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

REPLY BRIEF OF TCG SEATTLE

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I. INTRODUCTION

1 When Qwest filed its complaint initiating this proceeding, it contended that virtual NXX ("VNXX") arrangements were illegal and must be prohibited by the Commission. Commission Staff ("Staff") echoed that view. However, it is clear from the initial briefs of Qwest and Staff that the legality of VNXX arrangements is no longer the issue. Qwest and Staff have clearly changed their position that all VNXX arrangements must be prohibited. This change in position is not surprising. As Global Crossing's brief correctly observed: "No party seriously contends – or could contend – that 'VNXX' is unlawful under existing state statutes and rules."[1]

2 The issue has evolved from being about the legality of VNXX to one of how competing carriers should be compensated when they exchange VNXX traffic. Qwest's brief puts it this way: "Qwest asks the Commission to conclude that VNXX is unlawful absent an agreement by the parties who use it as to how that traffic will be exchanged."[2] In other words, Qwest has acknowledged that the real issue is about money. The resolution of this issue, however, could affect more than just the pocketbooks of competing carriers. If, for example, Qwest and other local exchange carriers were allowed to impose originating access charges on VNXX traffic, the availability of affordable dial-up Internet access service and competitive foreign exchange service ("FX service") to Washington consumers would be seriously jeopardized.

3 To avoid this result, the interests of consumers, Incumbent Local Exchange Carriers ("ILECs"), and Competitive Local Exchange Carriers ("CLECs") must be balanced. This is

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1 Opening Post-Hearing Brief Of Global Crossing Local Services, Inc., Northwest Telephone, Inc., and Pac-West Telecomm, Inc., ¶7 at 3.

2 Qwest's Opening Brief, ¶8 at 3 (emphasis added).

not an easy undertaking and demands a national solution. The Federal Communications Commission ("FCC") has a proceeding under way to find that national solution for VNXX as well as other services implicating intercarrier compensation issues. As TCG Seattle has consistently argued, the Commission, if possible, should defer a decision on this issue until the FCC has acted. If the Commission believes it cannot wait for the FCC to act, the Commission should order carriers to exchange VNXX traffic on a "bill and keep" basis. This should preserve the availability of affordable Internet access and competitive voice services while, at the same time, balance the interests of carriers.

4 In its initial brief, TCG Seattle established that VNXX arrangements were not illegal under industry guidelines, state law, or federal law and that sound public policy supports allowing VNXX arrangements to exist, subject to bill and keep intercarrier compensation. We will not repeat all of those arguments here, but will simply emphasize a few points in response to arguments in Qwest's, Staff's, and WITA's initial briefs.

II. "VNXX" LEGAL ISSUES

A. Industry Guidelines

5 In their initial briefs, the CLECs in this proceeding, including TCG Seattle, fully rebutted Qwest's and Staff's arguments in testimony that industry guidelines ("Guidelines") prohibited VNXX arrangements. The single new argument Qwest articulates in its brief is that VNXX traffic cannot be an exception under section 2.14 of the Guidelines because VNXX is "widely used by CLECs."[3] The only "authority" cited by Qwest in support of this conclusion is the definition of "exception" in the Microsoft Encarta Dictionary.[4]

6 In addition to the lack of legal authority to support its argument, Qwest misconstrues

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[3] Qwest Opening Brief, ¶ 20 at 7.
[4] *Id.*

section 2.14's use of the term "exception." Section 2.14 states an "assumption" that "CO codes/blocks are to be utilized to provide service to a customer's premise physically located in the same rate center that the CO codes/blocks are assigned."[5] It then acknowledges that exceptions to that assumption exist, such as foreign exchange service. The "exception," therefore, relates to whether a CO code/block is used to provide service for a customer outside the rate center to which the CO code/block is assigned. It has nothing to do with how frequently Qwest assigns a number to an FX customer outside the rate center to which the number is assigned or how a CLEC assigns a number to a VNXX customer outside the rate center to which the number is assigned. Both FX and VNXX services involve number assignments to customers outside the rate center to which the number is assigned and, hence, are exceptions to section 2.14's general assumption.

B. Washington State Statutes, Rules, and Orders

7 As was the case with Qwest's Guidelines argument, the CLECs in this proceeding anticipated Qwest's and Staff's arguments concerning Washington State law and rebutted those arguments in their initial briefs. Only a couple of points in Qwest's and Staff's initial briefs warrant additional response.

