

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION
COMMISSION**

NORTHWEST TELEPHONE, INC., Complainant, v. QWEST CORPORATION, Respondent.	Docket No. UT- 053081
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**QWEST CORPORATION
RESPONSE TESTIMONY OF WILLIAM R. EASTON**

February 7, 2006

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.

A. My name is William R. Easton. My business address is 1600 7th Avenue, Seattle Washington. I am testifying on behalf of Qwest Corporation (“Qwest”) where I am employed as Director – Wholesale Advocacy.

Q. PLEASE GIVE A BRIEF BACKGROUND OF YOUR EDUCATIONAL BACKGROUND AND TELEPHONE COMPANY EXPERIENCE.

A. I graduated from Stanford University in 1975, earning a Bachelor of Arts degree. In 1980, I received a Masters of Business Administration from the University of Washington. In addition, I am a Certified Management Accountant.

I began working for Pacific Northwest Bell in 1980, and have held a series of jobs in financial management with U S WEST, and now with Qwest, including staff positions in the Treasury and Network organizations. From 1996 through 1998, I was Director – Capital Recovery. In this role I negotiated depreciation rates with state commission and FCC staffs and testified in various regulatory proceedings. From 1998 until 2001 I was a Director of Wholesale Finance, responsible for the management of Wholesale revenue streams from a financial perspective. In this capacity I worked closely with the Product Management organization on their product offerings and projections of revenue. In

1 October of 2001 I moved from Wholesale Finance to the Wholesale Advocacy group,
2 where I am currently responsible for advocacy related to Wholesale products and services.
3 In this role I work extensively with the Product Management, Network and Costing
4 organizations.

5
6 **Q. HAVE YOU TESTIFIED PREVIOUSLY IN WASHINGTON?**

7 A. Yes I have. I testified in Docket Numbers UT-940641, UT-950200, UT-951425, UT-
8 960347, UT-003013 (Part D), UT-033035, UT-033044 and UT-043045.

9
10 **II. PURPOSE OF TESTIMONY**

11 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

12 A. The purpose of my testimony is to address issues raised in the testimony of Mr. Andrew
13 Metcalf of Northwest Telephone, Inc. (NTI). In his testimony, Mr. Metcalfe requests that
14 this Commission order Qwest to pay its proportional share of the facilities NTI orders and
15 that NTI be allowed to purchase the facilities at cost based rates under the interconnection
16 agreement. My testimony will discuss how these facilities are being ordered today and
17 why proportional cost sharing is not proper. I will then discuss why, based on NTI's use of
18 the facilities, it is not appropriate to convert the existing tariffed private line facilities to
19 local interconnection services purchased under the interconnection agreement (ICA).
20 Finally I will discuss NTI's claims for refunds.

1 **III. SERVICES CURRENTLY PURCHASED BY NTI**

2 **Q. WHAT SERVICES IS NTI CURRENTLY PURCHASING FROM QWEST?**

3 A. NTI purchases a number of private line facilities today, all but one of which are purchased
4 out of Qwest’s federal (FCC) private line tariff.

5
6 **Q. WHOSE DECISION WAS IT TO PURCHASE THESE FACILITIES OUT OF THE**
7 **PRIVATE LINE TARIFF?**

8 A. On page 3 of his testimony Mr. Metcalfe acknowledges that the decision to purchase these
9 services as private line services was a decision made by NTI.

10
11 **Q. IS NTI ALLOWED TO USE THESE PRIVATE LINE SERVICES FOR LOCAL**
12 **INTERCONNECTION PURPOSES?**

13 A. Yes. The interconnection agreement between the two parties permits private line services
14 to be used in this way. However, Section 7.3.1.1.2 of the agreement states that if NTI
15 “chooses to use an existing facility purchased as Private Line Transport Service from the
16 state or FCC Access Tariffs, the rates from those Tariffs will apply.”

17
18 **Q. ON PAGE 7 OF HIS TESTIMONY MR. METCALFE DISCUSSES SECTION**
19 **7.3.1.1.3 OF THE INTERCONNECTION AGREEMENT. IS THIS THE ONLY**
20 **SECTION OF THE AGREEMENT THAT REQUIRES A PROPORTIONAL**
21 **SHARING OF FACILITY COSTS WHEN TWO-WAY TRUNKING IS ORDERED?**

1 A. No. There are two sections of the agreement which require proportional sharing of
2 facilities costs. Section 7.3.1.1.3 discusses proportional sharing as it relates to an Entrance
3 Facility which connects the two carriers' networks. Section 7.3.2.2.1 discusses
4 proportional sharing of Direct Trunked Transport which is the transport to tandem or end
5 office switches. Per the parties' interconnection agreement, cost sharing only applies to
6 Entrance Facilities and Direct Trunked Transport.

7

8 **Q. DO EITHER OF THESE SECTIONS APPLY TO THE PRIVATE LINE SERVICES**
9 **PURCHASED BY NTI?**

10 A. No. The language in each of these sections is specifically related to the purchase of
11 Entrance Facilities or Direct Trunked Transport purchased under the interconnection
12 agreement. Neither section applies to private line services purchased from a tariff.

