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TELECOM

ELECTRIC LIGHTWAVE.
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June 28, 2007

Ms. Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr SW
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Reply Brief of Electric Ligntwave, LLC in UT-063038

Dear Ms. Washburn,

Enclosed for filing are an original and 12 copies of the Reply Brief of Electric Lightwave, LLC in UT-063038. If you have questions regarding this filing, please don't hesitate to contact me.

Very truly yours,

Charles L. Best
VP Government Affairs
WSB No. 31943

cc: All Parties of Record

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, LLC; 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 ELECTRIC LIGHTWAVE, LLC

June 28, 2007

I INTRODUCTION

In their Initial Briefs, Qwest and Staff decline to address the legitimate issues raised by ELI in its testimony and at the hearing. Instead, they continue to lump together all CLECs and the services they provide. By doing this, Qwest and Staff imply facts that are false as they apply to ELI.

The record is clear that ELI's Virtual Foreign Exchange/VNXX service is functionally equivalent to Qwest's FX service. There is no requirement that ELI provide this comparable service exactly like Qwest does, nor is any additional cost imposed on Qwest by ELI in the way it provides the service. Qwest has provided no evidence that ELI's provision of VNXX is illegal or even contrary to the public interest.

II VNXX LEGAL ISSUES

A COCAG and Other Industry Guidelines

Predictably, Qwest and Staff interpreted Section 2.14 of the COCAG as providing an exception for the FX service that the incumbent local exchange companies (ILECs) provide, but no others. As ELI pointed out in its Initial Brief, the language of Section 2.14 makes clear that "exceptions" exist which would exclude the notion that ILEC FX is the only possible exception. For the COCAG to provide the greatest latitude in the provision of telecommunications service, the guidelines would need to be flexible to accommodate new technologies. The position taken by Qwest and Staff leaves no room for a company like ELI that uses its own facilities to compete with Qwest for FX service. Other than the COCAG, there are no industry guidelines that either condone or outlaw VNXX.

1 Extent to Which Guidelines are Binding on the Commission

While Qwest suggests that the COCAG should be viewed as more than just "guidelines", at least Staff acknowledges that the Commission has the authority to recognize an exception to the general rules of geographic number assignment principles. Where ELI and Staff really seem to disagree is around the idea that all VNXX is the same.

Throughout both Staff's Initial Brief and Qwest's, they lump all VNXX providers together and deem all variants as illegal. However, the record in this proceeding actually shows there are differences in the VNXX service provided by the CLECs. As we know from the discussion of BR-1, ELI's provision of VNXX is a practical equivalent to Qwest's FX service. While it is true that ELI does not have a switch in every local calling area, one of the fundamental principals of the Telecom Act was not to require competitors to overbuild the incumbent network. Staff recognized this problem and no longer takes the position that ELI must have a switch in every local calling area. Perhaps the more important question is why would ELI be required to have a switch in every local calling area? What public purpose would be served by such a requirement? Obviously, from Qwest's perspective such a requirement would give it a monopoly in the FX market since ELI and other facilities based CLECs would be unable to compete. However, such an environment would deny consumers a choice of providers and the benefits of new technologies.

Although Qwest and Staff remain wedded to the requirement that ELI must also use a "private line", the fact is that both Qwest and ELI use a form of common transport to send this traffic from the local calling area where the called number resides to the foreign exchange where the FX/VNXX customer resides. (TR 175-176). Consequently, ELI's use of its common transport facility to carry this traffic is just as much a private line as the facilities Qwest uses for its transport.

2 Industry Guidelines and Geographic Issues in Connection with numbers and number assignments

After reviewing the Initial Briefs, ELI remains convinced the only pertinent industry Guideline or Practice is the COCAG. When the COCAG is read in context, the exceptions in Section 2.14 remain at the center of this controversy and the primary issue the Commission must decide. However, Staff begins ¶39 of its brief by defining VNXX as it was defined in a Global NAPs decision:

> Virtual NXX, or VNXX, refers to telephone number assigned to a customer in a local calling area different from the one where the customer is physically located in circumstance where the telephone company assigning the number is not using facilities of its own to transport the call from the calling area associated with the telephone number to the area where the customer is actually located. Global NAPs, Inc. v. Verizon New England, Inc. 454 F.3d 91, fn.3 (2006).

