Exhibit No. ____ (DEM-4T)

**BEFORE THE**
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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| QWEST CORPORATION<br><br>Complainant,<br><br>v.<br><br>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.<br><br>Respondents. | ) | Docket No. UT-063038 |

**REBUTTAL TESTIMONY OF**

**DANIEL E. MELDAZIS**

**ON BEHALF OF BROADWING COMMUNICATIONS, LLC**

**March 20, 2007**

**Q. Please state your name, job title, and business address.**

A. My name is Daniel E. Meldazis. I am the Director of Regulatory Affairs for Broadwing Communications, LLC. My business address is 200 North LaSalle Street, 10th Floor, Chicago, IL 60601.

**Q. Are you the same Mr. Meldazis who submitted direct testimony in this proceeding on November 20, 2006?**

**A.** Yes.

**Q. What is the purpose of your testimony?**

**A.** In this testimony, I respond to and rebut the testimony offered by Qwest witnesses in the following subject areas:

Associating NXXs with the CLLI code of a switch;

Duration of the growth cap on ISP-bound minutes; and

Contract provisions related to VNXX traffic.

**Q. Mr. Brotherson testified that Qwest is able to determine whether a particular call is local or not by the CLLI code of the switch for that call. Do you agree?**

**A.** No. Let me first preface my response by stating that the use of the word "local" is a matter of contention between the parties. Without addressing any of the issues between Broadwing and Qwest as to what constitutes a "local" call, my response is predicated on a definition of a "local call" as provided for in the interconnection agreement between Broadwing and Qwest, which I will henceforth refer to as uppercase "Local." Having established that, I assume that Mr. Brotherson was testifying that the general geographic location of a called or calling party can be ascertained by the NPA-NXX of that party's phone line. However, this geographical affinity between switches and phone numbers is

the product of traditional wireline architectures in which a telephone switch was placed in close proximity to the lines that it served. Recent market entrants like Broadwing have found it more efficient to locate one switch in a densely populated location in its service area and then have this switch provide Local service to all of its customers' service areas, regardless of their distance from that switch. For example, Broadwing's switch in Washington is located in Seattle. While a call from a Broadwing customer in Seattle to another party in Seattle will be switched by that switch, so will a call from a Broadwing customer in Tacoma to another party in Tacoma. While I believe that Qwest would agree that both calls are "Local" based on its definition of the term, it appears that the TUMS and CroSS7 systems that Mr. Brotherson refers to in his testimony might report otherwise because it only considers the physical switch location. In its response to Broadwing Request 02-025, Qwest has also admitted as much, stating that "[t]he Broadwing switch location does not, in and of itself affect the determination of the jurisdictional nature of a call. . . . Qwest has used switch location as an indicator that certain calls may not be local, but not a final or decisive factor in making that determination."

**Q. Mr. Brotherson testified that Broadwing was not entitled to charge for traffic above the growth caps imposed in the *ISP Remand Order* (Brotherson at 12 - 21). Do you agree?**

A. No. As Mr. Brotherson states, this is mainly an issue of legal interpretation (Brotherson at 14), so I am restricting my response to my observations concerning the interconnection agreement that governs the relationship between Qwest and Broadwing. Concerning growth caps, Broadwing has been operating under the plain language of the Revised

Inter-Carrier Compensation Mechanism Amendment to the interconnection agreement, effective July 26, 2002. This amendment, based on an original draft provided by Qwest, contains a schedule in Section 4 in which the parties agree to an ISP-Bound traffic growth ceiling "through and including December 31, 2003." There is no provision in the amendment to extend the growth caps beyond that date. I am familiar with subsequent amendments to the interconnection agreement, and am not aware of any that extend the growth caps in any way.

**Q. What is your opinion of Mr. Brotherson's testimony regarding the history, scope and policy issues involved in FCC proceedings related to the growth caps?**

A. I believe that these are legal issues that are best addressed in our briefs. Concerning the impact of these proceedings on the interconnection agreement, I have found no provisions in the interconnection agreement or subsequent amendments that give orders issued by the FCC or courts precedence over the language in the agreement, nor do I find any provisions that cause the agreement to automatically conform to the holdings in those decisions.

**Q. Do you agree with Mr. Brotherson's description of how the principle of VNXX applies to Broadwing?**

A. I agree with the general outline of his description, but take issue with some of his phrasing. Like traditional foreign exchange ("FX") services Virtual NXX or VNXX generally refers to a network arrangement where a LEC (not necessarily just a CLEC), such as Qwest,, has assigned telephone numbers with NPA-NXXs that correspond to a rate center used for the rating of calls but the end-user may not be physically present, in whatever form, in that rate center. The originating LEC routes the traffic directed to

those numbers to one of its points of interconnection with the terminating LEC. The terminating LEC then delivers the call to that LEC's customer. Reciprocal or terminating compensation principles apply when these calls are routed to a LEC retail customer whose NPA-NXX is associated with the same Local rating area as that which the call originated.

I disagree that VNXX "undercuts the principle of geographic synchronization between telephone numbers and customer location" (Brotherson at 23) because I am not aware of any such principle. As I testified earlier, the affinity between a particular switch, its geographic location and the NPA-NXXs that home on that switch are a legacy of traditional network architectures that Broadwing and other recent entrants have chosen not to adopt. CLEC VNXX arrangements do no more to "undercut the principle of geographic synchronization between telephone numbers and customer location" than traditional FX services do.

