

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

QWEST CORPORATION)
)
 Complainant,) DOCKET NO. UT-063038
)
 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)
 WORLDCOM COMMUNICATIONS, INC.)
)
 Respondents.)
)
)

INITIAL BRIEF OF TCG SEATTLE

Gregory L. Castle
Senior Counsel
AT&T Services, Inc.
525 Market Street, Rm. 2022
San Francisco, CA 94105
Telephone (415) 778-1487
Facsimile (415) 974-1999
Email: gregory.castle@att.com

David W. Wiley
Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone (206) 628-6600
Facsimile (206) 628-6611
Email: dwiley@williamskastner.com

Attorneys for TCG Seattle

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	2
II. “VNXX” LEGAL ISSUES	5
A. Industry Guidelines Do Not Prohibit VNXX Arrangements.....	5
B. Washington Law Does Not Prohibit VNXX Arrangements.....	6
C. The Current Interconnection Agreement between Qwest and TCG Seattle Covers VNXX Arrangements and Provides for “Bill-and-Keep” Intercarrier Compensation.	9
D. Federal Law Does Not Prohibit VNXX Arrangements.	10
III. RELATIONSHIP OF VNXX SERVICE TO FOREIGN EXCHANGE SERVICE.	11
IV. VNXX POLICY CONSIDERATIONS.....	13
V. STAFF PROPOSAL	15
VI. QWEST/MCI VERIZON ACCESS SETTLEMENT.....	17
A. Standards for Approval of Negotiated ICA.	18
B. Terms and Conditions.....	18
VII. CONCLUSION/RECOMMENDATIONS	18

TABLE OF AUTHORITIES

Page(s)

Case Law

<i>Global Naps, Inc. v. Verizon New England, Inc.</i> , 444 F.3d 59, 72 (1st Cir. 2006)	11
<i>Qwest v. WUTC</i> , No. C06-956-JPD, slip op. at 26 (W.D. Wash. Apr. 9, 2007)	11

Administrative Case Law

<i>Re Developing a Unified Intercarrier Compensation Regime</i> , CC Dkt. 01-92, <i>Notice of Proposed Rulemaking</i> , FCC 01-132 (Apr. 27, 2001)	4, 11
Alliance for Telecommunications Industry Solutions, Inc., <i>Central Office Code Assignment Guidelines Final Document</i> , ATIS-0300051, p. 8 (May 5, 2006)	5
<i>In re AT&T Communications of the Pacific Northwest and TCG Seattle</i> , Docket UT-033035, Order 4, <i>Arbitrator's Report</i> , Dec. 1, 2003.....	8, 9, 12, 16
<i>In re AT&T Communications of the Pacific Northwest and TCG Seattle</i> , UT-033035, Order 5, <i>Final Order Affirming Arbitrator's Report and Decision Approving Interconnection Agreement</i> , Feb. 6, 2004.....	8
<i>Re Developing a Unified Intercarrier Compensation Regime</i> , CC Dkt. 01-92, <i>Notice Of Proposed Rulemaking</i> , 16 F.C.C.R. 9610, FCC 01-132 (rel. Apr. 27, 2001)	11
<i>In re Whether Certain Calls are Local</i> , DT 00-223/DT 00-054, <i>Order 24,218, 88</i> N.H.P.U.C. 462, <i>slip op.</i> at 20 (Oct. 17, 2003)	16, 17

Statutes, Codes and Regulations

47 U.S.C. §§ 252(e)(2)(A)(i), (ii)	18
47 C.F.R. § 52.13(d)	10
RCW 80.36.300(5).....	14
WAC 480-120-021.....	6, 7, 8
WAC 480-120-265(2)	6, 7, 8

I. INTRODUCTION

1 This proceeding involves two important and interrelated issues: (1) whether consumers in Washington will continue to have access to affordable dial-up internet access and foreign exchange services from competing providers, and (2) what compensation should flow between interconnecting carriers whose networks are used to provide those services. For some time, Washington consumers, particularly those in rural areas, have had access to affordable dial-up Internet access because competitive local exchange carriers (“CLECs”) have provided service to Internet service providers (“ISPs”) that allows dial-up customers to reach their ISP by dialing a “local number,” even though the dial-up customer and his ISP were in different exchanges. Because the numbers were local, dial-up Internet customers did not have to pay per-minute toll charges, which would have made dial-up access cost prohibitive for many of those customers. Similarly, if a business wanted its customers or employees located in an exchange different from that of the business to be able to call the business without toll charges, CLECs would assign the business a telephone number that was “local” to the area in which the customers or employees were located.¹ Because the business’s customers and employees could call the business as if they were locally dialed from the originating exchange, they were not discouraged from calling. This process of assigning a “local” number for one area to a customer located in another exchange is commonly referred to as “virtual FX” or virtual NXX (“VNXX”).