13

14 **Q. IS QWEST REQUIRED TO SHARE THE COSTS OF FACILITES PURCHASED**
15 **OUT OF FCC PRIVATE LINE TARIFFS?**

16 A. No. Section 2.7 of Qwest's Tariff F.C.C. No.1 covers mixed use of an interstate special
17 access circuit. The tariff provides for an allocation of charges when switched and non-
18 switched services occupy the same transport, but only for shared use of federally-tariffed
19 services. When private line service is shared with local exchange service, however, this
20 tariff provides that no apportionment shall occur based on the use of the facility. In fact,
21 the tariff specifically prohibits any cost adjustment based upon the local use of the facility:

22

1 **2.7.1 PLTS with Local Exchange Service**

2 PLTS and Local Exchange Service may be provided on a Shared Use facility.
3 *However, individual recurring and nonrecurring charges shall apply for each*
4 *PLTS and Local Exchange Line. The Shared Use Facility is not apportioned*
5 *(emphasis added).*
6
7

8 **Q. HAS THE COMMISSION CONSIDERED A SIMILAR ISSUE IN THE PAST?**

9 A. Yes. In an arbitration between AT&T and Qwest, the arbitrator rejected a proposal by
10 AT&T which would have required the same kind of cost sharing that NTI is proposing in
11 this proceeding, stating:

12
13 It appears that AT&T’s proposed language that would apply relative
14 use factors to “other comparable facilit[ies] providing equivalent
15 functionality” potentially results in a sort of “blended rate” for PLTS
16 circuits rejected by the FCC in its *Triennial Review Order*. In
17 addition, AT&T’s proposed language would encompass facilities-
18 access purchased out of federal tariffs over which the Commission
19 lacks jurisdiction. Accordingly, AT&T’s proposed language “other
20 comparable facilit[ies] providing equivalent functionality” that would
21 apply relative use factors to PLTS circuits is rejected.¹ Internal
22 footnotes omitted.
23

24 The arbitrator’s decision on this issue was subsequently approved by the Commission. In
25 summary, there is nothing in the interconnection agreement itself nor in the tariffs which
26 require the kind of cost sharing requested by NTI.

¹ *In the Matter of the Petition for Arbitration of AT&T COMMUNICATIONS OF THE PACIFIC
NORTHWEST AND TCG SEATTLE With QWEST CORPORATION Pursuant to 47 U.S.C. Section 252(b), Docket
No. UT-033035. Order No. 4, Arbitrator’s Report at ¶ 44.*

1 **Q. HAS NTI PURCHASED ANY INTERCONNECTION FACILITIES UNDER THE**
2 **INTERCONNECTION AGREEMENT RATHER THAN UNDER QWEST**
3 **PRIVATE LINE TARIFFS?**

4 A. Yes. NTI has purchased one interconnection facility under the interconnection agreement.

5 **Q. DOES THIS FACILITY QUALIFY FOR PROPORTIONAL COST SHARING?**

6 A. No. Although the Interconnection Agreement calls for the proportional cost sharing of
7 interconnection facilities, as Mr. Metcalfe acknowledges in his testimony, the Agreement
8 limits the calculation of each party's proportional use to "non-ISP-bound" traffic. Qwest
9 believes that all of the NTI-bound traffic is ISP traffic and, therefore, cost sharing is not
10 appropriate.

11

12 **IV. NTI'S REQUESTS ARE NOT PERMITTED UNDER THE INTERCONNECTION**
13 **AGREEMENT**

14 **Q. ON PAGE 4 OF HIS TESTIMONY MR. METCALFE STATES THAT QWEST**
15 **HAS REFUSED TO PROVISION FACILITIES AS LOCAL INTERCONNECTION**
16 **BECAUSE THE TRAFFIC OVER THE FACILITIES IS NOT BETWEEN TWO**
17 **END USERS WHO ARE PHYSICALLY LOCATED IN THE SAME LOCAL**
18 **CALLING AREA. CAN YOU PLEASE EXPLAIN?**

19 A. Mr. Metcalfe is referring to the fact that NTI makes use of Virtual NXX or VNXX. Before
20 explaining why Qwest is opposed to the use of local interconnection services for this
21 purpose, perhaps an explanation of VNXX would be helpful.

1 In short, VNXX is an arrangement that provides NTI's customers the functionality of toll
2 or 8XX service, but at no extra charge. An NXX code, commonly referred to as a prefix, is
3 the second set of three digits of a ten-digit telephone number (NPA-NXX-XXXX). These
4 three digits (NXX) are assigned to and indicate a specific central office from which a
5 particular customer is physically served. In other words, in the number (206) 996-XXXX,
6 the "996" prefix is assigned to a specific central office in the (206) area code and thus
7 identifies the general geographic area in which the customer is located.

