

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

QWEST CORPORATION,  
Complainant

v.

LEVEL 3 COMMUNICATIONS, LLC; PAC-WEST  
TELECOM, INC.; NORTHWEST TELEPHONE  
INC.; TCG-SEATTLE; ELECTRIC LIGHTWAVE,  
INC.; ADVANCED TELECOM GROUP, INC.  
D/B/A ESCHELON TELECOM, INC.; FOCAL  
COMMUNICATIONS CORPORATION; GLOBAL  
CROSSING LOCAL SERVICES INC; AND MCI  
WORLDCOM COMMUNICATIONS, INC.  
Respondents.

Docket No. UT-063038

REPLY BRIEF OF  
BROADWING  
COMMUNICATIONS, LLC

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**I. INTRODUCTION**

1. Broadwing Communications, LLC (“Broadwing”), by undersigned counsel, files this Reply Brief for the purpose of addressing Broadwing’s counterclaim against Qwest herein at Section VII.A. In all other respects, Broadwing supports those positions set forth by Level 3 Communications, LLC (“Level 3”) in its Initial and Reply Briefs in this proceeding.

**II. “VNXX” LEGAL ISSUES**

2. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3’s Initial and Reply Briefs in this proceeding.

**A. COCAG and Other Industry Guidelines**

3. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3’s Initial and Reply Briefs in this proceeding.

**1. Extent to Which Guidelines are Binding on the Commission**

4. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**2. Industry Guidelines and Geographic Issues in Connection with Numbers and Number Assignments**

5. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**3. Exceptions/Industry Practices**

6. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**B. Washington State Statutes, Rules, Orders, Tariffs**

7. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**C. Interconnection Agreements**

8. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**D. FCC/Federal Court/Other State Commission Decisions**

9. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**1. The Telecommunications Act**

10. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**2. FCC Orders**

11. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**a. *ISP Remand Order***

12. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**b. *Core Forbearance Order***

13. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**c. *Other FCC Orders***

14. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**3. *Federal Court Decisions***

15. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**4. *VoIP Preemption/ESP Exemption***

16. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**5. *Other State Commission Decisions***

17. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**III. *VNXX RELATIONSHIP TO OTHER SERVICES***

18. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**A. *Foreign Exchange Service***

19. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**B. 800 Service**

20. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**C. Market Expansion Line/Remote Call Forwarding Services**

21. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**D. One Flex Service**

22. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**E. Other Services**

23. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**IV. VNXX POLICY CONSIDERATIONS**

**A. Cost Issues**

24. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**B. Impact on Access Regime/Impact on Competition**

25. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**C. Consumer Impact**

26. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.



**D. Impact on Independent ILECs**

27. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**E. Other Public Policy Considerations**

28. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**V. STAFF PROPOSAL**

29. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**VI. QWEST/MCI VERIZON ACCESS SETTLEMENT**

30. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**A. Standards for Approval of Negotiated ICA**

31. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**B. Terms and Conditions**

32. Broadwing supports the positions of Level 3 concerning these issues, as set forth in Level 3's Initial and Reply Briefs in this proceeding.

**VII. CARRIER-SPECIFIC ISSUES**

**A. Level 3/Broadwing Counterclaim**

33. Qwest's brief on the counter-claims is a model of misdirection and irrelevant arguments that, despite the considerable efforts of Broadwing and other parties to propound testimony and respond to data requests, tells the Commission no more than Qwest has already provided in pre-filed testimony.

34. Qwest argues that Broadwing has not met its burden of proof, but this is a disingenuous claim. For example, Qwest complains that Broadwing has not provided any information as to how it has pro-rated its interest claim among what Qwest believes are subparts of the dispute,<sup>1</sup> but Broadwing is not obligated to breakdown the interest charges according to Qwest's unilateral categorization of the disputed amounts, nor did Qwest request such a breakdown. Broadwing has introduced through pre-filed testimony the breakdown of its claims against Qwest.<sup>2</sup> Instead of directly addressing those facts and figures, Qwest opts to generically assert that Broadwing has failed to satisfy its burden. The fact is that Broadwing has met its burden of proof in all respects, having both produced undisputed evidence of its claims and rebutted Qwest's unsubstantiated defenses.

35. Qwest asserts that the traffic is not compensable under the parties' ICA because some portion of the traffic is either not local or is FX-like. In disputing that traffic is local, Qwest merely reasserts the "belief" contained in its direct testimony<sup>3</sup> and has made no effort to address, let alone impeach, the Reply and Hearing Testimony of Ms. McNeil that established that this "belief" is without basis.<sup>4</sup> Qwest has also referenced the same arguments in regard to disputed access charges,<sup>5</sup> again accompanied by a recitation of its pre-filed testimony, with no rebuttal of Broadwing's testimony.

36. It is noteworthy that this is not the first time that Qwest has engaged in speculation rather than offering factual arguments. In Docket No. UT-053036, Qwest also disputed whether local traffic was transit traffic, and also failed to produce any evidence to rebut

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<sup>1</sup> Qwest's Opening Brief, ¶ 127.