8 First, Qwest claims that VNXX arrangements violate four Washington State statutes: RCW 80.36.080, 80.36.140, 80.36.160, and 80.36.170.[6] None of these statutes directly addresses VNXX, or for that matter any numbering arrangement. Instead, these statutes generally require that carriers' rates, services, and practices be just and reasonable. It is telling that Qwest devotes less than a page of its brief attempting to explain how VNXX

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

[6] Qwest Opening Brief, ¶ 22 at 8.

arrangements violate these statutes. Indeed, Qwest's entire legal analysis of each statute can hardly be called analysis; it is one or two sentences in which Qwest merely offers the conclusion that VNXX violates the statute because Qwest is not receiving the amount of intercarrier compensation it desires.[7]

9 Qwest's lack of meaningful analysis is not surprising. There is nothing about the use of VNXX arrangements that violates these statutory sections. In fact, it is more likely that prohibiting VNXX would violate at least some of these statutes. For example, section 80.36.170, which prohibits telecommunications carriers from, among other things, subjecting any "person, corporation, or locality" to any undue or unreasonable prejudice or disadvantage" would preclude Qwest's current attempt to subject CLECs to unreasonable prejudice or disadvantage by prohibiting them from using VNXX arrangements to compete against Qwest.

10 Second, Qwest selectively interprets the relevance and significance of the Commission's past decisions to the issue of VNXX. For example, Qwest provides an extended discussion of two Commission decisions regarding toll bridging, even though these old decisions – one from 17 years ago and the other seven – do not deal with VNXX service.[8] Yet tellingly, Qwest devotes only one short paragraph to a 2004 Commission decision in an arbitration between Qwest and two AT&T CLECs - AT&T Communications of the Pacific Northwest and TCG Seattle ("Qwest/AT&T Arbitration"). There, the Arbitrator's and Commission's decisions dealt directly with VNXX service, and in particular with VNXX service used to provide Internet access and FX-like service, the precise services at issue in this proceeding. While Qwest's short paragraph notes that the

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[7] Qwest Opening Brief, ¶¶ 23-26 at 8-9.
[8] Qwest Opening Brief, ¶¶ 29-34 at 9-12.

Arbitrator had some concern about allowing unlimited use of VNXX arrangements, Qwest's brief is silent about the Arbitrator's equal concern that Qwest's desire to restrict CLECs' ability to use VNXX for "FX service and provisioning of local numbers for ISPs" would be anticompetitive and should not be allowed.[9]

11 Qwest's discussion also omits reference to the Commission's decision affirming the Arbitrator's report. That decision noted the Arbitrator's concern that Qwest would try to use the definition of local calling "to frustrate an effort by AT&T to offer services that are functionally equivalent, from a customer perspective, to Qwest's FX service and local-number-presence service for ISP bound traffic."[10] The decision also expressed the desire that the ICA between the parties be implemented in a manner consistent with the procompetitive principles articulated in the Arbitrator's report.[11] The Qwest/AT&T Arbitration decision is clearly highly relevant to the issues in this proceeding, unlike the older decisions concerning non-VNXX services. Indeed, the Qwest/AT&T Arbitration decision provides strong support for the continuation of VNXX service to offer dial-up internet access and FX-like service.

C. Interconnection Agreements

12 Qwest's discussion of interconnection agreements ("ICAs") in its opening brief continues its misconstruction of the Commission's decision in the Qwest/AT&T Arbitration. Here, Qwest notes only that "[t]he Commission's concern in that docket – that NPA-NXX

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[9] *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, UT-033035, Order No. 4, *Arbitrator's Report*, ¶ 33 at 16 (Dec. 1, 2003).

[10] *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, UT-033035, Order No. 5, *Final Order Affirming Arbitrator's Report and Decision Approving Interconnection Agreement*, ¶¶ 15-16 at 8 (Feb. 6, 2004).

[11] *Id.*

rating would be too far-reaching – has proven to be a legitimate concern...."[12] Again, Qwest fails to even acknowledge that the Commission expressed an equal concern that Qwest not try to use its definition of "local calling area" to frustrate AT&T's efforts to offer services like FX service and local-number-presence service for ISP-bound traffic.[13] A fair reading of the Commission's decision in the Qwest/AT&T Arbitration is that ICA's might contain some limits on the use of VNXX arrangements to avoid extreme abuses, but those limits should not preclude the CLECs from using VNXX for ISP-bound and FX-like services.