2 VNXX arrangements clearly benefit consumers who depend on dial-up access to reach the Internet and businesses wanting locally-dialed numbers for the use of their customers or employees. VNXX traffic also affects the compensation flowing between telecommunications

¹ This service provided by CLECs is functionally equivalent to foreign exchange (“FX”) service provided by Qwest.

carriers when the network of more than one carrier is used to complete the call. Generally, if a call is rated as local, the originating carrier will pay the terminating carrier for terminating the call. If the call is rated as toll, the originating local exchange carrier will receive originating access charges for connecting the call to an interexchange carrier. Because VNXX calls are rated as local, some CLECs in Washington (TCG Seattle not among them) are charging Qwest terminating compensation for terminating VNXX calls. Qwest brought this complaint alleging that VNXX calls should be considered toll calls and subject to originating access charges due to Qwest.

3 When it initially brought its complaint, Qwest argued that the Washington Utilities and Transportation Commission (“Commission”) should resolve what is essentially a dispute about intercarrier compensation by finding that all VNXX arrangements are legally prohibited. Qwest argued that such arrangements are legally prohibited by industry guidelines and Washington state law and should be discontinued. Because Qwest originally asserted this position, we address below why that position is wrong. VNXX arrangements are not prohibited by industry guidelines, Washington state law, or federal law.

4 But now, even Qwest appears to have retreated from its initial incorrect and extreme position that all VNXX calls are legally prohibited. Qwest now characterizes its position as “the use of VNXX arrangements by other carriers, *without payment of access charges or other appropriate arrangements*, is unlawful.”² In other words, the dispute is about money. In fact, Qwest and Verizon Access have proposed to settle the dispute between the two parties by recognizing that Verizon Access can use voice and ISP-bound VNXX arrangements on a “bill-and-keep” basis. This means Verizon Access will not charge Qwest terminating compensation

² Narrative Supporting Settlement Agreement of Qwest and Verizon Access, ¶ 3 (Mar. 7, 2007).

charges, and Qwest will not charge Verizon Access originating access charges.

5 TCG Seattle understands both sides of this dispute. It is in the rather unique position of being part of a company, AT&T, that includes both ILEC and CLEC operations. TCG Seattle knows, therefore, that intercarrier compensation issues, of which VNXX is merely one, are very complex and difficult to resolve. Nor are these issues limited to the State of Washington. They occur throughout the nation and, for that reason, the Federal Communications Commission (“FCC”) is in the middle of a proceeding to seek a unified intercarrier compensation regime to resolve these issues in a competitively-neutral and comprehensive manner.³ TCG Seattle believes that in a telecommunications market that is national, if not international, in scope, a national solution for intercarrier compensation is needed, and the FCC is in the best position to find that solution. TCG Seattle recommends, therefore, that the Commission defer a policy decision in this area until the FCC has completed its work.

6 If the Commission believes it must act now, TCG Seattle recommends that the Commission order bill-and-keep compensation for all VNXX traffic until the FCC concludes its intercarrier compensation proceeding. This interim solution, first proposed by TCG Seattle in its opening testimony and now effectively endorsed by Qwest and Verizon Access in their proposed settlement, will preserve affordable dial-up Internet access and competitive voice-FX services for Washington consumers and businesses. At the same time, it will provide balanced compensation treatment for Qwest and the CLECs. Proof of this is that TCG Seattle and Qwest have been successfully exchanging VNXX traffic subject to bill-and-keep compensation for several years without significant dispute.

³ *Re Developing a Unified Intercarrier Compensation Regime*, CC Dkt. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132 (Apr. 27, 2001).

7 TCG Seattle now addresses below the issues specified in the common outline developed
by the parties to the extent those issues are applicable to TCG Seattle's position.

II. "VNXX" LEGAL ISSUES

A. Industry Guidelines Do Not Prohibit VNXX Arrangements.

8 Qwest argued originally that industry guidelines, more specifically the Central Office
Code Assignment Guidelines ("Guidelines"), broadly prohibit the assignment of VNXX
numbers.⁴ In particular, Qwest pointed to section 2.14 of the Guidelines to support this
contention. Qwest's contention is wrong.

9 Section 2.14 states:

It is assumed from a wireline perspective that CO codes/blocks allocated to a wireline service provider 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. Exceptions exist, for example tariffed services such as foreign exchange service. (Emphasis added).⁵

To fully understand Section 2.14, one must first consider Section 2.8, which states:

These assignment guidelines were prepared by the industry to be followed on a voluntary basis. However, FCC 00-104... and FCC 00-429... contain "Rules" associated with CO/NXX number administration which have been incorporated and are referenced by a footnote in the format 'FCC 00-104...' or 'FCC 00-429'. (Emphasis added).⁶

In other words, when the Guidelines include an FCC "rule," the FCC decision that imposed the rule is cited. The Guidelines offer no such citation for Section 2.14. The Guidelines, therefore, do not consider Section 2.14 an FCC rule, but rather a guideline to be followed on a voluntary basis.

