 offer its customers local telephone numbers that cross Verizon's exchanges instead
3 of the traditional long-distance numbers attached to such calls” and that “Global's
4 desired use of virtual NXX simply *disguises* traffic subject to access charges as
5 something else and would force Verizon to subsidize Global's services.” (Emphasis
6 added). The Pennsylvania Commission used the word “tricks” (a synonym of
7 “fools”) to describe what VNXX does to the billing system. The Pennsylvania
8 commission explains this problem in these words: the CLEC “can create a situation
9 in which a Verizon end-user can call a CLEC customer outside the Verizon end-
10 user’s local calling zone without paying a toll charge, thus expanding the Verizon
11 end-user’s local calling zone without providing appropriate compensation to
12 Verizon for the transport outside the local calling area. *This situation, i.e., the*
13 *virtual NXX assignment ‘tricks’ Verizon’s billing systems into failing to levy toll*
14 *charges on the Verizon end-user and into payment of reciprocal compensation.”¹⁰*

15 (Emphasis added).

16 While Dr. Blackmon may consider the words I use to describe VNXX as
17 provocative, I believe they are completely accurate.

¹⁰ Opinion and Order, *Petition of Global NAPs South for Arbitration of Interconnection Rates, Terms, and Conditions with Verizon Pennsylvania*, 2003 WL 21135673, at Issue 4(c)(1) (Pa. PUC April 21, 2003) (note: Westlaw version unpaginated).

1

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V. THE NXX ARGUMENT

3

Q. PLEASE DESCRIBE THE NXX ARGUMENT WHERE THE CLECS PROPOSE THAT TELEPHONE NUMBERS, NOT THE LCAS, DETERMINE WHETHER A CALL IS LOCAL OR NOT.

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5

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A. Mr. Greene states that it is an arbitrary decision over which NPA-NXXs to include as local calls and the designation of an NXX as local simply reflects a retail marketing decision by the originating carrier (Greene Direct at 11-13). This “NXX theory” (which I discussed in my Direct Testimony at 27-32) asserts that the determination of whether calls are local or not is based on telephone number assignments. Under this theory, if two customers have telephone numbers associated with the same LCA—that is, NXX codes associated with the same LCA—then CLECs like Level 3 and Global Crossing argue that the call is a local call (without regard to the location of the calling parties) and should be so treated for intercarrier compensation purposes. In other words, the NXX theory creates the fiction that calls are local based on telephone numbers, no matter where the parties to the call are located.

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Q. DO YOU AGREE WITH THE ARGUMENT THAT THE NXX DETERMINES WHAT IS CLASSIFIED AS A LOCAL CALL?

20

21

A. No. The significance is that NXXs have for decades served as the proxy for the geographic location of a party. If local telephone companies only assigned numbers within the appropriate LCA, then the rule held true. In other words, under number assignment practices, if the NXXs of the parties to a call were associated with the

22

23

24

1 same LCA, the carriers could rely on the fact that the parties to the call were
2 actually physically located in the same LCA and that the call, therefore, was a local
3 call. The integrity of this system, of course, depends on carriers following proper
4 numbering rules, and not, as some CLECs have been doing, assigning local
5 telephone numbers to customers that have absolutely no geographical connection to
6 the LCA with which the telephone number is associated.

7
8 **Q. MS. PETERS STATES ON PAGE 3 OF HER TESTIMONY THAT “LIKE**
9 **QWEST, HOWEVER, GLOBAL CROSSING OFFERS CUSTOMERS THE**
10 **OPTION OF BEING ASSIGNED A TELEPHONE NUMBER THAT IS**
11 **RATED AS LOCAL TO A DIFFERENT LCA.” IS THIS AN ACCURATE**
12 **STATEMENT?**

13 A. No. Qwest does not assign telephone numbers that are rated as local calls to a
14 different LCA. Ms. Peters implies that Qwest, like other CLECs in this complaint,
15 support the theory that if two customers have telephone numbers associated with
16 the same LCA—that is, NXX codes associated with the same LCA—then the call is
17 a local call (without regard to the location of the calling parties) and should be so
18 treated for intercarrier compensation purposes. In other words, this NXX theory
19 creates the fiction that calls are local based on telephone numbers, no matter where
20 the parties to the call are located. I have explained previously the differences
21 between FX and VNXX, and a true FX service requires much more than the mere
22 assignment of a telephone number to someone in a different LCA.

23

1 **Q. MR. ROBINS STATES THAT THE LERG DOESN'T KNOW OR CARE**
2 **HOW NUMBERS ARE ASSIGNED (ROBINS AT PAGE 20). DO YOU**
3 **AGREE?**

4 A. No. Because the entire basis for whether to assess toll charges to a call relate to the
5 specific physical locations at which traffic bound for particular switches may be
6 delivered, the LERG is an important tool for determining the jurisdiction of a call.
7 To state that the LERG doesn't know or care how numbers are assigned is simply
8 incorrect. To the extent that telephone numbers lose any geographic significance,
9 then next-door neighbors calling each other could each have telephone numbers
10 assigned to different LCAs, and parties on opposite ends of the state could, in
11 theory, be in the same LCA (in both circumstances, of course, the concept of a LCA
12 becomes meaningless). The point is that there are compelling policy reasons
13 (completely aside from legal mandates, telephone numbering rules, or technical
14 capabilities) to maintain the system of rating calls based on physical location;
15 telephone numbers must retain their geographic associations. In addition, the local
16 rates established for LECs are based on the original Commission defined LCAs, not
17 on transporting calls LATA-wide based on NXX codes.