13 For purposes of their ICA, Qwest and AT&T negotiated an appropriate limit on VNXX arrangements, requiring the parties to exchange VNXX traffic on a bill and keep basis.[14] That negotiated arrangement is consistent with the Commission's and Arbitrator's guidance and is consistent as well with Verizon Access's and Qwest's proposed settlement of the VNXX issue in this proceeding. That arrangement has allowed Qwest and TCG Seattle to continue their business operations without significant dispute.

D. FCC/Federal Court/Other State Commission Decisions

14 No party's brief identifies any FCC decision or federal law that prohibits VNXX arrangements. Qwest even acknowledges that "there are no FCC orders that directly address VNXX."[15] Similarly, no party can cite to any federal court decision that holds VNXX arrangements to be prohibited by federal law. Recent federal court decisions suggest, rather, that states have authority to decide whether VNXX arrangements should be allowed and, if

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[12] Qwest Opening Brief, ¶48 at 16-17.
[13] *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, UT-033035, Order No. 5, *Final Order Affirming Arbitrator's Report and Decision Approving Interconnection Agreement*, ¶¶ 15-16 at 8 (Feb. 6, 2004).
[14] Exh. No. 541 T 8:16 – 9:2 (Neinast).
[15] Qwest Opening Brief, ¶54 at 19.

so, what intercarrier compensation should apply to those arrangements, unless and until the FCC preempts the states on those issues.[16] The FCC is in the process of examining those issues now.

15 The parties' briefs identify decisions by other state commissions which reach varying results on the issue of VNXX arrangements. As Staff aptly observes: "It is difficult to generalize what other state commissions have decided with regard to VNXX."[17] Parties identified only one state, Vermont, that prohibits VNXX altogether, and another state, Oregon, that prohibits voice VNXX.[18] Unlike Washington, Oregon also prohibits ILECs from providing FX service.[19] The holding in Oregon, therefore, is at least competitively neutral. That would not be the case if Washington prohibited VNXX.

16 In the rest of the states examined, VNXX traffic is permitted, and the issue is about appropriate intercarrier compensation for such traffic (which, as noted above, has become the main issue in this proceeding). Here again the decisions vary, but many state

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16 *See e.g., Global Naps, Inc. v. Verizon New England, Inc.*, 444 F.3d 59, 72 2006 WL 924035 (1st Cir. Mass.), p. 10 (Apr. 2006); *Qwest v. WUTC*, No. C06-956-JPD, *Order Reversing and Remanding the Final Decision of the WUTC, slip op.* p. 26 (W.D. Wash., filed Apr. 9, 2007).

17 Opening Brief of Commission Staff, ¶72 at 28.

18 *See e.g.*, Initial Brief of Level 3 Communications, LLC, ¶62, fn. 133 at 33. WITA's brief appears to imply that VNXX is prohibited in Pennsylvania, Connecticut, and Maine. Opening Brief of WITA, ¶11 at 5. If that implication was intended, it is inaccurate. The Pennsylvania Public Utilities Commission recently addressed the issue of VNXX and recognized that in its VNXX Statement of Policy it concluded: "we decline to take any steps at this time to prohibit the use of virtual NXX service in Pennsylvania. Additionally, since the FCC is currently considering to establish a unified intercarrier compensation regime for all telecommunications traffic that utilizes the public switched network, we will not make any conclusions at this time on the issue of intercarrier compensation for traffic that moves over VNXX arrangements (*VNXX Statement of Policy* at 11)." *Application of Core Communications*, A-310922F0002, *Opinion and Order*, 2006 WL 3523755 (Pa. P.U.C.), mimeo, p. 11 (Nov. 2006). Connecticut appears to allow VNXX but has held that it is not subject to reciprocal compensation. *Re Payment of Mutual Compensation for Local Calls Carried over Foreign Exchange Service Facilities – FCC Verizon Order*, Dkt. (Conn. P.U.C.), Decision, mimeo., p. 6 (Nov. 2002). In a 2005 decision, the Maine Public Utilities Commission approved an amendment to an Interconnection Agreement between New England Telephone and Telegraph Company and AT&T Communications of New England, which expressly provided the rates at which VNXX traffic would be exchanged. *Re Verizon New England, Inc.*, Dkt. 2004-820, 2005 WL 578121 (Me.P.U.C.), mimeo., pp. 1,5,8 (Jan. 2005).

