

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.; BROADWING COMMUNICATIONS, LLC;  
GLOBAL CROSSING LOCAL SERVICES INC;  
AND, MCIMETRO ACCESS TRANSMISSION  
SERVICES LLC D/B/A VERIZON ACCESS  
TRANSMISSION SERVICES

DOCKET NO. UT-063038

**REBUTTAL TESTIMONY**  
**OF DR. WILLIAM L. FITZSIMMONS**  
**ON BEHALF OF**  
**QWEST CORPORATION**

**MARCH 20, 2007**

1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME AND POSITION.**

3 A. My name is William L. Fitzsimmons. I am a Director at LECG, LLC; my  
4 business address is 2000 Powell Street, Suite 600, Emeryville, CA 94608. I filed  
5 Direct Testimony in this docket.

6

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

8 A. The purpose of this testimony is to respond to statements made by Dr. Blackmon,  
9 Mr. Sumpter, and Mr. Robins.

10

11 **II. COST CAUSATION AND COST RESPONSIBILITY**

12 **Q. DOES IT APPEAR THAT THERE IS GENERAL AGREEMENT ABOUT**  
13 **THE ULTIMATE COST CAUSERS OF THE INTERNET TRAFFIC AT**  
14 **ISSUE IN THIS PROCEEDING?**

15 A. Yes, it appears that Mr. Sumpter, Mr. Robins, and I agree that end user customers  
16 who employ dial-up Internet access are the ultimate causers of the costs related to  
17 this traffic. As stated in my direct testimony:

18 Perhaps more than any other factor, forcing cost causers to  
19 face the responsibility of **recovering the costs from end**  
20 **users** is what drives efficient outcomes in competitive  
21 markets. [*Fitzsimmons Direct*, p. 2, emphasis added]

22 And,

23 ISPs and their customers cause the costs associated with  
24 switching and transporting the Internet traffic that Qwest  
25 delivers to the CLECs that serve those ISPs. The CLECs  
26 take responsibility for these costs on behalf of the ISPs, and  
27 Qwest incurs the costs. The proper chain of payments is  
28 determined by the chain of cost, but in reverse – back to

1                   **the ultimate cost causer, the ISP end-user.** [*Fitzsimmons*  
2                   *Direct*, p. 9-10, emphasis added]

3                   Perhaps my use of the term “ISP end-user” confused Mr. Sumpter and Mr. Robins  
4                   into believing that we are not in agreement on this point. What is important,  
5                   however, is that there is general agreement that “the calling customer is the cost  
6                   causer” [*Sumpter Response*, p. 17], and the “causer of the costs is the individual  
7                   that initiates the phone call” [*Robins Direct*, p. 16]. Specifically, the ultimate cost  
8                   causers of the traffic at issue in this proceeding are the end users, acting as  
9                   customers of Internet service providers (ISPs), who use dial-up access to reach non-  
10                  local ISPs.

11  
12                  **Q. HOW DOES A CONSIDERATION OF THE CHAIN OF COST**  
13                  **CAUSATION LEAD TO FAIR AND EFFICIENT POLICY DECISIONS?**

14                  A. In competitive markets, cost responsibility follows cost causation, which is a key  
15                  reason why competitive markets produce efficient outcomes. Dr. Blackmon is on  
16                  the correct track when he observes that the principles of cost responsibility “hold  
17                  the originator of the call [the cost causer] responsible for the cost of the call”  
18                  [*Blackmon Direct*, p. 19]. As I describe in the following section, however, Dr.  
19                  Blackmon’s proposal for holding the originators of the Internet-bound calls  
20                  responsible for the costs that they cause is seriously flawed, because it rests on the  
21                  mistaken assumption that these VNXX calls are local calls. In fact, these are non-  
22                  local calls that involve a chain of cost causation, which includes Qwest, CLECs,  
23                  ISPs, and their dial-up customers.