The Court's decision makes it clear that ELI's Virtual Foreign Exchange was not considered VNXX in Vermont. Given Staff's acceptance of this definition, ELI should be allowed to offer Virtual FX/VNXX in Washington since ELI does "use facilities of its own" to transport the call from the originating local calling area to the foreign exchange.

In Paragraph 41 of its Brief, Staff also mentions that state commissions have the authority to order NANPA to reclaim numbers from VNXX providers. While this is certainly true, it is important to examine the circumstance where this has actually occurred. To ELI's knowledge, this has only happened with Brooks Fiber. In that situation, Brooks had 54 NXXs in rate centers where they had no end user customers.

The NXXs were dedicated entirely to customers who were not located in any of the assigned rate centers. This is true VNXX and is why the NANPA sought to reclaim the codes. ELI has no knowledge of NANPA reclaiming codes where most numbers are properly assigned to end user customers simply because a few are used for FX.

Not surprisingly, the New Hampshire PUC was correct when they adopted Staff's position in *Investigation as to Whether Certain Calls are Local, Dockets DT 00-223 and DT 00-054* :

> ... the fact that some portion of the numbers within the NXX are terminated in the same local calling area from which they originate removes the virtual attribute of that NXX ... because some customers are drawing dial tone from the CLEC switch and are located in the rate center. Where the CLEC decides to terminate the call once the ILEC hands it off affects the transport costs of the CLEC, not the ILEC. Order No. 24,218 at page 16.

3 Exceptions/Industry Practices

Here again, a review of the Initial Briefs reveals the only real issue for the Commission to decide is whether Section 2.14 of the COCAG allows for a functionally equivalent service to compete with FX. This Commission has allowed ELI to use one switch to provide local service to multiple local calling areas. If Qwest's FX service is a local service, how can ELI's VNXX service be interexchange when it uses ELI approved local architecture and is provided over ELI facilities in both the local and foreign calling areas?

B Washington State Statutes, Rules, Orders, Tariffs

The Initial Briefs provide very little unanticipated argument so ELI will not recite the content of its Initial Brief again here. No party has pointed to a single statute, rule, Order or tariff that has been violated by ELI's VNXX service. ELI makes no attempt to "disguise" its VNXX traffic anymore than Qwest does with its FX traffic. ELI filed a Price List for its "Virtual FX Service" years ago and has been exchanging this traffic with Qwest without objection until only recently. As stated earlier, Qwest's allegation that ELI does not charge its end users for its VNXX product is false. See Qwest's Opening Brief, Paragraph 23, lines 23-24.

Qwest's attempt to suggest that ELI's VNXX service is the same as "toll bridging" is ridiculous on its face. As Qwest acknowledges, toll bridging takes advantage of overlapping EAS areas whereby calls that would normally be toll are "bridged" across the toll boundaries using some form of facility. Of course, ELI's VNXX service does not bridge EAS areas. Even, if the WUTC were to so hold, Qwest's FX service is provided in substantially the same manner as ELI's VNXX so this would create new issues for the WUTC to resolve.

Qwest's tariffs do not promote Qwest's case either. While ELI does not dispute what Qwest's tariffs say, it does dispute the notion that Qwest's FX service is somehow local while ELI's functionally equivalent VNXX service is not. Qwest's suggestion the decision in *Verizon California v.* Peevey, 462 F.3d 1142 (9th Cir. 2006) is distinguishable since Verizon's tariffs in California are different that Qwest's Washington tariffs, completely misses the point. <u>The industry as a whole identifies and bills local and toll traffic based upon NPA/NXX.</u> Indeed, Qwest bills its own customers based on NPA/NXX. Qwest's attempt to distinguish itself from Verizon California by the language of its tariff does not change the fact that Qwest uses NPA/NXX just like Verizon does. Qwest's misguided attempt to use an imbalance of traffic to identify VNXX traffic was not only inaccurate, but underscores the fact that

Qwest as well as Verizon cannot accurately identify and bill traffic without using NPA/NXX.

As Staff correctly points out, the Commission has been wrestling with the VNXX issue for some time. ELI agrees the Commission has the ability to direct a result that would benefit both consumers and the industry. Banning all forms of VNXX will do neither. Adopting an approach similar to the New Hampshire Commission will do both.

