WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: January 11, 2007
CASE NO.: UT-063038
REQUESTER: Pac-West

WITNESS: Robert Williamson
RESPONDER: Robert Williamson
TELEPHONE: (360) 664-1288

For Request Nos. 2-7, please reference the Direct Testimony of Robert Williamson, dated November 20, 2006 ("Williamson Direct"), at pages 4-7.

PAC-WEST DATA REQUEST NO. 5:

Please identify each and every distinction between "Foreign Exchange Service" and "VNXX" as those terms are used in the Williamson Direct. Please provide a citation to Commission orders or rules and copies of all documents that support your response.

RESPONSE:

Please see Mr. Williamson's testimony regarding foreign exchange service at pages 6 and 18. Additionally, Staff agrees with the direct testimony of Qwest witness Mr. Larry Brotherson – beginning on page 37, line 12 and ending on page 40, line 18 – and incorporates it in its response here. Regarding citation to Commission orders and rules supporting this response, foreign exchange service is a very old service that has been contained in the tariffs of local exchange companies for decades in this and other states. Staff is not currently aware of any Commission orders or rules that specifically support its response.

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For Request Nos. 2-7, please reference the Direct Testimony of Robert Williamson, dated November 20, 2006 ("Williamson Direct"), at pages 4-7.

PAC-WEST DATA REQUEST NO. 6:

Is it Staff's position that only ILECs can provide Foreign Exchange ("FX") Service? If so, please explain why. If not, please explain whether a CLEC must "mirror" ILEC FX service or provision and charge for FX service exactly as the ILECs provision and charge for that service (i.e., by requiring the customer to obtain and pay for a separate dedicated circuit between the local calling areas) and if not, how a CLEC could provide FX service that is not "VNXX" as that term is used in the Williamson Direct.

RESPONSE:

It is not Staff's position that only ILECs can provide Foreign Exchange (FX) Service. VNXX is not an FX service and is more akin to an 800 service than an FX service. It is beyond the scope of Mr. Williamson's testimony to posit an acceptable way for CLECs to provide foreign exchange service. As a practical matter, FX serves a different need and set of customers than dial-up Internet service providers typically served with VNXX. Staff would note that CLECs have provided FX service in a manner similar to the FX service provided by ILECs in the past. Pac-West itself provides an FX service called "Intelligent Foreign Exchange (IFEX)." Section 17 of the Pac-West Price List on the UTC website (http://www.wutc.wa.gov) describes the IFEX service as "… a Calling Service that provides customers with subscription numbers in multiple exchanges." (17.1) Section 17 continues: "… Private virtual circuits are required for transport of traffic from each Rate Center from which Pac-West provides Customer with service…" (17.6.1).

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
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PAC-WEST DATA REQUEST NO. 8:

Please provide the factual basis for, and all documents supporting, the statement on page 10, lines 16-17 in the Williamson Direct that "ISPs located their modems in each local calling area where they wished to offer dial-up Internet service."

RESPONSE:

Mr. Williamson is drawing from his own engineering experience as an Engineering Manager at US West, Teleport Communications Group (TCG, a CLEC) and as an Engineer at the UTC. Mr. Williamson personally met with and designed dial-up internet services for ISPs for TCG. In 1996 and 1997, while with the UTC, Mr. Williamson also met individually and in groups with a large number of local ISPs to discuss their issues with the ILECs and held workshops with ISPs, ILECs and CLECs. Staff continues to meet with individual ISPs as the needs arise.

The ESP exemption from access charges required that ISPs purchase local business lines. This meant locating equipment within the LCA so that calls to those business lines would not be subject to toll charges.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

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PAC-WEST DATA REQUEST NO. 9:

Does Staff consider a call to "terminate" at an ISP modem? If so, please explain Staff's position and provide all documents that support that position.