8
9 A "virtual" NXX, or VNXX undercuts this concept because it results in a carrier-assigned
10 NXX associated with a particular central office where the carrier has no customers
11 physically located. Instead, these telephone numbers are assigned to a customer physically
12 located outside the local calling area of the central office associated with the particular
13 NXX. The physical location of the CLEC customer who has been assigned a VNXX
14 number is in a local calling area that would require a toll call from an ILEC's subscriber
15 located in the local calling area with which the CLEC-assigned telephone number is
16 associated under the North American Numbering Plan (NANP). This scheme requires the
17 NANP administrator to assign a "virtual" NXX to the CLEC. The NXX is labeled "virtual"
18 because it is an assigned number that tells callers that it is in the *calling party's* local calling
19 area, rather than the *called party's* local calling area. In other words, a call to the ""virtual"
20 NXX looks like a local call within the local calling area to which the VNXX number
21 appears to be assigned; but in reality the call is not a local call. Instead, the call is
22 terminated in a different local calling area, and perhaps even in a different state. Exhibit
23 WRE-2 attached hereto demonstrates visually how VNXX circumvents the proper
24 numbering plan.

1 VNXX has become an issue because CLECs, like NTI, obtain local numbers from the
2 NANPA administrator in various parts of a state that are actually assigned to its customers
3 (*e.g.*, ISPs) with no physical presence in the local calling area with which the local numbers
4 are associated; thus, the traffic directed to those numbers is, instead of being routed to a
5 customer in the same local calling area as the calling party, routed to one of the points of
6 interconnection (“POIs”) of the CLEC and is then delivered to the CLEC’s ISP customer at
7 a physical location in another local calling area or even in another state.

8
9 Carriers making use of VNXX services are attempting to redefine existing tariffed services
10 and Commission-established local boundaries in an attempt to avoid switched access
11 charges. Switched access charges are rightfully paid by a long distance carrier to a local
12 carrier when the local carrier originates or terminates a long distance call. These VNXX
13 numbers, and the facilities that would be used to connect to locations where such calls
14 would be terminated, are interexchange in nature. By attempting to fool mechanized
15 systems with a local number, the call detail itself would not indicate that any compensation
16 associated with this interexchange or toll call should be made. The assignment of
17 telephone numbers in the VNXX manner should not be permitted to disguise inter-
18 exchange calls as local calls.

19
20 **Q. AT PAGE 3 OF HIS TESTIMONY MR. METCALFE DEFINES LOCAL CALLS**
21 **AS “CALLS BETWEEN PARTIES WITH TELEPHONE NUMBERS THAT HAVE**

1 **BEEN ASSIGNED TO THE SAME LOCAL CALLING AREA.” DO YOU AGREE**
2 **WITH THIS DEFINITION?**

3 A. No. A more appropriate definition would be that local calls are calls that originate and
4 terminate in the same local calling area. In fact, Section 4.22 of the interconnection
5 agreement between the two parties contains the following definition:

6 4.22 “Exchange Service” or “Extended Area Service (EAS)/Local
7 Traffic” means traffic that is originated and terminated within the local
8 calling area as defined by Qwest’s then current EAS/local serving
9 areas, and as determined by the Commission.
10

11 I will discuss this issue further below, but Qwest’s tariffs and price lists make it clear that
12 “local calling area” is based on physical location, not phone numbers.

13

14 **Q. MR. METCALFE STATES ON PAGES 4-5 OF HIS TESTIMONY THAT THE**
15 **TELECOMMUNICATION INDUSTRY HAS LONG RATED CALLS BASED**
16 **UPON THE FIRST SIX DIGITS OR NPA NXX OF THE PARTIES TO THE CALL.**
17 **PLEASE COMMENT.**

18 A. The system of rating calls based on a comparison of NPA NXX is based upon the
19 presumption that telephone numbers are related to the geographic locations of subscribers.
20 In fact, the entire Public Switched Telephone Network (PSTN) and the regulatory structure
21 related to retail service pricing and intercarrier compensation are based on the geographic
22 location of the parties to a call. State telephone rates are established to distinguish local

1 from toll calls based on rules defining local exchange boundaries and local calling areas.²
2 Intrastate access and exchanges of traffic between independent companies continue to be
3 based on this 100-year-old convention.

4
5 It is true that historically the means by which telephone companies have often determined
6 the geographic location of customers has been by the telephone number assigned to them,
7 but that does not mean that Qwest or the Commission ever concluded that telephone
8 numbers were the end of the analysis - the telephone numbers were simply a means to the
9 end of rating calls based on the geographical location of the parties to the call. For
10 decades, this system worked very well because telephone numbers have long been a
11 reliable and consistent means of determining the geographical location of the parties to a
12 call. Thus, Mr. Metcalfe has it backwards. For purposes of distinguishing local from toll
13 calls, the threshold criteria is to determine whether calls are within or between local calling
14 areas, and not (as Mr. Metcalfe contends) to determine whether the telephone numbers of
15 the parties to the call are assigned to the same local calling area.

