

**BEFORE THE  
WASHINGTON 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  
WORLD COM COMMUNICATIONS,  
INC.

Docket No. UT-063038

ANSWER OF MCIMETRO  
ACCESS TRANSMISSION  
SERVICES LLC d/b/a VERIZON  
ACCESS TRANSMISSION  
SERVICES

MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (“Verizon Access”) answers the Complaint of Qwest Corporation (“Qwest”) for an Order Prohibiting VNXX, filed May 22, 2006. The subheadings and numbered paragraphs in Verizon Access’s Answer correspond to the subheadings and numbered paragraphs in Qwest’s Complaint. All pleadings, correspondence, and other communications concerning this Answer should be sent to Verizon Access at the following addresses:

Gregory M. Romano  
General Counsel – Northwest Region  
1800 41<sup>st</sup> Street  
Everett, WA 98201  
Telephone (425) 261-5460  
Facsimile: (425) 261-5262  
Email: [gregory.m.romano@verizon.com](mailto:gregory.m.romano@verizon.com)

Robert Millar  
Director - Regulatory  
924 Capitol Way, Ste 104  
Olympia, WA 98501  
Telephone (360) 236-9727  
Facsimile: (360) 236-9919  
Email: [robert.a.millar@verizon.com](mailto:robert.a.millar@verizon.com)

## I. INTRODUCTION

1. No response is necessary to this statement that Qwest is bringing a complaint against the named companies.
2. No response is necessary to this statement about Qwest's contact information.
3. No response is necessary to this statement that Qwest set forth the names and addresses of the respondents in Appendix A to its Complaint. However, Verizon Access points out that Qwest listed both WorldCom Communications, Inc. ("WorldCom") and MCImetro Transmission Services LLC ("MCImetro") in the same contact information block. Verizon Access denies that WorldCom is an appropriate respondent, given the nature of Qwest's Complaint, so only Verizon Access answers the Complaint. *See* ¶ 8, below. Qwest admits that it may not have named the correct corporate entity in some cases, and that the Complaint may need to be amended to correct some entities' names. Qwest Complaint n. 1.

## II. PARTIES

4. Based upon information and belief, Verizon Access admits that Qwest is a telecommunications company as defined in RCW 80-04.010 and an incumbent local exchange company as defined in 47 U.S.C. § 251(h), and that Qwest provides local exchange and other telecommunications services in the State of Washington.
5. No Verizon Access response is necessary to this statement about Level 3.

6. No Verizon Access response is necessary to this statement about Pac-West.
7. No Verizon Access response is necessary to this statement about NTI.
8. Verizon Access denies that WorldCom Communications, Inc., the Respondent Qwest named, is registered with the Commission. MCImetro Access d/b/a Verizon Access is registered with the Commission as a CLEC and is authorized to provide local and long-distance services in Washington. As noted, Verizon Access believes Qwest intended to name Verizon Access, not WorldCom, as a Respondent.

### **III. JURISDICTION**

9. Qwest's allegation that "other statutes cited herein" confer jurisdiction over Verizon Access and over Qwest's Complaint is vague and ambiguous, so Verizon Access denies it. Verizon Access does not deny that the Commission has jurisdiction over Qwest's Complaint and Verizon Access pursuant to RCW 80.01.040, or that RCW 80.04.110 governs Qwest's Complaint. However, the FCC is already addressing exactly the same issues Qwest's Complaint raises. In its ongoing intercarrier compensation rulemaking, the FCC intends to resolve issues relating to usage of VNXX codes, including what intercarrier compensation and transport obligations should apply to VNXX traffic. *See Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed rulemaking, 16 FCC Rcd 9610 (April 27, 2001), at ¶ 115. The pleading cycle in that case has concluded, and a decision is pending. To the extent that the FCC's resolution of

VNXX usage and compensation issues is inconsistent with any decision this Commission might reach on Qwest's Complaint for an Order prohibiting VNXX, this Commission's decision will be preempted. Therefore, to avoid wasting its limited resources, the best course is for this Commission to defer to the FCC and decline to consider Qwest's Complaint at this time.

