

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

QWEST CORPORATION,

Complainant,

v.

LEVEL 3 COMMUNICATIONS, LLC, *et*
al.,

Respondents.

DOCKET NO. UT-063038

**REPLY POST-HEARING BRIEF OF
GLOBAL CROSSING LOCAL SERVICES, INC.,
NORTHWEST TELEPHONE, INC., AND
PAC-WEST TELECOMM, INC.**

June 29, 2007

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I. INTRODUCTION

1. Qwest Corporation (“Qwest”) initiated this docket by filing a complaint against Global Crossing Local Services, Inc. (“Global Crossing”), Northwest Telephone, Inc., Pac-West Telecomm, Inc. (“Pac-West”) (collectively “Joint CLECs”) and other competitive local exchange carriers (“CLECs”). Qwest alleged in its complaint that these CLECs are violating state law and public policy by providing what Qwest refers to as “Virtual NXX” or “VNXX” telephone numbers. Qwest has not proven the allegations in its complaint, despite filing hundreds of pages of prefiled testimony and exhibits, engaging in extensive evidentiary hearings, and providing a lengthy post-hearing brief. Qwest has failed to cite any statute, rule, or order that prohibits “VNXX” number assignments, and Qwest’s own behavior nullifies its legal position. Qwest’s settlement with Verizon Access unequivocally demonstrates that Qwest does not believe that “VNXX” number assignments are unlawful. Rather, Qwest simply wants to be relieved of its obligation to pay intercarrier compensation for calls its customers make to competitive local exchange company (“CLEC”) subscribers of “VNXX” provisioned foreign exchange (“FX”) service. The Commission, therefore, should deny Qwest the relief sought in its complaint and should grant Global Crossing’s counterclaim.

2. That should be the end of this docket. Unfortunately, however, the focus of this proceeding has shifted from whether “VNXX” provisioning of FX service is unlawful under existing Washington law to a generic investigation and exploration of whether such provisioning *should* be prohibited. Qwest, the Washington Independent Telephone Association (“WITA”), and Commission Staff have expanded the scope of this case far beyond the boundaries of the complaint and applicable law. Qwest’s primary interest apparently is to compel CLECs to accept a new intercarrier compensation mechanism, not just in Washington but in all 14 states in which Qwest operates as an incumbent local exchange carrier (“ILEC”). Staff proposes that the

Commission establish a new policy with respect to “VNXX” provisioning of FX services by banning its use to serve voice customers but permitting it to be used to serve Internet Service Provider (“ISP”) customers as long as no intercarrier compensation is paid. WITA apparently would like the Commission to resolve a variety of issues, most of which are not even tangentially related to Qwest’s complaint, including Pac-West’s reciprocal compensation bills to other CLECs, whether Level 3 has remitted payments to the intrastate universal service fund, and the propriety of Global Crossing’s interconnection trunking and traffic routing with Qwest. WITA did not file testimony or sponsor a witness but has chosen to attempt to raise its own parochial issues through cross-examination of other witnesses and in its post-hearing brief.

3. The Commission should hold Qwest to the issues raised in its complaint and should refuse to permit this proceeding to devolve into a vehicle for Qwest, WITA and Staff to pursue their own separate objectives. If Staff believes the Commission should establish a new policy with respect to the provisioning of FX service, Staff should initiate such a proceeding – a proceeding in which Staff should be required to address critical issues that it has ignored in making its proposal in this docket, including the impact of that proposal on voice over Internet protocol (“VoIP”) providers and their customers and the extent to which Qwest and its affiliates provide local service to customers who do not physically reside in the local calling area where their telephone number is rated. WITA simply should bring its own complaint if it seeks resolution of its issues. And Qwest should be compelled yet again to comply with its legal obligations.

4. The Commission should refuse to consider any of the additional issues raised by Qwest, WITA, and Staff. If the Commission considers those issues, however, the Commission should conclude that none of these parties’ claims has merit. “VNXX” provisioned FX service is functionally indistinguishable from ILEC FX service, poses no threat to the access charge regime

or universal service objectives, is no more subject to abuse than any other local exchange service, and should be treated for regulatory and intercarrier compensation purposes just like the ILEC FX services. To do otherwise would be to sanction discrimination against CLECs and to unreasonably limit customer access to legitimate competitive service alternatives to the ultimate detriment of Washington consumers.

II. “VNXX” LEGAL ISSUES

A. COCAG and Other Industry Guidelines.

5. The Central Office Code Assignment Guidelines (“COCAG”) do not prohibit CLECs from provisioning FX service without a dedicated private line between the “local” and the “foreign” exchange – what the ILECs and Staff call “VNXX” – any more than those guidelines preclude the ILECs from offering FX service that requires the customer to purchase such an additional facility.¹ Qwest contends that unlike ILEC FX service, CLEC FX service cannot be an exception to the geographic specificity of industry numbering assignment guidelines because “VNXX is far too widely used by CLECs, and those serving ISPs in particular, to be something that can fairly be described as an exception.”² Qwest’s novel argument is unsustainable.