⁴ Exh. No. 171 T 11:4 - 15:18 (Linse). WUTC Staff ("Staff") originally made a similar argument. *See, e.g.*, Exh. No. 201 T 4:10 - 6:16, 14:6-13 (Williamson).

⁵ Alliance for Telecommunications Industry Solutions, Inc., *Central Office Code Assignment Guidelines Final Document*, ATIS-0300051, p. 8 (May 5, 2006).

⁶ *Id.* at 7.

10 Even in isolation, however, Section 2.14 does not ban VNXX arrangements. It expressly recognizes that “exceptions” exist to the “assumption” it makes. Section 2.14 never intended or purported to list all of the exceptions to the assumption. Instead, it offers but one “example” of an exception. If Section 2.14 intended the one exception it identified to be the only exception, it would not have indicated that exceptions exist and that it was offering an “example” of those existing services.

11 The example Section 2.14 provides, moreover, is telling: “services such as foreign exchange service.” As discussed in more detail below, VNXX is the functional equivalent of foreign exchange service -- both allow a customer in one local calling area to have a local number presence in another local calling area.⁷ One can reasonably infer, therefore, that VNXX is encompassed by the example listed in Section 2.14. There certainly is no basis to interpret Section 2.14 to prohibit VNXX arrangements.

B. Washington Law Does Not Prohibit VNXX Arrangements.

12 Qwest has suggested that Commission rules prohibit VNXX arrangements.⁸ For support, Qwest cites section 480-120-021 of the Washington Administrative Code (“WAC”), which provides definitions for various terms, including “exchange,” “interexchange,” and “local calling area,” and section 480-120-265 (2) of the WAC, which discusses expanding local calling areas. Contrary to Qwest’s position, no Washington law, including WAC sections 480-120-021 and 480-120-265 (2), prohibits VNXX arrangements.

⁷ While it is true that CLECs may provision VNXX arrangements differently than Qwest, that is simply a result of CLECs having a different network architecture than Qwest.

⁸ See, e.g., Exh. No. 1 T 15:12 - 17:1 (Brotherson). Staff has made a similar suggestion. See, e.g., Exh. No. 201 T 6:18 - 7:12 (Williamson).

13 In fact, section 480-120-021 simply defines words used in Chapter 480-120 of the WAC. That section does not purport to require or prohibit anything. It defines, but does not prohibit, intraexchange calls, interexchange calls, and local calling area. It does not even specifically address foreign exchange or VNXX calls. As a purely definitional section, it does not act to proscribe any specific regulatory conduct.

14 Beyond that, the assignment of VNXX numbers is consistent with the definitions in section 480-120-021. Qwest's argument that VNXX is inconsistent with those definitions is based not on the definitions in section 480-120-021, but on Qwest's tortured interpretations of those definitions. For example, section 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." To construct its premise that VNXX calls are not local, Qwest interprets the definition to mean that the calling and called parties must be in the same exchange. Contrary to Qwest's argument, however, the definition of local calling area makes no reference to the physical location of the calling or called parties or even to an "exchange" for that matter. Section 480-120-021 does not serve as a basis to conclude that VNXX arrangements are prohibited.

15 WAC section 480-120-265 (2) also does not prohibit the use of the VNXX. That section, which deals with customer requests for expanded local calling areas, on its face is inapposite to this dispute, which is between carriers, not as a result of a customer request. But even if this section were applicable, it does not preclude the use of VNXX arrangements. To the contrary, this section notes that, among other things, the Commission will generally "rely on local competition to meet customer demand for alternate or expanded calling." CLECs' use of VNXX arrangements is a product of local competition and, therefore, is implicitly endorsed by section 480-120-265.

16 The Commission has previously examined CLEC use of VNXX arrangements and has not considered them prohibited under WAC sections 480-120-021, 480-120-265, or any other Washington law. For example, in a 2003 arbitration between Qwest and two AT&T CLECs -- AT&T Communications of the Pacific Northwest and TCG Seattle -- the Arbitrator and this Commission were asked to consider many of the same arguments for and against VNXX arrangements that have been advanced in this proceeding.⁹ While it is true that the Arbitrator believed that unlimited use of VNXX arrangements “could lead to potentially unacceptable consequences in terms of intercarrier compensation,” the Arbitrator also believed that Qwest’s proposal to apply access charges to VNXX arrangements used to provide FX-like traffic and ISP-bound traffic would be “anticompetitive and should not be allowed.”¹⁰

17 Rather than finding that Commission rules prohibited VNXX arrangements, the Arbitrator believed appropriate limitations could be placed on VNXX arrangements so CLECs could offer voice FX type of service and dial-up Internet access. The Commission agreed with the Arbitrator on this point, stating:

We note, however, the Arbitrator’s discussion of his concerns that adopting Qwest’s alternative leaves open the door to disputes if Qwest tries to use its definition to frustrate an effort by AT&T to offer services that are functionally equivalent, from a customer perspective, to Qwest’s FX service and local-number-presence service for ISP bound traffic.

