

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

PAC-WEST TELECOMM, INC.

Petitioner,

v.

QWEST CORPORATION,

Respondent.

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LEVEL 3 COMMUNICATIONS,  
LLC,

Petitioner,

v.

QWEST CORPORATION,

Respondent.

DOCKET NO. UT-053036

DOCKET NO. UT-053039

(consolidated)

QWEST CORPORATION'S PETITION  
FOR ENFORCEMENT OF  
COMMISSION ORDERS 12 and 13  
(FINAL ORDER and ORDER ON  
RECONSIDERATION)

*I* Qwest Corporation ("Qwest")<sup>1</sup>, brings the following Petition for Enforcement of Commission Orders 12 and 13 ("Final Order" and "Order on Reconsideration") in this docket.

**INTRODUCTION**

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<sup>1</sup> Following the Commission's final order in Docket UT-100820, entered on March 14, 2011, Qwest Communications International Inc., the parent company of Qwest Corporation, merged with CenturyTel, Inc., becoming CenturyLink. For purposes of continuity, CenturyLink will continue to refer to its company as Qwest Corporation in this docket.

QWEST CORPORATION'S  
PETITION FOR ENFORCEMENT OF COMMISSION  
ORDERS 12 AND 13  
(FINAL ORDER and ORDER ON RECONSIDERATION)

**CENTURYLINK**  
1600 7<sup>th</sup> Ave., Suite 1506  
Seattle, WA 98191  
Telephone: (206) 398-2500  
Facsimile: (206) 343-4040

2 On November 14, 2011, the Commission issued its Final Order in these proceedings. In its Final Order, the Commission found that Pac-West and Level 3 are not entitled to either reciprocal compensation nor the ISP-bound traffic rate established in the FCC's ISP Remand order for intrastate VNXX ISP-bound traffic. Specifically, the Commission determined that the FCC's *ISP Remand Order* and *Mandamus Order* addressed only compensation for traffic within a local calling area, not intrastate interexchange traffic. The Commission found that states retain authority under Section 251(g) of the Act to apply access or toll charges to intrastate interexchange traffic and that VNXX calls occur outside a local calling area and that the parties' agreements likely require the CLECs to pay Qwest for their interexchange or IntraLATA toll traffic.

### **JURISDICTION**

3 The Commission has jurisdiction over this Petition and the parties pursuant to 47 U.S.C. §§ 251-52, RCW 80.36.610, RCW 80.04.110 and WAC 480-07-650. Those rules and statutes allow the Commission to enforce interconnection agreements, and to enforce its own orders.

### **DISCUSSION**

4 The Commission's Final Order relies on a review of a number of decisions in support of its conclusions.

5 In Paragraph 57, the Commission found that the *Mandamus Order* has no effect on the District Court's interpretation of the scope of the ISP Remand Order, therefore following the court's analysis and decision, which held that "the *ISP Remand Order*" addressed the compensation structure of a subset of ISP-bound traffic, specifically, ISP-bound traffic within a local calling area. The Commission concluded that the *Mandamus Order* only clarified the legal rationale

supporting the *ISP Remand Order*'s compensation scheme, which was later affirmed in the D.C. Circuit and First Circuit. A new regulatory scheme was not created by expanding the scope of traffic to which the FCC's rates established in the *ISP Remand Order* apply.

- 6 In Paragraph 60 of its Final Order, the Commission joined with other state commissions and federal courts in concluding that the FCC's use of the term "*ISP-bound traffic*" in the *Mandamus Order* did not mean "all" ISP-bound traffic. Rather, the FCC intended to limit the Order's scope to that of the *ISP Remand Order*: those calls terminating within a local calling area. The First Circuit Court of Appeals reached this same conclusion in its most recent decision involving yet another dispute between Global NAPs, Inc., and Verizon New England, Inc., over the scope of the *ISP Remand Order* and interpretation of the parties' interconnection agreement.
- 7 The Commission's previous order determined that ISP-bound traffic using VNXX services is not local traffic and should not be included in the scope of the traffic subject to the FCC's new compensation scheme.<sup>2</sup>
- 8 In Paragraph 76 of its Final Order, the Commission concluded that the CLECs VNXX service is based upon network arrangements or telephone number resources that create the illusion that calls to their ISP customers are local. Terminating these calls may involve numerous switching and transport facilities that would not be necessary to terminate a call within the boundaries of the originating caller's local calling area. Under the CLEC's analysis, these additional costs would be borne by the terminating company and avoided by the CLECs

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<sup>2</sup> VNXX Order, n.2, citing PAC-West Telecom, Inc. v. Qwest Corp., Docket UT-053036, Order 05, Final Order Affirming and Clarifying Recommended Decision, n.1 (Feb. 10, 2006) and Level 3 Communications, LLC. v. Qwest Corp., Docket UT-053039, Order 05, Order Accepting Interlocutory Review; Granting, in Part and Denying, in Part, Level 3's Petition for Interlocutory Review, P.10, n.4(Feb. 10, 2006).

