

EXHIBIT K

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

QWEST CORPORATION,

Complainant,

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
WORLD COM COMMUNICATIONS, INC.

Respondents.

Docket No. UT-

COMPLAINT OF QWEST
CORPORATION FOR AN ORDER
PROHIBITING VNXX

I. INTRODUCTION

1 Pursuant to RCW 80.04.110 and WAC 480-07-305, Qwest Corporation (“Qwest”) brings the following Complaint against Level 3 Communications LLC (“Level 3”); Pac-West Telecomm (“Pac-West), Northwest Telephone Inc. (“NTI”); TCG-Seattle (“TCG”); Electric Lightwave,

Inc. (“ELI”); Advanced TelCom Group, Inc. d/b/a Eschelon Telecom, Inc. (“Eschelon”); Focal Communications Corporation (“Focal”); Global Crossing Local Services Inc. (“Global”); and, MCI Worldcom Communications, Inc. (“MCI”) (collectively, “Respondents” or “CLECs”).¹

2 In support of its Complaint, Qwest alleges as follows: The names, addresses, and telephone numbers of the persons to whom communications should be addressed are:

Lisa A. Anderl
Adam L. Sherr
1600 – 7th Ave. Room 3206
Seattle, WA 98191
206-345-1574

3 Pursuant to WAC 480-07-370(1)(a)(ii)(B), Qwest states that the names and addresses of the respondents are set forth in Appendix A hereto.

II. PARTIES

4 Qwest is a telecommunications company as defined in RCW 80.04.010 and is an incumbent local exchange company (“ILEC”), as defined in 47 U.S.C. § 251(h). Qwest provides local exchange and other telecommunications services in the State of Washington.

5 Level 3 is registered and classified by the Commission as a competitive local exchange company (“CLEC”). Level 3 is authorized to provide switched and non-switched local exchange and long distance services in Washington.

6 Pac-West is registered and classified by the Commission as a CLEC. Pac-West is authorized to provide switched and non-switched local exchange and long distance services in Washington.

¹ Qwest is aware that mergers and acquisitions may have changed the entity names listed herein, e.g., Focal may now be “Broadwing”. However, Qwest has identified the Respondents herein by the names used in the interconnection agreements with Qwest. Qwest reserves the right to amend this complaint to correct the names of the corporate entities should the need arise.

7 NTI is registered and classified by the Commission as a CLEC. NTI is authorized to provide
switched and non-switched local exchange and long distance services in Washington.

8 Each of the other Respondent companies is also registered with the Commission as a CLEC
and is authorized to provide local and long distance services in Washington.

III. JURISDICTION

9 The Commission has jurisdiction over this Complaint and Respondents pursuant to RCW
80.01.040, RCW 80.04.110, and other statutes cited herein.

IV. SUMMARY OF COMPLAINT

10 On February 10, 2006, the Washington Utilities and Transportation Commission
("Commission") entered final orders in Docket Nos. UT-053036 and UT-053039, petitions by
Pac-West and Level 3 against Qwest for enforcement of the interconnection agreements
between the parties.² In those orders, the Commission dismissed Qwest's counterclaims,
stating that "Qwest's counterclaims address the use of VNXX arrangements generally, not the
specific issue of compensation for VNXX ISP-bound traffic. Should Qwest wish to pursue the
broader issue of VNXX generally, it may file its own complaint about specific carriers and
their behavior regarding intercarrier compensation methods."³

11 In the *Level 3* order, the Commission stated that it had previously addressed and approved
compensation for VNXX arrangements, but has not considered the propriety of these
arrangements.⁴

² *Level 3 Communications LLC v. Qwest Corporation*, Docket No. UT-053039 ("*Level 3*"). *Pac-West v. Qwest Corporation*, Docket No. UT-053036 ("*Pac-West*").

³ *Pac-West* at ¶ 43 and *Level 3* at ¶ 40.

⁴ *Level 3* at ¶ 71.

12 In this complaint, Qwest contends that VNXX numbering arrangements for routing traffic are unlawful and contrary to the public interest and public policy of the state. Qwest asks the Commission for a ruling that carriers engaged in or using such numbering arrangements, including Respondents, are in violation of state law, Qwest's tariffs, and prior Commission orders. Qwest asks the Commission to order that such arrangements are prohibited in the state of Washington, and that Respondents must cease and desist such arrangements immediately, or pay appropriate access charges for the traffic being routed via VNXX.

V. FACTS

13 There are two general traffic types relevant to this complaint – Interexchange (toll) traffic, and local traffic. Local traffic is telecommunications traffic that originates and terminates in a geographically-defined area that is approved by the Commission. These areas are called “local calling areas” or “extended area service” (“EAS”) areas. See e.g., WAC 480-120-021. These geographically-defined areas allow for an end-user customer's unlimited local calling within these areas for a Commission-approved flat rate.

14 Interexchange (toll) traffic is traffic that originates and terminates between end users located in *different* local calling areas/EAS areas – it is also commonly referred to as “long distance” traffic.

15 The type of traffic, either local or toll, is determined by the geographic boundaries of the originating and terminating local calling areas of the calling and called parties. Based on these physical end points, the telecommunications industry has developed a method of determining the general location (i.e., local calling area/EAS area) for intercarrier compensation purposes based on the assignment of telephone numbers of the originating and terminating end users. Telephone numbers are displayed in the NPA/NXX format (in which the NPA is the area code and the NXX is the central office code). The central office code is then followed by a four-

digit line number which together constitute the telephone number of the end-user's telephone line. Based on this format, which is founded on the geographic location of the calling and called parties, and the known geographic local calling area/EAS boundaries, a call is determined to be either local or long distance.