C Interconnection Agreements

While Qwest argues in its Brief that its interconnection agreements (ICAs) with ELI and other CLECs support Qwest's case that VNXX is illegal and inappropriate, Qwest provides no reference to language that would ban VNXX but allow FX. There is no such language.

Qwest also cites the AT&T Arbitration in UT-033035 as Commission support for its position. While it is true that the Commission did not accept AT&T's proposed language, the Commission also expressed concern about Qwest's language. Qwest does not mention the Commission's concern about competitors being able to offer a functionally equivalent service to FX or the fear that Qwest would use it to frustrate CLECs. (Order No. 5 at Paragraph 14 & 15). If the Commission adopts Qwest's position requiring CLECs to have a switch in every local calling area plus use a dedicated private line between calling areas, it will be impossible for CLECs to provide a functionally equivalent service without overbuilding Qwest's legacy network architecture. Order No. 5 clearly expresses the Commission's desire to have competition in the FX market.

Staff also takes the position that ELI's ICA somehow prohibits ELI's VNXX service. However, a review of the quoted language shows staff has missed the point. How can ELI's provision of VNXX as shown in BR-1 violate Qwest's tariffs if Qwest is able to offer its functionally equivalent FX service yet claim FX is a local service? There is no logical or meaningful distinction and the Commission should reject Qwest's attempt to define FX in a manner that excludes legitimate competitive offerings.

D FCC/Federal Court/Other State Commission Decisions

1 The Telecom Act

ELI has nothing new to add to what is contained in its Initial Brief.

2 FCC Orders

a ISP Remand Order

In Paragraph 62 of its Opening Brief, Qwest makes a number of allegations which are not true. For example, ELI does not use a Single Point of Presence or "SPOP" in Washington. (TR 767-771). ELI also denies it assigns telephone numbers to customers in other states. Qwest has provided no evidence to support these allegations against ELI.

In footnote 61 on Page 22 of its Brief, Qwest describes how a VNXX call between ELI and Qwest in Olympia would be handled. Qwest's example is also incorrect. As noted in Mr. Robins Testimony (421-T at Page 11) and BR-1, ELI is collocated in Qwest's Olympia office. Qwest only carries a call originated by one of its customers to the ELI collocation space in Qwest's Olympia Central Office. From there, ELI carries the call on its own facilities, not Qwest's. With an ELI call, Qwest is not forced to use its facilities to transport the call.

Finally, Qwest states:

> As the facts demonstrate in this case, many of the CLEC respondents assigned telephone numbers to ISPs that had no local connection whatsoever (physical or otherwise) with the calling party's LCA, thus resulting in VNXX traffic. Qwest Opening Brief, Paragraph 62, lines 12-14.

Qwest has provided no evidence to support this allegation as it applies to ELI.

b Core Forbearance Order

ELI has nothing new to add to what is contained in its Initial Brief.

c Other FCC Orders

ELI has nothing new to add to what is contained in its Initial Brief.

3 Federal Court Decisions

While it is true that the Federal District Court has held that the *ISP Remand Order* applied only to ISP bound traffic within a local calling area, the Court also made clear that the WUTC has the authority to interpret interconnection agreements as requiring the FCC Interim Rate Cap. *Qwest v. WUTC*, 2007 WL 1071956 at page 13.

The District Court stated:

> On remand, the WUTC is simply directed to reinterpret the *ISP Remand Order* as applied to the parties' interconnection agreements, and classify the instant VNXX calls, for compensation purposes, as within or outside a local calling area, to be determined by the assigned telephone numbers, the physical routing points of the calls, or any other chosen method within the WUTC's discretion. *Ibid.*

The court also noted:

> It may be true, for example, that the physical location of an ISP is a poor regulatory reference point when it comes to determining intercarrier compensation for this traffic.... Today's technology may render the traditional distinctions less meaningful or even obsolete, and it may also be true that the FCC's compensation regime has yet to fully catch-up with the technology. *Ibid.*

A fair summary of the Court's decision is that the Commission made the right decision for the wrong reason and the court has all but led the Commission to the same outcome. Qwest's argument that this decision has somehow changed the regulatory landscape flies in the face of what the court actually said.