Although Qwest's Complaint is styled as seeking an order prohibiting VNXX arrangements, in at least one place, Qwest asks the Commission to order Respondents *either* to stop using VNXX arrangements *or* pay access charges to Qwest for VNXX traffic. Complaint, ¶ 12. But to the extent that carriers have disputes about intercarrier compensation for VNXX traffic (including whether VNXX traffic is subject to access charges) they are properly addressed through individual actions to enforce interconnection agreements ("ICAs"), which govern intercarrier compensation for traffic exchanged between ILECs and CLECs.<sup>1</sup> When existing ICAs expire or are terminated, carriers can negotiate new, mutually acceptable intercarrier compensation arrangements for exchanging VNXX and other traffic, as a number of the largest ILECs and CLECs have already done. Until the FCC rules in its Intercarrier Compensation docket, reliance on these voluntary, market-based solutions to resolve intercarrier compensation issues is preferable to the protracted, expensive litigation that had been the typical approach to deciding VNXX disputes. As Qwest's focus on compensation indicates, if Qwest and

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<sup>1</sup> See, e.g., *Level 3 Comm. LLC v. Qwest Corp.*, Order No. 05, Order Accepting Interlocutory Review; Granting, in Part, and Denying, in Part, Level 3's Petition for Interlocutory Review, Docket No. UT-053039, (Feb. 10, 2006) ("*Level 3 Order*"); *Pac-West Telecomm. Inc. v. Qwest Corp.*, Order No. 05, Final Order Affirming and Clarifying Recommended Decision, Docket No. UT-053036 (Feb. 10, 2006) ("*Pac-West Order*").

Verizon Access can resolve VNXX compensation issues, Qwest will no longer have any basis for complaining about Verizon Access's offering VNXX capability.

#### **IV. SUMMARY OF COMPLAINT**

10. Verizon Access admits that, on February 10, 2006, the Washington Utilities and Transportation Commission entered Orders in Docket Nos. UT-053036 and UT-053030, involving petitions by Pac-West and Level 3, respectively, against Qwest for enforcement of their interconnection agreements. Those Orders speak for themselves, but Verizon Access acknowledges that the Orders determined that Qwest's ICAs with Pac-West and Level 3 required Qwest to compensate those CLECs for handling Qwest-originated VNXX traffic, but that the Commission did not decide Qwest's counterclaims about the propriety of VNXX arrangements.
11. The *Level 3 Order* speaks for itself, but Verizon Access acknowledges that that Order states, at ¶ 71: "In decisions approving arbitrated agreements between Level 3 and CenturyTel and Qwest, the Commission has addressed and approved compensation for VNXX arrangements, but has not considered the propriety of these arrangements."
12. Verizon Access denies that VNXX numbering arrangements are unlawful and contrary to the public interest and public policy of the State of Washington, and also denies that such arrangements violate state law, Qwest's tariffs, and Commission orders. No further response is necessary to Qwest's requests for relief from the Commission.

## V. FACTS

13. Verizon Access denies that Qwest has completely or accurately represented the definitions of “local calling areas” or “extended area service” under WAC 480-120-021. WAC 480-120-021 defines “local calling area” as “one or more rate centers within which a customer can place calls without incurring long-distance (toll) charges” and it defines “extended area service (EAS)” as “telephone service extending beyond a customer’s exchange, for which the customer may pay an additional flat-rate amount per month.” These definitions address retail charges to the end user, rather than intercarrier compensation. Verizon Access denies that “interexchange (toll) traffic” and “local traffic” are the only “two general traffic types relevant to this complaint.” To the extent that Qwest’s allegations in paragraph 13 are inconsistent with the definitions and concepts recited here, or that they suggest the Commission must issue an order approving Verizon Access’s rates for end-user services, Verizon Access denies Qwest’s allegations.
14. Verizon Access admits that “interexchange” as defined in WAC 480-120-021, “means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another.” “Toll” and “long distance” traffic are not defined in WAC 480-120-021. To the extent that Qwest’s description of “Interexchange (toll)” differs from the WAC description, Qwest’s allegation is denied.
15. Verizon Access denies that the characterization of traffic as “local” or “toll”, which are retail designations, necessarily depends on the geographic boundaries of the originating and terminating local calling areas of the calling and called parties. The following Qwest allegation is vague, ambiguous, and confusing, so Verizon Access denies it: “Based on