We approve of the Arbitrator’s efforts to encourage the parties to avoid such potential disputes by further negotiation if necessary. . . .¹¹

⁹ *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, Docket UT-033035. As evidenced by the docket title, the arbitration involved both AT&T Communications of the Pacific Northwest and TCG Seattle. For convenience, we will refer to the arbitration as the “Qwest/AT&T Arbitration.”

¹⁰ *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, Docket UT-033035, Order 4, *Arbitrator’s Report*, ¶ 33 at 16, Dec. 1, 2003.

¹¹ *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, UT-033035, 5, *Final Order Affirming Arbitrator’s Report and Decision Approving Interconnection Agreement*, ¶¶ 15-16 at 8, Feb. 6, 2004.

Clearly, the Commission was concerned that AT&T be allowed to provide FX-like and ISP-bound VNXX services, and was not announcing that such services were inconsistent with Commission rules or any other Washington law.

C. **The Current Interconnection Agreement between Qwest and TCG Seattle Covers VNXX Arrangements and Provides for “Bill-and-Keep” Intercarrier Compensation.**

18 The Commission addressed the issue of VNXX traffic in the Qwest/AT&T Arbitration and, as noted above, acknowledged the Arbitrator’s concern about Qwest trying to use its definition of “local calling area” to frustrate AT&T’s efforts to offer services like FX service and local-number-presence service for ISP-bound traffic and “approv[ed] of the Arbitrator’s efforts to encourage the parties to avoid such potential disputes” Although recognized as dicta by the Commission, the Arbitrator had suggested in his decision that bill-and-keep compensation would be a reasonable resolution of the dispute over VNXX traffic:

The FCC’s ISP Remand Order does not preempt state jurisdiction to determine the appropriate intercarrier compensation scheme for FX functionality provided via virtual NXX, but it is strongly suggestive of what is appropriate given that FX service and ISP local number provisioning both result in a hybrid form of traffic; traffic that is neither clearly local, nor clearly interexchange, and that is largely one-way traffic. Such traffic should be compensated on a bill-and-keep basis.¹²

In response to this guidance, Qwest and TCG Seattle are exchanging all local-rated traffic, including voice and ISP-bound VNXX traffic, on a bill-and-keep basis under their current approved interconnection agreement. VNXX arrangements for both voice and ISP-bound traffic exist, but neither carrier receives intercarrier compensation for this type of traffic. The

¹² *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, Docket UT-033035, Order 4, Arbitrator’s Report, ¶ 35 at 17, Dec. 1, 2003.

arrangement is consistent with the Commission and Arbitrator's guidance and, as explained in more detail below, is consistent as well with Verizon Access and Qwest's proposed settlement of the VNXX issue in this proceeding.

D. Federal Law Does Not Prohibit VNXX Arrangements.

19 No federal law -- statutory, case law, or regulation -- prohibits the use of VNXX arrangements. In its complaint and testimony, even Qwest does not appear to allege that any federal law prohibits VNXX. The closest Qwest comes to such an allegation is its suggestion that adherence to INC guidelines (presumably including the Guidelines) is an FCC mandate.¹³ Qwest's support for that statement, however, is 47 C.F.R. § 52.13(d), which contains only a general statement that the North American Numbering Plan Administrator ("NANPA") "shall administer numbering resources in an efficient and non-discriminatory manner, in accordance with [FCC] rules and regulations and the guidelines developed by the INC and other industry groups pertaining to administration and assignment of numbering resources." That section addresses the conduct of NANPA, not carriers. That section, moreover, does not purport to address the use of VNXX numbers. To the extent Qwest is suggesting that VNXX arrangements violate the Guidelines which, in turn, violates section 52.13(d), we have previously explained above why VNXX arrangement do not violate the Guidelines.¹⁴

20 The FCC has not held that VNXX arrangements are prohibited either. The FCC was well aware that carriers were using VNXX arrangements when it issued its notice of proposed rulemaking to develop a unified intercarrier compensation regime. While the FCC believed the

¹³ Exh. No. 171 T 12:1-8 (Linse).

