

August 24, 2011

Mr. David W. Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, Washington 98504

Re: *Pac-West Telecomm, Inc. v. Qwest Corporation*, Docket No. UT-053036
Level 3 Communications, LLC. v. Qwest Corporation, Docket No. UT-053039

Dear Mr. Danner:

This letter is filed by Pac-West Telecomm, Inc. ("Pac-West") and Level 3 Communications, LLC ("Level 3") in the above-captioned cases.

On July 28, 2011, Pac-West filed as supplemental authority Order No. U-31211, *In re: Petition of CenturyTel of Central Louisiana, LLC d/b/a CenturyLink, et al. for Declaratory Ruling on the compensation scheme applicable to ISP-bound traffic routed to MCI metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services*, Louisiana Public Service Commission Docket No. U-31211 (April 20, 2011) ("Louisiana Order"). Qwest Corporation (now d/b/a CenturyLink QC) ("CenturyLink") responded by letter dated August 4, 2011, attempting to distinguish the Louisiana case from the case at issue in this docket. However, CenturyLink has misstated the nature and relevance of that case. Accordingly, Pac-West and Level 3 submit the following reply.

The Louisiana Order addressed a dispute between CenturyLink and Verizon regarding the compensation due to Verizon for terminating CenturyLink's VNXX-routed ISP-bound traffic. In that case, Verizon attempted to impose access charges for terminating the subject traffic to CenturyLink's ISP customers. In response, CenturyLink argued that Verizon's intrastate terminating access charges *could not* be imposed on its VNXX ISP-bound traffic because that traffic was jurisdictionally interstate and subject to the FCC ISP Remand Order. Louisiana Order, at p. 4.

The Louisiana PSC agreed with CenturyLink that *all* ISP-bound traffic is subject to the FCC's ISP Remand Order and granted CenturyLink's request for a declaratory ruling, explaining its reasoning as follows:

The calls at issue are calls to ISPs. ISP-bound traffic has been determined by the FCC to be interstate in nature. *In the Matter of Implementation of the Local Competition Provision of the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, CC Docket No. 96-98 and 96-98 (Rel. April 27, 2001)*, the FCC did an end-to-end analysis of ISP-bound traffic and found ISP-bound traffic to be jurisdictionally interstate in nature. Louisiana Order at p. 21.

Qwest incorrectly states that the traffic at issue in the Louisiana Order is not VNXX traffic. On the contrary, the Order is perfectly clear that it is. Specifically, the Order explains:

CenturyLink determined that the calls in question were ISP-bound calls . . . [p. 21] The traffic at issue in this docket is not only ISP-bound, the calls in this case were made to out-of-state Internet Service Providers who were given virtual NXX numbers which appeared to place them within CenturyLink's LOS territory. The ISP's actual physical locations were obscured by assigning a virtual NXX. The actual physical locations however were not within Louisiana. . . [p. 22] It would be contrary to the Commission's and the FCC's policy objectives and regulatory directives to interpret the Verizon Tariff to allow for the imposition of intrastate access charges on ISP-bound traffic. This is particularly the case when the traffic at issue does not fit within the parameters of its own tariff [p. 23].

Louisiana Order, at pp. 21-23.

In contrast to what it argued in the Louisiana case, CenturyLink argues here that under the ISP Remand Order reciprocal compensation only applies to ISP-bound traffic that is destined for an ISP server physically located in the same local calling area as the originating caller. Thus, according to CenturyLink in the instant case, VNXX traffic is not 'ISP-bound' as discussed or defined in the ISP Amendment to Pac-West's Interconnection Agreement ("ICA"). Yet this is the polar opposite of what CenturyLink argued in Louisiana, when it required a different result. CenturyLink cannot have it both ways.

Pac-West and Level 3 concur with CenturyLink's position in the Louisiana case that all ISP-bound traffic (including VNXX traffic) is jurisdictionally interstate and subject to the FCC Remand Order, without regard to the location of the ISPs¹. For purposes of both the Pac-West

¹ Given that the traffic at issue in the Louisiana Order terminated to ISPs outside of the state of Louisiana, it could be argued that the analysis is limited to such cases. Under such a more limited view, the Louisiana case would stand for the proposition that VNXX traffic that terminates to an ISP located *within* the originating state would not necessarily be covered by the terms of the ISP Remand Order, while VNXX traffic terminating to an ISP located *outside* the originating State would be covered by the terms of the ISP Remand Order. Nevertheless, Pac-West and Level 3 believe that the broad holding in the Louisiana Order is intended to bring *all* VNXX-routed ISP-bound under the terms of the ISP remand order.

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Level 3 cases, that means that the ISP-bound traffic terminated by Pac-West and Level 3 for CenturyLink was subject to the companies' ISP Amendments.

CenturyLink's theory in this case that a separate category of ISP-bound traffic exists is not supported by the *ISP Remand Order*, the *ISP Mandamus Order*, the D.C. Circuit order affirming the *ISP Mandamus Order*, or CenturyLink's own advocacy before the Louisiana Commission. Further argument about the applicability of a two tiered system for compensation of ISP-bound traffic should end.

As CenturyLink correctly points out in its response letter, the traffic at issue in the Louisiana case was not subject to any form of compensation because the parties in that case did not have an ICA. Louisiana Order, at p. 24. The Louisiana PSC acknowledged that, if an ICA did exist, its terms would govern the parties' payment obligations. *Id.* In this case, both Pac-West and Level 3 had ICAs with CenturyLink, and under applicable law and the plain language of the ICAs' ISP Amendment the VNXX ISP-bound traffic terminated by Pac-West and Level 3 is Section 251(b) traffic eligible for terminating compensation at the rate of \$0.0007 per minute of use.

The original plus 12 copies of this letter will be sent via UPS overnight.

Very truly yours,

ATER WYNNE LLP



Arthur A. Butler
Attorneys for Pac-West Telecomm, Inc.

MCDOWELL, RACKNER & GIBSON PC



Lisa F. Rackner
Attorneys for Level 3 Communications

Enclosure
cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of August, 2011, served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC, via the method(s) noted below, properly addressed as follows:

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I hereby certify that I have this 24th day of August, 2011, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 24th day of August, 2011, at Seattle, Washington.