these physical end points, the telecommunications industry has developed a method of determining the general location (*i.e.*, local calling area/EAS area) for intercarrier compensation purposes based on the assignment of telephone numbers of the originating and terminating end users.” Verizon Access admits that telephone numbers are displayed in the NPA/NXX format, that the “NPA” portion of the telephone number is sometimes referred to as the “area code,” that the “NXX” portion of the telephone number is the central office code, that the NPA and NXX are followed by a four-digit number, and that the NPA and NXX code, plus these four digits, constitute the end user’s telephone number. To the extent Qwest’s assertions are inconsistent with the numbering guidelines employed by the North American Numbering Plan Administration (“NANPA”) or are incomplete, then Verizon Access denies them. In particular, the “Central Office Code (NXX) Assignment Guidelines” expressly recognize that a customer’s physical location does not always correspond to the “NXX” code in the customer’s telephone number.

16. Verizon Access admits that the term “virtual NXX (or “VNXX”) number” is commonly used to mean a telephone number that is assigned to a customer utilizing an NPA/NXX associated with a different local calling area than the one in which the customer is physically located. Verizon Access denies Qwest’s allegation about what the term “virtual” means, but admits that a VNXX call may appear as a local call to the end user making the call. Verizon Access admits that VNXX calls are typically made between customers located in separate local exchange areas, that Verizon Access does not pay Qwest access charges for VNXX traffic, and that it does not purchase dedicated transport

to route VNXX calls. To the extent Qwest's other allegations are not specifically admitted, they are denied.

17. Verizon Access admits that it offers a dial-Internet service to wholesale (*i.e.*, ISP) and enterprise customers that uses VNXX capability in various locations, and that end users of the ISPs and other customers taking this service can receive calls without the caller incurring toll charges. To the extent Qwest's Complaint suggests Verizon Access is offering VNXX capability as a product or service unto itself, Verizon Access denies that allegation. Because Qwest uses a number of vague, ambiguous, and undefined terms, including "routing number," "inter-exchange facilities," and "local trunk groups" in paragraph 17, Verizon Access is unable to affirmatively admit or deny Qwest's statements including these terms. In addition, Qwest's use of the term "appropriate access charges" suggests a legal conclusion to which no response is required. To the extent Verizon Access has not expressly admitted any of Qwest's allegations in paragraph 17, they are denied.
18. Verizon Access denies the first sentence in paragraph 18. Verizon Access lacks sufficient knowledge to either admit or deny Qwest's statement about its costs in the second sentence, and, based upon information and belief, denies that "Qwest is unable to replicate a VNXX-like service offering to its customers that would be competitive with VNXX." To the extent Qwest's remaining allegations state or imply that Verizon Access is not properly compensating Qwest for VNXX calls under the parties' ICA, or that Verizon Access's dial-Internet service is impermissible, Verizon Access denies those



allegations. Verizon Access also denies any remaining allegations that it has not specifically admitted.

19. Based upon information and belief, Verizon Access admits that Qwest's foreign exchange ("FX") offering, like VNXX arrangements, permits a customer to have a local presence in a calling area other than the one where he is physically located. Qwest's tariffs speak for themselves, so it is not necessary for Verizon Access to either admit or deny Qwest's allegations concerning its tariffs. Verizon Access does not know whether Qwest can offer FX service "for free." To the extent any other allegations in paragraph 19 of the Complaint require an answer, they are denied.
  
20. Verizon Access admits that VNXX arrangements allow some customers to make calls without incurring toll charges, but denies that it is avoiding any "financial responsibility" to Qwest by providing dial-Internet service using VNXX capability. Verizon Access denies that it is "forcing" Qwest to pay any compensation that is not due under the parties' ICA. Verizon Access has no knowledge of any "financial consequences on Qwest" or on the "entire access compensation system established in Washington and elsewhere," and so cannot affirmatively admit or deny Qwest's allegations in this regard.

To the extent that Qwest's Complaint assumes that compensation for ISP-bound VNXX traffic must either flow to the ILEC in the form of access charges, or to the CLEC in the form of reciprocal (or transitional) compensation, Verizon Access denies that notion. Qwest fails to recognize that there is an alternative to the polarized positions on VNXX compensation that ILECs and CLECs, respectively, have taken in the past. The industry

trend, led by the largest ILECs and CLECs, is toward negotiated, market-based solutions. Verizon Access, for example, negotiated and implemented region-wide “unitary rate agreements” with SBC (prior to its merger with AT&T) and with Verizon (prior to its merger with MCI), and would like to do the same with Qwest. These agreements all provide for the CLEC to receive some compensation for handling ISP-bound VNXX traffic originated by the ILEC, in exchange for, among other things, a commitment by the CLEC to extend its network further toward the ILEC, thereby reducing the ILEC’s cost of transporting VNXX traffic. The level of compensation varies from one agreement to another, as do the CLECs’ network architecture commitments. But these unitary rate agreements negotiated by the Verizon ILECs and the former SBC ILECs with major CLECs—and then adopted by yet more CLECs—are a relatively consistent marketplace resolution by sophisticated adversaries of an otherwise difficult regulatory problem.