18

19 **VI. THE COST ARGUMENT**

20 **Q. SEVERAL CLECS HAVE ARGUED THAT SINCE THE COSTS ARE THE**
21 **SAME TO DELIVER A CALL TO THE SPOI IT SHOULDN'T MATTER IF**
22 **THE CALL IS LOCAL OR VNXX. DO YOU AGREE WITH THEIR**
23 **STATEMENTS?**

24 A. No I do not. This argument was raised by several CLECs (Robins at 11, lines 12-

1 13; Kell at 3, Peters at 6; Greene at 26). The argument is in essence that VNXX
2 places no greater cost burden on Qwest than a local call. It is simply an attempt to
3 change a call rating issue into a cost issue. Calls fall into different classifications
4 not based on cost, but based on Commission rules. A call can be local, intrastate, or
5 interstate, and each classification carries with it certain regulatory obligations and
6 charges. But cost is not relevant in establishing the classification of a call. It may,
7 in fact, cost no more to deliver a call to a CLEC local switch than to deliver a call to
8 an IXC switch next door. But the regulatory treatment of a local call and an
9 interexchange call are totally different. Stating that the costs are the same does not
10 make an interexchange call a local call, and stating that the cost to deliver the
11 VNXX call to the CLEC switch is the same does not make a VNXX call a local
12 call. This argument is completely specious and unrelated to the classification of a
13 call under Washington rules.

14
15 **VII. COMPARING VNXX TO OTHER QWEST PRODUCTS**

16 **Q. MR. ROBINS AND MR. GREENE STATE THAT QWEST APPEARS TO**
17 **OFFER THE VERY SAME SERVICES AS VNXX (ROBINS AT 15,**
18 **GREENE AT 28). PLEASE ADDRESS WHAT QWEST DOES AND HOW**
19 **IT DIFFERS FROM VNXX SERVICE IN THIS CASE.**

20 **A.** To the extent that a CLEC states that it wants to operate like QCC or suggest that
21 QCC has some kind of advantage over other CLECs, those statements are simply
22 not true. It is easy to oversimplify this issue and make out-of-context comparisons
23 that cloud, instead of clarify, the issues.

1 For example, broad statements about QCC ignore the different ways in which QCC
2 and the CLECs in this case operate. In Washington, QCC operates as an Enhanced
3 Services Provider (“ESP”), for certain of its offerings, and as an IXC for others. So
4 when a CLEC says it would like to be like QCC or suggests that QCC has some
5 kind of improper advantage, it begs the question as to the role that QCC is playing
6 and whether the CLEC is playing the same role.

7 A CLEC cannot simply pick and choose something that QCC does as an ESP and
8 say that it wants to do the same thing as a CLEC, nor can a CLEC pick only the
9 positive benefits that are part of a method of operation and then shrug off the
10 obligations.

11 My point is that when a company operates as a CLEC, it is subject to a set of rules
12 that govern CLECs (notably Section 251 and the FCC rules adopted to implement
13 it) including rules related to intercarrier compensation—those rules include rights,
14 and duties that accompany those rights. The same is true for ESPs and IXCs.
15 Thus, if a company operates as a CLEC (as Level 3 is doing with regard to the
16 traffic at issue here) it is entitled to receive benefits as a CLEC such as the right to
17 charge call termination charges in certain circumstances. But in so doing, it must
18 accept the obligations and commission rules regulating local telephone companies
19 that accompany the rights related to its status as a CLEC. On the other hand, it
20 cannot operate as a CLEC and blindly argue that it is entitled to all of the rights of
21 an ESP—particularly when it is unwilling to accept the obligations or limitations of
22 ESP status.

23 So, when a CLEC says that QCC has an advantage over it (or implies that it would

1 like to be just like QCC), that should be the beginning point for an analysis that
2 must consider the role that QCC is playing and the role the CLEC is playing, and
3 the compensation regime that applies to those roles. It is critical that regulators
4 match the compensation regime to the actual activities of the carriers.

5
6 **Q. PLEASE EXPLAIN WHERE QCC FITS INTO THE QWEST FAMILY OF**
7 **COMPANIES.**

8 A. The overall parent company is Qwest Communications International Inc. (“QCII”).
9 QCII is the parent company of Qwest Corporation (“QC”)—QC is the party to this
10 docket and is the traditional telephone company with whom other providers
11 interconnect (in the parties’ testimony, QC is usually referred to simply as
12 “Qwest”). QCII is also the parent company of QCC—a Section 272 entity and the
13 provider of services such as Wholesale Dial (an ISP product) and One-Flex (a VoIP
14 product). QCC is not a subsidiary of QC. QC and QCC are affiliate corporations.