6. The record is devoid of any evidence of the number of “VNXX” numbers that are in service, but the Commission can take official notice of the fact that the FCC has determined that CLECs serve only 14% of the end user switched access lines in the state of Washington.³ Even if a significant portion of those lines are used to provide “VNXX” service, landline telephone numbers are overwhelmingly assigned consistent with the COCAG’s general

¹ Joint CLEC Opening Brief ¶¶ 8-12.

² Qwest Opening Brief ¶ 20.

³ *Local Telephone Competition: Status as of December 31, 2005*, FCC Industry Analysis and Technology Division, Wireline Competition Bureau, Table 8 (July 2006) (a copy of which can be downloaded from the Wireline Competition Bureau Statistical Reports Internet site at www.fcc.gov/wcb/stats).

assumption that a customer's telephone number is rated to the local calling area in which the customer resides. Qwest nevertheless contends that a much higher proportion of CLECs' lines are used to provision "VNXX" service than the proportion of Qwest's lines uses to provide FX service. Such a comparison is meaningless. The COCAG are industry guidelines, not company-specific standards. Nothing in those guidelines suggests, much less states, that exceptions are determined on a per-carrier or even per-industry segment basis. A far more meaningful comparison is that Qwest is very likely terminating more traffic to its FX customers than individual CLECs are to their customers.⁴ FX service is an exception to the COCAG's geographic location assumptions, regardless of how that service is provisioned.

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

7. No party has cited any Washington statute, rule, Commission order, or company tariff that renders "VNXX" provisioning of FX service unlawful. The most that Staff can say is that "VNXX is inconsistent with Washington state telecommunications *policy* reflected in statutes, Commission rules, and company tariffs."⁵ Staff's attempt to support that conclusion applies equally to ILEC FX service. In both cases, telephone numbers are assigned to customers who are not physically located in the local calling area to which those numbers are rated. If "VNXX" FX provisioning is inconsistent with Washington public policy – which it is not – so, too, is ILEC FX service.

8. Qwest contends that "VNXX" provisioning of FX service violates various statutes requiring that rates and services be fair, just, and reasonable and prohibiting undue prejudice or disadvantage, but Qwest's FX service avoids access charges and requires payment of reciprocal compensation to the terminating carrier to the same extent as "VNXX" provisioned FX service.

⁴ Joint CLEC Opening Brief ¶ 48.

⁵ Staff Opening Brief ¶ 44 (emphasis added).

Far from rendering “VNXX” provisioning unlawful, proper application of the statutes Qwest cites precludes *prohibition* of such provisioning (at least as long as ILECs are permitted to offer their FX service) as unreasonable, discriminatory and unduly prejudicial to CLECs. Qwest also argues that “VNXX” violates Commission prescription of local exchange area boundaries, but again, the same argument applies to Qwest’s FX service, which also provides “local” service to customers located outside of the exchange area boundaries. Neither state statutes nor Commission rules prohibit “VNXX” provisioning of FX service.

9. Qwest further maintains that Commission orders that prohibited bridging of extended area service (“EAS”) areas effectively preclude “VNXX” provisioning of FX service.⁶ Those orders are inapplicable. FX service, however it is provisioned, avoids payment of access charges to the local exchange carrier (“LEC”) whose customer calls the FX customer, and “end users can make calls to distant LCAs without incurring toll charges.”⁷ That superficial resemblance to EAS bridging does not render FX service unlawful, whether or not that service is provisioned using “VNXX.” Unlike the EAS toll bridgers, moreover, CLECs who provision FX service using “VNXX” have deployed their own network facilities, including switches, transport, and loops to serve their customers, and even Staff recognizes that CLECs serving ISPs using “VNXX” provisioning are enhancing network efficiencies⁸ – thus offering “innovation in service or technology” that EAS bridgers did not provide.⁹ “VNXX” provisioning of FX service is not remotely comparable to EAS bridging.

⁶ WITA joins this contention and further claims that “VNXX” provisioning of FX service is comparable to the “IP-in-the-middle” service that the Commission found subject to access charges. WITA, however, makes no attempt to explain how those services are similar. “VNXX” provisioning of FX service is nothing like “IP-in-the-middle” provisioning of toll service, and the Commission should give no credit to WITA’s unsupported assertions to the contrary.

⁷ Qwest Opening Brief ¶ 31.

⁸ *E.g.*, Staff Opening Brief ¶ 100.

⁹ Qwest Opening Brief ¶ 34 (quoting *U & I CAN* at 9).