24                  Because this is a proceeding between an ILEC (Qwest) and several CLECs, what is  
25                  needed is for this Commission to hold those CLECs responsible for the costs they  
26                  cause Qwest to incur on behalf of ISPs and their end users. This will set

1 competitive processes in motion that will naturally drive cost responsibility  
2 backward along the chain of cost causation toward the ultimate cost causers.

3

4 **Q. IS THE CHAIN OF COST RESPONSIBILITY A MIRROR IMAGE OF THE**  
5 **CHAIN OF COST CAUSATION?**

6 A. Yes. The chains of cost causation and cost responsibility for the traffic at issue in  
7 this proceeding are mirror images of each other, as summarized below:

8 Cost Causation: Dial-up End Users → ISPs → CLECs → Qwest  
9 Cost Responsibility: Dial-up End Users ← ISPs ← CLECs ← Qwest

10 The ultimate cost causer is the end user who uses dial-up Internet access. As I  
11 describe in my direct testimony, the end user acts as a customer of an ISP when he  
12 places the toll-free call to his ISP. The ISP, in turn, obtains a toll-free service from  
13 its CLEC, and the CLEC, through its interconnection agreement, orders services  
14 that require Qwest to collect the Internet-bound dial-up traffic and deliver it to the  
15 CLEC. Implementing the principle of cost responsibility begins by requiring the  
16 CLEC to pay Qwest for costs that Qwest incurs on its behalf. The CLEC can then  
17 charge the ISP so that the ISP can correctly price its service to its customers. To  
18 this point, the excerpt from my direct testimony (begun above) continues as  
19 follows:

20 In this way, every entity is responsible for the costs that it  
21 causes, and every entity can properly weigh its costs  
22 against the expected benefits or revenues that it expects to  
23 receive. This is the compensation pattern that drives the  
24 efficient use of resources in competitive markets.  
25 [*Fitzsimmons Direct*, p. 10]

26 If CLECs can sidestep costs that they cause Qwest to incur, then the chain of  
27 payments that forces the responsibility of costs back to the end user who initiated

1 the dial-up Internet call is broken. If this occurs, Qwest and its customers that do  
2 not employ dial-up Internet access to non-local ISPs will face costs that they do not  
3 cause, and the power of cost causation to produce efficient decisions will be lost.

4  
5 **Q. WHY DOES IT MATTER IF THE CALL IS TO A NON-LOCAL ISP?**

6 A. Cost responsibility in telecommunications does not occur in a regulatory vacuum.

7 In terms of cost causation and cost responsibility, there is a long-standing  
8 distinction between local and non-local services, and Qwest cannot ignore this  
9 reality. Specifically, local service prices are designed to compensate Qwest for  
10 costs it incurs for traffic that originates and terminates within the same local  
11 calling areas. This includes dial-up traffic from end users to ISPs that are in the  
12 same local calling areas as the end users. When the ISPs are not in the same local  
13 calling areas as their end users, however, the dial-up calls are no longer local  
14 calls, and local prices are not designed to compensate Qwest for the costs it incurs  
15 to complete non-local calls. This is true for traditional long distance traffic, and it  
16 is true for the dial-up Internet traffic at issue in this proceeding.

17  
18 **III. RIGHT GOALS, WRONG PROPOSALS**

19 **Q. HOW WOULD YOU ASSESS DR. BLACKMON'S COMMENTS RELATED**  
20 **TO THE ECONOMIC GOALS THAT SHOULD GUIDE DECISIONS IN**  
21 **THIS PROCEEDING?**

22 A. Dr. Blackmon is correct that decisions in this proceeding should “establish rates  
23 that reflect economic costs,” [*Blackmon Direct*, p. 16] “advance economic  
24 efficiency,” [*Blackmon Direct*, p. 18] and “result in better price signals or better  
25 allocation of resources.” [*Blackmon Direct*, p. 20] These are appropriate goals,

1 but proposals that ignore the non-local nature of VNXX traffic will not get us  
2 there. Appropriate decisions related to VNXX traffic at issue in this proceeding  
3 begin with recognition of the following:

- 4 1. Dial-up Internet traffic that originates in one local  
5 calling area and delivered to an ISP in another is not  
6 local traffic.
- 7 2. Basic local service prices are not designed to  
8 compensate Qwest for costs incurred related to non-local  
9 traffic.
- 10 3. Terminating compensation for ISP traffic is only  
11 appropriate for local ISP traffic.
- 12 4. Requiring Qwest to pay terminating compensation for  
13 non-local (interexchange) traffic, when Qwest incurs  
14 costs to collect and deliver this traffic, turns the  
15 principle of cost responsibility on its head.
- 16 5. Advancing economic efficiency, limiting artificial  
17 subsidies, providing better price signals, and promoting  
18 a better allocation of resources all require that CLECs  
19 compensate Qwest for the costs that they cause on  
20 behalf of ISPs and the ultimate end user customers.
- 21 6. Originating access charges are the prices set by  
22 regulators for compensating Qwest for the costs it incurs  
23 related to originating non-local traffic.
- 24 7. If CLECs are required to pay originating access charges  
25 on this traffic, some portion of these charges may pass  
26 through to end users who employ dial-up Internet  
27 access.

28 Dr. Blackmon's approach of ignoring the interexchange nature of this traffic and  
29 waving the specter of unaffordable dial-up Internet access is an unfortunate  
30 distraction from the careful assessment of these issues and progress toward fair and  
31 efficient decisions.

32 At the very least, achieving the goals enumerated by Dr. Blackmon require: (1) the  
33 cessation of terminating compensation payments by Qwest for Internet traffic that

1 is non-local; and (2) consideration of a form of payment from CLECs to Qwest in  
2 compensation for the costs that Qwest incurs related to the traffic at issue in this  
3 proceeding. Even if it is determined that originating switched access prices are not  
4 the appropriate level of compensation, or that charging originating switched access  
5 prices would result in unaffordable dial-up access for some customers, the fact  
6 remains that the direction of compensation today is incorrect. Ignoring this fact  
7 will preclude fair and efficient decisions.

8  
9 **Q. DOES DR. BLACKMON ASSUME THAT QWEST'S LOCAL SERVICE**  
10 **PRICES ARE DESIGNED TO COMPENSATE QWEST FOR SWITCHING**  
11 **ALL INTERNET TRAFFIC?**

12 A. Yes. Dr. Blackmon contends that: "If Qwest's local rate is not sufficient to cover  
13 these costs [origination, transport, and termination of dial-up Internet calls]...then  
14 the rate level or rate structure should be revised to correct that problem."  
15 [*Blackmon Direct*, p. 19] The first assumption embodied in this statement is that  
16 local service prices are designed to compensate Qwest for non-local dial-up  
17 Internet traffic. This is false. The second assumption embodied in the statement  
18 is that, if a problem exists with rates, then steps should be taken to revise rates or  
19 the rate structure. I agree with the second assumption, but the first step in  
20 correcting any problem is the proper identification of the problem. Correcting  
21 *local* rates to compensate Qwest for costs caused by *non-local* calls is not  
22 sensible. Dr. Blackmon's proposal, which includes the possibility of a general  
23 increase in local exchange rates, ignores the economic underpinnings of the  
24 FCC's *ISP Remand Order*, in which the FCC observes that: "There is no public  
25 policy rationale to support a subsidy running from all users of basic telephone

1 service to those end-users who employ dial-up Internet access.”<sup>1</sup> Yet it appears  
2 that this is what Dr. Blackmon proposes: to have all local exchange users in  
3 Washington subsidize the subset of local exchange users who use dial-up Internet  
4 access.