15
16 **Q. PLEASE DISCUSS QCC’S ROLE AS AN IXC.**

17 A. An IXC provides services that are referred to interchangeably as “interexchange,”
18 “long distance” or “toll” services. These are calls placed by an end user customer
19 located in one LCA to another end user customer located in another LCA (where
20 there is no Extended Area Service between the two LCAs). The most typical of
21 these calls is when the calling party dials 1 plus the called number. The dialing of
22 the “1” instructs the end office switch serving the calling party that the call is an
23 interexchange call. Most customers are presubscribed to an IXC, and the
24 information relating to that presubscription is loaded into the end office switch.

1 Thus, if the customer's IXC is AT&T, the switch will know that the call is to be
2 routed to transport facilities owned or leased by AT&T. The call would then be
3 transported to the LCA of the called party where it would be handed off to Qwest or
4 another LEC for termination.

5 When QCC is operating as an IXC, it is operating under the intercarrier
6 compensation regime that applies to the services provided by IXCs: the state and
7 federal access charge tariffs. When a carrier operates as a CLEC it can purchase
8 LIS trunks at TELRIC prices. But in other contexts, a CLEC wants to be like QCC,
9 but unlike QCC, and contrary to access rules, it seeks to put IXC traffic on LIS
10 trunks. When QCC acts as an IXC, Qwest requires it, like other IXCs, to purchase
11 access on FGD trunks. In seeking to put interstate and intrastate toll on LIS trunks,
12 a CLEC is clearly not trying to be like QCC, but is instead seeking an advantage
13 over QCC and all other IXCs.

14

15 **Q. PLEASE EXPLAIN THE ROLE QCC PLAYS AS AN ESP.**

16 A. As discussed above, for two services that are at issue in this case (services for ISPs
17 and VoIP services), QCC, and not QC, is the provider of those services. Qwest
18 believes—and I believe CLECs agree—that services to ISPs and VoIP services
19 (because they involve protocol conversions) fall within the category of
20 enhanced/information services. The fact that these services are enhanced services
21 brings in to play the ESP Exemption. The parties can address this issue in their
22 briefs, so I will give only a general description of my understanding of the ESP
23 Exemption. In the early 1980s, the FCC made a decision that when companies are
24 providing “enhanced services,” they would be treated just like *end users*. However,

1 ESP were not granted rights that exceeded the rights of other end users.

2 The ESP Exemption has been a feature of telecommunications regulation for many
3 years. My understanding of the Exemption is that ESPs (providers of enhanced
4 services) are treated as end users for the purpose of applying access charges; thus,
5 ESP generally buy local business lines and pay local business rates for their
6 services. The implication of the ESP Exemption is very important to this docket.
7 Instead of paying originating access charges for interexchange enhanced services,
8 ESP are allowed to purchase local exchange services (1FBs, trunks, PRIs, etc.)
9 from the LEC's local exchange tariff or price list. Another way of looking at ESPs
10 is that, because they are treated *as end users*, they are *not treated as CLECs or*
11 *IXCs*. As such, when a company operates under the ESP Exemption, its
12 relationship with its service provider is not the carrier-to-carrier relationship that
13 must exist under access tariffs or an interconnection agreement. Rather, it is a
14 carrier-to-end user customer relationship, subject to all of the rights and limitations
15 of such a relationship.

16 When QCC is operating as an ESP to offer Wholesale Dial, it is operating under the
17 intercarrier compensation regime that applies to the services provided by ESPs,
18 which includes the ESP Exemption. While a CLEC is happy to avoid originating
19 access on dial-up ISP traffic, something an ESP purchasing as an end user is
20 entitled to, a CLEC nevertheless wants to charge a terminating compensation
21 charge to Qwest by virtue of the fact that it is a CLEC. In other words, a CLEC
22 wants to wear two different hats in the same transaction so that it can obtain the
23 benefits of both roles—but it does not want to incur the corresponding obligations

1 that pertain to each role.

2 A CLEC cannot blindly argue that it is entitled to all of the rights of an ESP (no
3 origination charge) when it is unwilling to accept the obligations or limitations of
4 ESP status (no right to a termination charge). Thus, a CLEC's claim that it is just
5 like QCC must be viewed with a critical eye. A CLEC is clearly not trying to be
6 like QCC, the ESP.

7 In fact, the role the carriers are playing in this case is that of a CLEC, and not an
8 ESP. In reality, CLECs wish to use Qwest's local plant and equipment and
9 switches for interexchange calling free of charge (Qwest would receive neither
10 originating access charges nor local exchange rates for providing its entire local
11 network and switches for a CLEC's benefit). Next, CLECs argue that they should
12 bear no financial responsibility to transport VNXX traffic; instead, they claim that
13 this is Qwest's legal responsibility to bear these costs. Finally, in contrast to QCC
14 (which as an ESP who must be treated as an end user and may not charge QC any
15 kind of terminating compensation), CLECs demand \$.0007 per MOU for every
16 minute of ISP traffic (regardless of where it originates and terminates). In light of
17 what they really want, their statement that they want to be treated just like QCC or
18 that QCC has some advantage, rings hollow.