4 VoIP Preemption/ESP Exemption

This issue exists largely because ELI and other CLECs pointed out that Qwest offers certain FX like services that look very much like VNXX. These services do not follow the same rules Qwest seeks to impose on CLECs. Qwest raises the preemption/exemption issue in an attempt to convince the Commission to disregard the comparison. However, ELI agrees with Staff that preemption and exemption issues do not need to be considered here.

5 Other State Commission Decisions

In its Brief, Qwest acknowledges that many of the 50 state commissions have gone a variety of directions with respect to VNXX. Many of those decisions banning VNXX arose out of circumstance where companies like Global Naps were providing VNXX service without even a physical presence in the state where the service was provided. In at least one case, the VNXX provider had no ICA and wanted compensation at eleven times the FCC $0.0007 rate. Under those circumstances, it is easy to understand why the various state commissions made VNXX as provided by Global NAPS illegal.

However, Qwest also points to neighboring Oregon as an example of a State that has banned VNXX arrangements. It is important to understand that Oregon bans <u>all foreign exchange like services</u>, including Qwest's FX. In other words, all providers are treated equally by the OPUC's rules.

Staff points to California as a state that used a "thoughtful approach." The California Commission allows VNXX and requires the payment of reciprocal compensation on VNXX traffic but also allows the ILEC to levy an "origination charge" on CLECs when the ILEC is required to transport the VNXX call beyond the local calling area. Although ELI has previously pointed to New Hampshire as its preferred model, ELI would also support the WUTC adopting an approach like California's. In both the New Hampshire and California plans, CLECs who have invested heavily in their own network are allowed to provide VNXX and collect reciprocal compensation when they have customers in the local calling area as well as facilities that are used to transport these calls between local calling areas. In other words, the ILEC has no more burden or cost from handling this type of CLEC VNXX traffic than it would when exchanging local traffic with the CLEC. Consequently, the exchange of reciprocal compensation remains appropriate.

III VNXX RELATIONSHIP TO OTHER SERVICES

A Foreign Exchange Service

Both Qwest and Staff continue to argue there is a meaningful difference between ELI's Virtual FX Service and Qwest's FX service. While Qwest's Brief dodges the issues ELI has raised in this proceeding by focusing on Pac-West and Level 3, Staff acknowledges that FX and VNXX are similar from a functional standpoint. However, Staff believes it would not be good policy to allow CLECs unlimited use of VNXX. See Staff Brief at Paragraph 79. When examining staff's policy concerns, it becomes clear that those concerns are largely directed at other CLECs.

First Staff argues that VNXX and FX are different from an engineering and cost recovery basis. Staff Brief, Paragraph 80. From an engineering standpoint, the differences are small. Staff has already agreed that CLECs should not have to place a switch in every local calling area. However, it does appear that Staff continues to believe that CLECs should be forced to use a private line as Qwest does.

BR-1 illustrates ELI's network for providing VNXX between Olympia and Seattle. The cross examination of Mr. Linse demonstrated that Qwest doesn't really use a dedicated private line, but rather a virtual one since the connection is actually converted to a time slot and uses Qwest's common transport from Olympia to Seattle. TR 175-176 Like Qwest, ELI also uses common transport over its own fiber between Olympia and Seattle. Also like Qwest, the ELI time slot is specific to the FX customer. It costs Qwest no more for one of its customers to originate a local call for delivery to an ELI customer in Olympia than it does for an ELI VNXX call bound for Seattle. Either way, it is carried on ELI's facilities from Olympia to Seattle. Consequently, it is difficult to understand Staff's concerns regarding engineering and Qwest's cost recovery as they apply to ELI.

Second, Staff goes on to explain its understanding of CLEC VNXX (including ELI's) as requiring Qwest to carry the VNXX call over its facilities to the CLEC at a single Point of Interconnection (POI) which Staff presumes is in the foreign exchange. This would saddle Qwest with the responsibility of transporting the call to the foreign exchange. Staff's Brief at Paragraph 81. However, Staff knows or should know this is not the case with ELI's network as demonstrated by BR-1. ELI is collocated with Qwest in virtually every local calling area ELI serves. In some cases as many as six collocations in a single local calling area. See Ex. 422. Qwest <u>does not</u> transport ELI traffic outside of the local calling areas without compensation or at increased cost to Qwest.