16
17 The language used to distinguish among different types of calls likewise is focused on
18 geography. For example, the use by telephone companies and state commissions of the
19 word “local” is not an accident. The concept of calling *within* a certain specified
20 geographical area where the residents and businesses share a geographically-based

² Per WAC 480-120-021 ‘Exchange’ means a *geographic* area established by a company for telecommunications service within that area.

1 community of interest has been plainly distinguished from calls *between* geographical
2 areas, often hundreds of miles apart, where no such community of interest exists.
3 Historically, the Washington Commission has treated local calls (i.e., where the parties to
4 the call are in the same geographical area) differently from toll calls. State commissions
5 have recognized the community of interest within certain defined rural areas or even within
6 large metropolitan areas, and have therefore required that telephone companies provide
7 service *within* these defined geographical areas on a flat-rated basis. These requirements
8 have been based on the idea that calls to and from neighbors and local businesses within an
9 area of community of interest should not be constrained by per-minute charges. Thus,
10 prices for local service in those areas have traditionally been flat-rated so that no extra
11 charges apply, no matter how much time a customer spends on the telephone calling others
12 located in the same local calling area. To suggest, as Mr. Metcalfe does, that the concept
13 of local service and local calls is based purely on telephone numbers and not on
14 geographical proximity is incorrect and historically inaccurate.

15
16 **Q. IS THERE ANYTHING IN THE QWEST TARIFFS THAT MAKES CLEAR THAT**
17 **THE DETERMINATION OF WHETHER A CALL IS LOCAL IS BASED ON**
18 **GEOGRAPHIC LOCATION?**

19 A. Yes. Qwest Tariff WNU-40 Exchange and Network Services Section 2 contains a
20 Definition of Terms section which includes the following definitions:

21 Exchange – A specified geographic area established for the furnishing
22 of communication service. It may consist of one or more central

1 offices together with the associated plant used in furnishing service
2 within that area.

3 Local Exchange – Exchange in which the customer’s premises is
4 located.

5 Local Service – Exchange access service furnished *between*
6 *customer’s premises located within the same local service area.*

7 Premises – The space occupied by a customer in a single building or in
8 connecting buildings on continuous property. The space may be a
9 dwelling unit, other building or a legal unit of real property such as a
10 lot on which a dwelling unit is located subject to the local telephone
11 company’s reasonable and nondiscriminatory standard operating
12 practices.

13 Thus, it is clear that Qwest’s tariffs (and, by extension, the parties’ ICA, see, Section 4.22)
14 define exchange service as *service within a specific geographic area.*

15
16 **Q. ARE THERE RULES FOR HOW TELEPHONE NUMBERS ARE ASSIGNED?**

17 A. Yes. The FCC has created the North American Numbering Plan Administrator
18 (“NANPA”), an impartial entity that is responsible for assigning and administering
19 telephone numbering resources in a non-discriminatory manner, *and* in accordance with the
20 guidelines developed by INC (the North American Industry Numbering Committee).³
21 Section 2.14 of the INC guidelines entitled “Central Office Code (NXX) Assignment
22 Guidelines” states that:

23 “It is assumed from a wireline perspective that CO [central office]
24 code/blocks allocated to a wireline service provider are to be utilized to
25 provide service to a customer’s premise *physically located* in the same
26 rate center that the CO codes/blocks are assigned. Exceptions exist,

³ 47 C.F.R. § 52.13(b) and (d)

1 such as for tariffed services like foreign exchange services.” (Emphasis
2 Added).

3
4 Clearly NTI’s use of VNXX is at odds with these guidelines and the Commission should
5 not sanction this misuse of numbering resources.

6
7 **Q. MR. METCALFE ARGUES ON PAGE 5 OF HIS TESTIMONY THAT NTI’S USE**
8 **OF VNXX IS NO DIFFERENT THAN THE FOREIGN EXCHANGE (FX)**
9 **SERVICE THAT QWEST OFFERS TO ITS CUSTOMERS. DO YOU AGREE?**

10 A. No. NTI’s proposed use of VNXX uses the PSTN to route and terminate calls to end user
11 customers connected to the PSTN in another local calling area. In all respects, except the
12 number assignment, the VNXX call is routed and terminated as any other toll call. Qwest’s
13 FX product, on the other hand, delivers the FX calls within the local calling area where the
14 number is actually associated. In other words, a Qwest FX customer actually purchases a
15 local service connection in the local calling area associated with the telephone number it
16 has been assigned. That local service connection is purchased by the FX customer out of
17 the local exchange tariffs that apply to that local calling area. Between this local calling
18 area and the local calling area where the subscriber is located, the calls are transported on
19 what is, in effect, the end user customer’s private network (private line) to another location.
20 In other words, after purchasing the local connection in the local calling area, the FX
21 customer bears full financial responsibility to transport it to the location where the call is
22 actually answered. It does this at tariffed rates. Qwest and other telephone companies
23 deliver the call to the local calling area of the called number. Private transport beyond that

1 is the business of and financial responsibility of the FX customer. Attached as Exhibit
2 WRE-3 is a diagram depicting Qwest FX service.