19

20 **Q. BOTH MR. ROBINS AND MR. GREENE STATE THAT QCC'S**
21 **WHOLESALE DIAL SERVICE AND CLECS' ISP SERVICES ARE THE**
22 **SAME (ROBINS DIRECT TESTIMONY PAGE 15, GREENE DIRECT**
23 **TESTIMONY PAGE 31). DO YOU AGREE WITH THAT COMPARISON?**

1 A. No. I have already discussed this issue above and will not repeat the details of my
2 position other than to say that the differences between the services are fundamental.
3 First, when QCC provides its service to ISPs it does not purport to be doing so as a
4 competitive local exchange carrier (“CLEC”) and does not interconnect with Qwest
5 as a CLEC under the Act. Because it is not operating as a CLEC in order to provide
6 services to ISPs, QCC must connect to the network as an end user in order to offer
7 its dial-up services to ISPs. In fact, ISPs like AOL or Earthlink do not need to use
8 the services of an ESP like QCC or the services of a CLEC like Level 3 at all. ISPs
9 can purchase end user services directly from Qwest or any other local telephone
10 company. But some ISPs choose to use the service of QCC, and in each instance
11 where that occurs, Qwest (the ILEC) complies with the regulatory rules and
12 requires that an ESP like QCC be treated as an end user, and not as a telephone
13 company entitled to interconnection under Section 251. When an ISP buys services
14 directly from Qwest, it too is treated as an end user, and not as a CLEC. Because
15 neither the ISP nor QCC interconnects with Qwest under section 251 in order to
16 provide ISP services, they are not entitled to any of the rights that come along with
17 interconnection, such as the right to terminating compensation, the right to require
18 an ILEC to transport local traffic to a single point of interconnection in each LATA,
19 or the right to purchase services at TELRIC rates.

20 In contrast, Level 3 (operating as a CLEC) is the provider of Level 3’s Managed
21 Modem Service. Level 3 interconnects as a CLEC, and is thus entitled to demand
22 that Qwest deliver “local” calls to a single POI in each LATA over TELRIC-priced
23 LIS trunks, and has the right to bill Qwest terminating compensation charges for
24 *local* ISP traffic. But ISPs and ESPs like QCC are *not* entitled to interconnect at a

1 SPOI nor receive terminating compensation from Qwest, and they do not claim
2 such a right.

3

4 **Q. HOW DOES QCC'S ROLE AS AN ESP WHEN OFFERING WHOLESALE**
5 **DIAL COMPARE TO THE VNXX SERVICE ADDRESSED IN THIS**
6 **DOCKET?**

7 A. The manner in which QCC provisions its Wholesale Dial service is a classic
8 application of my understanding of the ESP Exemption. Because the service that
9 QCC provides to ISPs is an enhanced service, QCC is allowed to buy services as a
10 business end user. It buys two services. The first is a local exchange service
11 known as a PRI (or PRS). The second service is private line transport from each
12 LCA in which QCC buys PRI to the location of QCC's Network Access Server,
13 which performs the IP-TDM/TDM-IP functionality on behalf of QCC's ISP
14 customers. QCC's Wholesale Dial service is provisioned by QCC solely through
15 the purchase of end user tariffed/price listed services. As a consequence, QCC pays
16 local exchange rates in each LCA that compensates Qwest for Qwest's local
17 exchange network and local switch that are necessary in order for the calls to be
18 routed to QCC. QCC then pays for transport at retail private line rates to transport
19 the traffic to the location of the Network Access Server. Thus, QCC takes full
20 economic responsibility for transporting the traffic. Finally, and this is a point that
21 is critical in this case, because QCC is an end user customer, it is my understanding
22 that it has no legal entitlement to reciprocal compensation under Section 251(b)(5)
23 nor to terminating compensation under the *ISP Remand Order* for ISP traffic.

24 There is no small irony in Level 3's comparison of its VNXX-based ISP service

1 with Qwest's Wholesale Dial service (Greene Direct at 30). In reality, QCC pays
2 for each of the costs caused by the end users of its ISP customers. Level 3, on the
3 other hand, wishes to avoid all costs caused by the end users of its ISP customers,
4 and then demands that Qwest pay it to terminate ISP traffic. As Dr. Fitzsimmons
5 has demonstrated, Level 3's approach reverses the proper compensation flow that is
6 dictated by the principle of cost causation.

7 The CLECs are not disadvantaged in any way by QCC's method of operation.
8 Indeed, instead of seeking parity with QCC, the CLECs are asking the Commission
9 to institutionalize a competitive advantage in this docket.