16 A Virtual NXX, or "VNXX" number is a telephone number that is assigned to a customer utilizing an NPA/NXX that is associated with a different local calling area than the one in which the customer is physically located. The term "virtual" is used to describe the fact that calls to the VNXX number are not local calls by definition, but rather the dialing pattern makes them appear to be local. This is because each VNXX number will route the seemingly local calls to the often distant location of the CLEC's customer. These calls, but for the assignment of VNXX numbering, would be rated and routed as long distance calls, because they are calls between customers geographically located in separate local calling areas. Respondents do not pay Qwest the access charges that would otherwise be due on an inbound 1+8XX service (or other applicable access charges), nor do they purchase dedicated access transport to route these calls. This allows Respondents and their customers to require Qwest to transport an unlimited volume of interexchange calls, without compensation to Qwest, from multiple local calling areas to distant local calling areas.

17 Respondents use local numbers (NXX's) to allow end users to make what appears to them to be local calls. Through the use of a routing number, the calls are routed not to destinations in the same local calling area, but rather over Qwest's inter-exchange facilities to destinations in distant local calling areas. Respondents use Qwest's local trunk groups to transport VNXX calls that may terminate to locations across the country. On the other hand non-VNXX long distance traffic terminates to locations across the country where the appropriate access charges and end user toll charges would apply. Although both VNXX and toll traffic may originate in

Washington and terminate to locations across the country, only VNXX avoids carrier access charges and end user toll.

18 Respondents rely on the ubiquitous network of Qwest (and other ILECs in the state) to provision long distance calling to their customers at no additional charge, and use this arrangement to their advantage. Because Qwest has built this network, and has incurred significant costs associated with its construction and maintenance, Qwest is unable to replicate a VNXX-like service offering to its customers that would be competitive with VNXX. In other words, there is no “other” carrier’s network that Qwest can use to obtain “free” transport as the CLECs do with VNXX. Respondents do not compensate Qwest for routing and transporting those long distance calls. Respondents’ use of VNXX is not a legitimate joint provisioning of FX or FX-type service because neither the Respondent nor its customer provisions dedicated transport or compensates Qwest at the appropriate rates for Qwest's provision of a portion of the dedicated transport necessary to link the Respondent's customer to the distant local calling area. Nor do Respondents compensate Qwest for the use of Qwest’s local network as an FX customer does.

19 Qwest’s service offering that permits a customer to have a local presence in a distant local calling area is called foreign exchange (FX) service. A description of the service may be found in Qwest’s Exchange and Network Services Tariffs and Price Lists, Section 5.1.4. A Qwest customer in Seattle purchasing FX service may obtain a local number in Olympia, or elsewhere in the Seattle LATA. The customer purchasing FX service is required to pay for a presence in the distant local office where Qwest provisions the service and also to pay for the dedicated transport that Qwest provisions between the distant central office and the customer’s premise. Qwest cannot offer this service for free, and Qwest requires customers who desire this service to pay for the facilities used and costs incurred to provide it.

20 VNXX has widespread and significant implications for the entire access compensation system established in Washington and elsewhere. Respondents want to allow their customers to avoid paying toll charges for long distance calls and are, in essence, providing an inbound 1+8XX-type service, for which they should be financially responsible. Further, some of the Respondents also seek to force ILECs like Qwest to pay them for routing and transporting toll calls for Respondents (through the intercarrier compensation provisions in their interconnection agreements). This has had severe financial consequences on Qwest, and erodes the financial support that toll and/or originating switched access charges provide to local rates, and distorts the compensation scheme (including universal service funding) underlying the public switched telephone network.

VI. CAUSES OF ACTION

A. Violation of Qwest's Access Tariffs

21 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

22 Respondents may lawfully offer their end users the ability to receive calls from throughout the state of Washington such that the calling party would not be charged a toll charge. In order to do so, Respondents could purchase one of two services from Qwest's access tariff. Respondents could purchase the "800 Data Base Access Service" from Qwest's Access Service Tariff, WN-U 44, Section 6.2.6, or they could purchase an FX product with Feature Group A access, under Section 6.2.1. Either service would enable the Respondents' end users to receive calls from throughout the state without the calling party experiencing a toll charge – in the same way that VNXX does today, but with lawful and proper compensation paid to Qwest for the use of its ubiquitous network. Failure to purchase the appropriate services out of the access tariff places Respondents in violation of Qwest's tariffs, state laws, and Commission rules.

B. Violation of Prescribed Exchange Areas

23 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

24 Pursuant to RCW 80.36.230, the Commission is granted the power to prescribe exchange area boundaries and/or territorial boundaries for telecommunications companies. The Commission has exercised that authority by promulgating rules, including WAC 480-120-021. The Commission defines "**Exchange**" as a *geographic* area established by a company for telecommunications service within that area. "**Interexchange**" means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another.

"**Interexchange company**" means a company, or division thereof, that provides long distance (toll) service.

25 The Commission has accepted Qwest's tariffs, which define its exchanges as geographic areas. See, Section 5 of Qwest's Exchange and Network Services tariff. Qwest has also defined local calling based on geographic areas, and the location of the customer's premises. Some or all of the Respondents have concurred in Qwest's local calling areas. However, to the extent that they allow and enable VNXX calling without payment of appropriate compensation for interexchange calls, Respondents are in violation of prescribed exchange areas.