At Paragraph 83 of its Brief, Staff seemingly throws a bone to ELI by renewing its "triple transport" suggestion for CLECs that have invested millions of dollars in physical plant in the local calling areas. Under Staff's solution, ELI would purchase and place a channel bank in each local calling area. But even if ELI made the significant capital expenditure to locate a channel bank in each LCA, it wouldn't be possible for Qwest and other CLECs to route calls to each customer circuit without an LRN for each customer in each LCA. It is important to recall that, Qwest routes another carrier's traffic based on NPA/NXX. When Qwest determines the NXX belongs to ELI it will route the call to ELI's trunk group which will take the call to ELI's switch. However, since Staff seeks to require a customer specific private line from the originating LCA for each FX number even though ELI carries the traffic on its own fiber, there is currently no way to get Qwest or other CLEC traffic onto the ELI private line instead of the ELI trunk group. It might be possible to solve this inability to route to the private line using Local Routing Numbers, but it would consume a lot of numbering resources.

For example, it might be possible to assign each VNXX customer an LRN for each LCA where a CLEC has VNXX service. This would ensure all calls to the FX number get to the location in the LCA. However, it isn't clear to ELI how Qwest would get the call onto the customer specific private line. The Commission should also be concerned that each LRN takes 10,000 numbers out of the NPA and makes them rate center specific. Given that there are at least 10 CLECs in the state and there are 13 local calling areas in the greater Seattle metro area alone, such a use of LRNs would strand at least 1.3 million numbers if each CLEC had just one FX customer in each LCA. Given number resource scarcity, this does not seem a viable solution to the new problem created by requiring CLECs to use a private line. Placing CLEC switches in each LCA would also require LRNs for each carrier in each LCA. It is hard to imagine the Commission would find this extreme and technologically unnecessary drain on number resources in the public interest just to satisfy the definition of FX proposed by Qwest.

Staff's "triple transport" requirement provides a solution where none is needed. Under triple transport, a call would be routed as follows: Assuming a Qwest customer in Olympia places a call to an ELI VNXX customer in Seattle, the Qwest customer would dial an ELI Olympia number which Qwest would route to ELI trunks in Olympia and ELI would carry on its own fiber to Seattle, exactly as it is done today. When the call arrived in Seattle, ELI's switch would recognize the number as an Olympia VNXX number. At this point rather than route the call to ELI's customer, ELI's switch would send the call back to Olympia where it would then be connected to ELI's newly purchased channel bank in Olympia. At this point, according to Staff, it is permissible for ELI to finally route the call from Olympia to its ultimate destination in Seattle. In Staff's solution, the call makes three one-way trips between Olympia and Seattle. Today, this same call makes only the original trip between Olympia and Seattle.

In Paragraph 84 of its Brief, Staff explains that the reason for its "triple transport" requirement is that it isn't fair from a cost recovery standpoint, for Qwest to provide the equivalent of private line transport to the foreign exchange on behalf of the CLEC. Apparently Staff still doesn't understand that **ELI provides its own transport to the foreign exchange** and there is no additional cost to Qwest.

Staff's true motive to protect Qwest's revenues thereby decreasing any upward pressure on Qwest's rates is unmasked in Paragraph 85 and Section IV B of Staff's Brief. The problem with Staff's position is it will actually hurt consumers in the long run. If companies like ELI are shut out of the market based on universal service policies, competition will be eliminated and new technological innovations will be suppressed. Staff's "circle the wagons" approach will only cause customers to suffer with fewer choices, less efficiency and higher prices. Universal service objectives can be served without stifling competition and innovation.

B 800 service

ELI has nothing new to add to what is contained in its Initial Brief.

C Market Expansion Lines

Both Qwest and Staff miss the point with Market Expansion lines (MELs). Staff's description is technically true but it isn't complete and implies a CLEC is compensated for a call to a MEL line that is forwarded out of the LCA. This isn't necessarily true. Assume for example that a Qwest MEL customer chooses MCI as its intrastate LD provider.