10

11 **Q. MR. GREENE INCLUDES A CHART (GREENE DIRECT AT 30) THAT**
12 **COMPARES LEVEL 3'S MANAGED MODEM SERVICE AND QWEST'S**
13 **WHOLESALE DIAL SERVICE. DO YOU AGREE WITH HIS**
14 **COMPARISON?**

15 A. No. The following chart illustrates that any technical similarities are overwhelmed
16 by the completely different regulatory regimes that apply to Level 3's Managed
17 Modem Service and Qwest's Wholesale Dial Service for calls outside the LCAs.
18 Likewise, the chart demonstrates that, unlike Level 3's Managed Modem Service
19 provided via VNXX, interexchange carriers ("IXCs") also compensate Qwest for
20 the use of Qwest's network and are not able to seek compensation from Qwest for
21 the termination of interexchange calls:

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**Comparison of Level 3 VNXX Service/QCC Wholesale Dial/IXC Service
 For Calls Outside the Local Calling Area**

Level 3 Proposed VNXX	QCC Wholesale Dial Service	IXC Toll Service
Local Origination Costs: Level 3 pays nothing to compensate Qwest for the use of Qwest's local network (loops, switches, etc.) within each LCA.	Local Origination Costs: QCC buys local exchange service in the LCA from Qwest and other local exchange carriers at the applicable tariffed rate.	Local Origination Costs: IXC pays originating access charges to compensate Qwest for originating the call.
Transport Costs: Level 3 asserts that it has no responsibility for any costs on Qwest's side of the POI and that it should pay nothing for transport.	Transport Costs: QCC pays Qwest and other local exchange carriers for transport to QCC's location in another LCA at retail private line transport rates.	Transport Costs: IXC self-provisions, purchases transport from another carrier, or purchases it from Qwest from the appropriate access tariff.
Termination Costs: Level 3 proposes to charge Qwest \$.0007 to terminate all long distance ISP traffic (VNXX).	Termination Costs: QCC is an ESP and under FCC rules is treated as an end user and as such may not charge Qwest terminating compensation.	Termination Costs: IXC pays terminating access charges to the LEC that terminates the call. The originating LEC (Qwest) is not charged for termination.

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This chart is equally applicable to the VNXX services offered by other CLECs in this docket.

Qwest Corporation does not terminate the call to itself. It delivers the call to QCC, an ESP end user, pursuant to tariffed services that are available to any end user, including Level 3. In fact, while Level 3 and other CLEC's criticize QCC's approach, they do not want to connect in the same manner as QCC because then they would be required to bear a portion of the costs in the local exchange that they now gets for free, would be required to pay tariffed transport rates, and would not be able to even claim the right to collect terminating compensation. The claims of the CLECs in this case suggest that Qwest somehow gives preference to QCC is

1 simply false. The CLECs are not seeking “competitive parity.” They are seeking a
2 significantly more advantageous competitive situation than QCC.

3
4 **Q. DO THE LOCAL EXCHANGE RATES PAID TO QWEST BY ITS END**
5 **USERS COMPENSATE QWEST FOR CALLS OUTSIDE THE LCA?**

6 A. No. Qwest’s local exchange tariffs for local service do not cover calls outside the
7 LCA. End users recognize that for calls beyond the LCA an IXC must be used and
8 additional charges may apply. Moreover, Qwest is compensated for the use of its
9 network to complete interexchange calls through approved access charges.

10
11 **Q. MR. ROBINS ALSO IMPLIES THAT ONEFLEX®, OFFERED BY**
12 **QWEST’S INTERNET COMPANY, IS ALSO A VNXX TYPE PRODUCT**
13 **(ROBINS AT PAGE 15). DO YOU AGREE?**

14 A. No. Mr. Robins claims that OneFlex® service might violate the criteria that Qwest
15 is trying to place on competitors. QCC offers Qwest OneFlex service (a VoIP
16 service) as an ESP. ESP providers are customers of local telephone companies and
17 as such do not interconnect with incumbent local exchange carriers as a CLEC. As
18 an ESP, QCC interconnects with incumbent local exchange carriers as an end user
19 customer. OneFlex only permits internet calls to enter or exit the PSTN as a local
20 call within the LCA where QCC has purchased local PSTN service as an end user.
21 Please see Exhibit LBB-29 for a diagram of Qwest’s OneFlex service.