¹⁴ In its opening testimony, Staff asserts that the use of VNXX arrangements violates "federal regulations," but does not identify those regulations. Exh. No. 201 T 16:17-20 (Williamson). Presumably, the Staff is referring to the Guidelines when it refers to "federal regulations," in which case its assertion is wrong for the reasons previously given.

use of VNXX arrangements raised issues that it needed to examine, it did not hold that VNXX arrangements were prohibited.¹⁵

21 Nor have courts held that federal law prohibits VNXX arrangements. Recent federal court decisions suggest rather that states have authority to decide whether VNXX arrangements should be allowed and, if so, what intercarrier compensation should apply to those arrangements, unless and until the FCC preempts the states on those issues.¹⁶ As stated earlier, the FCC is in the process of examining those issues now.

22 In sum, no existing federal or Washington State law prohibits the use of VNXX arrangements. And, as discussed below, relevant policy considerations militate against the Commission creating such a prohibition in this proceeding.

III. RELATIONSHIP OF VNXX SERVICE TO FOREIGN EXCHANGE SERVICE

23 Other parties undoubtedly will compare VNXX service to various other services in an attempt to argue, depending upon their view, that either terminating compensation or originating access charges should apply to VNXX services. TCG Seattle need not make these comparisons in light of its proposal that the Commission, if it feels a need to act now, should adopt bill-and-keep compensation for VNXX arrangements until the FCC can conclude its intercarrier compensation proceeding. TCG Seattle, however, will discuss the relationship of VNXX service to Qwest's FX service, not as it relates to intercarrier compensation, but as it relates to the Staff's proposal that carriers be prohibited from using VNXX arrangements to provide voice service.

¹⁵ *Re Developing a Unified Intercarrier Compensation Regime*, CC Dkt. 01-92, *Notice Of Proposed Rulemaking*, 16 F.C.C.R. 9610, FCC 01-132, ¶ 115 (rel. Apr. 27, 2001) (“*Unified Intercarrier Compensation NPRM*”).

¹⁶ *See, e.g., Global Naps, Inc. v. Verizon New England, Inc.*, 444 F.3d 59, 72 (1st Cir. 2006); *Qwest v. WUTC*, No. C06-956-JPD, slip op. at 26 (W.D. Wash. Apr. 9, 2007)(*Reversing and Remanding the Final Decision of the WUTC*).

24 The Commission examined the relationship of VNXX service to Qwest’s FX service four years ago during the Qwest/AT&T Arbitration. In his report, the Arbitrator concluded that AT&T should be entitled to take advantage of the same exceptions to the typical relationship between NPA-NXX and a single local calling area as Qwest takes advantage of in offering FX and Internet access numbers. The Arbitrator disagreed with Qwest’s argument that the two services were different:

Qwest’s argument (*Qwest Brief at 17-20*) that AT&T’s VNXX provisioning option is “nothing like Qwest’s foreign exchange service” is unavailing. AT&T’s VNXX voice service would be functionally identical to Qwest’s FX service from a customer perspective. The differences on which Qwest dwells are related to the different network architectures employed by the two companies. Encouraging technical innovation and provisioning of functionally competitive services at lower cost to consumers is central to the goals of the Telecommunications Act of 1996.¹⁷

Because the two services are functionally comparable, the Arbitrator believed treating those services differently would be anticompetitive and should not be allowed.

25 The Commission noted the Arbitrator’s concern that AT&T not be frustrated in its efforts to offer services functionally equivalent, from a customer prospective, to Qwest’s FX service. In this proceeding as well, the Commission must once again ensure that carriers desiring to compete with Qwest’s FX service are not frustrated in those efforts. Frustration of such efforts would have been anticompetitive in 2003 and remains so today. Therefore, as discussed in more detail below, the Commission should deny Staff’s reformulated proposal that all VNXX voice services be prohibited.

¹⁷ *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, Docket UT-033035, Order 4, Arbitrator’s Report, ¶ 36, n. 20 at 17, Dec. 1, 2003.

IV. VNXX POLICY CONSIDERATIONS

26 Policy considerations surrounding intercarrier compensation unquestionably are complicated. The FCC has described the complexity of current intercarrier compensation rules as follows:

These regulations treat different types of carriers and different types of services disparately, even though there may be no significant differences in the costs among carriers or services. The interconnection regime that applies in a particular case depends on such factors as: whether the interconnecting party is a local carrier, an interexchange carrier, a CMRS carrier or an enhanced service provider; and whether the service is classified as local or long-distance, interstate or intrastate, or basic or enhanced.¹⁸

Inter-carrier compensation for VNXX services is just one of many interrelated intercarrier compensation issues in need of resolution as the telecommunications marketplace continues to rapidly evolve in technology and scope. As a result, the situation is ripe for a comprehensive national solution to intercarrier compensation issues.

27 The FCC is well down the road in seeking that solution. Begun in 2001, its proceeding to seek a unified intercarrier compensation regime has already explored several proposals. The fact that the FCC's proceeding is already six years old, if anything, is testament to the difficulty and complexity of the undertaking.