10. Qwest (along with Staff) asserts that its (and other carriers') tariffs and interconnection agreements define "exchange," "local exchange," "local service," "local service area," and similar terms to require that customers reside within the local service area to which their telephone numbers are rated. Qwest, of course, does not explain how it can provide its own FX service – which Qwest defines as providing local exchange service within an exchange where the customer does *not* reside¹⁰ – consistent with these tariff and contract provisions. Qwest paradoxically touts its FX service as "support[ing] the general rule of geographic assignment of numbers."¹¹ Qwest's FX service does no such thing. Rather, Qwest's FX service demonstrates, contrary to Qwest's advocacy in its Opening Brief, that Qwest's tariffs are functionally indistinguishable from the Verizon tariffs in California¹² and Virginia¹³ – Qwest routes and rates traffic based on the NPA/NXX of the telephone numbers, not the geographic location of the calling and called parties. If Qwest can offer its FX service consistent with the geographic restrictions in its tariffs and interconnection agreements, so can CLECs who use "VNXX" to provision FX service.

11. Finally, Qwest and Staff claim support from the interconnection agreement arbitration between AT&T and Qwest in which the Commission declined to adopt AT&T's proposed language to define "local" calls based on the calling and called parties' telephone numbers. Qwest and Staff conveniently neglect to mention that the Commission adopted Qwest's proposed contract language but noted with approval the Arbitrator's conclusion that "AT&T should be entitled to take advantage of the same exceptions to the typical relationship between NPA-NXX and a single local calling area as Qwest takes advantage of in offering FX

¹⁰ *E.g.*, Qwest Opening Brief ¶ 86.

¹¹ Qwest Opening Brief ¶ 41.

¹² *Verizon California v. Peevey*, 462 F.3d 1142, 1159 (9th Cir. 2006).

and Internet access numbers.”¹⁴ “VNXX” provisioning of FX service does just that – it permits a CLEC with a single switch to offer customers a local dialing presence in a local calling area outside the customers’ geographic location, just as Qwest offers with its FX service. Such FX service provisioning is fully consistent with state statutes, Commission rules and orders, company tariffs, and interconnection agreements.

C. FCC/Federal Court/Other State Commission Decisions.

1. Telecom Act.

12. The Joint CLECs explained in their Opening Brief that FX service predated the federal Telecommunications Act of 1996 (“Act”) and accordingly is preserved under Section 251(g), while ISP-bound traffic did not exist in 1996, and thus compensation for both types of traffic is governed under Section 251(b)(5).¹⁵ No other party specifically addressed these issues or raised any other issues under the Act to which the Joint CLECs need to respond.

2. FCC Orders.

13. The FCC’s analysis of intercarrier compensation for the exchange of telecommunications traffic under the Act supports the continued application of that compensation to “VNXX” provisioned FX service.¹⁶ Qwest contends that “the scope of the *ISP Remand Order* is limited only to *local ISP traffic*, traffic where the calling party and the ISP are located in the same LCA.”¹⁷ As discussed further below, the Washington District Court did not interpret “local” so narrowly but, consistent with Ninth Circuit precedent, extended the meaning of that term to include locally dialed traffic as determined by the Commission. The Commission

¹³ *In re Starpower Communications, LLC v. Verizon South, Inc.*, FCC File No. EB-00-MD-19, Memorandum Opinion and Order, ¶ 15 (rel. Nov. 7, 2003).

¹⁴ *In re Petition for Arbitration of AT&T*, WUTC Docket No. UT-033035, Order No. 5, Final Order Affirming Arbitrator’s Report and Decision, ¶ 14 (Feb. 6, 2004).

¹⁵ Joint CLEC Opening Brief ¶¶ 17-21.

¹⁶ *Id.* ¶¶ 18-21.

¹⁷ Qwest Opening Brief ¶ 60.

has been aware of “VNXX” provisioned FX service for years and has never found – and has no basis now not to conclude – that such traffic is not “local” within the federal court’s interpretation of the *ISP Remand Order*.

14. Qwest also engages in some revisionist history when claiming that the “VNXX” issue became “more prevalent” in 2000 “because of the adoption by ILECs of policies allowing CLECs to exchange traffic as [*sic*] a single point of interconnection in each LATA.”¹⁸ “VNXX” provisioning of FX service has nothing to do with Qwest’s Single Point of Presence or “SPOP” offering. Carriers such as Pac-West, ELI and TCG interconnect with Qwest and exchange traffic at multiple points (usually Qwest tandems and end offices) within the LATA,¹⁹ yet Qwest nevertheless contends that those CLECs are unlawfully providing “VNXX” service. Qwest, moreover, never made an issue of “VNXX” until after the FCC issued its *Core Forbearance Order*²⁰ in late 2004 lifting the growth and new market caps on compensation for ISP-bound traffic.²¹ Qwest’s complaint has far more to do with its disagreement with the *Core Forbearance Order* than with any longstanding dispute over how CLECs provision their FX service.