C. Violation of RCW 80.36.080 Rates, services, and facilities.

26 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

27 RCW 80.36.080 provides, in pertinent part:

All rates, tolls, contracts and charges, rules and regulations of telecommunications companies, for messages, conversations, services rendered and equipment and facilities supplied, whether such message, conversation or service to be performed be over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable and sufficient,

28 Respondents' use of VNXX numbering and routing without charging their end users for that service constitutes a violation of 80.36.080, which requires rates to be fair, just, and reasonable. Respondents' customers receive the benefit of access to a state-wide toll network, without contribution to the costs of maintaining and supporting that network.

D. Violation of State Law, RCW 80.36.140 Rates and services fixed by commission, when.

29 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

30 RCW 80.36.140 provides, in pertinent part:

Whenever the commission shall find, after such hearing that the rules, regulations or practices of any telecommunications company are unjust or unreasonable, or that the equipment, facilities or service of any telecommunications company is inadequate, inefficient, improper or insufficient, the commission shall determine the just, reasonable, proper, adequate and efficient rules, regulations, practices, equipment, facilities and service to be thereafter installed, observed and used, and fix the same by order or rule as provided in this title.

31 The Respondents' use of VNXX is a practice that is unjust and unreasonable, in that it requires Qwest to incur costs that should be compensated by the Respondents, who may then more appropriately obtain compensation from their end users.

E. Violation of RCW 80.36.160, Physical connections may be ordered, routing prescribed, and joint rates established

32 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

33 RCW 80.36.160 provides:

In order to provide toll telephone service where no such service is available, or to promote the most expeditious handling or most direct routing of toll messages and conversations, *or to prevent arbitrary or unreasonable practices* which may result in the failure to utilize the toll facilities of all telecommunications companies equitably and effectively, the commission may, on its own motion, or upon complaint, notwithstanding any contract or arrangement between telecommunications companies, investigate, ascertain and, after hearing,

by order (1) require the construction and maintenance of suitable connections between telephone lines for the transfer of messages and conversations at a common point or points and, if the companies affected fail to agree on the proportion of the cost thereof to be borne by each such company, prescribe said proportion of cost to be borne by each; and/or (2) prescribe the routing of toll messages and conversations over such connections and the practices and regulations to be followed with respect to such routing; and/or (3) establish reasonable joint rates or charges by or over said lines and connections and just, reasonable and equitable divisions thereof as between the telecommunications companies participating therein.

34 By implementing and promoting VNXX services with their end users, Respondents are engaging in unreasonable practices, resulting in a failure to utilize the toll networks of all telecommunications carriers equitably and effectively, in violation of RCW 80.36.160.

F. Violation of RCW 80.36.170 Unreasonable Disadvantage Prohibited

35 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

36 RCW 80.36.170 provides in relevant part:

No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation, or locality, or subject any particular person, corporation, or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

37 By providing facilities and services to their customers at rates and on terms and conditions that avoid proper payment of access charges and/or toll rates, Respondents are subjecting Qwest and other ILECs in the state to undue prejudice or disadvantage in violation of RCW 80.36.170. To the extent that the VNXX services are not provided under contract, Respondents are also giving an undue preference to their customers, and the customers of other local exchange carriers such as Qwest.

G. VNXX is Contrary to the Public Interest in the State of Washington

38 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

39 The Commission has previously articulated that while the state has a policy to promote diversity in the supply of telecommunications services, that policy falls short of a duty to underwrite or subsidize developing competition. The Commission explained that such a subsidy would be the result of a ruling that allowed carriers to escape its obligation of making an appropriate contribution toward the fixed and variable costs associated with accessing the public switched telecommunications network.⁵

40 As with toll bridgers, Respondents offer no innovation in service or technology, merely a subterfuge under which it avoids paying access charges. VNXX is contrary to the public interest for the same reasons that EAS bridging is contrary to the public interest, and should be prohibited for the same reasons that EAS bridging is prohibited.

VII. RELIEF REQUESTED

41 Qwest respectfully requests the Commission enter an order:

42 (1) holding that VNXX violates state law and Qwest's tariff and is otherwise contrary to the public interest,

43 (2) prohibiting Respondents from using VNXX numbering by assigning NPA/NXXs in local calling areas other than the local calling area where the customer is physically located or has a physical presence,

⁵ See, Commission orders in *In the Matter of Determining the Proper Classification of: U.S. MetroLink Corp., Second Supplemental Order p. 7*, Docket No. U-88-2370-J (1989), and *In the Matter of Determining the Proper Classification of United & Informed Citizen Advocate Network, Fourth Supplemental Order, Commission Decision and Final Cease and Desist Order*, Docket No. UT-971515 (1999) ("U & I CAN").

- 44 (3) requiring that Respondents cease their misuse of such telephone numbering resources,
- 45 (4) requiring that Respondents properly assign telephone numbers based on the actual physical
location of its customer, and
- 46 (5) requiring that Respondents comply with Qwest's access tariffs if they wish to enable toll-
free long distance calling for their own customers and the customers of other local exchange
companies.
- 47 Qwest also requests that the Commission grant such other and further relief that the
Commission deems appropriate.

DATED this 22nd day of May, 2006.