28 TCG Seattle respectfully submits that the Commission, at this juncture, should let the FCC complete its efforts, rather than weighing into the morass of intercarrier compensation issues in a piecemeal fashion. If the Commission believes it is compelled to act now, it should pursue a course that is the least disruptive to consumers and competitively neutral. The Commission can achieve those policy goals by ruling that carriers may continue to use VNXX

¹⁸ *Unified Intercarrier Compensation NPRM*, ¶ 5.

arrangements and should exchange all VNXX traffic on a bill-and-keep basis until the FCC concludes its intercarrier compensation proceeding.

29 Washington consumers, particularly in rural areas, have come to rely on dial-up Internet service, and any major change made to that service as a result of this proceeding (e.g., prohibiting VNXX or making VNXX subject to access charges) could prevent many, if not all, of these customers from continuing to enjoy the Internet access they use today.¹⁹ Because of relationships created by CLECs and ISPs, VNXX traffic has evolved to provide dial-up Internet service for much of rural America.²⁰ More specifically, CLECs' provision of VNXX service has allowed ISPs to concentrate modem equipment in a centrally located manner, rather than distributed in every local calling area.²¹ ISPs have been able to pass the cost saving efficiencies from this centralization on to users of their dial-up service. The Commission's adoption of a bill-and-keep compensation formula for VNXX traffic should allow CLECs to continue offering service to ISPs that will preserve affordable Internet service for consumers.

30 Moreover, by allowing CLECs to use VNXX arrangements on a bill-and-keep basis, the Commission would be "promoting diversity in the supply of telecommunications services and products in telecommunications markets throughout this state" as directed by the Washington Legislature.²² Bill-and-keep compensation would balance the interests of CLECs and ILECs until the FCC can conclude its deliberations on a comprehensive intercarrier compensation scheme. As noted, Qwest and TCG Seattle have exchanged VNXX traffic for over three years

¹⁹ Exh. No. 541 T 4:24-5:1 (Neinast).

²⁰ Exh. No. 541 T 4:20-21 (Neinast).

²¹ Exh. No. 541 T 4:21-23 (Neinast).

²² RCW 80.36.300(5).

using bill-and-keep compensation without major disputes or disruptions to either party's operations.

31 Sound public policy supports continuing to allow CLECs to use VNXX arrangements to provide ISP-bound service and FX-like voice service. If the provision of these VNXX services is subject to bill-and-keep compensation, consumers should continue to have access to affordable dial-up Internet service and the interest of all carriers will be balanced.

V. **STAFF PROPOSAL**

32 In accord with TCG Seattle, Staff recommends that CLECs be allowed to use VNXX for the exchange of dial-up ISP-bound traffic, subject to bill-and-keep compensation, until the FCC completes its intercarrier compensation proceeding.²³ Staff articulates many of the same policy reasons to which TCG Seattle has alluded:

Staff understands that a prohibition of VNXX or requiring CLECs to pay Qwest originating access charges (instead of receiving terminating charges) could have serious consequences for the CLECs, their ISP customers and the ISP's end users. Staff also understands that Verizon and Qwest have a proposal before the commission to exchange VNXX traffic at a rate of zero -- that is, subject to bill-and-keep.²⁴

33 Unlike TCG Seattle, Staff advocates prohibiting all VNXX used for voice services. Staff bases its proposal, in part, on the Commission's order approving the Arbitrator's order in the Qwest/AT&T Arbitration. In doing so, Staff notes the Commission's reference to the Arbitrator's concern that AT&T's definition of local calling was "too sweeping in its potential effect" and "could have potentially unacceptable consequences in terms of intercarrier

²³ Exh. No. 203 T 20:9-13 (Williamson).

²⁴ Exh. No. 203 T 20:3-8 (Williamson).

compensation.”²⁵ Staff also refers to a New Hampshire PUC staff report to support Staff’s concerns that “there appear[] to be many questionable uses for VNXX numbers.”²⁶

34 To properly evaluate Staff’s concerns, the two sources Staff cites for those concerns must be put in context. While it is true that the Arbitrator in the Qwest/AT&T Arbitration voiced the concern identified by Staff, the Arbitrator was equally concerned that it would be “anticompetitive” to treat VNXX services that are functionally comparable to Qwest’s voice FX and local provisioning for ISP services differently for purposes of intercarrier compensation.²⁷ Again, as discussed above, the Arbitrator found AT&T’s VNXX services to be functionally equivalent to Qwest’s voice FX service and local provisioning for ISP service. Staff’s position fails to take this concern of the Arbitrator into account.