15. Qwest accurately states that the FCC’s 2001 *Intercarrier Compensation NPRM* did not resolve the “VNXX” issue or disturb the *ISP Remand Order*. Qwest, however, neglects to mention that the *Intercarrier Compensation NPRM* sought comment on whether *all* section 251(b)(5) traffic should be exchanged on a bill and keep basis.²² The *ISP Remand Order* thus was part of the FCC’s overall strategy at that time to eliminate the payment of reciprocal

¹⁸ *Id.* ¶ 62.

¹⁹ *E.g.*, Ex. 421T (ELI Robins Direct) at 3, lines 5-8 & Ex. 422 (ELI-Qwest interconnections).

²⁰ *Petition of Core Communications, Inc. for Forbearance from Application of the ISP Remand Order*, FCC 04-241, WC Docket No. 03-171 (rel. Oct. 18, 2004).

²¹ *See, e.g.*, Ex. 442 (Spreadsheet detailing amounts in dispute between Qwest and Global Crossing concerning alleged “VNXX” traffic showing origination of dispute in 2005).

²² *In re Developing a Unified Intercarrier Compensation Regime*, FCC 01-132, CC Docket No. 01-92, Notice of Proposed Rulemaking ¶ 69 (rel. April 27, 2001).

compensation altogether. Indeed, in the *Intercarrier Compensation NPRM* the FCC even went so far as to suggest the eventual elimination of switched access charges.²³ The *Core Forbearance Order* issued over three years later effectively increased the number of ISP-bound traffic subject to intercarrier compensation and was part of the FCC’s retreat from its prior proposal to phase out all such compensation. The FCC, contrary to Qwest’s representations, thus abandoned at least one principle underlying the *ISP Remand Order* – that ISP-bound traffic should not be subject to some level of compensation.

3. Federal Court Decisions.

16. The Ninth Circuit upheld the California commission’s rulings that “Pac-West is entitled to reciprocal compensation for traffic that appears to originate and terminate within a single exchange by virtue of Pac-West’s assignment of a number that appears to be ‘local,’ but in fact is not – so-called ‘Virtual Local’ or ‘VNXX’ traffic.”²⁴ Qwest nevertheless contends that “federal case law is unanimous that the *ISP Remand Order* applies only to local ISP traffic,”²⁵ which Qwest defines as traffic that originates and is delivered to an ISP modem physically located within the same local calling area. Neither the Ninth Circuit nor the Washington Western District Court has interpreted “local” so narrowly.

17. Qwest selectively quotes in vain from both *Peevey* and the District Court decision in Qwest’s appeals of this Commission’s decisions in the Pac-West and Level 3 complaint cases. Both federal courts recognized that the definition of “local” traffic is subject to state commission determination. The Ninth Circuit upheld the California Commission determination that Pac-West was entitled to compensation for calls made by Verizon subscribers to Pac-West “VNXX” provisioned FX customers, just as this Commission has historically required. Consistent with the

²³ *Id.* ¶ 97.

²⁴ *Verizon California, Inc. v. Peevey*, 462 F.3d 1142, 1145 (9th Cir. 2006).

Ninth Circuit's decision, the Washington District Court concluded that the *ISP Remand Order* does not apply to *all* ISP-bound traffic as the Commission had previously decided but remanded the case to the Commission to "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."²⁶ No remand would have been necessary or appropriate if, as Qwest contends, the physical location of the ISP modem is determinative of whether the call is "local." The Commission, therefore, remains free under federal law to continue to determine that traffic to all FX subscribers, regardless of how the service is provisioned, is considered "local" and subject to appropriate intercarrier compensation.

4. VoIP Preemption/ESP Exemption.

18. The Joint CLECs do not address this issue.

5. Other State Commission Decisions.

19. The Joint CLECs agree with Staff that the California Commission "takes a thoughtful approach to VNXX," at least with respect to per minute of use compensation, which has been upheld by the Ninth Circuit.²⁷ The Joint CLECs, however, disagree with Staff that the net effect of the total compensation required in California is zero. The California Commission requires CLECs that offer "VNXX" provisioned FX service either to establish and pay for facilities used to transport those calls to the CLEC switch from the ILEC tandem serving the local calling area to which the FX telephone numbers are rated, or to pay a total element long-run

²⁵ Qwest Opening Brief ¶ 71.

²⁶ *Qwest v. WUTC*, Case No. C06-956-JPD, Order Reversing and Remanding the Final Decisions of the WUTC, slip op. at 26 (April 9, 2007) (emphasis in original).

²⁷ Staff Opening Brief ¶ 77.

incremental cost (“TELRIC”) based origination charge to the ILEC for that transport.²⁸ The record in this case contains no evidence of transport costs or any other evidence sufficient to determine the net compensation between carriers under the California Commission requirements. Any such net compensation in any event would depend on the volume of traffic, number and location of local calling areas, and other information specific to particular CLECs. Staff, therefore, has no basis on which to conclude that such net compensation would be zero or to make that calculus in advance for all CLECs in Washington.