19 *Pac-West Telecomm Inc. v. Qwest Corp.*, Order No. 05-1219, 2005 WL 3747718, mimeo. p.6 (Nov. 2005).

commissions have adopted forms of bill and keep compensation for VNXX traffic.[20]

III. RELATIONSHIP OF VNXX SERVICE TO FOREIGN EXCHANGE SERVICE

17 Not surprisingly, the CLECs' briefs generally recognize VNXX and FX services as functional equivalents, while Qwest and Staff try to distinguish the services by identifying technical differences in the way the two services are provisioned. It is noteworthy, however, that neither Qwest nor Staff discusses how the Arbitrator and Commission viewed the relationship between these services when they examined them in the Qwest/AT&T Arbitration.

18 The Arbitrator concluded that VNXX and FX voice service are functionally equivalent, specifically rejecting Qwest's contention that the two services were different:

> Qwest's argument (*Qwest Brief at 17-20*) that AT&T's VNXX provisioning option is "nothing like Qwest's foreign exchange service" is unavailing. AT&T's VNXX voice service would be functionally identical to Qwest's FX service from a customer perspective. The differences on which Qwest dwells are related to the different network architectures employed by the two companies. Encouraging technical innovation and provisioning of functionally competitive services at lower cost to consumers is central to the goals of the Telecommunications Act of 1996.[21]

In particular, the Arbitrator rejected Qwest's claim that the services are different because Qwest charges FX customers the cost of a dedicated transport facility (private line):

> Qwest argues that it imposes on FX customers the cost of a dedicated transport facility in lieu of access charges. That may be so, but is simply a result that flows from the network architecture that Qwest uses to furnish FX service. AT&T's network architecture is different, and does not require the use of a dedicated transport facility to provide functionally identical service to Qwest's

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[20] *See e.g.*, 541 T 8:9-15 (Neinast); Qwest Opening Brief, ¶82 at 31.

[21] *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, UT-033035, Order No. 4, *Arbitrator's Report*, ¶36, fn. 20 at 17 (Wash.U.T.C. Dec. 1, 2003).

FX service.[22]

When it affirmed the Arbitrator's report, the Commission noted the Arbitrator's concern that AT&T not be frustrated in its efforts to offer services functionally equivalent, from a customer prospective, to Qwest's FX service[23] The presentations and arguments of Qwest and Staff in this proceeding establish no basis for the Commission to deviate from its holding in the Qwest/AT&T Arbitration.

IV. VNXX POLICY CONSIDERATIONS

19 With the exception of WITA, all parties believe the continued use of VNXX arrangements for ISP-bound traffic is in the public interest. Staff concludes: "[P]rohibiting VNXX or requiring CLECs to pay Qwest originating access charges likely would have very serious consequences for the CLECs, their ISP customers, and the ISP's end user customers (that is, people who use AOL or other dial-up Internet access services)."[24] Although Qwest still contends that the elimination of VNXX would produce no demonstrable negative consumer impact, it now concedes that "there would be even less of an impact if the Commission were to adopt the Staff position or the Qwest/Verizon Access settlement, allowing VNXX under certain conditions."[25] Qwest, moreover, has represented to the Commission that its settlement agreement with Verizon Access is in the public interest and should be approved.[26] That agreement allows Verizon Access to continue using VNXX arrangements subject to bill and keep compensation.

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22 *Id.* at ¶33, fn. 19 at 16.
23 *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, UT-033035, Order No. 5, *Final Order Affirming Arbitrator's Report and Decision Approving Interconnection Agreement*, ¶¶ 15-16 at 8 (Feb. 6, 2004).
24 Opening Brief of Commission Staff, ¶122 at 47.
25 Qwest Opening Brief, ¶107 at 42.
26 Qwest Opening Brief, ¶115 at 44.