As noted, Qwest’s Complaint focuses on banning the use of VNXX numbers, but the compensation issue is plainly driving its Complaint. If Qwest and CLECs can agree on VNXX compensation that gives appropriate weight to their respective business interests, such arrangements will presumably moot Qwest’s Complaint with respect to the propriety of VNXX arrangements.

Therefore, at least until the FCC decides the VNXX usage and compensation issues, the Commission should strongly encourage CLECs and ILECs to try to voluntarily negotiate such intercarrier compensation agreements. If they cannot agree on compensation terms, the Commission may impose such terms in arbitrations of new agreements. Of course, as

long as existing ICAs (including the Qwest/Verizon Access ICA) remain in place, their intercarrier compensation provisions will continue to govern.

## **VI. CAUSES OF ACTION**

### **A. Qwest's Allegation of Violation of Its Access Tariffs**

21. Verizon Access reasserts its answers to Qwest's allegations in paragraphs 1-20.
22. Verizon Access admits that it may lawfully offer its dial-Internet service that allows subscribers to receive calls from throughout the state of Washington without the calling party incurring a toll charge, but denies that it must purchase Qwest's tariffed "800 Data Base Access Service" or "an FX product with Feature Group A access" to do so. Verizon Access denies that it is violating Qwest's tariffs, state laws, or Commission rules by not purchasing these services out of Qwest's access tariff. Qwest's tariffs speak for themselves, so Verizon Access need not respond to Qwest's allegations about what those tariffs say.

### **B. Qwest's Allegation of Violation of Prescribed Exchange Areas**

23. Verizon Access reasserts its answers to Qwest's allegations in paragraphs 1-20.
24. Verizon Access admits that RCW 80.36.230 grants the Commission the power to prescribe exchange area boundaries and/or territorial boundaries for telecommunications companies. Verizon Access denies that WAC 480-120-021 is an exercise of the Commission's authority under RCW 80.36.230, but admits that Qwest has correctly

stated the definitions of “exchange,” “interexchange,” and “interexchange company” in WAC 480-120-021, except for the italics Qwest added.

25. Verizon Access lacks sufficient knowledge or information to specifically admit or deny Qwest’s general statement that “[t]he Commission has accepted Qwest’s tariffs.” Verizon Access admits that section 5 of Qwest’s Exchange and Network Services tariff addresses “Exchange Services,” and that section 5.1.1 of that tariff lists Qwest’s “exchange areas” and “local calling areas.” To the extent Qwest makes other allegations about its tariffs, those tariffs speak for themselves, and no further response from Verizon Access is required. Verizon Access admits that it has concurred in Qwest’s local calling areas, but points out that Verizon Access’ Local Traffic Termination Service (“LTTS”) tariff provides that calls will be deemed local if the calling and called parties’ NPA/NXXs are assigned in the Local Exchange Routing Guide (“LERG”) to the same local calling area. *See* Verizon Access Price List No. 1, LTTS, § 9.1. Verizon Access denies that it is “in violation of prescribed exchange areas,” or that it has failed to pay Qwest “appropriate compensation” for VNXX calls under its ICA.

**C. Qwest’s Allegation of Violation of RCW 80.36.080**

26. Verizon Access reasserts its answers to Qwest’s allegations in paragraphs 1-20.
27. Verizon Access admits that Qwest has accurately quoted part of RCW 80.36.080, but denies that that provision is pertinent to Qwest’s Complaint for an order prohibiting VNXX arrangements.

28. Verizon Access admits that it does not assess its customers a separately defined charge for the VNXX capability included in its dial-Internet service provided to wholesale and enterprise customers. Verizon Access denies that its service including VNXX capability violates RCW 80.36.080 and denies other allegations in paragraph 28, to the extent that they may require an answer.