22
23 **Q. HOW DOES QWEST ASSIGN TELEPHONE NUMBERS WITH ITS**
24 **ONEFLEX SERVICE?**

1 A. Only certified local telephone companies can obtain and assign telephone numbers
2 to their customers. If QCC, as an ESP, purchases local exchange service in a LCA
3 it is entitled as a customer to obtain a block of numbers from the local exchange
4 company. These numbers can then be assigned to VoIP customers, but the
5 connection to the PSTN must be in the LCA where the numbers are assigned. With
6 OneFlex®, customers have the option of choosing up to five additional telephone
7 numbers associated with their OneFlex service. These additional telephone
8 numbers are an optional premium feature of the OneFlex residential offering.
9 There is an additional charge of \$4.99 for each additional telephone number
10 assigned. QCC purchases tariffed or catalog services from Qwest (the ILEC),
11 typically catalog Primary Rate ISDN or equivalent services, in each of the LCAs
12 where these virtual telephone numbers are assigned. The calls are handed off
13 within the LCA where QCC has purchased local PSTN service. These additional
14 numbers honor the LCA guidelines and calls to or from these numbers from outside
15 the LCA where the VoIP POP is located are not local calls. In terms of the ESP
16 exemption, all traffic is measured to and from the VoIP POP, just as Qwest's
17 language requires of the CLECs, and all calls comply with the exemption. No
18 VNXX calls are permitted with OneFlex because calls are exchanged between the
19 POP and the caller within the same LCA. If a CLEC assigns a Seattle number to its
20 ESP customer in Seattle then calls from Qwest Seattle customers will be delivered
21 to it as local. OneFlex does not, nor should a CLEC be permitted to assign an
22 Olympia VNXX number to a Seattle ESP customer.

23

24 **Q. HOW ARE ONEFLEX CALLS ROUTED?**

1 A. When a calling party dials a OneFlex telephone number the call would route as a
2 local call within the calling party's LCA to the QCC location within that same LCA
3 where QCC, as an ESP, has purchased local PSTN service (i.e. a local to local call).
4 The call is then converted to IP protocol and transported over the QCC IP network
5 to the terminating location of the OneFlex residential called party over their
6 broadband internet connection.

7 As stated in the above example, QCC purchases local PSTN service in every LCA
8 where these additional telephone numbers are provided. Because QCC has
9 purchased service within each LCA, the calls are treated as local calls between
10 another carrier's local customer and the Qwest local customer (QCC) in that LCA.
11 The calls are routed in the same manner as all other local calls between the two
12 carriers. Once QCC receives the call in that originating LCA it is converted into IP
13 protocol and sent over the internet to the broadband connection of the OneFlex
14 customer.

15

16 **Q. DOES QWEST PAY ACCESS CHARGES ASSOCIATED WITH ITS**
17 **ONEFLEX SERVICE?**

18 A. QCC does not purchase local exchange service in all LCAs in Washington. Thus,
19 when it terminates calls in LCAs where it has not purchased local service it hands
20 the traffic off to an IXC for termination. QCC pays terminating access charges
21 associated with OneFlex traffic when it terminates such traffic over a Feature Group
22 D trunk or if the called party is in a different LCA from the local facility over which
23 QCC delivers traffic from its POP to the PSTN. As an ESP, when QCC purchases
24 local service in an LCA it is entitled to terminate its OneFlex traffic in that LCA

1 without paying access under the ESP exemption.

2
3 **Q. MR. ROBINS DISCUSSES TELEPHONE NUMBER ASSIGNMENT FOR**
4 **VOIP SERVICE AND STATES THAT THOUSANDS OF NUMBERS ARE**
5 **USED FOR VOIP SERVICE IN WASHINGTON (ROBINS PAGE 8-9).**
6 **PLEASE COMMENT ON NUMBERING GUIDELINES IN**
7 **RELATIONSHIP TO VOIP SERVICE.**

8 A. As previously stated, only certified local telephone companies can obtain and assign
9 telephone numbers to their customers. Qwest agrees that thousands of numbers
10 have been used for VoIP services; however, these numbers should be assigned only
11 by the local telephone companies to VoIP providers who have purchased local
12 service as an end user following the numbering guidelines established by NANPA.
13 QCC, under the ESP exemption, typically buys local service (PRI or its equivalent)
14 in the LCA where it obtains local phone numbers (the numbers are included with
15 the local exchange service purchased by QCC) instead of buying interconnection
16 services as a CLEC under an Interconnection Agreement. QC adheres to the
17 numbering guidelines and properly assigns telephone numbers within the LCA.
18 Local numbers are assigned to each dedicated local PRI circuit that is provisioned
19 from each LCA to the customer, QCC. QC knows that its PRI customer is located
20 in the LCA, or has a physical presence in that calling area by virtue of purchasing
21 the tariffed local service and combining it with a tariffed or catalogued private line
22 transport service. A QC customer must purchase local service to obtain a local
23 number. If such customers have no local dial-up number, then a dial-up end user
24 would have to dial a "1+" call or an 8XX number to connect to QCC.

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Q. MR. ROBINS ALSO COMPARES VNXX TO MARKET EXPANSION LINES (ROBINS PAGE 15). DO YOU AGREE WITH THIS COMPARISON?