A. WITA's Advocacy of an Outright VNXX Ban

20 WITA raises the sole dissent to allowing VNXX to continue for ISP-bound traffic. It contends that VNXX causes rural ILECs to lose access revenue and potentially be subject to reciprocal compensation.[27] WITA's contention should be rejected. It is beyond the scope of this proceeding, is factually inaccurate, and totally disregards the interests of dial-up internet users.

21 This complaint proceeding was initiated by Qwest against specific CLECs, alleging that the CLECs were providing VNXX service that should be considered unlawful. Qwest and these CLECs are the original parties to the proceeding. No other ILEC, including members of WITA, joined in Qwest's complaint or filed its own complaint. No other ILEC was a named a respondent to Qwest's complaint. Instead, WITA filed a petition to intervene, which announced that WITA's participation would not broaden the issues in this proceeding.[28]

22 WITA is now attempting to do just that. It is broadening the issues in this complaint case by asking the Commission to consider completely unsubstantiated claims of hypothetical harm to WITA's members by alleged VNXX arrangements. Neither WITA nor its members presented witnesses or testimony concerning the existence or magnitude of VNXX traffic in their service territories. Thus, there is no factual record to support these claims. In addition, CLECs had no opportunity to cross-examine any WITA witness about whether and how WITA members provide FX service or VNXX service. In short, there is no factual record in Qwest's complaint case to support any claim of harm to WITA members by the existence of VNXX arrangements.

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[27] *See e.g.*, Opening Brief of WITA, ¶28 at10.
[28] Petition to Intervene of WITA, p. 2 (July 6, 2006).

23 WITA is not the complainant in this proceeding, nor is it invested with some public interest/public counsel mantle in its role in the case. WITA is here only as a general intervenor. As the Commission found in a recent proceeding rejecting an expansionist intervenor role which sought to thwart a settlement and object to a proposed resolution on related grounds:

> ... Time Warner is an intervenor in an enforcement proceeding. Time Warner has no stake or interest in the proceeding other than a desire for a certain benefit or outcome or an expectation of that benefit. Time Warner is not the party prosecuting the proceeding or defending against imposition of a penalty or some other deprivation of its property interest.[29]

WITA is in a similar position in this proceeding. Consequently, the Commission should not consider WITA's unsubstantiated claims in resolving this issue.

24 Ironically, if anything, this proceeding demonstrates the fallacy of WITA's claims of harm. If WITA members have exchanged VNXX traffic with CLECs, which has not been demonstrated on this record, CLECs have not been paying access charges on that traffic. The continuation of VNXX, therefore, will not reduce the current revenues of WITA's members. Nor would the revenues of WITA's members increase if VNXX were prohibited because consumers are not likely to place toll calls to receive dial-up access. If consumers do not place toll calls, WITA's members receive no access charges.

25 WITA's brief also asks the Commission to ignore consumers' desire for affordable dial-up Internet access. In WITA's words, "[e]ncouraging dial-up access delays the ability to move the price of broadband access lower."[30] WITA's members apparently want to force dial-up service users to switch to broadband service, whether or not they want broadband

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[29] *WUTC v. Advanced Telecom Group, Inc., et al*, Docket No. UT-033011, Order No. 19, ¶55 at 17 (Dec. 2004).

[30] Opening Brief of WITA, ¶35 at13.

service. WITA may also want to eliminate VNXX service simply to eliminate competition. According to WITA, "Every rural carrier [e.g., WITA members] provides dial-up ISP access to their customers."[31] Without the ability to purchase VNXX service from CLECs, as WITA advocates, dial-up ISPs would have no choice but to purchase FX service from WITA's members.

26 In sum, WITA's allegations about the effect of VNXX arrangements on its members are unsupported by the factual record in this proceeding. Those allegations blatantly disregard the interests of current users of dial-up internet access. The Commission should reject WITA's claims.

B. VNXX Voice Traffic

27 Only two parties advance policy concerns about voice VNXX traffic. WITA expresses the concerns discussed above about all VNXX traffic, both voice and ISP-bound. As noted above, WITA's proposal should be rejected. Staff also asks the Commission to prohibit voice VNXX traffic because of a potential for "abuse of local calling areas and the access charge system in [sic] VNXX is allowed for voice services."[32] Staff's concern is hypothetical and its remedy unnecessarily broad and unduly harsh.