QWEST CORPORATION

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EXHIBIT L

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: _____ : Chapter 11
: Case No. 07 - 10562 (BLS)
PAC-WEST TELECOMM, INC., *et al.*,¹ :
: (Jointly Administered)
Debtors and Debtors in Possession. :
_____ : Related to Docket No. _____

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
UNDER 11 U.S.C. § 1129(a) AND (b) AND FED. R. BANKR. P. 3020
CONFIRMING THE FINAL MODIFIED SECOND AMENDED JOINT PLAN
OF REORGANIZATION OF PAC-WEST TELECOMM, INC. AND ITS
DEBTOR AFFILIATES (WITH TECHNICAL AMENDMENTS)**

This matter is before the Court for entry of an order confirming the *Final Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates (With Technical Amendments)* [Docket No. 706] (together with all exhibits and schedules thereto and the Plan Documents filed with the Court, the "Plan"), dated November 19, 2007, filed by Pac-West Telecomm, Inc. and the other above-captioned debtors and debtors in possession (collectively, the "Debtors"). On September 6, 2007, the Court approved the *Disclosure Statement Accompanying the Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates* (the "Disclosure Statement").² Based upon this Court's review of (i) the *Debtors' Brief in Support of Confirmation of the Final Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates* [Docket No. 712] (the "Confirmation Brief"), filed on November 16, 2007; (ii) the *Affidavit of Kurtzman Carson Consultants LLC Certifying Ballots Accepting and Rejecting the*

¹ The Debtors are the following entities: Pac-West Telecomm, Inc., PWT of New York, Inc., PWT Services, Inc., Pac-West Telecomm of Virginia, Inc., Installnet, Inc., and U.S. Net Solutions, Inc.

² Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Plan or the Disclosure Statement.

Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates [Docket No. 645] (the "Voting Affidavit") with a "Ballot Tabulation Report" attached thereto as Exhibit A , filed on October 24, 2007; (iii) the *Declaration of Michael Katzenstein in Support of Confirmation of the Final Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates* [Docket No. 714] (the "Katzenstein Declaration"), filed on November 16, 2007; (iv) the Cure Amount Stipulations and the Adequate Assurance Agreements (each as defined herein); (v) certain documents comprising the Plan Documents filed by the Debtors and by the Committee on September 28, 2007 and November 16, 2007; (vi) the *Statement of the Official Committee of Unsecured Creditors in Support of Confirmation of the Final Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates* [Docket No. 717] (the "Committee Statement"), filed by the Official Committee of Unsecured Creditors (the "Committee") on November 16, 2007, and the statements of the Committee made in support of the Plan; (vii) the *Debtors' Omnibus Response to Objections Filed in Response to the Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates* [Docket No. 618], filed on October 18, 2007; (viii) all of the evidence proffered or adduced at, objections filed in connection with, and arguments of counsel made at, the Confirmation Hearing (as defined below); and (ix) the entire record of these Cases; and after due deliberation thereon and good cause appearing therefore, this Court hereby makes and issues the following Findings of Fact, Conclusions of Law and Order:³

THE COURT FINDS AND CONCLUDES:

³ This Confirmation Order constitutes this Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable by Bankruptcy Rules 7052 and 9014. Any and all findings of fact shall constitute findings of fact even if they are stated as conclusions of law, and any and all conclusions of law shall constitute conclusions of law even if they are stated as findings of fact.

interests in and to the Collateral, subject only, where applicable, to the liens and security interests specified or permitted under the Exit Financing Agreements, the Plan, and this Confirmation Order. On the Effective Date, all of the liens and security interests to be created under, or in connection with, the Exit Financing Agreements shall be deemed created and shall be valid and perfected without any requirement of filing or recording of financing statements, mortgages or other evidence of such liens and security and without any approvals or consents from governmental entities or any other persons and regardless of whether or not there are any errors, deficiencies or omissions in any property descriptions attached to any filings and no further act shall be required for the perfection of such liens and security interests.

HH. **The Class 4 Liquidating Trust.** Entry into the Class 4 Liquidating Trust is in the best interests of the Reorganized Debtors and their Creditors, and the Class 4 Liquidating Trust and the Class 4 Liquidating Trustee shall be vested with the rights and duties set forth in Article XVII of the Plan and the Class 4 Liquidating Trust Agreement.

II. **Approval of Settlements and Compromises.** Pursuant to Bankruptcy Rule 9019 and any applicable State law, and as consideration for the distributions and other benefits provided under the Plan, all settlements and compromises of Claims, causes of action, and objections to Claims that are embodied in the Plan, constitute a good faith compromise and settlement of any Claims, causes of action, and objections to Claims, which compromises and settlements are hereby approved as fair, equitable, reasonable, and appropriate in light of the relevant facts and circumstances underlying such compromise and settlement, and are in the best interests of the Debtors and their Estates and Creditors.

JJ. **Releases and Discharges.** The releases and discharges of Claims and causes of action described in Article XII of the Plan and this Confirmation Order constitute good faith

compromises and settlements of the matters covered thereby and are consensual. Such compromises and settlements are made in exchange for adequate consideration and are in the best interest of Holders of Claims, are fair, necessary, equitable, and reasonable, and are integral elements of the resolution of the Cases in accordance with the Plan. Each of the discharge, release, indemnification and exculpation provisions set forth in the Plan and this Confirmation Order is: (i) within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), 1334(b) and 1334(d); (ii) an essential means of implementing the Plan pursuant to section 1123(a)(6) of the Bankruptcy Code; (iii) an integral element of the transactions incorporated into the Plan; (iv) conferring material benefit on, and is in the best interests of, the Debtors, their estates and their creditors; (v) important to the overall objectives of the Plan to finally resolve all Claims among or against the parties-in-interest in the Cases with respect to the Debtors; and (vi) consistent with sections 105, 1123, 1129 and other applicable provisions of the Bankruptcy Code.

KK. Satisfaction of Conditions to Confirmation. Each of the conditions precedent to the entry of this Confirmation Order, as set forth in Article XIII of the Plan has been satisfied or waived in accordance with the Plan, or will be satisfied by entry of this Confirmation Order.