Further assume the Qwest MEL customer has an Olympia number forwarded to a location in Seattle. If an ELI Olympia customer calls the Qwest MEL line the call will appear to be local and Qwest will charge ELI reciprocal compensation. Since the call is forwarded to Seattle Qwest will translate the call and hand it off to MCI. MCI will hand it back to Qwest in Seattle where Qwest will deliver the call. MCI will collect toll and pay Qwest originating and terminating access. On this call Qwest receives reciprocal compensation, originating access and terminating access. ELI pays reciprocal compensation even though the call terminates in Seattle. In this example ELI receives no compensation for the call.

D One Flex Service

Qwest's One Flex Service is nothing more than Qwest's brand of VNXX. Qwest attempts to distinguish One Flex from VNXX by claiming that it is an enhanced service and its customer has a point of presence in the local calling area. First, ELI questions whether One Flex is an enhanced service at all. If an ELI customer in Olympia calls a Qwest One Flex customer in Dallas, Texas, who is using a Qwest Olympia virtual number, the call starts out as a voice call using the Public Switched Network. Qwest claims the call is converted to Internet Protocol (IP) at some point, but the call remains a voice call even when it arrives in Dallas in IP format. What change to the content of the call has taken place? When the calling party says "hello" the called party hears "hello" in the recognizable voice of the calling party. It appears that only the transmission medium has changed.

Second, unlike QCC, ELI is not a customer of Qwest's, but rather a certified local exchange carrier. Staff and Qwest expect ELI to pick up traffic like Qwest's customer QCC does. However, ELI's customer isn't picking up traffic from Qwest; they are picking up traffic from ELI. Qwest's obligation is to hand off ELI traffic to ELI at our POI. It is then ELI's obligation to pass that traffic on to our customer.

IV VNXX POLICY CONSIDERATIONS

A Cost Issues

As ELI pointed out in its Initial Brief, because ELI's VNXX service uses ELI facilities between the local calling area and the foreign exchange, Qwest incurs no more cost than if it had originated a local call. BR-1 makes it clear that if a Qwest Olympia customer calls an ELI VNXX customer in Seattle, the Qwest customer dials a local Olympia number which (like all local calls dialed by a Qwest customer) is sent to the Qwest Olympia switch. The Qwest switch looks up the number and identifies the number as belonging to ELI. Qwest hands the call to ELI <u>in Olympia</u> and ELI has the responsibility for transporting the call to its customer in Seattle. If a Qwest Olympia customer made a call to an ELI customer located in Olympia, the call would be handled by Qwest in exactly the same way. There is no additional cost to Qwest and Qwest properly recovers its origination costs for the loop and switching through its Olympia local service rates. After all, it is the Qwest customer who originated the call, not the ELI customer. ELI's VNXX call is no more a toll call than a Qwest FX, OneFlex, Wholesale Dial or MEL call is.

In its Opening Brief, Staff identifies two main cost issues. First, does VNXX deprive ILECs of access charges? Second, whether VNXX causes Qwest to provide transport for an FX like service without compensation. Staff's Opening Brief at Paragraph 91. Although Staff continues to lump all CLECs and their networks together, the record is clear that the second cost issue is not a concern for ELI calls since ELI provides its own transport.

With respect to Staff's first issue, it begs a fundamental question. Is ELI's VNXX more akin to a toll service which is interexchange by nature and subject to access charges or a local service like FX? Based on the record before the Commission, it should be abundantly clear that the manner in which ELI provides its Virtual Foreign Exchange service is nearly identical to Qwest's FX. As BR-1 illustrates, ELI's service is provided in a functionally equivalent manner using the same facilities ELI uses to provide local service. Since the Commission has approved ELI's method of providing local service (which is also different than the way Qwest provides local service), there is no logical reason why ELI cannot provide a functional equivalent to FX using its local network configuration. ELI's provision of VNXX is a competitive offering that gives consumers real choice in technology and providers. If the Commission prohibits ELI's provision of this service, ELI's customers will be forced off their ELI service and back to Qwest since ILECs will be the only ones able to provide the service. In some cases the entire customer account will be lost because they prefer to have all services with a single provider.

B Impact on Access Regime/Impact on Competition

ELI's provision of VNXX service has little impact on the traditional access regime. Historically, access was not paid on ISP bound traffic because it has only recently come into existence. (See Dr. Blackmon's Testimony Exh. 401 T). It would be a windfall to Qwest and other ILECs to require access payments on this type of traffic. Furthermore, FX service has always been treated as a local service and not subject to access. As ELI pointed out above, its VNXX service is provided over the same ELI facilities used to provide local service.