3
4 NTI's approach is fundamentally distinct from FX service. Under FX, a customer in
5 Yakima who desires a Spokane telephone number purchases a local service connection in
6 the Spokane local calling area and is responsible for transporting the traffic between the
7 cities. With VNXX, NTI's customer has no local service connection in the local calling
8 area associated with the assigned number. In addition, based on Mr. Metcalfe's testimony,
9 NTI expects Qwest to bear full responsibility for the transport of the traffic to a distant
10 local calling area. In calling its product an FX-like product, NTI confuses the critical
11 distinctions between VNXX and FX. Whereas VNXX uses inappropriate telephone
12 number assignment to disguise inter-exchange calls as local calls, FX is entirely consistent
13 with the way commissions have been distinguishing between toll and local calls since
14 access charges were established.

15
16 **Q. DID A RECENT DECISION IN MINNESOTA ADDRESS THE ISSUE OF**
17 **WHETHER FX AND VNXX ARE EQUIVALENT SERVICES?**

18 A. Yes. An Administrative Law Judge in a Minnesota complaint case issued a
19 Recommendation on Motions for Summary Disposition earlier this month which
20 specifically addressed this issue, stating:

21 The distinction between ISP-bound FX traffic and VNXX traffic could
22 be important in determining whether some form of termination
23 compensation is due, whether under the reciprocal compensation

1 provisions of § 251(b) or the hybrid regime for ISP traffic. For
2 example, Qwest offers a service called FX, which permits a customer
3 to purchase a connection in the local calling area associated with a
4 telephone number, for which it pays the local exchange rate, as well as
5 a private line transport to wherever its equipment is located. The
6 customer who receives the calls pays for the dedicated transport, not
7 the calling party. Qwest maintains that it requires its ISP customers to
8 use the same arrangement and to pay full retail rates for the private
9 line. Because the private line terminates in the same local calling area
10 as the assigned NPA/NXX, Qwest considers that call to be local. As
11 described by the parties, VNXX routing achieves the functionality of
12 FX service, but no one pays anything (access charges or dedicated
13 transport) for traffic that crosses local calling areas and would
14 otherwise be considered toll traffic. The ALJ cannot assume on this
15 record that VNXX and FX traffic are the same thing.⁴
16

17 **Q. MR. METCALFE PROVIDES AN EXAMPLE ON PAGES 5-6 OF HIS**
18 **TESTIMONY TO DEMONSTRATE THAT LOCATION OF THE ISP**
19 **CUSTOMER’S MODEM BANK IS IRRELEVANT FOR CALL RATING**
20 **PURPOSES SINCE BOTH CALLS WOULD BE ROUTED TO THE NTI SWITCH.**
21 **DO YOU AGREE?**

22 A. No. The two calls in Mr. Metcalfe’s example are, in fact, very different. In the first
23 example, when the Qwest customer in Pasco calls the ISP modem bank in Pasco, the call
24 gets routed to the NTI switch in Wenatchee and is delivered over NTI facilities to the ISP
25 in Pasco. In this case, consistent with traditional association of telephone numbers with
26 geographical location, the call is truly local in nature because the parties to the call are
27 physically located within the same local calling area. In the second example, NTI has

⁴ *The Complaint of Level 3 Communications, LLC, against Qwest Corporation Regarding Compensation for ISP-Bound Traffic*, Docket No. C-05-721, State of Minnesota Office of Administrative Hearings for the Public Utilities Commission. (January 18, 2006), p. 12.

1 assigned a Pasco number to the ISP whose modem bank is located in Wenatchee or perhaps
2 some other distant city. The ISP will market its dial-up services to Pasco customers and
3 will provide the local numbers assigned to them by NTI as the local access number for the
4 end user customers to access the ISP, and thus the Internet. Other than the telephone
5 numbers, there is nothing remotely “local” about the call to the ISP. It originates in Pasco,
6 but it is answered by the ISP’s modems in Wenatchee or elsewhere; from there, the call is
7 then sent to websites throughout the country or even the world.
8

9 **Q. ON PAGE 3 OF HIS TESTIMONY MR. METCALFE STATES THAT NTI HAS**
10 **FACILITIES USED TO EXCHANGE LOCAL TRAFFIC WITH QWEST. ARE**
11 **THE PARTIES ACTUALLY EXCHANGING TRAFFIC TODAY?**

12 A. No. The parties cannot truly be said to be exchanging traffic today, in that it is virtually all
13 one way from Qwest to NTI. Attached as Confidential Exhibit WRE-4 is an NTI data
14 request response which quantifies the flow of traffic between the two parties.
15

16 **Q. ON PAGE 7 OF HIS TESTIMONY, MR. METCALFE STATES THAT TRAFFIC**
17 **IN EXCESS OF A THREE TO ONE RATIO IS PRESUMPTIVELY ISP-BOUND**
18 **TRAFFIC. DO YOU AGREE?**