LL. Likelihood of Satisfaction of Conditions Precedent to Consummation. Based on the evidence proffered or adduced at, or prior to, or in declarations filed in connection with the Confirmation Hearing, including the Katzenstein Declaration, and all other related pleadings, exhibits and other relevant documents, each of the conditions precedent to the Effective Date, as set forth in Article XIII of the Plan, is reasonably likely to be satisfied.

MM. Tranche A Earn Out Note and the Tranche B Earn Out Note. The Tranche A Earn Out Note and the Tranche B Earn Out Note (the "Earn Out Notes") have been negotiated in good faith and are essential elements of the Plan and the issuance of the Earn Out Notes in

execute and to deliver the Plan Documents, the Merrill Lynch Note, and any other agreements, documents and instruments contemplated by the Plan or the Plan Documents in the name and on behalf of Reorganized Debtors.

PP. Authorization of Exit Financing Facility. The Reorganized Debtors and the Exit Lender are authorized to execute the Exit Financing Agreements, including the Exit Loan Agreement and the New Senior Secured Note, together with all other agreements, documents, and instruments executed and/or delivered in connection therewith or related thereto and to perform their obligations under the Exit Loan Agreement without further approval of the board of directors of the Debtors or any other Person. The Reorganized Debtors are hereby authorized to grant to the lender under the Exit Financing Agreements valid, binding and enforceable and perfected security interests in and liens upon all Collateral (as such term is defined in the Exit Financing Agreements) to secure all of the obligations under or in connection with the Exit Financing Agreements in accordance with the terms thereof.

QQ. Preservation of Rights of Action. It is in the best interests of Creditors that all Rights of Action, including the Avoidance Rights of Action and the VeriSign Rights of Action, are to be retained by the Reorganized Debtors or the Class 4 Liquidating Trust as provided for in Article X of the Plan.

RR. The Committee. The Committee has fully acquitted its fiduciary duty to all general unsecured creditors.

SS. Retention of Jurisdiction. This Court may retain jurisdiction over the matters set forth in Article XIV of the Plan.

THE COURT HEREBY ORDERS:

1. Confirmation of the Plan. The Plan, substantially in the form as amended through the date hereof, and each of its provisions are confirmed in each and every respect

pursuant to section 1129 of the Bankruptcy Code. The terms of the Plan, including all exhibits thereto and the Plan Documents, the Cure Amount Stipulations, and the Adequate Assurance Agreement are incorporated by reference into, and are an integral part of, this Confirmation Order. The terms of the Plan, including all exhibits thereto and the Plan Documents, and all other relevant and necessary documents, shall be effective and binding as of the Effective Date of the Plan. Notwithstanding the foregoing, if there is any direct conflict between the terms of the Plan or and the terms of this Confirmation Order, the terms of this Confirmation Order shall control. The Plan and this Confirmation Order shall supersede any orders of this Court issued prior to the Effective Date that are inconsistent herewith.

2. **Objections.** All objections and responses to and statements and comments regarding the Plan, to the extent not already withdrawn, waived, or settled, and all reservation of rights included therein, shall be, and hereby are, overruled.

3. **Plan Modifications.** All modifications or amendments to the Plan since the solicitation, as embodied in the form of the Plan filed November 19, 2007, or otherwise filed with the Court or disclosed in open court at or prior to the Confirmation Hearing (to the extent not withdrawn), are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3016.

4. **Plan Classification Controlling.** The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of the distributions to be made thereunder. The classifications set forth on the Ballots and Master Ballots tendered to or returned by the Debtors' Creditors in connection with voting on the Plan: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims

amended, and applicable state and local laws requiring registration of securities. The interests of such Holders in distributions from the Class 4 Liquidating Trust shall be exempt from registration under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 because: (i) the beneficial interests in the Class 4 Liquidating Trust will not be represented by certificates; (ii) the Class 4 Liquidating Trust exists for the sole purpose of liquidating and distributing its assets; (iii) the Class 4 Liquidating Trust shall only exist for the period of time necessary to liquidate and distribute its assets; (iv) the Class 4 Liquidating Trust will issue annual unaudited financial statements to Holders of Allowed Class 4 Unsecured Claims; (v) the Bankruptcy Court shall have continuing jurisdiction over all matters related to the Class 4 Liquidating Trust; and (vi) the interests in the Class 4 Liquidating Trust will not be transferable, except with respect to a transfer by will or under the laws of descent and distribution, as set forth in the Class 4 Liquidating Trust Agreement.

12. Immediate Effectiveness; Successors and Assigns. Notwithstanding Bankruptcy Rules 3020(e), 6004(g), 7062, 8001, 8002 or otherwise, immediately upon the entry of this Confirmation Order, the terms of the Plan and this Confirmation Order shall be, and hereby are, immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, the Class 4 Liquidating Trustee, the Class 4 Liquidating Trust, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are Impaired under the Plan or whether the Holders of such Claims or Interests accepted, were deemed to have accepted, rejected or were deemed to have rejected the Plan), all Persons that are party to or subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan or herein, each Person acquiring property under the Plan, and any and all non-Debtor parties to executory contracts and unexpired leases with the Debtors and the

respective heirs, executors, administrators, successors or assigns, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, or guardians, if any, of any of the foregoing.

13. **Limited Substantive Consolidation.** The limited substantive consolidation of the Cases as set forth in Section 7.4 of the Plan and in ¶ CC hereof is approved in its entirety solely for the purposes of voting on the Plan, confirmation thereof and distributions in effectuation thereof.

14. **Continued Corporate Existence; Vesting of Assets in the Reorganized Debtors.** On and after the Effective Date, Reorganized Pac-West, Reorganized PW Virginia, Reorganized PWT of New York, Inc., Reorganized PWT Services, Inc., Reorganized Installnet, Inc., and Reorganized U.S. Net Solutions, Inc., shall remain in existence, and shall retain their assets on the terms and conditions of the Plan and this Confirmation Order, including the retention of assets as set forth in Paragraph 22 of this Confirmation Order.