Finally, since ELI's Virtual Foreign Exchange service is offered at a premium price, there will always be limited demand for the service. Qwest has provided no evidence to the contrary. As the Commission is no doubt aware, if Qwest is successful in getting VNXX banned in Washington, only the ILECs will be able to offer FX as the expense of replicating the incumbent network is effectively a barrier to entry.

C Consumer Impact

As noted above, if ELI is forced to exit the market for FX type services, ELI's current customers will be forced to terminate their service with ELI and will have to buy FX from the ILEC in their service territory. This will eliminate competition and innovation in favor of a monopoly that uses decade's old technology and pricing that reflects the lack of competition.

D Impact on Independent ILECs

WITA did not raise any issues that ELI has not already addressed.

E Other Public Policy Considerations

As ELI stated in its Initial Brief, the Commission should be wary of any proposal that requires the entire industry to mimic the incumbents' networks. If Qwest can force competitors to replicate Qwest's network in order to provide a competitive alternative to FX, there is nothing to prevent this same argument from being used to prevent the provision of a variety of competitive services by CLECs. ELI is allowed to provide a variety of services in a manner that is different than the way incumbents provide them. The Commission should be cognizant of the potential precedent it will set in this case if it issues a decision in favor of Qwest.

V Staff Proposal

Staff's proposal would essentially ban VNXX as a competitive alternative to voice FX and would rewrite federal rules with respect to ISP bound traffic. The Commission should allow companies who use their own facilities to compete with Qwest and other incumbents for both voice and ISP traffic. With respect to ISP bound traffic, Staff's proposal ignores the fact that Staff has taken the position that VNXX traffic is illegal under Washington law. While ELI disputes that its VNXX traffic violates any statute, rule or Order in Washington, it is interesting that Staff can determine something that is illegal can be made legal as long as the right financial balance is struck.

VNXX as provided by ELI is not illegal nor should it be. It doesn't matter whether the traffic is voice or data; both are permissible under Washington law. To the extent ELI provides VNXX over its own network for ISP bound traffic, it is entitled to receive the FCC's $.007 rate for that traffic. The Commission should reject Staff's proposal.

VI QWEST/MCI ACCESS SETTLEMENT

ELI has nothing new to add to what is contained in its Initial Brief.

VII CARRIER SPECIFIC ISSUES

ELI takes no position with respect to these issues.

VIII CONCLUSION/RECOMMENDATIONS

ELI provides a functionally equivalent FX service to its customer for both voice and data services. ELI's Virtual Foreign exchange violates not laws, rules, tariff or orders and imposes no additional costs on Qwest. The Commission should particularly note that

Staff adopts a definition of VNXX in its Brief that excludes the service provided by ELI from the definition. This shouldn't be surprising given that ELI uses its approved local network configuration to provide the service.

When the Commission looks at the testimony and evidence from the hearing, one thing stands out: There is no technical or policy reason to treat ELI's Virtual Foreign Exchange Service in a manner that is different from Qwest's FX service. If the Commission denies ELI the ability to utilize the network it spent millions of dollars on in Washington to provide this competitive service, ELI won't be the only loser. ELI's customers will be forced back to the incumbent providers using less efficient technology for no valid purpose.

ELI urges the Commission to review the decisions of New Hampshire and California as well as the Global Naps court decision cited by Staff. These decisions demonstrate that Qwest's definition of VNXX in this case is too broad and eliminates valid competitive offerings that benefit consumers. The WUTC should dismiss the complaint against ELI and issue an Order allowing the competitive FX service that ELI currently offers.

Respectfully submitted this 28th day of June, 2007

By: Charles L. Best

Charles L. Best
Attorney for Electric Lightwave, LLC
WSB No. 31943

CERTIFICATE OF SERVICE

UT-063038

I hereby certify that I have this day served the enclosed Reply Brief of ELI upon all parties of record in this proceeding by e-mail and/or depositing it pre-paid with the U.S. Postal Service.

Dated at Portland, Oregon this 28th day of June, 2007.

Charles L. Best