RESPONSE:

From an engineering standpoint, Staff considers a Public Switched Telephone Network (PSTN) call to be "terminated" at the ISP modem's serving central office when the called party (modem or telephone set) answers and "answer supervision" is transmitted from the terminating central office to the originating central office.

See BOC Notes On the LEC Network, SR-TV-002275; Signaling System #7, Second Edition, Travis Russel, McGraw Hill Telecommunications; SIP – Understanding the Session Initiation Protocol, Alan B. Johnston (all three are copyrighted material).

Staff objects to this question to the extent that it inquires into attorney work product regarding the FCC's analysis, for jurisdictional purposes, of ISP bound calls as interstate based on the endpoints of the call. Notwithstanding this objection, with the exception of FX service, it is the physical location of the calling and called parties that determines whether the call is interexchange or local (and, therefore, which compensation scheme applies). The documents supporting this position include WAC 480-120-021; WAC 480-120-655; Qwest tariff WN40 Exchange and Network Services Washington; Central Office Code Assignment Guidelines (COCAG), ATIS-00051; and 47 C.F.R. §§ 52.7, 52.9, 52.11, 52.12, 52.13.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
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PAC-WEST DATA REQUEST NO. 10:

Is it Staff's position that calls made by customers within a local calling area to ISPs with telephone numbers rated to that local calling area and with modems physically located in that same local calling area are "local" calls, but calls from those same customers to ISPs with telephone numbers rated to that local calling area but with modems physically located in a different local calling area are "toll" calls? Please explain your response.

RESPONSE:

Yes. It is staff's position that calls that physically originate in one local calling area and terminate physically in another local calling area are "toll" calls. Calls that originate and terminate in the same local calling area are "local." Please see WAC 480-120-021 and 480-120-265; and COCAG, ATIS-0300051.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

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PAC-WEST DATA REQUEST NO. 11:

Is Staff's position provided in response to Request No. 10 the same if the ISPs with modems physically located in a different local calling area obtain Foreign Exchange ("FX") service from the local exchange company connecting their modems to the ISPs' customers' local calling area? Please explain your response.

RESPONSE:

Yes. FX is a Commission-approved and tariffed (or price-listed) service by industry members providing local exchange services that allows a customer to originate and terminate calls in a local calling area that is different from where the customer is physically located. It is Staff's position that calls to an ISP's modems, in that case, are local in nature. Please see WAC 480-120-021 and 480-120-265; and COCAG, ATIS-0300051.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
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PAC-WEST DATA REQUEST NO. 15:

Re: Williamson Direct at page 18, lines 1-4, if the CLEC serving the ISP pays for the transport from the calling party's local calling area to the ISP modem, please explain how "VNXX" "results in the ILEC transporting the call in the same manner as a toll call, without receiving the same compensation."

RESPONSE:

Staff is not aware that the CLEC pays for transport from the calling party's local calling area to the ISP modem. Staff is aware that the CLEC pays for its share of the trunk transport that connects the originating LEC to the CLEC central office and that transport is used for all calls, whether they are VNXX calls or not. The transport connecting the serving CLEC to the ISP modem many times is within the CLEC building that contains the CLEC switch and does not physically connect to the LCA that the VNXX telephone number is assigned to. There are some occasions that the ISP modem may actually be in another LATA or state, and even more distant from the origination local calling area. The industry standard for the assignment of NXXs requires that "... codes/blocks ... are to be utilized to provide service to a customer's premise physically located in the same rate center that the CO codes/blocks are assigned". Williamson page 4 and 5. Calls between local calling areas are considered to be long distance. Williamson pg. 6 and 7.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

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CASE NO.: UT-063038
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PAC-WEST DATA REQUEST NO. 16:

Re: Williamson Direct at page 18, lines 4-5, please answer the following based on the assumption that a local exchange service customer's physical premises is located in local calling area A but the customer obtains FX service from the ILEC that connects the customer (i.e., provides a number rated as local) to local calling area B:

a. Does Staff consider the service provided by the ILEC to be "toll bypass" as that term is used in the Williamson Direct? If not, please explain why not.