A. No. Qwest's Market Expansion Line ("MEL") is simply a remote call forwarding "feature" for business customers that allows the customer to call forward their service to a different location without the need for a physical location in that area. Calls to a MEL service are forwarded automatically from the central office to another telephone number of the customer's choice, either within the LCA or to another LCA. If the number to which MEL is forwarded to is outside the LCA of the central office serving the MEL line, full retail toll charges apply to the MEL customer (and access charges are applied to such calls). MEL service is no different than any other "call forwarding" service. All calls from the MEL customer to other customers are rated based on the location of the LCA where the MEL customer obtains local service. With MEL, if the call from a calling party (Qwest's customer) to a MEL customer of another LEC originates in a different LCA than the LCA in which the MEL customer obtains local service, the caller would need to dial 1+ and the call would be a toll call; the calling party's IXC will pay the appropriate access charges. When a MEL customer forwards its service to another LCA, it is the MEL customer that incurs the toll charges for that portion of the call and the MEL customer's IXC would pay all applicable access charges.

1 the Qwest/Level 3 arbitration docket, does not either.

2

3 **IX. LATA-WIDE FREE CALLING**

4 **Q. MS. PETERS STATES THAT GLOBAL CROSSING HAS ESTABLISHED**
5 **SEATTLE LATA-WIDE LOCAL CALLING BUT AT THE SAME TIME**
6 **ROUTES ALL CALLS FOR INTERCARRIER COMPENSATION**
7 **PURPOSES ACCORDING TO THE RATING AREAS (PETERS AT 5).**
8 **HOW DO YOU RESPOND TO THAT?**

9 A. It appears that the only way Global Crossing can offer LATA-wide free calling is
10 through the use of VNXX service. It does not appear to be handing off the traffic to
11 an IXC, which would be rating and routing LATA-wide calls according to the
12 intercarrier compensation rules, nor do they pay access for LATA-wide service.
13 Yet Global Crossing expects Qwest to provide the transport for its LATA-wide
14 transport for free. This is the heart of why VNXX service is wrong.

15

16 **X. THE MCI SETTLEMENT**

17 **Q. ON MARCH 7, 2007, QWEST AND MCI METRO (“MCI”) ACCESS FILED**
18 **A JOINT MOTION SEEKING THE COMMISSION’S APPROVAL OF A**
19 **SETTLEMENT AGREEMENT BETWEEN THE PARTIES, WHICH**
20 **INCLUDES DISMISSAL OF MCI FROM THIS DOCKET. PLEASE**
21 **COMMENT ON THE SETTLEMENT.**

22 A. Along with the Joint Motion, the Qwest and MCI filed a document entitled
23 “Narrative Supporting Settlement Agreement, which provides background and

1 other information about the settlement, requesting the Commission approve it. I
2 will briefly explain the key elements of the settlement.

3 As noted, the settlement resolves many historic billing disputes between the parties
4 and sets forth amended ICA language for each of the fourteen Qwest states for a
5 future compensation framework. Exhibit B-1 to the Settlement Agreement sets
6 forth the amended ICA language the parties intend to file in Washington and in
7 eleven other Qwest states (Iowa and Colorado are excluded).

8 At the heart of the agreement are two elements. First is the Unitary Rate which
9 applies to traffic that is payable for the exchange of local traffic. The initial
10 Unitary Rate applicable in Washington (and the same unitary rate that is employed
11 in all Qwest states, except Iowa and Colorado) is \$0.00078651. This rate was
12 calculated based on company-specific usage data from the twelve states where the
13 rate will be applicable and also accounts for the current approved voice rates in
14 each state and the FCC's mandated rate for local ISP traffic. As I will discuss
15 below, the traffic that will be compensated at this rate is local voice and local ISP
16 traffic.

17 The second key element is the "Percent Compensable Minute Factor" ("PCMF")
18 which is used to determine "which traffic exchanged by the Parties pursuant to the
19 Agreement is subject to compensation at the Unitary Rate." The PCMF is the ratio
20 of "a) the quantity of Local Voice Traffic *plus* Local ISP-bound traffic to b) the
21 quantity of Virtual VNXX traffic *plus* Local Voice Traffic and Local ISP-bound
22 traffic." A PCMF is calculated for each company's originated traffic. Thus, for
23 Qwest-originated traffic, if there were 100 minutes of traffic originating from

1 Qwest and terminating to MCI, consisting of 10 minutes of Local Voice Traffic, 30
2 minutes of Local ISP-bound traffic, and 60 minutes of Virtual NXX traffic, the
3 formula would work as follows:

$$\frac{10 + 30}{60 + 10 + 30} = \frac{40}{100} = 40\% \text{ PCMF}$$

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6 Thus, of the 100 minutes of traffic, MCI will bill and Qwest would pay terminating
7 compensation on 40 of them: the 40 local voice and ISP minutes, which would be
8 compensated at \$0.00078651. In other words, the net effect of the agreement is
9 that terminating compensation will not be paid by Qwest on VNXX minutes. The
10 same methodology is used to calculate a PCMF for MCI-originated traffic that
11 Qwest will employ when billing MCI for its traffic. Under the agreement, MCI
12 will be allowed to use VNXX routing, but all VNXX minutes are effectively
13 subject to a bill and keep compensation regime

14 Both the Initial Unitary Rate and the PCMF will be in effect for one year and can
15 be revisited after that initial period at the election of either party. The Revised
16 Unitary Rate will be recalculated to reflect any changes in the mix of local voice
17 and ISP traffic, or changes in a state voice rate or FCC ISP rate. The Revised
18 PCMF will be recalculated to reflect any changes in the mix of local voice and ISP
19 traffic, on the one hand, and VNXX traffic on the other.