20. Nor is the California Commission’s analysis “unnecessarily complex” as Staff contends. Rather, that commission addressed its concern that ILECs would be required to pay additional transport costs to deliver “VNXX” provisioned FX traffic to CLECs by requiring CLECs to pay for additional transport costs. Such concerns are unwarranted, but at least the California Commission specifically targeted a solution to address them, rather than taking Staff’s overly broad approach of eliminating all intercarrier compensation for the exchange of such traffic. Accordingly, the California Commission approach, while problematic, nevertheless is less discriminatory and more competitively neutral than Staff’s proposal.

III. “VNXX” RELATIONSHIP TO OTHER SERVICES

A. Foreign Exchange Service.

21. “VNXX” provisioned FX service is functionally indistinguishable from the FX service that Qwest provides.²⁹ Qwest and Staff disagree, primarily based on the difference between how a CLEC with a single switch provisions FX service and how Qwest provisions FX service using its multiple switches. That difference is irrelevant. Qwest’s FX customers pay for the network facilities that Qwest uses to provide the FX service, and CLEC FX customers pay

²⁸ See *In re Verizon California Inc. Petition for Arbitration with Pac-West*, Cal. PUC Application 02-06-024, Decision 03-05-075 at 3-6 (May 22, 2003).

for the network facilities that the CLEC uses to provide the FX service. CLECs do not compensate Qwest for its customers' FX service – or any other end user service – any more than Qwest compensates CLECs for their customers' service. Rather, Qwest and CLECs compensate each other for the switching costs incurred to terminate Section 251(b)(5) traffic originated by the other, regardless of the type of service that the terminating carrier provides to its end user customers.

22. Qwest nevertheless complains that while it has built out an extensive network, Level 3 and Pac-West have not, and those CLECs should not be able to take advantage of Qwest's network construction.³⁰ To the extent that this argument has any viability or relevance – which it does not – it applies equally to traffic exchanged between customers who are physically located within the same local calling area. Indeed, Qwest's parent corporation has long advocated to the FCC that no compensation should be paid for *any* ISP-bound traffic, regardless of the location of the ISP modem, largely on this same basis.³¹ The FCC has not accepted Qwest's position and neither should the Commission. Qwest's customers pay for Qwest's network, and Pac-West's customers pay for Pac-West's network, regardless of the size, type, or configuration. No connection exists between the ubiquity of Qwest's network and its obligation to pay interconnecting carriers to terminate traffic originated by Qwest's end user customers.

²⁹ Joint CLEC Opening Brief ¶¶ 26-31.

³⁰ Qwest also claims that Pac-West does not provide local exchange service to end users in Washington based solely on the traffic imbalance between the companies. Pac-West, however, obviously serves some end user customers other than ISPs because even Qwest's figures demonstrate that Qwest is terminating some local traffic originated on Pac-West's network. Whether Pac-West serves customers other than ISPs, however, is irrelevant.

³¹ See, e.g., *In re Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of Qwest Communications International Inc. at 47 (Oct. 25, 2006) (“Qwest supports a firm rule that provides that, so long as payments are mandated between carriers for termination of traffic (and carriers cannot decline to hand such traffic off even if it is uneconomical to do so), ISP traffic (or other one-way traffic that might develop) be exchanged on a bill and keep basis using actual rather than presumptive volumes.”).

23. Qwest and Staff also contend that Qwest FX customers pay for the transport between the local calling areas while CLECs rely on interconnection facilities for such transport. Again, this argument mixes apples and oranges. FX service rates cover the costs of providing that end user service, and the rates for interconnection facilities cover the costs of transporting traffic between carriers. The purpose and compensation for each service is different and cannot be compared. Indeed, Staff and Qwest acknowledge that Qwest incurs the same costs for interconnection facilities regardless of the location of the CLEC customers or whether those customers are subscribing to FX service or some other local exchange service.³²

24. Staff claims that because ILEC FX customers must pay for dedicated transport, such “service is expensive for subscribers and often proves less cost-effective than functionally equivalent 800- service,” thus “prevent[ing] it from ever amounting to a significant ‘loophole’ (if viewed as such) in the access charge system.”³³ As the Joint CLECs previously explained, ILEC FX service is cost effective for customers with large traffic volumes, and making the reasonable assumption that business customers follow their economic self-interest and only obtain FX service when it is cost-effective, ILEC FX service is just as “significant” a “loophole” in the access charge system as “VNXX” provisioned FX service.³⁴ Staff, moreover, appears to take the

³² E.g., Ex. 24T (Qwest Brotherson Rebuttal) at 31-32; TR. at 452-53 (Staff Williamson). Even if the Commission has any concerns about transport costs for the exchange of “VNXX” provisioned FX traffic – which it should not – those concerns would not justify prohibiting such provisioning or precluding application of the same compensation that applies to ILEC FX traffic. The California Commission, as discussed above in Section II.C.5 for example, addressed such concerns by requiring that interconnecting carriers pick up the traffic at the ILEC tandem or pay a TELRIC-based transport charge. The Joint CLECs do not advocate adoption of the same requirement in Washington, but such a requirement would be less discriminatory and would have less of a negative impact on competition and consumers than Staff’s or Qwest’s proposals. Indeed, some CLECs already provide or otherwise pay for the facilities necessary to transport traffic from local calling areas other than the one in which the CLEC switch is located. E.g. Ex. 421T (ELI Robins Direct) at 3, lines 5-8 & Ex. 422 (ELI-Qwest interconnections).