**D. Qwest's Allegation of Violation of State Law, RCW 80.36.140**

29. Verizon Access reasserts its answers to Qwest's allegations in paragraphs 1-20.

30. Verizon Access admits that Qwest has accurately quoted part of RCW 80.36.160, but denies that that provision is pertinent to Qwest's Complaint for an order prohibiting VNXX.

31. Verizon Access denies Qwest's allegations.

**E. Qwest's Allegation of Violation of RCW 80.36.160**

32. Verizon Access reasserts its answers to Qwest's allegations in paragraphs 1-20.

33. Verizon Access admits that Qwest has accurately quoted RCW 80.36.160, except for Qwest's addition of italics. Verizon Access denies that that provision is pertinent to Qwest's Complaint.

34. Verizon Access denies Qwest's allegations, specifically including its claim that Verizon Access's service including VNXX capability violates RCW 80.36.160.

**F. Qwest's Allegation of Violation of RCW 80.36.170**

35. Verizon Access reasserts its answers to Qwest's allegations in paragraphs 1-20.
36. Verizon Access admits that Qwest has accurately quoted part of RCW 80.36.170, except for Qwest's addition of commas after the two instances of "corporation." Verizon Access denies that that provision is pertinent to Qwest's Complaint, and denies that it justifies the relief Qwest's Complaint seeks.
37. Verizon Access denies Qwest's allegations, specifically including Qwest's claim that Verizon Access's service including VNXX capability violates RCW 80.36.170. Verizon Access also denies that it offers any "VNXX services" outside of contracts.

**G. Qwest's Allegation of Violation of the Public Interest**

38. Verizon Access reasserts its answers to Qwest's allegations in paragraphs 1-20.
39. Verizon Access admits that the Commission, in its Second Supplemental Order in *Determining the Proper Classification of U.S. Metrolink Corp.*, Docket No. U-88-2370-J, 1989 Wash. UTC Lexis 40; 103 P.U.R. 4<sup>th</sup> 194 (1989) ("*MetroLink*"), stated that while the policy of the state is to promote diversity in the supply of telecommunications services, that policy falls short of a duty to underwrite or subsidize developing

competition, and found that the Commission had jurisdiction to require MetroLink to make “an appropriate contribution toward the fixed and variable costs associated with accessing the public switched telecommunications network.” *MetroLink* at p. 7. Verizon Access denies Qwest’s other allegations in this paragraph and denies that either *MetroLink* or the other decision Qwest cites in note 5 of its Complaint, *Determining the Proper Classification of United & Informed Citizen Advocates Network*, Fourth Supplemental Order, Comm’n Decision and Final Cease and Desist Order, Docket No. UT-971515 (1999), require prohibition of VNXX arrangements as contrary to the public interest.

40. Verizon Access denies Qwest’s allegations.

## **VII. Relief Requested**

- 41-47. No response is required to these paragraphs stating Qwest’s request for the Commission to enter an order that would require the Respondents, including Verizon Access, to stop providing VNXX capability to their customers. As Verizon Access has stated, it is not violating any state law, Qwest tariff, or the public interest, so there is no basis for the order Qwest seeks.

## **AFFIRMATIVE DEFENSES**

1. Qwest’s Complaint presents the issue of whether continued use of VNXX arrangements should be prohibited as contrary to the public interest. However, Qwest repeatedly alleges that Respondents, which include Verizon Access, are not paying appropriate

intercarrier compensation to Qwest with respect to VNXX arrangements. To the extent that Qwest's allegations about inappropriate compensation are the predicate for its Complaint, then Verizon Access raises as an affirmative defense the fact that its Commission-approved ICA with Qwest governs intercarrier compensation, and that Verizon Business is complying with the ICA's intercarrier compensation provisions.

**WHEREFORE**, having fully answered the Complaint, Verizon Access respectfully requests that the Commission issue an order dismissing the Complaint with prejudice.

DATED this 26<sup>th</sup> day of June, 2006.

MCIMETRO ACCESS TRANSMISSION SERVICES  
LLC d/b/a VERIZON ACCESS TRANSMISSION  
SERVICES

By \_\_\_\_\_  
Gregory M. Romano  
General Counsel – Northwest Region  
1800 41<sup>st</sup> Street  
Everett, WA 98201  
(425) 261-5460