19 A. No. The three to one presumption that Mr. Metcalfe refers to is related to an assumption
20 used for reciprocal compensation of termination charges. It has nothing to do with the
21 sharing of facilities costs. More importantly, as Mr. Metcalfe himself concedes, Section
22 7.3.1.1.3.1 of the interconnection agreement limits calculation of each party’s proportional

1 use to non-ISP bound traffic volumes. The language for Section 7.3.1.1.3.1 of the
2 agreement reads as follows:

3 7.3.1.1.3.1 The provider of the LIS two-way Entrance Facility (EF)
4 will initially share the cost of the LIS two-way EF by assuming an
5 initial relative use factor of fifty percent (50%) for a minimum of one
6 quarter. The nominal charge to the other Party for the use of the
7 Entrance Facility (EF), as described in Exhibit A, shall be reduced by
8 this initial relative use factor. Payments by the other party will be
9 according to this initial relative use factor for a minimum of one
10 quarter. The initial relative use factor will continue for both bill
11 reduction and payments until the Parties agree to a new factor, based
12 upon actual minutes of use data for *non-Internet Related Traffic* to
13 substantiate a change in that factor. If either Party demonstrates with
14 *non-Internet Related data* that actual minutes of use during the first
15 quarter justify a relative use factor other than fifty percent (50%), the
16 Parties will retroactively true up first quarter charges. Once
17 negotiation of a new factor is finalized, the bill reductions and
18 payments will apply going forward, for a minimum of one quarter. By
19 agreeing to this interim solution, Qwest does not waive its position that
20 Internet Related Traffic or traffic delivered to Enhanced Service
21 Providers is interstate in nature.

22
23 The same language as it relates to Direct Trunked Transport appears in Section 7.3.2.2.1 of
24 the agreement.

25 **Q. MR. METCALFE STATES ON PAGE 7 OF HIS TESTIMONY THAT QWEST**
26 **SHOULD BE RESPONSIBLE FOR THE TOTAL PERCENTAGE OF THE**
27 **FACILITIES USED TO DELIVER CALLS FROM QWEST TO NTI FOR**
28 **TERMINATION TO ITS CUSTOMERS. PLEASE COMMENT.**

29 A. The costs of carrying VNXX calls between different local calling areas should not be borne
30 by Qwest. The VNXX service providers, and the ISP whose customers, the ultimate cost

1 causers, generate the traffic via dial-up Internet connections, should bear the financial
2 responsibility for such traffic. After all, it is the CLEC and its ISP customers who generate
3 the traffic. NTI, the carrier that wishes to deliver this interexchange traffic elsewhere, must
4 bear the financial responsibility of the interexchange transport to the ISP. The appropriate
5 compensation mechanism for VNXX services is that the VNXX service provider be
6 financially responsible for transport of calls between local calling areas. Such calls should
7 not be considered local calls.

8
9 **Q. AT PAGE 6 OF HIS TESTIMONY MR. METCALFE STATES THAT THE**
10 **PARTIES' INTERCONNECTION AGREEMENT DOES NOT PROHIBIT THE**
11 **ROUTING OF VNXX TRAFFIC OVER LIS TRUNKS. DO YOU AGREE?**

12 A. No. Section 7.1.1 of the parties' ICA specifically delineates the types of traffic that are to
13 be exchanged under the ICA. With respect to the traffic and disputes at issue in this matter,
14 there are three relevant types of traffic which are appropriately exchanged under the
15 agreement: (1) Exchange Service (EAS/Local traffic), (2) Exchange Access (IntraLATA
16 Toll), (3) Jointly Provided Switched Access (InterLATA and IntraLATA) traffic. VNXX
17 traffic does not fit any of these categorizations.

18
19 **Q. HOW DOES THE ICA DEFINE THESE CATEGORIES OF TRAFFIC?**

20 A, The ICA defines those categories of traffic as follows:

- 21 • “Exchange Service” or “Extended Area Service (EAS)/Local
22 Traffic” means traffic that is originated and terminated within
23 the local calling area as defined by Qwest's then current

1 EAS/local serving areas, and as determined by the
2 Commission. (ICA, § 4.22)

- 3
- 4 • “Exchange Access (IntraLATA Toll)” is defined in accordance
5 with Qwest’s current IntraLATA toll serving areas, as
6 determined by Qwest’s state and interstate Tariffs and excludes
7 toll provided using Switched Access purchased by an IXC.
8 (ICA, § 4.30)
 - 9
 - 10 • "Meet-Point Billing" or "MPB" or “Jointly Provided Switched
11 Access” refers to an arrangement whereby two LECs
12 (including a LEC and CLEC) jointly provide Switched Access
13 Service to an Interexchange Carrier, with each LEC (or CLEC)
14 receiving an appropriate share of the revenues from the IXC as
15 defined by their effective access Tariffs. (ICA, § 4.39)
 - 16
 - 17
 - 18

19 **Q. IS IT POSSIBLE AS SOME OTHER CARRIERS HAVE ATTEMPTED TO**
20 **CLAIM, THAT VNXX TRAFFIC IS “EXCHANGE SERVICE” TRAFFIC,**
21 **COMMONLY REFERRED TO AS “EAS/LOCAL TRAFFIC.”**

22 A. No. This traffic is defined in section 4.22 of the ICA as “traffic that is originated and
23 terminated within *the local calling area as defined by Qwest’s then current EAS/local*
24 *serving areas, and determined by the Commission.*” (Emphasis added). Even a cursory
25 examination of the traffic at issue, however, shows that it does not meet this definition. As
26 NTI acknowledges, this VNXX traffic is not terminated in the same local calling area as
27 the originating caller. Thus, given that “Qwest’s then current EAS/Local serving areas” are
28 defined geographically, not by telephone number, VNXX traffic at issue cannot be
29 “Exchange Service” traffic.