³³ Staff Opening Brief ¶ 82.

³⁴ Joint CLEC Opening Brief ¶ 48.

troubling position that FX service is only acceptable when it is too expensive, inefficient, and not cost effective. The Commission's objective should be to encourage network efficiency and lower cost services for consumers, not to make certain services artificially expensive in an effort to discourage customers from purchasing them.

25. Finally, Staff maintains that CLECs could provision FX service other than through "VNXX" by locating a channel bank or subscriber carrier facility in each local calling area in which it wants to offer such service. Staff, however, produced no evidence on the costs CLECs would incur – much less the economic viability of incurring the costs – to purchase the necessary equipment, collocate that equipment in the various Qwest wire centers, and construct transport facilities to that equipment sufficient to permit calls to zig zag back and forth between the collocated equipment and the CLEC switch in order to comply with how Staff believes FX service should be provisioned. No engineering justification exists for such provisioning. To the contrary, Staff concedes that network engineers would not design such network configuration.³⁵ The functionality of Staff's proposed provisioning and "VNXX" provisioning is the same. The sole purpose of Staff's proposal, therefore, is to comply with Staff's view of the regulatory requirements and to impose additional costs on CLECs so that their provisioning of FX service, like Qwest's, is too expensive, inefficient, and not cost effective. No such regulatory requirement exists or should exist. The Commission should interpret regulatory requirements to encourage carriers to be more efficient, reduce expenses, and pass the resulting cost savings on to consumers – the exact opposite of what Staff proposes in this proceeding.

26. No other party has demonstrated, or could demonstrate, that "VNXX" provisioned FX service and ILEC FX service are not functionally identical and entitled to the same treatment for regulatory purposes, including payment of intercarrier compensation.

B. 800 Service.

27. “VNXX” provisioned FX service provides a customer with a local presence (generally through seven digit local dialing) in a single local calling area, while 800 service provides generic toll-free calling using 10 digit dialing from multiple local calling areas. These services are functionally different services.³⁶ Qwest, WITA, and Staff focus on call routing and contend that other than a database dip, the call flow for “VNXX” provisioned FX service is identical to the call flow for 800 service.³⁷ Those call flows, however, are also identical to the call flow between a Qwest customer and a CLEC customer who are physically located in the same local calling area.³⁸ Call flow thus is not, and should not be, the determinative factor in characterizing a service. Rather as the Commission observed in the AT&T arbitration, CLECs are entitled to offer services that are *functionally* equivalent to Qwest’s FX service and to have those services be treated the same as the ILEC’s services for regulatory purposes.³⁹ 800 service is no more the functional equivalent of “VNXX” provisioned FX service than it is of ILEC FX service.

C. Market Expansion Line/Remote Call Forwarding Services.

28. Qwest’s Market Expansion Line (“MEL”) service enables a customer to obtain a local telephone number in a local calling area where the customer is not physically located in order to enable parties who are physically located in that local calling area to make local calls to

³⁵ TR at 438, lines 15-24 (Staff Williamson).

³⁶ Joint CLEC Opening Brief ¶¶ 32-33.

³⁷ Qwest also falsely claims that “Level 3’s witness, Dr. Blackmon, confirmed the similarity of VNXX with toll or 1-800 calls.” Qwest Opening Brief ¶ 97. The transcript portions cited in support of this statement include a discussion of 800 service, but Dr. Blackmon discussed only 800 service and made no comparison between that service and “VNXX” provisioned FX service.

³⁸ TR. at 131-32 (Qwest Linse).

³⁹ *In re Petition for Arbitration of AT&T*, WUTC Docket No. UT-033035, Order No. 5, Final Order Affirming Arbitrator’s Report and Decision, ¶ 14 (Feb. 6, 2004).

that customer.⁴⁰ This service is functionally indistinguishable from “VNXX” provisioned FX service. Qwest claims that MEL service honors local calling area boundaries because the MEL customer must pay toll charges (and Qwest must pay access charges) if the local call is forwarded to a telephone number rated to a different local calling area. What happens on Qwest’s side of the call is irrelevant. A CLEC must pay reciprocal compensation to Qwest for calls to a MEL customer who is not physically located in the local calling area to which that customer’s telephone number is rated. MEL service, contrary to Qwest’s claims, thus does not work like 800 service from the perspective of the carrier serving the calling party but, to use Qwest’s words, “seeks to disguise an interexchange call as a local call to avoid access charges” to the calling party’s serving LEC.⁴¹ Again, “VNXX” provisioned FX service is functionally indistinguishable from Qwest’s MEL service and is no less lawful.