b. If a CLEC provides local exchange service to a customer whose premises is physically located in local calling area B, is the CLEC entitled to originating or terminating switched access charges on calls between its customer and the ILEC's customer? If not, please explain why not.

c. If a CLEC provides local exchange service to a customer whose premises is physically located in local calling area A, is the ILEC entitled to originating or terminating switched access charges to calls between its customer and the CLEC's customer? If so, please explain why switched access charges apply when the CLEC customer's physical premises is located in the same local calling area as the ILEC customer's physical premises.

RESPONSE:

a. No. FX service has been a tariffed/price-listed service for many years and is not considered to be toll bypass. The company that provides the local exchange facilities, over which the FX traffic is carried, receives compensation, because the end user pays for a private line to the foreign exchange in addition to a local service charge. In other words, FX does not undercut the access charge regime. Also, it does not represent an arbitrage opportunity that results in the market distortions that the FCC and others have identified with regard to the application of reciprocal compensation to one-way, ISP-bound traffic.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: January 11, 2007
CASE NO.: UT-063038
REQUESTER: Pac-West

WITNESS: Robert Williamson
RESPONDER: Robert Williamson
TELEPHONE: (360) 664-1288

b. No. The call from a CLEC customer in LCA "B" to an ILEC FX customer served from the switch in LCA "B" is a local call, and no access charges apply. Calls are terminated in the ILEC central office switch located in LCA "B." For further discussion see 16(a) above.

c. Yes. The call from the ILEC customer with FX service in LCA "B" to the CLEC customer in LCA "A" is a long distance call; and the ILEC would receive originating access charges and the CLEC will receive terminating access charges for a call between LCA "B" and LCA "A." A call from the CLEC customer in LCA "A" to the FX customer served from the switch in LCA "B" would be a long distance call as well. In that case, the CLEC would receive originating access charges, and the ILEC would receive terminating access charges. Please see 16(a) above for further discussion on why access charges apply.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: January 11, 2007
CASE NO.: UT-063038
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PAC-WEST DATA REQUEST NO. 17:

Please answer the following based on the assumption that a local exchange service customer's physical premises is located in local calling area A but the customer obtains a service from the ILEC that automatically forwards the customer's calls from a telephone number rated as "local" in local calling area B:

a. Does Staff consider the service provided by the ILEC to be "toll bypass" as that term is used in the Williamson Direct? If not, please explain why not.

b. If a CLEC provides local exchange service to a customer whose premises is physically located in local calling area B, is the CLEC entitled to originating or terminating switched access charges on calls between its customer and the ILEC customer? If not, please explain why not.

c. If a CLEC provides local exchange service to a customer whose premises is physically located in local calling area A, is the ILEC entitled to originating or terminating switched access charges to calls between its customer and the CLEC's customer? If so, please explain why access charges apply when the CLEC customer's physical premises is located in the same local calling area as the ILEC customer's physical premises.

RESPONSE:

a. No. This is really an instance of two calls, and neither are toll bypass. The rating of the first call is dependent on the location of the originating party that dialed the call-forwarded telephone number. (If the originating caller is within LCA "B", then the call is local; if the originator is calling from some other LCA, then the call is toll.) The second call, invoked by the call-forward feature, is the call-forwarded leg between LCA "B" and LCA "A", for which long distance charges and appropriate access charges apply on every call received. (The ILEC customer, whose line is call-forwarded, technically originates that second call and is liable for all long distance charges.)

b. No. If the CLEC customer in LCA "B" calls the ILEC customer with a telephone number in LCA "B", that portion of the call is a local in nature, and no access charges apply. However, when the call forward feature is invoked by the ILEC switch in LCA "B", then

DATE PREPARED: January 11, 2007
CASE NO.: UT-063038
REQUESTER: Pac-West

WITNESS: Robert Williamson
RESPONDER: Robert Williamson
TELEPHONE: (360) 664-1288

a long distance call is initiated to the ILEC switch in LCA "A", for which access charges would apply. (The serving ILEC in LCA "B" would receive originating access charges, and the serving ILEC in LCA "B" would receive terminating access charges.)