15. **Cancellation of Existing Securities.** On the Effective Date, except to the extent otherwise provided in the Plan, the Existing Securities shall be cancelled and the obligations of the Debtors thereunder or in any way related thereto shall be discharged.

16. **Cancellation of the Prepetition Notes.** On the Effective Date, except to the extent otherwise provided in the Plan, the Prepetition Notes shall be cancelled and the Prepetition Notes Indentures shall be deemed to be cancelled, provided, however, that the Prepetition Notes Indentures shall continue in effect to the extent necessary to allow the respective Prepetition Notes Trustees to (i) receive and make distributions pursuant to the Plan, or to otherwise act as trustee, paying agent, or registrar; (ii) exercise their respective charging liens against any such distributions and rights relating to payment of fees, expenses, and indemnifiable obligations solely from property or cash distributed under the Plan to such

Prosecution Advance, (d) the right to certain Net Proceeds of the VeriSign Rights of Action as set forth in the Plan; and (e) the right to receive the Guaranteed Class 4 Payment. Such transfers are exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax and shall be free and clear of any Liens, Claims, interests, and encumbrances, and no other entity, including the Debtors or Reorganized Debtors, shall have any interest, legal, beneficial, or otherwise, in the Class 4 Liquidating Trust or the Class 4 Liquidating Trust Assets upon their assignment and transfer to the Class 4 Liquidating Trust (other than as expressly provided in the Plan or in the Class 4 Liquidating Trust Agreement). The Class 4 Liquidating Trustee is hereby authorized, on behalf of the Debtors and Reorganized Debtors and their Estates, but subject to Section 10.1.1 of the Plan, to pursue all Avoidance Rights of Action that are not waived or released pursuant to the Plan.

28. **Discharge, Releases, Exculpation, and Indemnification Obligations.** The discharge of the Debtors and any of their assets or properties provided in Section 11.1 of the Plan, the releases set forth in Section 12.1 of the Plan, and the exculpation and limitation of liability provisions set forth in Section 12.3 of the Plan, and the indemnification obligations set forth in Section 12.4 of the Plan, are deemed incorporated in this Confirmation Order as if set forth in full herein and are hereby approved in their entirety. The rights afforded under the Plan and the Confirmation Order and the treatment of Claims and Interests thereunder shall be in exchange for, and in complete satisfaction, discharge, and release of, all Claims and satisfaction or termination of all Interests, including any interest accrued on Claims from and after the Petition Date. Except as otherwise expressly provided in the Plan or this Confirmation Order, upon the occurrence of the Effective Date, the Debtors shall be discharged, effective immediately, from any Claim and any "debt" (as that term is defined in section 101(12) of the Bankruptcy Code),

and the Debtors' liability in respect thereof shall be extinguished completely, whether reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown, that arose from any agreement of the Debtors entered into or obligation of the Debtors incurred before the Confirmation Date, or from any conduct of the Debtors prior to the Confirmation Date, or that otherwise arose before the Confirmation Date, including, without limitation, all interest accrued and expenses incurred, if any, on any such debts, whether such interest accrued or such expenses were incurred before or after the Petition Date, and including, without limitation, any liability of a kind specified in Bankruptcy Code section 502(g), 502(h) and 502(i), whether or not a proof of claim was filed or is deemed filed under Bankruptcy Code section 501, such Claim is allowed under Bankruptcy Code section 502 or the Person holding such Claim has accepted the Plan. The discharge granted hereunder shall void any judgment obtained against the Debtors or Reorganized Debtors at any time, to the extent that such judgment relates to a discharged Claim.

29. **Injunctions and Stays.** Except as otherwise specifically provided in the Plan or this Confirmation Order and except as may be necessary to enforce or remedy a breach of the Plan and the Plan Documents, from and after the Effective Date, all Persons are permanently enjoined from, and restrained against, commencing or continuing in any court any suit, action, or other proceeding, or otherwise asserting any claim or interest, seeking to hold (a) Reorganized Debtors, (b) the property of Reorganized Debtors, (c) the Class 4 Liquidating Trust, (d) the Class 4 Liquidating Trustee, (e) the property of the Class 4 Liquidating Trust, including, without limitation, the Class 4 Liquidating Trust Assets, or (f) any of the Releasees, liable for any claim, obligation, right, interest, debt or liability that has been discharged or released pursuant to

Sections 11.1 or 12.1 of the Plan. The satisfaction, release, and discharge granted pursuant to the Plan and this Confirmation Order shall also act as an injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or cause of action satisfied, released, or discharged under the Plan and this Confirmation Order to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 thereof. Subject to the discharge granted under Bankruptcy Code sections 524 and 1141, the injunction described herein shall not preclude police, federal tax, or regulatory agencies from fulfilling their statutory duties to the extent permitted under section 362(b) of the Bankruptcy Code. Notwithstanding any provision of this Order, all rights of recoupment or setoff held by Qwest Corporation or Qwest Communications Corporation shall be governed by that certain *Stipulation by and among Qwest Corporation, Qwest Communications Corporations and the Debtors and Order (I) Granting Relief from the Automatic Stay to Pursue Prepetition Litigation Pending in Arizona, Washington, and Colorado, and (II) Preserving Rights of Setoff and Recoupment* entered on October 11, 2007 [Docket No. 598].