35 Staff’s reference to a New Hampshire report must also be taken in context. While the New Hampshire staff report may have identified some abuse of VNXX arrangements by CLECs in New Hampshire, New Hampshire does not prohibit all voice VNXX traffic. Indeed, New Hampshire allows what it calls “CLEC FX,” in which CLECs use VNXX numbering arrangements to provide FX-like service. The New Hampshire Commission found, as did the Arbitrator in the Qwest/AT&T Arbitration here in Washington, that “ILEC FX and CLEC FX are equivalent services even though they are provided in a different manner.”²⁸ The New Hampshire Commission went on to find that “the different methods of provisioning both local and FX services are necessary and reasonable and are consistent with the goal of the [Telecommunications Act] to bring about competition without requiring absolute replication of

²⁵ Exh. No. 203 T 4:13-16 (Williamson).

²⁶ Exh. No. 203 T 22:20-21(Williamson).

²⁷ *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, Docket UT-033035, Order 4, Arbitrator’s Report, ¶ 33 at 16 (Dec. 1, 2003).

²⁸ *In re Whether Certain Calls are Local*, DT 00-223/DT 00-054, Order 24,218, 88 N.H.P.U.C. 462, slip op. at 20 (Oct. 17, 2003).

the network.”²⁹ Thus, if anything, the New Hampshire experience counsels against Staff’s proposal to prohibit all VNXX voice traffic in Washington.

36 Even accepting Staff’s concern that CLECs might implement some forms of voice VNXX service that are abusive, its proposal to prohibit all voice VNXX service is overbroad. Indeed, Staff’s proposal would prohibit CLECs from providing FX-like service in competition with Qwest, a result the Arbitrator in the Qwest/AT&T Arbitration considered anticompetitive and which the Commission encouraged the parties to avoid. A better approach would be to allow VNXX for voice services and handle individual CLEC abuses, if any occur, through the existing complaint processes. If the Commission believes it must put some limits on VNXX arrangements for voice services, those limits should be narrowly tailored. At a minimum, CLECs should be allowed to use VNXX arrangements to provide voice services functionally equivalent to Qwest’s FX service.

VI. QWEST/MCI VERIZON ACCESS SETTLEMENT

37 On March 7, 2007, Qwest and Verizon Access filed a motion to approve a settlement agreement between the parties and dismiss Verizon Access from this proceeding.³⁰ The settlement agreement requires Qwest to forego its claim for originating access charges on voice and ISP-bound VNXX traffic and Verizon Access to forego its claim to terminating compensation on voice and ISP-bound VNXX traffic. In other words, the parties have agreed to exchange all VNXX traffic on a bill-and-keep basis during the term of the Agreement. Qwest and Verizon

²⁹ *Id.* at 21.

³⁰ Joint Motion to Approve Settlement Agreement and Dismiss MCImetro Access Transmission LLC with Prejudice (Mar. 7, 2007).

Access have represented to the Commission that the settlement agreement is in the public interest and should be approved.

A. Standards for Approval of Negotiated ICA.

38 The settlement agreement would result in a negotiated modification to the ICA between Qwest and Verizon access. Section 252(e)(2)(A) provides that a state commission may reject an ICA adopted by negotiation only if it finds that:

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.³¹

The Commission should apply this standard to consider the settlement agreement.

B. Terms and Conditions.

39 TCG Seattle generally supports negotiated interconnection agreements and settlements of interconnection disputes. Accordingly, TCG Seattle does not oppose the settlement agreement proposed by Qwest and Verizon Access. In fact, TCG Seattle believes the proposed settlement agreement's treatment of VNXX traffic and intercarrier compensation for that traffic is consistent with the manner in which VNXX traffic and intercarrier compensation for that traffic is treated under the current interconnection agreement between Qwest and TCG Seattle.

VII. CONCLUSION/RECOMMENDATIONS

40 For all of the reasons stated above, the Commission should refrain from rendering a long-term policy decision on this issue until the FCC has had an opportunity to conclude its

³¹ 47 U.S.C. §§ 252(e)(2)(A)(i), (ii).

intercarrier compensation proceeding. If the Commission believes it must act now, it should allow VNXX arrangements for both voice and ISP-bound services to continue, subject to bill-and-keep compensation. That interim resolution is balanced for Qwest and the CLECs and, most importantly, is fully consistent with the public interest in preserving affordable access by Washington consumers and businesses to dial-up Internet access and competitive voice FX services.

Respectfully submitted this 1st day of June, 2007.

By: 

Gregory L. Castle
Senior Counsel
AT&T Services, Inc.
525 Market Street, Rm. 2022
San Francisco, CA 94105
Telephone (415) 778-1487
Facsimile (415) 974-1999
Email: gregory.castle@att.com

David W. Wiley
Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone (206) 628-6600
Facsimile (206) 628-6611
Email: dwiley@williamskastner.com

Attorneys for TCG Seattle

Docket No. UT-063038
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached document(s) upon the persons and entities listed on the Service List below by depositing a copy of said document(s) in the United States mail, first class postage prepaid, addressed as shown on said Service List, and/or by electronic mail as indicated by the e-mail address shown below:

DATED at Seattle, WA, this 1st day of June, 2007.