D. One Flex Service.

29. Qwest assigns telephone numbers to its VoIP affiliate for the provision of One Flex service with the full knowledge that at least some of those numbers will be assigned to customers who are not physically located in the local calling area to which those numbers are rated, and Qwest treats calls to those customers as local calls if the calling parties have telephone numbers that are rated to the same local calling area.⁴² Qwest contends that calls to One Flex customers are exchanged in the local calling area, but that is a distinction without a difference. A CLEC must pay reciprocal compensation to Qwest for calls to a One Flex customer who is not physically located in the local calling area to which that customer’s telephone number is rated. Qwest, on the other hand, considers calls to be “VNXX” even if Qwest hands the traffic off to

⁴⁰ Joint CLEC Opening Brief ¶¶ 34-37.

⁴¹ Qwest Opening Brief ¶ 98.

⁴² Joint CLEC Opening Brief ¶¶ 38-39.

the CLEC within the local calling area.⁴³ Such disparate treatment is unreasonable. CLECs that use “VNXX” to provision FX service are providing a service that is functionally identical to, and no less lawful and entitled to intercarrier compensation than, Qwest’s (and its affiliate’s) services.

E. Other Services.

30. The Joint CLECs do not address any other services.

IV. VNXX POLICY CONSIDERATIONS

A. Cost Issues

31. Intercarrier compensation for transport and termination of traffic bound for CLEC customers of “VNXX” provisioned FX service is required by federal law and well-established cost-causation principles and has no demonstrable adverse impact on Qwest’s cost to provide local exchange service to its customers.⁴⁴ Staff takes issue only with the costs that Qwest incurs to transport such traffic to the point of interconnection, while Qwest makes the blanket contention that such traffic is interexchange and all costs associated with its transport and termination should be recovered in the same manner as toll traffic. Neither Staff’s nor Qwest’s positions is well-taken.

32. Staff agrees that “VNXX” provisioning of FX service is more efficient from an engineering perspective (at least with respect to serving ISPs) and that “Qwest’s costs are the same whether the CLEC terminates the call at the server located next to its switch, or instead hauls the call back to a similar Internet gateway located in the local calling area where the call originated.”⁴⁵ Staff nevertheless contends that Qwest’s obligation to pay for its proportionate share of interconnection facilities is based on the assumption that the CLEC is bearing a

⁴³ *E.g.*, TR. at 286-88 (Qwest Brotherson).

⁴⁴ Joint CLEC Opening Brief ¶¶ 41-45.

⁴⁵ Staff Opening Brief ¶ 100.

symmetrical burden of transporting the call back to the same local calling area. Nothing in the Act or FCC rules includes any such assumption.

33. The Act and FCC regulations require symmetrical *rates* set at the ILEC's forward-looking costs based, in part, on the observation that "[b]oth the incumbent LEC and the interconnecting carriers usually will be providing service in the same geographic area, so the forward-looking economic costs should be similar in most cases."⁴⁶ FCC orders and rules, however, do not suggest, much less state, that the ILEC's obligation to pay to transport traffic originated on its network to the CLEC for termination is conditioned on the extent of the CLEC network on its side of the point of interconnection or the location of the CLEC's customers.

34. Qwest, on the other hand, contends that "VNXX" provisioned FX service is interexchange calling and as such, cost causation principles require that the CLEC and its customers pay all costs associated with calls between those customers and Qwest customers, including calls originated by Qwest customers. All of Qwest's arguments, however, apply with equal force to Qwest's own FX service, which Qwest concedes provides for toll-free interexchange calling yet is treated as local calling for intercarrier compensation purposes.⁴⁷ Qwest cannot have it both ways. If calls to ILEC FX customers from subscribers with telephone numbers rated to the same local calling area are "local" calls, calls to "VNXX" provisioned FX service under the same circumstances are "local" calls. FX service is FX service, regardless of how it is provisioned, and the same regulatory rules – including payment of intercarrier compensation – should apply.

⁴⁶ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-325, Docket No. 96-98, *et al.*, First Report and Order ¶ 1085 (Aug. 6, 1996) ("*Local Competition Order*").

⁴⁷ *E.g.* TR. at 297-301 (Qwest Brotherson).

B. Impact on Access Regime/Impact on Competition

35. “VNXX” provisioning of FX service has no significant impact on the access charge regime.⁴⁸ Staff agrees with respect to such provisioning used to serve ISPs, but contends that “VNXX” provisioning represents toll bypass when used for voice service. Qwest and WITA view “VNXX” provisioning of FX service as toll bypass regardless of the nature of the customers for that service. All three of these parties are incorrect.