30. **The Automatic Stay.** The stay in effect in the Cases pursuant to sections 105 or 362(a) of the Bankruptcy Code shall continue to be in effect until the Effective Date, and at that time shall be dissolved and of no further force or effect, subject to the injunctions set forth in Paragraph 29 hereof and/or sections 524 and 1141 of the Bankruptcy Code; provided, however, that nothing herein shall bar the filing of financing documents (including uniform commercial code financing statements, security agreements, leases, mortgages, trust agreements, bills of sale, and applications for vessel registration) or the taking of such other actions as are necessary to

45. **Retention of Jurisdiction.** Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and sections 157 and 1334 of title 28 of the United States Code, notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain (a) exclusive jurisdiction after the Effective Date over all matters arising out of or related to the Cases, the Plan, this Confirmation Order, or any related agreements and documents including, without limitation, the Plan Documents; and (b) jurisdiction over Rights of Action after the Effective Date, as legally permissible, on the terms set forth in Article XIV of the Plan.

46. **Payment of Statutory Fees.** All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid on the earlier of when due or the Effective Date, or as soon thereafter as practicable, but prior to the closing of the Cases, with respect to any such fees payable after the Effective Date.

47. **Final Order.** This Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

Dated: Wilmington, Delaware
November 19, 2007


THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT M

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	Case No. 07 - 10562 (BLS)
PAC-WEST TELECOMM, INC., <i>et al.</i> , ¹	:	
	:	(Jointly Administered)
Debtors and Debtors in Possession.	:	

**FINAL MODIFIED SECOND AMENDED JOINT PLAN OF REORGANIZATION
OF PAC-WEST TELECOMM, INC. AND ITS DEBTOR AFFILIATES
(WITH TECHNICAL AMENDMENTS)**

JENNER & BLOCK LLP

Michael S. Terrien (Ill. Bar No. 6211556)
Anthony C. Porcelli (Ill. Bar No. 6225868)
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- and -

SAUL EWING LLP

Norman L. Pernick (No. 2290)
Jeremy W. Ryan (No. 4057)
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222 Delaware Avenue, Suite 1200
Wilmington, DE 19801-1611
Telephone: (302) 421-6800
Facsimile: (302) 421-5865

Dated: November 19, 2007

¹ The Debtors are the following entities: Pac-West Telecomm, Inc., PWT of New York, Inc., PWT Services, Inc., Pac-West Telecomm of Virginia, Inc., Installnet, Inc., and U.S. Net Solutions, Inc.

expenses of Professional Persons must be filed and served within twenty (20) calendar days of service of the relevant fee application.

10.4 Treatment of Disputed Claims.

10.4.1 No Distribution Pending Allowance. If any portion of a Claim is a Disputed Claim, no payment or distribution provided for under the Plan shall be made on account of the portion of such Claim that is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.

10.4.2 Distribution After Allowance. On the next Distribution Date following the date on which a Disputed Claim becomes an Allowed Claim, the Distribution Agent shall distribute to the Person holding such Claim any Cash or other property that would have been distributable to such Person if such Claim had been an Allowed Claim on the Effective Date.

10.4.3 Reserves for Disputed Claims. In the event that an Unsecured Claim is a Disputed Claim, the Distribution Agent(s) shall establish reserves in an amount equal to the amount that would have been distributed to the Holder of the Unsecured Claim based on the face value of such Unsecured Claim had its Disputed Claim been deemed an Allowed Claim on the Effective Date. If the Disputed Unsecured Claim subsequently becomes an Allowed Claim, in part or in full, the Holder of such Unsecured Claim shall be entitled to recover under this Plan that Holder's Pro Rata share of the amount reserved on account of such Unsecured Claim (but only to the extent of the Allowed Amount of such Disputed Unsecured Claim).

ARTICLE XI

EFFECTS OF PLAN CONFIRMATION

11.1 Discharge. The rights afforded under this Plan and the Confirmation Order and the treatment of Claims and Interests thereunder shall be in exchange for, and in complete satisfaction, discharge, and release of, all Claims and satisfaction or termination of all Interests, including any interest accrued on Claims from and after the Petition Date. Except as otherwise expressly provided in the Plan or the Confirmation Order, upon the occurrence of the Effective Date, the Debtors shall be discharged, effective immediately, from any Claim and any "debt" (as that term is defined in section 101(12) of the Bankruptcy Code), and the Debtors' liability in respect thereof shall be extinguished completely, whether reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown, that arose from any agreement of the Debtors entered into or obligation of the Debtors incurred before the Confirmation Date, or from any conduct of the Debtors prior to the Confirmation Date, or that otherwise arose before the Confirmation Date, including, without limitation, all interest accrued and expenses incurred, if any, on any such debts, whether such interest accrued or such expenses were incurred before or after the Petition Date, and including, without limitation, any liability of a kind specified in Bankruptcy Code section 502(g), 502(h) and 502(i), whether or not a proof of claim was filed or is deemed filed under Bankruptcy Code section 501, such Claim is allowed under Bankruptcy Code section 502 or the Person holding such Claim has accepted the Plan. The discharge granted under this section 11.1 shall void any judgment obtained against the

Debtors or Reorganized Debtors at any time, to the extent that such judgment relates to a discharged Claim.

11.2 **Revesting.** Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, without any further action, Reorganized Debtors will be vested with all of the property of the Debtors' Estates free and clear of all Claims, Liens and Interests, and may operate their businesses and may use, acquire, or dispose of their assets free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court; *provided, however,* that such property of the Debtors' Estates shall be subject to the Liens granted pursuant to the New Senior Secured Note and any Liens retained on account of Class 3 Secured Claims. Except as otherwise expressly provided in the Plan, all Rights of Action are hereby preserved, retained for enforcement solely and exclusively by and at the discretion of the Reorganized Debtors.