Franny Drobny, Legal Assistant
Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380

VIA E-MAIL AND U.S. MAIL, FIRST CLASS POSTAGE PREPAID:

For Complainant Qwest Corporation:

Lisa A. Anderl
Adam L. Sherr
Qwest Corporation
1600 7th Avenue, Room 3206
Seattle, WA 98191
E-mail: lisa.anderl@qwest.com
E-mail: adam.sherr@qwest.com

For Respondent Level 3 Communications, LLC:

Greg Rogers
Gregg Strumberger
Regulatory Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
E-mail: greg.rogers@level3.com
E-mail: Gregg.strumberger@level3.com

Rogelio E. Peña
Peña & Associates, LLC
1919 14th Street, Suite 610
Boulder, CO 80302
E-mail: repena@boulderattys.com

VIA E-MAIL AND U.S. MAIL, FIRST CLASS POSTAGE PREPAID:

<p>For Respondents Pac-West Telecomm, Inc., Northwest Telephone Inc., Broadwing, and Global Crossing Local Services Inc.:</p> <p>Gregory J. Kopta Davis Wright Tremaine LLP 1501 Fourth Avenue, Suite 2600 Seattle, WA 98101 E-mail: gregkopta@dwt.com</p>	<p>For Respondent TCG Seattle:</p> <p>Gregory L. Castle Senior Counsel AT&T Services, Inc. 525 Market Street, Room 2022 San Francisco, CA 94105 E-mail: gregory.castle@att.com</p>
<p>For Respondent Electric Lightwave d/b/a Integra Telecom:</p> <p>Charles L. Best, VP Government Affairs Jay Nusbaum 1201 NE Lloyd Boulevard, Suite 500 Portland, OR 97232 E-mail: charles.best@integratelecom.com E-mail: jay.nusbaum@integratelecom.com</p>	<p>For Respondent Advanced Telecom, Inc. d/b/a Eschelon Telecom, Inc.:</p> <p>Dennis D. Ahlers Associate General Counsel Eschelon Telecom, Inc. 730 2nd Ave. South, Suite 900 Minneapolis, MN 55402 E-mail: ddahlers@eschelon.com</p>
<p>For Respondent Broadwing Communications, LLC:</p> <p>Tamara E. Finn Edward W. Kirsch Bingham McCutchen, LLP 2020 K Street, NW Washington, D.C. 20006 E-mail: tamar.finn@bingham.com E-mail: edward.kirsch@bingham.com</p>	<p>For Respondent MCI Metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services:</p> <p>Gregory M. Romano General Counsel - NW Region MCI Metro Access Services dba Verizon Access Transmission Services 1800 41st Street Everett, WA 98201 E-mail: gregory.m.romano@verizon.com</p>
<p>For Intervenor CenturyTel:</p> <p>Calvin K. Simshaw Associate General Counsel CenturyTel 805 Broadway Vancouver, WA 98660-3277 E-mail: calvin.simshaw@centurytel.com</p>	<p>For Intervenor Washington Independent Telephone Association:</p> <p>Richard A. Finnigan 2112 Black Lake Boulevard SW Olympia, WA 98504-0128 E-mail: rickfinn@localaccess.com</p>

VIA E-MAIL AND U.S. MAIL, FIRST CLASS POSTAGE PREPAID:

Courtesy Copy to Staff Commission:

Jonathan C. Thompson
Assistant Attorney General
Washington Utilities and Transportation
Commission
1400 S. Evergreen Park Drive SW
P. O. Box 40128
Olympia, WA 98504-0128
E-mail: jthomps@wutc.wa.gov

Courtesy Copy to:

Administrative Law Judge Theodora Mace
Washington Utilities and Transportation
Commission
1300 S. Evergreen Park Drive SW
P. O. Box 47250
Olympia, WA 98504-7250
Email: tmace@wutc.wa.gov

VIA E-MAIL ONLY:

For Complainant Qwest Corporation:

Mark S. Reynolds
E-mail: mark.reynolds3@qwest.com

For Respondent Pac-West Telecomm, Inc.:

Ethan Sprague
E-mail: esprague@pacwest.com

For Respondent Northwest Telephone Inc.:

Andrew Metcalfe
E-mail: ametcalfe@nti.us

For Respondent TCG Seattle:

Dan Foley
Email: dan.foley@att.com

**For Respondent Electric Lightwave, Inc. d/b/a
Integra Telecom:**

Dennis Robins
E-mail: dennis_robins@eli.net

**For Respondent Broadwing Communications,
LLC:**

Larry Strickling
Email: Larry.strickling@broadwing.com

**For Respondent Global Crossing Local
Services Inc.:**

Michael J. Shortley
Email: michael.shortley@globalcrossing.com