The CLEC customer makes a local call, but the ILEC customer is billed for a long distance call from LCA "B" to LCA "A", and appropriate switched access charges would apply for that leg of the call. Please see 17(a) above for further discussion on why access charges only apply for the call-forward leg (second call) in this scenario.

c. If the ILEC customer physically located in LCA "A" calls the CLEC customer physically located in LCA "A", the call is local in nature; no call forwarding is invoked and no long-distance charges or switched access charges apply. (The call-forwarding feature would not be used.)

If the CLEC customer located in LCA "A" called the call-forwarding number of the ILEC's customer assigned to the switch in LCA "B," this would constitute two long distance calls. The CLEC customer would be billed for a long distance call between LCA "A" and LCA "B." On the first call, the CLEC would be entitled to originating access charges, and the ILEC would receive terminating access charges. On the call-forward leg, or second call, the serving ILEC for LCA "B" would receive originating access charges, and the serving ILEC for LCA "A" would receive terminating access charges.

Please see 17(a) above for further discussion on why access charges do or do not apply on both legs of this call-forward scenario.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: January 11, 2007
CASE NO.: UT-063038
REQUESTER: Pac-West

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PAC-WEST DATA REQUEST NO. 18:

Re: Williamson Direct at page 18, lines 1-11, is it Staff's position that the "tariffed monthly facility fee" that an FX customer pays is equivalent to the compensation the ILEC would receive to transport calls "in the same manner as a toll call"? If so, please provide the factual basis and all cost studies and other documents supporting that position. If not, please explain why FX service does not violate the same "legacy standards/regulations" that Staff contends that VNXX violates.

RESPONSE:

The tariffed monthly facility fee may or may not be equivalent to the compensation the ILEC would receive, if the calls were transported in the same manner as a toll call. The important point is that because of the fee, FX has not, that Staff is aware, been exploited as an arbitrage opportunity that undercuts the access charge regime or results in the market distortions that the FCC and others have identified with regard to the application of reciprocal compensation to one-way, ISP-bound traffic.

FX service is a tariffed (or price-listed) service that has been offered by LECs for many years. As a Commission-approved service, it does not violate "legacy standards/regulations" that VNXX does. FX service is also listed as an exception to the NXX assignment rules in the COCAG (ATIS-0300051). Also, as noted above, the company that provides the local exchange facilities, over which the FX traffic is carried, receives compensation because the end user pays for a private line to the foreign exchange in addition to a local service charge.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: January 11, 2007
CASE NO.: UT-063038
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PAC-WEST DATA REQUEST NO. 19:

Re: Williamson Direct at page 22, lines 17-21, please provide the factual basis and all cost studies and other documents supporting the statement that permitting "VNXX" as that term is used in the Williamson Direct "would make the rate payers of Washington State who do not use dial-up Internet access, subsidize the low cost service for those that do."

RESPONSE:

Staff agrees with, and incorporates in its response here, the direct testimony of Qwest witness Dr. Fitzimmons, at pages 9 and 10.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

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CASE NO.: UT-063038
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PAC-WEST DATA REQUEST NO. 20:

Please provide any and all research, studies, or analysis that Staff has undertaken on the financial impact on, and the availability of competitive alternatives to, consumers who rely on dial-up Internet access if the Commission were to prohibit "VNXX" as that term is used in the Williamson Direct.