5  
6 **Q. WOULD REVISING LOCAL RATES, AS PROPOSED BY DR.  
7 BLACKMON, IGNORE THE NATURE OF VNXX TRAFFIC?**

8 A. Yes. If CLECs have a concern about the proper level of compensation to Qwest  
9 for interexchange dial-up Internet traffic that Qwest collects on their behalf, then  
10 the proper course is to propose an alternative level of compensation, not to  
11 pretend that non-local traffic is, indeed, local. The theme of Dr. Blackmon’s  
12 testimony on this issue is that, because switched access prices are higher than  
13 Level 3 deems appropriate, CLECs should not have to compensate Qwest for the  
14 costs that Qwest incurs to collect and deliver dial-up interexchange traffic. With  
15 no plausible rationale for ignoring the distinction between local and non-local  
16 traffic for the purpose of compensating Qwest, and no proposal for an alternative  
17 form of compensation, Dr. Blackmon simply proposes that the Commission allow  
18 CLECs to continue pretending that this traffic is local.

19  
20 **Q. WOULD YOU PLEASE SUMMARIZE YOUR COMMENTS RELATED TO  
21 DR. BLACKMON’S TESTIMONY ON THIS ISSUE?**

22 A. Ignoring the truth about the nature of interexchange dial-up Internet traffic will  
23 not lead to fair or efficient decisions. For the interexchange traffic at issue in this

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<sup>1</sup> Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Intercarrier compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, ¶ 87 (FCC. 2001) (hereinafter “ISP Remand Order”).



1 proceeding, fair and efficient decisions require: (1) the cessation of terminating  
2 compensation payments by Qwest for Internet traffic that is interexchange in  
3 nature; and (2) consideration of some form of payment from CLECs to Qwest in  
4 compensation for the costs that Qwest incurs related to the traffic at issue in this  
5 proceeding. If Dr. Blackmon believes that access charges are not the appropriate  
6 form of compensation for this traffic, then the rational course is to propose an  
7 alternative form of compensation. Ignoring the costs that Qwest incurs related to  
8 this traffic is contrary to the principle of cost responsibility and will not lead to  
9 efficient prices. As observed correctly by the FCC: “Efficient prices result when  
10 carriers offer the lowest possible rates based on the costs of the service they  
11 provide to ISPs, not when they can price their services without regard to cost.”  
12 [*ISP Remand Order*, ¶ 71].

13  
14 **Q. WOULD YOU OFFER CONCLUDING COMMENTS RELATED TO FAIR**  
15 **AND EFFICIENT DECISIONS RELATED TO VNXX TRAFFIC?**

16 A. It is important to note the positive role that efficient prices play in guiding  
17 customers’ choices among existing and emerging alternatives and the  
18 corresponding impact these choices have on firms’ investment decisions.  
19 Although it is uncertain what portion of the compensation paid by CLECs to  
20 Qwest will find its way into end user prices for dial-up access, it is near certain  
21 that this compensation will accelerate both the adoption of broadband alternatives  
22 and investment in these alternatives. This is a natural progression consistent with  
23 our national telecommunications policy, as described by FCC Chairman Kevin  
24 Martin:

25 “Creating a policy environment that speeds the deployment  
26 of broadband throughout the U.S. is my highest priority as

1 the new chairman of the FCC...Most Americans today can  
2 choose between several competing broadband service  
3 providers and service packages...These proliferating  
4 service providers are increasingly competing with each  
5 other, and that holds down prices, increases consumer  
6 choice, and creates a vast new array of services.”<sup>2</sup>

7 This is meant to put the impact of efficient prices in perspective; it is not meant to  
8 discount the possibility that there are dial-up customers who will deem the prices of  
9 dial-up service or broadband alternatives unaffordable. To the extent that this is an  
10 issue that requires regulatory intervention, establishing explicit subsidies, funded in  
11 a competitively neutral manner, is one fair and efficient option. The existing  
12 system of implicit subsidies, supported by Qwest and its local rate payers, is neither  
13 fair nor efficient. Again, as observed by the FCC: “There is no public policy  
14 rationale to support a subsidy running from all users of basic telephone service to  
15 those end-users who employ dial-up Internet access.” [*ISP Remand Order*, ¶87]  
16 There is, likewise, no economic efficiency rationale to support such a subsidy.

17  
18 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

19 A. Yes.

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<sup>2</sup> Martin, Kevin, “Broadband,” *The Wall Street Journal*, July 7, 2005.