30

31 **Q. DOES “EXCHANGE ACCESS” APPLY TO VNXX TRAFFIC?**

1 A. No. Although “Exchange Access”, which is defined in section 4.30 of the ICA as being “in
2 accordance with Qwest’s current IntraLATA toll serving areas, as determined by Qwest’s
3 state and interstate Tariffs...”, may appear functionally appropriate, upon closer
4 examination the traffic does not meet this definition either.

5
6 As a threshold matter, only NTI knows the exact location of the ISP. Thus, Qwest cannot
7 completely determine for any given call whether the call is destined for a location within
8 the local calling area or in a different local calling area. Qwest only knows how far it
9 carried the call before handoff to the interconnected carrier, where that carrier’s serving
10 switch is located, and whether traffic is one-way or two-way. In addition, even for that
11 traffic which may functionally appear to match the definition, NTI’s use of VNXX
12 telephone numbers makes it difficult to track such traffic. NTI clearly does not intend for
13 the traffic to be treated as “Exchange Access” traffic under the ICA, as evidenced by its
14 misuse of telephone numbers. Thus, it is apparent this definition does not match the traffic
15 either. Furthermore, if this were exchange access, the service would be most like an
16 inbound 800-type service, thereby requiring NTI to pay access charges.

17
18 **Q. WHAT ABOUT THE LAST TRAFFIC TYPE? DOES VNXX TRAFFIC QUALIFY**
19 **AS JOINTLY PROVIDED SWITCHED ACCESS?**

20 A. No. “Meet-Point Billing” or “Jointly Provided Switched Access,” does not match up at all
21 to the VNXX traffic at issue either. This is so because no IXC is involved, as only NTI and
22 Qwest are involved in carrying the traffic, which is contrary to the definition of the traffic

1 in section 4.39 of the ICA.

2
3 **Q. WHAT DO YOU CONCLUDE FROM THIS?**

4 A. In reviewing the ICA's plain language and the VNXX traffic that NTI causes Qwest to
5 exchange, none of the traffic types that the parties specifically agreed to exchange match
6 this VNXX traffic. Since NTI can avoid the use of VNXX by properly assigning telephone
7 numbers based on the actual location of its end-user customers, it is incumbent upon NTI to
8 ensure that the exchange of traffic under the ICA follows the terms and conditions of that
9 agreement. In the end, NTI is simply attempting to exchange traffic that the parties never
10 agreed to exchange under the terms of the ICA. It is for this reason that Qwest denied
11 NTI's request to convert its private line facilities to LIS facilities.

12
13 **Q. ARE THERE ADDITIONAL REASONS WHY QWEST IS NOT WILLING TO**
14 **CONVERT THE PRIVATE LINE FACILITIES TO LIS?**

15 A. Yes. In addition to the VNXX traffic that is at dispute, these private lines simultaneously
16 support switched local interconnection circuits purchased under the ICA and tariffed point
17 to point circuits. Point to point circuits may extend to an end user in contrast to the
18 switched service which extends only between switches. Facilities carrying such a mix of
19 circuits are priced from the tariff and not "ratcheted" or apportioned as mentioned earlier in
20 my testimony.

1 **Q. ON PAGE 4 OF HIS TESTIMONY MR. METCALFE STATES THAT NTI**
2 **SOUGHT TO CHANGE ITS METHOD OF INTERCONNECTION TO A “MEET**
3 **POINT.” IS NTI’S PROPOSAL ALLOWED UNDER THE INTERCONNECTION**
4 **AGREEMENT?**

5 A. No. Although the agreement does provide for the use of a Mid Span Meet Point of
6 Interconnection, NTI’s proposal was for something else entirely. Mid-span meet is a form
7 of interconnection that connects the networks of the two carriers. Under Mid-Span Meet
8 interconnection, each carrier builds to a meet point approximately half way between the
9 originating and terminating switches, as long as the CLEC’s switch is in Qwest territory. If
10 the CLEC’s switch is not in Qwest territory, the meet point is half way between the
11 CLEC’s POI and the Qwest switch.