RESPONSE:

Staff's testimony is that VNXX traffic is inter-local calling area traffic that should be rated as an intrastate toll service. Since Staff did not testify to the financial impact on, or the availability of, competitive alternatives to consumers who rely on dial-up Internet access if VNXX was prohibited, no cost studies have been completed or used by Staff. The FCC has stated that reciprocal compensation for one-way dial-up Internet access in general results in market distortions and misallocation of investment.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: April 13, 2007
CASE NO.: UT-063038
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RESPONDER: Robert Williamson
TELEPHONE: (360) 664-1288

PAC-WEST DATA REQUEST NO. 21:
Re: Rebuttal Testimony of Robert Williamson, page 12, lines 2-4

Please provide all cost studies, analyses, work papers, and any other documents that support the statement that "Because of the way FX service is provisioned by the ILECs, FX service is expensive for subscribers and often proves less cost-effective than 800- service."

RESPONSE:

Staff objects to the request for "any other documents" and to the very broad definition of "document" set out in the definitions section of these data requests, as it is overbroad and beyond the scope of permissible discovery in a proceeding such as this. See *In Re US WEST Communications, Inc.*, Docket No. UT-980948, Ninth Supp. Order (April 1999), http://www.wutc.wa.gov/rms2.nsf/vw2005OpenDocket/F01A1C2636ADC79808256B7E00159AAF

Staff has not conducted any formal cost studies or analyses, or generated any work papers in regard to this statement. The statement is based on the analysis that follows.

FX Service has been most commonly used when a business wants to receive and/or originate calls in an adjacent calling area from the one in which it resides. 800 service, like VNXX service, is commonly used by businesses wanting to receive calls from many different local calling areas without the "calling party" being billed for a long distance call. The cost for using FX service for the receipt of calls from multiple local calling areas is expensive because a private line circuit is required to connect each desired local calling area to the subscriber's premises. Unlike FX service, a subscriber to an 800 service can receive calls from as many local calling areas as it requires without the cost of private line circuits connecting each local calling area to the subscriber's premises.

The fact that FX service is expensive is evident from Qwest's exchange access tariff, which is a publicly available document. The fact that subscribers acting in their own financial self-interest often choose 800- service over FX service is not based on any cost studies, formal analyses, work papers or other documentation, but rather on Mr. Williamson's experience in the telecommunications industry. The fact that 800- service is commonly used by businesses that market their products or services in an area larger than the local calling area is also evident from

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: April 13, 2007
CASE NO.: UT-063038
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PAC-WEST DATA REQUEST NO. 22:
Re: Rebuttal Testimony of Robert Williamson, page 12, lines 4-12

Please provide all cost studies, analyses, work papers, and any other documents that support the statement that FX service as provided by the ILECs is not "a significant 'loophole' in the access charge system." In addition, please quantify or otherwise explain the term "significant" in this context.

RESPONSE:

Staff makes the same objection as set forth in response to DR 21, above.

Staff has not conducted any cost studies, formal analyses, or generated any work papers in regard to this statement. Rather, the statement is made on the basis of Mr. Williamson's experience in the telecommunications industry and on the same observations stated in response the DR 21, above.

The word "significant" does not denote any specific quantitative measure, but simply means "of a noticeable or measurably large amount."

Staff would note, however, that Qwest has provided quantitative evidence that supports the statement. Qwest witness Mr. Brotherson states in his rebuttal testimony (Rebuttal Testimony, Exhibit LBB-24RBT, March 20, 2007, pg. 13, 18-21) that out of a total 1,800,000 lines served by Qwest in Washington State, only 4,047 are FX lines. This represents less that one percent of the total lines (approx. 0.22 percent). No matter what usage the FX lines generate, less than one quarter of one percent of the total of Qwest lines cannot have a major influence, or create "a significant" 'loophole,' in the access system.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: April 13, 2007
CASE NO.: UT-063038
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PAC-WEST DATA REQUEST NO. 25:
Re: Rebuttal Testimony of Robert Williamson, page 17, lines 11-14

Please explain why, if the Commission permits "VNXX" as Staff defines it, LECs other than CLECs "have no alternative but to continue to provide FX service in the same manner they traditionally have done." If your response, in whole or in part, relies on the different network architectures deployed by ILECs and CLECs, please explain why the Commission should prohibit CLECs from provisioning a service in a particular manner because ILECs cannot provide that service in that same manner as a result of the structure of the ILECs' networks.