**Q. Do you agree with Mr. Brotherson's testimony that the original interconnection agreement and the Revised Inter-Carrier Compensation Mechanism Amendment render VNXX traffic ineligible for reciprocal compensation?**

A. No. Neither the original interconnection agreement nor the Revised Inter-Carrier Compensation Mechanism Amendment define, describe or address VNXX traffic. Consequently, it is inaccurate to state that reciprocal compensation for VNXX traffic is barred. What the interconnection agreement does establish is that "the characterization of intraLATA traffic as 'local' (local includes EAS), or 'toll' . . . shall be the same as the characterization established by the effective tariffs of the incumbent local exchange

carrier as of the date of this agreement." Section that 5.1.A.2 of Qwest Tariff WN U-40 provides that "[l]ocal calling refers to calls placed to telephone numbers where message toll charges do not apply." Toll charges do not apply to calls with the same NPA-NXX. Consequently, VNXX traffic is, by the terms of the agreement, not toll and therefore subject to reciprocal compensation, in accordance with Section V.D.1.a. of the agreement which states that "[t]he Parties agree that call termination rates as described in Appendix A will apply reciprocally for the termination of Local/EAS traffic per minute of use."

Apart from the fact that VNXX traffic is, by the terms of the agreement, eligible for reciprocal compensation, the standard industry practice has been for ILECs such as Qwest to determine whether traffic is toll or Local according to the NXX codes of the calling and called parties, and then to apply the appropriate compensation rate. If the call is between two NXX codes assigned to the same Local calling area, it is rated as "local" (*i.e.* non-toll), and Qwest does not route the call to the customer's presubscribed toll carrier and does not bill access charges to the interconnecting carrier.

**Q. Are there any transmission characteristics of FX or VNXX traffic that would require it to be compensated differently than any other Local traffic?**

A. No. There are no reasons why VNXX traffic should not be treated as any other Local (i.e., non-toll) traffic and subject to reciprocal compensation under the agreement. Carriers serving customers using VNXX arrangements incur costs to terminate traffic originated by customers of other carriers. The fact that the called party does not have a physical presence in the same Local calling area as the calling party does not alter this reality. Further, the physical location of the terminating party has no impact on the costs

Qwest incurs to bring a call to the point of interconnection ("POI"). Not only does the call appear indistinguishable from any other Locally dialed call, but because Qwest's responsibilities in delivering such calls are the same as for any other Local call that it delivers to a Broadwing customer, its incurs no additional costs in delivering traffic destined to a Broadwing VNXX telephone number. Regardless of whether a telephone number is assigned with VNXX capabilities or not, when a Broadwing customer calls a Qwest customer, Broadwing must transport that call to the POI and incur the related switching and transport expenses. Broadwing then hands the call off to Qwest, and from that point, Qwest is solely responsible for the transport and termination of the call to the called customer. The reverse is true when the call travels in the opposite direction. Whenever a Qwest customer calls a Broadwing customer, Qwest must incur the expenses only on its side of the POI. Because all traffic routed from Qwest to Broadwing must pass through the POI, from a network, routing, and cost perspective, it makes no difference to Qwest where the Broadwing customer is located. When Qwest delivers a call to Broadwing, Qwest must deliver the call to the same location and, therefore, incurs the same transport and switching expenses whether the Broadwing customer is located 10 feet or 10 miles from the POI. Likewise, it makes no difference to Broadwing where the Qwest customer is located. Because Qwest incurs no additional costs when it exchanges VNXX traffic with Broadwing, the compensation structure should be the same as it would be when the Broadwing customer has a physical presence. That compensation structure requires the originating carrier—in this case Qwest—to compensate the terminating carrier, Broadwing.

**Q. Does this apply to ISP-Bound traffic as well?**

A. Yes. As I alluded to in a previous answer, in the *ISP Remand Order,*[1] the FCC makes clear that the federal ISP-bound traffic compensation regime applies to *all* ISP-bound traffic: "We conclude that this definition of 'information access' was meant to include *all access traffic* that was routed by a LEC 'to or from' providers of information services, of which ISPs are a subset."[2] The *ISP Remand Order* does not create categories of ISP-bound traffic, such as Local ISP-bound traffic, as Qwest suggests. The Revised Inter-Carrier Compensation Mechanism Amendment conforms with the *ISP Remand Order* in this respect as well. It defines ISP-bound traffic as "*all* traffic transported by a carrier to the Receiving Party and then delivered by the Receiving Party to an Internet service provider" with no further qualification. Consequently, there is no Local requirement for ISP-bound traffic that would somehow exempt it from the intercarrier compensation provisions of the interconnection agreement and the Revised Inter-Carrier Compensation Mechanism Amendment. This also comports with other Commission decisions on this subject, e.g. *Level 3 Communications v. Qwest*, Docket No. UT-053039, Order No. 3, (August 26, 2005). There, the Commission held that "the ISP Remand Order addresses all ISP-bound traffic, and that '[t]he FCC did not distinguish traffic between an ISP and its customer in different local calling areas from traffic between an ISP and its customer in the same local calling area' . . . Qwest must compensate Level 3 for all ISP-bound traffic under the ISP Remand Order, including VNXX traffic."

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1 *In the Matter of Intercarrier Compensation for ISP-Bound Traffic,* Order on Remand, CC Docket No. 99-68, FCC 01-131 (rel. April 27, 2001.) (*ISP Remand Order*).

2 *ISP Remand Order* at ¶ 44 (emphasis added).

**Q. Does this conclude your testimony?**

**A.** Yes.