12
13 The Mid Span Meet Point of Interconnection option is described in section 7.1.2.3 of the
14 parties’ interconnection agreement:

15
16 7.1.2.3 Mid-Span Meet POI. A Mid-Span Meet POI is a
17 negotiated Point of Interface, limited to the Interconnection of
18 facilities between one Party’s switch and the other Party’s switch. The
19 actual physical Point of Interface and facilities used will be subject to
20 negotiations between the Parties. Each Party will be responsible for its
21 portion of the build to the Mid-Span Meet POI. A Mid-Span Meet
22 POI shall not be used by CLEC to access unbundled network elements.
23 These Mid Span Meet POIs will consist of facilities used for the
24 provisioning of one or two way local/IntraLATA and Jointly Provided
25 Switched Access Interconnection trunks, as well as miscellaneous
26 trucks such as Mass Calling Trunks, OS/DA, 911 and including any
27 dedicated DS1, DS3 transport trunk groups used to provision
28 originating CLEC traffic.

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By contrast, NTI's concept of a 'meet-point' went beyond the interconnection facility between the two parties' switches that the interconnection agreement language discusses. Under the NTI proposal Qwest would be financially responsible for provisioning one-way end office trunking to POIs that NTI establishes at each Qwest access tandem. This type of request clearly does not fall under the Mid-Span Meet POI option defined in section 7.1.2.3 of the ICA.

V. NTI REFUND REQUEST

Q. NTI REQUESTS THAT THE COMMISSION REQUIRE QWEST TO PAY A SHARE OF THE COST OF THE FACILITIES BOTH HISTORICALLY AND ON A GOING FORWARD BASIS. PLEASE COMMENT.

A. As I noted earlier in this testimony, NTI, by its own admission, made the decision to order these facilities from Qwest's private line tariff. There is nothing in the tariff that allows for cost apportionment and thus there is no basis for NTI's request for a refund. Clearly NTI is not entitled to refunds that go back to 2002 and 2003 as Mr. Metcalfe argues. This argument makes no more sense than going back to a car dealer more than two years after purchasing a car and asking for a refund of a portion of the car payments you have made, based on the fact that you could have originally ordered a less expensive vehicle.

1 In addition, NTI is not entitled to any refund of charges for facilities it purchased under the
2 interconnection agreement as it is Qwest's understanding that all of the traffic is ISP traffic
3 which is excluded from the relative usage calculation.

4
5 Thus, NTI is not entitled to any refund amount.

6 .
7 **Q. HAS QWEST PERFORMED A DETAILED ANALYSIS OF THE REFUND**
8 **AMOUNTS CONTAINED IN MR. METCALFE'S CONFIDENTIAL EXHIBIT?**

9 A. No. Based on the limited description of the confidential exhibit in Mr. Metcalfe's
10 testimony, Qwest was unable to verify the numbers or calculations contained in the exhibit.
11 Following a recent meeting between the parties to clarify the nature of the refund amounts,
12 it appears that NTI is requesting a refund of all private line and local interconnection
13 charges for facilities used to carry the traffic between the two parties. For all of the reasons
14 cited above, such a refund is not appropriate and NTI's request should be denied.

15
16 **VI. SUMMARY/CONCLUSION**

17 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

18 A. NTI has requested that this Commission order Qwest to pay its proportional share of the
19 facilities that NTI orders and that NTI be allowed to purchase these facilities at cost based
20 rates. Neither of these requests is appropriate given the facilities that NTI is purchasing
21 from Qwest today and the way in which it is using the facilities.

1 NTI made the decision to purchase facilities from Qwest under the Qwest federal private
2 line tariff. Although the interconnection agreement between the two parties allows private
3 line services to be used in this way, the agreement is clear that the private line tariff rates
4 apply. The agreement is equally clear that the facilities cost apportionment language in the
5 interconnection agreement is specifically related to the purchase of Local Interconnection
6 Service Entrance Facilities or Direct Trunked Transport purchased under the agreement.
7 Neither section applies to private line services purchased under tariff, a fact this
8 Commission recognized when it rejected an arbitration proposal by AT&T which would
9 have required precisely the kind of cost sharing that NTI is proposing in this proceeding.
10 The Commission should similarly reject NTI's apportionment argument. Furthermore, the
11 interconnection agreement excludes ISP-bound traffic from the relative use calculation, so
12 cost apportionment would not apply even if NTI had purchased the services under the
13 interconnection agreement.

14
15 NTI's request to purchase its facilities at cost-based rates under the interconnection
16 agreement is contrary to the language of the interconnection agreement and long
17 recognized concepts as to what constitutes a local call. NTI proposes to assign telephone
18 numbers in a manner that has no relationship to where customers are physically located
19 and, in so doing, to redefine existing tariffed services and Commission-established local
20 service boundaries in an attempt to avoid access charges. Other than the telephone
21 numbers, there is nothing remotely "local" about calls going to NTI's ISP customers. In
22 addition to being contrary to definitions in the Washington Administrative Code and

1 Qwest's Washington Network and Exchange Network Services Tariff, VNXX traffic is not
2 a type of traffic which is allowed to be carried over local interconnection trunks purchased
3 under the interconnection agreement between the parties.

4 For all of these reasons, Qwest respectfully requests that the Commission reject NTI's
5 requests.

6

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 A. Yes, it does.