28 Staff bases its concern about voice VNXX traffic on a report prepared by the New Hampshire commission staff. Staff readily admits, however, that it did not do a study of VNXX traffic in the state of Washington to determine if any of the abuses found in New Hampshire were occurring in Washington.[33] Moreover, despite the alleged abuses reported by the New Hampshire staff, New Hampshire does not prohibit voice VNXX traffic. The

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31 Opening Brief of WITA, ¶26 at10.
32 Opening Brief of Commission Staff, ¶119 at 46.
33 TR. 474: 11-13 (Williamson).

New Hampshire commission expressly recognized that ILEC FX service and "CLEC FX" service are functionally the same even though CLEC FX uses VNXX arrangements.[34] The New Hampshire commission permits CLEC FX service if the CLEC has a sufficient presence in the local exchange market.[35] The New Hampshire commission understands the need to encourage competition for FX services, without requiring replication of the ILEC network.

29 The State of Washington also well understands the need to encourage competition. The Washington Legislature has declared that it is the state's policy to "promote diversity in the supply of telecommunications services and products in telecommunications markets throughout this state."[36] Like the Legislature, this Commission recognizes the benefits of encouraging competition, including allowing CLECs to provide services that are functionally equivalent to those of the ILEC, even though the CLEC may provision those services differently. For that reason, the Commission in the Qwest/AT&T Arbitration affirmed the Arbitrator's report which expressed concern that it would be "anticompetitive" to treat VNXX services that are functionally comparable to Qwest's voice FX and local provisioning for ISP services differently for purposes of intercarrier compensation.[37]

30 Sound public policy supports continuing to allow CLECs to use VNXX arrangements to provide FX-like voice service. Even if a CLEC were to attempt to abuse these services, the answer is not to prohibit all voice VNXX services. Rather, individual CLEC abuses, if any occur, should be dealt with by use of existing complaint processes. If

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[34] *In re Whether Certain Calls are Local*, DT 00-223/DT 00-054, *Order No. 24,218*, 88 N.H.P.U.C. 462, *slip op.*, p. 20 (Oct. 17, 2003).
[35] *Id.* at 11.
[36] RCW 80.36.300(5).
[37] *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, UT-033035, Order No. 4, *Arbitrator's Report*, ¶33 at 16.

the Commission believes it must put some limits on VNXX arrangements for voice services, those limits should be narrowly tailored. At a minimum, CLECs should be allowed to use VNXX arrangements to provide voice services functionally equivalent to Qwest's FX service.

V. QWEST/MCI VERIZON ACCESS SETTLEMENT

31 As stated in its initial brief, TCG Seattle generally supports negotiated interconnection agreements and settlements of interconnection disputes and, therefore, does not oppose the settlement of VNXX issues proposed by Qwest and Verizon Access ("VNXX Settlement"). TCG Seattle believes the proposed VNXX Settlement's treatment of VNXX traffic and intercarrier compensation for that traffic is consistent with the manner in which VNXX traffic and intercarrier compensation for that traffic is treated under the current interconnection agreement between Qwest and TCG Seattle.

32 TCG Seattle opposes Qwest's position that a CLEC desiring to opt into Qwest's and Verizon Access's settlement of this Washington complaint proceeding would have to opt into that settlement in all 14 states in which Qwest operates.[38] That issue, however, is not yet ripe for review because it is not clear that any CLEC will desire to opt into the settlement. The Commission need not, and should not, address opt-in requirements at this time.

VI. CONCLUSION/RECOMMENDATIONS

33 No party has advanced a valid reason for prohibiting VNXX arrangements used to provide ISP-bound and voice-FX services. Such a prohibition would jeopardize the availability to consumers of affordable dial-up Internet access service, as well as the

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[38] Qwest Opening Brief, ¶119 at 45.

continued availability of competitive choice for consumers of voice FX service. The true issue posed at this juncture of the complaint proceeding is intercarrier compensation and, for all of the reasons stated above and in TCG Seattle's initial brief, the Commission should refrain from rendering a long-term policy decision on that pivotal issue until the FCC has had an opportunity to conclude its intercarrier compensation proceeding. If the Commission believes it must act now, it should allow VNXX arrangements for both voice and ISP-bound services to continue, subject to bill-and-keep compensation.

Respectfully submitted this 29th day of June, 2007.

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Docket No. UT-063038
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