<sup>2</sup> See, e.g., Rebuttal Testimony of Rhonda J. Evans McNeil, at 3-5, Exhibit 305.

<sup>3</sup> Qwest's Opening Brief, ¶¶ 131, 135.

<sup>4</sup> McNeil, TR. 704:7-705:5; Blackmon, TR. 752:14-754:9.

<sup>5</sup> Qwest's Opening Brief, ¶¶ 153.

Pac-West's claims that it was not. Finding that Pac-West had met its burden and Qwest had not, the Commission agreed that "it was incumbent upon Qwest to produce evidence to prove that any subset of the traffic Qwest delivered to Pac-West should be excluded from the traffic for which Pac-West is entitled to compensation."<sup>6</sup> Finding that "Qwest had several opportunities to provide information about disputed amounts due to transit traffic, but did not," the Commission held that Qwest owed the full amount of Pac-West's claims.<sup>7</sup>

37. Likewise, Broadwing, has presented testimony explaining how it rates calls and ensures that traffic originated by third parties is not included in its bills to Qwest.<sup>8</sup> Qwest did nothing to refute this evidence in either cross or its witness testimony, and has perpetuated this lassitude in its Brief. Therefore, the Commission must find that Broadwing is entitled to compensation for terminating this traffic.

38. In defense of Broadwing's claim for non-capped ISP-bound revenues, Qwest does everything it can to divert the Commission's attention from the plain language of the agreement that Qwest's lawyers' drafted and its senior management signed. It faults Broadwing for offering no other explanation for its position that the non-capped charges are due, as if the plain language of the agreement is not enough.<sup>9</sup> It attempts to construe Broadwing's delayed billing as a waiver of its right to payment.<sup>10</sup> It offers yet another lengthy dissertation on the *ISP Remand Order*, rehashing FCC policy and citing to arguments (or lack thereof) that are irrelevant to the

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<sup>6</sup> *Pac-West Telecomm, Inc. v. Qwest Corporation*, WUTC Docket No. UT-053036, Order No. 05, Final Order Affirming and Clarifying Recommended Decision, ¶ 37 (Feb 10, 2006).

<sup>7</sup> *Id.* ¶ 38.

<sup>8</sup> See McNeil, TR. 701:14-702:13, 704:7-17, and 707:12-21.

<sup>9</sup> Qwest's Opening Brief, ¶ 137.

<sup>10</sup> Qwest's Opening Brief, ¶ 139.

ICA at hand.<sup>11</sup> Despite Qwest's blanket statements, these issues were addressed in Broadwing's Initial Brief.<sup>12</sup>

39. Similarly irrelevant are Qwest's arguments disclaiming its obligations to pay non-capped ISP-bound charges after the effective date of the *Core Order* but prior to the post-*Core* amendment of the ICA. It does not matter when the *Core Order* became effective between the parties, since the caps expired on December 31, 2003. Qwest has lost this argument before the Commission once before. In Docket No. UT-053036, the Commission accepted the Arbitrator's decision that Qwest should pay for all traffic it sent to Pac-West after January 1, 2004, and that uncapped compensation was due regardless of whether the ICA had been amended to reflect the *Core Order*.<sup>13</sup> Although this Order was reversed and remanded by the federal district court on appeal, it was not on this particular issue, which Qwest never appealed beyond the Arbitrator's Recommended Decision.<sup>14</sup>

40. Finally, Qwest disputes charges that are ostensibly "tainted" by VNXX.<sup>15</sup> As referenced in previous sections, charges for FX-like traffic are perfectly legitimate as local traffic. Even if the Commission finds that they are not, this would have little effect on Qwest's claims because it refuses to identify the amount of traffic at issue. As Broadwing explained in its Opening Brief, Qwest's testimony regarding the amount of FX-like traffic it has terminated was only guesswork.<sup>16</sup> Since then, Qwest has done nothing to improve the precision of this claim. In its brief, it persists in wanly asserting that "*some* traffic is VNXX traffic as opposed to local

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<sup>11</sup> Qwest's Opening Brief, ¶ 139-146.

<sup>12</sup> See, e.g., Broadwing's Initial Brief, 8-10.

<sup>13</sup> *Pac-West Telecomm, Inc. v. Qwest Corporation*, WUTC Docket No. UT-053036, Order No. 05, Final Order Affirming and Clarifying Recommended Decision at (Feb 10, 2006), accepting Recommended Decision in Order No. 3, ¶ 39 (Aug. 23, 2005).

<sup>14</sup> *Pac-West Telecomm, Inc. v. Qwest Corporation*, WUTC Docket No. UT-053036, Order No. 3, Recommended Decision, ¶ 9 (Aug. 23, 2005).

<sup>15</sup> Qwest's Opening Brief, ¶ 148.

<sup>16</sup> Broadwing's Initial Brief, ¶ 36.