(originating company). For example, carriers could conceivably locate their ISP modems virtually anywhere, with no actual physical presence or customers within a local exchange, and expect Qwest (or any other facilities-based carrier) to both transport VNXX calls to them and pay them the ISP-bound rate set forth in the ISP Remand Order. The Commission found it contrary to public policy to allow such regulatory gamesmanship to occur given the importance of intercarrier compensation revenues, which are used to maintain a robust interconnected telecommunications network and to support important statutory policy goals such as universal service.

- 9 The Commission's Final Order concluded that the CLECs should bear the costs of using Qwest's network to serve their customers. This is a fundamental principle of intercarrier compensation that is reflected in interconnection agreements between these parties and those of all other companies within the jurisdiction.
- 10 On Reconsideration, in an order entered February 10, 2012, the Commission stated that in its final order, Order 13, "the Commission found that Pac-West and Level 3 are entitled to neither reciprocal compensation nor the ISP-bound traffic rate established in the FCC's *ISP Remand Order* for intrastate VNXX ISP-bound traffic."<sup>3</sup>

#### **NEED FOR ENFORCEMENT BEFORE FURTHER EVIDENTIARY PROCEEDINGS**

- 11 As discussed in Qwest's original Motion for Summary Determination, and the Confidential Affidavit of Larry B. Brotherson, Qwest has paid Level 3 and Pac-West significant amounts of money for Commission-ordered VNXX compensation. See specifically, Confidential Attachments A, B and C, showing that Qwest paid these carriers millions of dollars in disputed

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<sup>3</sup> Order 13, ¶ 9.

VNXX compensation after the Commission entered Order 05 in each of these dockets. Qwest paid these amounts because even though it sought an appeal of the Commission's orders in federal court, the orders were not stayed, and Qwest complied with them.

12 After the Commission's final order on remand in November 2011, Qwest sent demand letters to Level 3 and Pac-West, asking for a refund of the above-described monies, with interest, as there was no longer any legal basis for Level 3 and Pac-West to retain those funds. Level 3's response is attached as Attachment A. Pac-West's response is attached as Attachment B. In neither case did the parties refund Qwest any money. It does not appear that these parties will refund the demanded amounts without further Commission action.

13 In light of the fact that a petition for reconsideration was pending (even though such a petition clearly did not stay Order 12), Qwest did not take further action to seek a refund at that time. Now, however, the Commission has entered an order on reconsideration. It was at this parallel point in the earlier proceedings (May 2006) that Qwest paid Level 3 and Pac-West the amounts described in the Brotherson Affidavit.

14 Neither the Commission's final order, nor its order on reconsideration is stayed at this time. Thus, Level 3 and Pac-West have a legal obligation to comply with those orders. While Qwest agrees that the Commission may hold subsequent evidentiary hearings to determine the nature of and any compensation to Qwest for the disputed traffic, it is indisputable that these carriers employed VNXX as a way to avoid toll and/or access charges, and that no reciprocal compensation was due for the minutes associated with those calls. As such, all monies paid to date by Qwest for VNXX traffic is due to be refunded to Qwest. As Qwest reads these orders, the future evidentiary hearings will determine only the inter- or intra- state jurisdictional nature


of the traffic, and any *further* compensation owed to Qwest.

### CONCLUSION

15 Qwest respectfully requests that the Commission enforce its Orders 12 and 13 in this docket, insofar as those orders hold that “Pac-West and Level 3 are entitled to neither reciprocal compensation nor the ISP-bound traffic rate established in the FCC’s *ISP Remand Order* for intrastate VNXX ISP-bound traffic.” Level 3 and Pac-West should be required to present a refund calculation to Qwest through March 2012, with interest, and to pay undisputed amounts by April 15, 2012.

DATED this 12th day of March, 2012

QWEST CORPORATION D/B/A CENTURYLINK QC



Lisa A. Anderl, WSBA #13236  
Associate General Counsel  
1600 7<sup>th</sup> Avenue, Room 1506  
Seattle, WA 98191  
Phone: (206) 398-2500