11.3 **Preservation of All Rights of Action.** Except as otherwise expressly provided herein or in any other Final Order, the Debtors on behalf of themselves and the Reorganized Debtors and, as provided in section 10.1.1 of the Plan, the Class 4 Liquidating Trustee exclusively reserve all rights to commence and pursue, as appropriate, any and all Rights of Action, whether arising prior to or after the Petition Date, in any court or other tribunal, including, without limitation, in an adversary proceeding filed in the Cases. While the Debtors have attempted to identify in the Disclosure Statement the Rights of Action that may be pursued, the failure to list therein any potential or existing Right of Action generally or specifically is not intended to limit the rights of the Debtors, the Reorganized Debtors, or the Class 4 Liquidating Trustee to pursue any such action.

Unless a Right of Action against any Person is expressly waived, relinquished, released, compromised, or settled as provided or identified in the Plan or any Final Order, the Debtors on behalf of themselves and Reorganized Debtors and, as provided in section 10.1.1 of the Plan, the Class 4 Liquidating Trustee expressly and exclusively reserve all Rights of Action for later adjudication and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches shall apply to such Rights of Action upon or after the confirmation or consummation of the Plan. In addition, except as otherwise provided herein, the Debtors on behalf of themselves and Reorganized Debtors expressly and exclusively reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors are defendants or interested parties against any Person.

ARTICLE XII

RELEASES, INJUNCTIONS AND EXCULPATION

12.1 **Release of Releasees by Debtors.** Except as otherwise provided in the Plan or the Confirmation Order, from and after the Effective Date, each of (i) the present directors, officers, and employees, agents, attorneys, accountants, or advisors or other professionals of the Debtors or Reorganized Debtors (including, without limitation, CXO and its directors, officers, members, employees, agents and contractors, and any Professional Person retained by the Debtors pursuant to a Final Order of the Bankruptcy Court, regardless of whether such

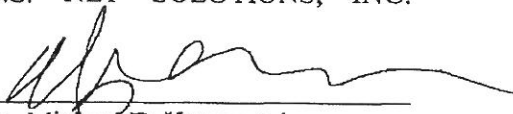
Professional Person still continues to provide services to the Debtors), solely in such capacities, (ii) the Lender and its affiliates, (iii) the Committee and its members (in such capacity), (iv) the Class 4 Liquidating Trustee and the Class 4 Liquidating Trust, (v) the Prepetition Notes Trustees (in such capacities), (vi) the respective advisors, attorneys, accountants, and other professionals, and the successors and assigns, of the parties set forth in items (ii) through (v) in section 12.1 of the Plan (solely in such capacities) and (vii) any Person claimed to be liable derivatively through any of the foregoing parties (collectively, the "Releasees"), shall be released by the Debtors, their respective subsidiaries, and any Person claiming by, through or under any of them (but, as to any such Person, only to the extent that Person claims through them), from any and all claims, obligations, suits, judgments, damages, rights, causes of action, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that any Debtor or any of their respective subsidiaries is entitled to assert in its own right or on behalf of the Holder of any Claim or Interest or other Person, based in whole or in part upon any act or omission, transaction, agreement, event, or other occurrence taking place on or prior to the Effective Date. Notwithstanding the foregoing, the Releasees shall not be released from any claims, obligations, suits, judgments, damages, rights, causes of action, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, arising under executory contracts assumed under the Plan or acts or omissions which are the result of fraud, gross negligence, willful misconduct, or willful violation of the law.

12.2 Injunctions and Stays. Unless otherwise provided in the Plan or the Confirmation Order, all injunctions and stays provided for in the Cases pursuant to Bankruptcy Code sections 105 and 362 or otherwise in effect on the Confirmation Date, shall remain in full force and effect until the Effective Date. From and after the Effective Date, except as otherwise provided in the Plan or the Confirmation Order, all Persons are permanently enjoined from, and restrained against, commencing or continuing in any court any suit, action, or other proceeding, or otherwise asserting any claim or interest, seeking to hold (a) Reorganized Debtors, (b) the property of Reorganized Debtors, (c) the Class 4 Liquidating Trust, (d) the Class 4 Liquidating Trustee, or (e) the property of the Class 4 Liquidating Trust, including, without limitation, the Class 4 Liquidating Trust Assets, liable for any claim, obligation, right, interest, debt or liability that has been discharged or released pursuant to sections 11.1 or 12.1 of the Plan. From and after the Effective Date, except as otherwise provided in the Plan or the Confirmation Order, all Persons are permanently enjoined from, and restrained against, commencing or continuing in any court any suit, action, or other proceeding, or otherwise asserting any claim or interest, seeking to hold any of the Releasees liable for any claim, obligation, right, interest, debt or liability that has been released pursuant to section 12.1 of the Plan.

The satisfaction, release, and discharge granted pursuant to the Plan shall also act as an injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or cause of action satisfied, released, or discharged under the Plan to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 thereof. Subject to the discharge granted under Bankruptcy Code sections 524 and 1141, the injunction described herein shall not preclude police, federal tax, or regulatory agencies from fulfilling their statutory duties to the extent permitted under section 362(b) of the Bankruptcy Code.

Dated: November 19, 2007

PAC-WEST TELECOMM, INC., PWT OF
NEW YORK, INC., PWT SERVICES,
INC., PAC-WEST TELECOMM OF
VIRGINIA, INC., INSTALLNET, INC.,
AND, U.S. NET SOLUTIONS, INC.

By: 
Name: Michael E. Katzenstein
Title: Chief Restructuring Officer