RESPONSE:

LECs other than CLECs "have no alternative but to continue to provide FX service in the same manner that they traditionally have done" because FX service, as provided by the ILECs, is a Commission-approved tariffed service and Qwest's tariff describes the manner in which the service is provided (i.e., through the use of a private line from the customer's premise to the serving central office). (Qwest WN40 Exchange and Network Services Washington.) CLEC VNXX exploits an arbitrage opportunity that arises from the fact that (1) CLECs are allowed to have only one switch per LATA, (2) the ILEC is required to transport calls from its customers to the CLEC's point of interconnection, and (3) the ILEC serves the vast majority of residential customers who originate calls to the CLEC's customers that utilize VNXX arrangements. This last point means that the intercarrier compensation flows almost entirely from the ILEC to the CLEC. In short, the ILECs and the CLEC's situations are not symmetrical and there is no way for ILECs to take advantage of the same arbitrage opportunity vis-à-vis the CLECs. Allowing VNXX would not level the playing field between ILECs and CLECs—rather, it would allow CLECs to broaden the existing arbitrage opportunities that the FCC described in the *ISP Remand Order*.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: April 13, 2007
CASE NO.: UT-063038
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PAC-WEST DATA REQUEST NO. 27:
Re: Rebuttal Testimony of Robert Williamson, page 17, lines 19-20

Please identify and provide all provisions of the COCAG and Commission rules that define "foreign exchange service." Is it Staff's position that such service must be "tariffed" to be considered to be an exception to geographic number assignment?

RESPONSE:

Neither the COCAG nor the Commission's rules define "foreign exchange service." Foreign exchange service is a service that was offered nationwide by the local telephone service providers long before the advent of local service competition with the assent of state regulators. It has an established meaning that includes a method of provisioning and a rate design.

COCAG ¶ 2.14 states that exceptions exist such as tariffed foreign exchange service. Neither the COCAG nor Commission rules provide a definition of foreign exchange service but instead rely on the serving LEC's tariff for that definition. In addition, please see Mr. Williamson's responses to Pac-West's Data Requests Nos. 5 and 6.

It is not Staff's position that such a service must be tariffed to be considered an exception to geographic numbering. It is Staff's opinion that such an exception must be explicitly listed in the industry standards (COCAG) or must be expressly authorized by state law. Until this year, all registered CLECs were required to file Price Lists with this Commission (WAC 480-80-204). Price lists were required to "include … a description of the service …," for all services being offered. Although Price Lists are not required now, Staff is aware that some CLECs listed in those Price Lists FX services similar in nature to that of the ILECs. To Staff's knowledge no CLEC listed an FX service that relies on VNXX number assignment.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
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DATE PREPARED: April 13, 2007
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PAC-WEST DATA REQUEST NO. 28:
Re: Rebuttal Testimony of Robert Williamson, final page, line 7-8

Please describe the efforts that Staff has undertaken, and all resulting studies, analyses, work papers, or any other documents, to support the statement that "There is no reason to believe that the situation in Washington is different than New Hampshire."

Staff makes the same objection as set forth in response to DR 21, above.

At this time, Staff has not undertaken any such studies or analyses. However, the CLECs have not provided evidence to show that the situation in Washington is any different than that presented by the Commission staff in New Hampshire. There is anecdotal evidence in the record, presented by Level 3 witness Dr. Blackmon and Qwest witness Mr. Linse, that there are most likely similar services being offered in this state today. (Blackmon Testimony, page 9; Linse Rebuttal Testimony, pages 13 and 14).