20 The Parties also agreed to a relative use factor (“RUF”) that allocates cost
21 responsibility for LIS transport. Under the amendments to the interconnection
22 agreement, MCI will effectively bear the responsibility under the RUF formula for
23 all VNXX traffic.

1

2 **Q. PLEASE ADDRESS THIS SETTLEMENT AT IT RELATES TO THE**
3 **VNXX ISSUES IN THIS DOCKET.**

4 A. The settlement, consistent with the Act's preference for voluntary negotiation of
5 interconnection arrangement, represents a voluntary, arms-length settlement of
6 several historic disputes between Qwest and MCI. On the one hand, if approved,
7 Qwest will forego its claim for originating access charges on VNXX traffic during
8 the term of the agreement; on the other hand, MCI will forego any claim that it is
9 entitled to terminating compensation on VNXX traffic during the term of the
10 agreement. It puts into place an agreement that provides some forward-looking
11 certainty for both companies, which is beneficial so that each can move forward
12 with some ability to plan for the future much more clearly. Finally, as noted in the
13 Narrative, while MCI will be dismissed from this matter with prejudice, the
14 Agreement does not purport to resolve and should not be interpreted as resolving
15 Qwest's complaints against the other parties to this docket, nor does it represent a
16 concession on any legal issues. From Qwest's perspective, the settlement
17 represents a win-win approach in which both parties have conceded certain disputed
18 issues to reach a mutually beneficial result.

19 Finally, once approved, other CLECs would be able to opt in to the same
20 agreement (the whole agreement) that Qwest will then have with MCI, though of
21 course the specific Unitary Rate and the PCMF provisions would produce different
22 rates and ratios for each party based on their unique mixes of traffic exchanged
23 with Qwest. Qwest strongly recommends the approval of the stipulation in its
24 entirety.

1 **XI. DEFERRING TO THE FCC**

2 **Q. MR. NEINAST SUGGESTS THAT THE COMMISSION SHOULD DEFER**
3 **ANY ACTION IN THIS DOCKET PENDING A DECISION IN THE FCC’S**
4 **INTERCARRIER COMPENSATION DOCKET. (DIRECT AT 3). PLEASE**
5 **RESPOND TO THIS POSITION.**

6 A. I disagree with Mr. Neinast for two reasons. First, next month, we will pass the
7 sixth anniversary of the FCC’s NPRM opening its comprehensive intercarrier
8 compensation docket. Given that the FCC has been unable to issue a decision in six
9 years, I am not confident that we will be seeing one anytime soon. Second, and
10 most importantly, the VNXX issue, which is fundamentally a question of the proper
11 application of LCAs and state call rating rules, has not been preempted by the FCC.
12 In fact, as I understand it, the court in *Global NAPs II*, the decision that upheld the
13 Vermont Board’s ban of VNXX, was clear that VNXX issues clearly fall within the
14 jurisdiction of state commissions. (454 F.3d at 101-03). In light of that, deferring
15 these issues would be entirely inappropriate.

16
17 **XII. THE GLOBAL CROSSING COUNTERCLAIM**

18 **Q. PLEASE COMMENT ON GLOBAL CROSSING’S COUNTERCLAIM IN**
19 **THIS DOCKET.**

20 A. Two companies—Broadwing and Global Crossing—filed counterclaims in this
21 docket. At the time that direct testimony was due, Broadwing filed testimony
22 attempting to justify its counterclaim. I rebutted that testimony in my Response
23 Testimony filed on February 2, 2007. In that testimony, I pointed out the reasons
24 why Broadwing’s claims should be rejected. I also noted that Global Crossing filed

1 no testimony in support of its counterclaim, thus making it impossible to respond.

2

3 **Q. HAS GLOBAL CROSSING DONE ANYTHING FURTHER TO PROVE ITS**
4 **CLAIM?**

5 A. No. In her testimony, Ms. Peters—the Global Crossing witness—provides a grand
6 total of one question and eight lines of testimony on the counterclaim (Peters
7 Response at 3) plus a single-page spreadsheet that purports to establish Global
8 Crossing’s counterclaim (Confidential Exhibit DP-2). Other than itemizing some
9 amounts that Global Crossing claims are owed, neither the testimony nor
10 spreadsheet explains the charges, nor do they demonstrate why Qwest owes them.
11 Thus, in the end, Global Crossing failed to timely file testimony to support its
12 claim, and the information it filed late is completely inadequate to provide a basis
13 upon which Qwest can even intelligibly respond to the claim. The counterclaim,
14 therefore, should be denied.

15

16 **XIII. CONCLUSION**

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

18 A. Yes.

19