36. Staff agrees that “allowing VNXX for ISP-bound traffic does not erode access charges because dial-up ISP ‘data’ calls are a use of the public switched telephone network that did not exist at the time the access charge system came about.”⁴⁹ Staff, however, claims with virtually no explanation and no citation to record evidence that “VNXX” provisioned FX service is “identical, at least in [its] effect, to” EAS toll bridging and “IP-in-the-middle” services that the Commission has previously prohibited as toll bypass.⁵⁰ Qwest’s FX service has exactly the same “effect” of “allow[ing] end users to call from one local calling area to another without incurring toll charges”⁵¹ Staff does not view Qwest FX as toll bypass because of the relatively few access lines that Qwest serves using FX service.⁵² Access charges, however, are applied to minutes of use, not access lines, and the minutes of use delivered over Qwest’s FX lines almost certainly far exceeds the voice traffic delivered to “VNXX” provisioned FX service.⁵³ “VNXX” provisioned FX service, therefore, is no more – and likely far less – “toll by-pass” than Qwest FX service.

⁴⁸ Joint CLEC Opening Brief ¶¶ 46-48.

⁴⁹ Staff Opening Brief ¶ 113.

⁵⁰ *Id.* ¶ 116.

⁵¹ *Id.*

⁵² Ex. 225 (Staff Response to Pac-West DR No. 22).

⁵³ Qwest does not track the minutes of use for its FX service, but given that a business customer could not cost-effectively use that service without high traffic volumes, the annual traffic on Qwest’s FX access lines could be as high as 400 million minutes, TR. at 460-62 (Staff Williamson), which is as high or higher than the *total* traffic Qwest exchanges with individual CLECs. Exs. 25-28 (Qwest Relative Washington Traffic analyses). No party disputes that

37. WITA, on the other hand, dismisses “the rationale that the access charge regime is not affected because dial-up ISP service did not exist at the time the access charge regime was created” because the latest Commission order on intrastate universal service funding provides that “if access minutes go down, revenue goes down.”⁵⁴ WITA misses the point. Traffic bound for ISPs, whether or not they are served with “VNXX” provisioned FX service, has never been subject to access charges, so there has never been a reduction in the access minutes subject to the intrastate USF access surcharge attributable to “VNXX” provisioned FX service to ISPs. And if such calls to ISPs were to be considered toll calls in the future – which they should not – such traffic would evaporate,⁵⁵ and thus there would be no increase in the access minutes subject to the USF surcharge. There is no correlation between “VNXX” provisioned FX service to ISPs and access revenues for rural incumbent companies.

38. WITA nevertheless contends that “the effect of VNXX service on the existing access regime has the potential to be devastating” and is a “scheme” that “simply strips away the access environment.”⁵⁶ Qwest is only slightly less dramatic in its claim that “VNXX subverts the existing access charge regime.”⁵⁷ Such hyperbole withers in the face of the record evidence that actual usage of Qwest FX service – which WITA characterizes as “not widely used”⁵⁸ – is likely greater than “VNXX” provisioned FX service. The record is devoid of any evidence whatsoever that “VNXX” provisioned FX service has any significant impact on the access charge regime or funding of universal service.

“VNXX” provisioned FX service is used overwhelmingly to serve ISPs, and Qwest is not aware that any ISP obtains Qwest FX service. TR. at 301, lines 9-22 (Qwest Brotherson). Accordingly, voice traffic to Qwest FX customer almost certainly far exceeds the voice traffic to “VNXX” provisioned FX service.

⁵⁴ WITA Opening Brief ¶ 23.

⁵⁵ Ex. 226 (Staff Response to Pac-West DR No. 23).

⁵⁶ *Id.* ¶ 18.

⁵⁷ Qwest Opening Brief ¶ 106.

C. Consumer Impact

39. Staff agrees that “prohibiting 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,”⁵⁹ but contends without any citation to the record that “it appears that few have come to rely on VNXX for voice services.”⁶⁰ Qwest is even more sanguine, claiming, “Elimination of VNXX would produce no demonstrable negative consumer impact.”⁶¹ Qwest might well say so since customers of CLEC “VNXX” provisioned FX service would have no alternative but to obtain service from Qwest, which certainly stands to benefit if Qwest alone can provide FX service within its service territory in Washington.

40. The Act was intended to promote development of competition in local exchange markets. The Washington legislature similarly established that one of the state’s public policy goals is to “[p]romote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state.”⁶² Competition benefits consumers. Monopoly does not. Prohibiting “VNXX” provisioned FX service as Qwest proposes or limiting such service to ISP-bound traffic without intercarrier compensation as Staff recommends would eliminate competition for FX services. Qwest would be the only source for business customers who seek to establish a local presence in a calling area other than the one in which those customers are physically located. Remonopolization of service may be in Qwest’s best interest, but it is inconsistent with Washington public policy to the ultimate detriment of this state’s telecommunications consumers.

⁵⁸ WITA Opening Brief ¶ 16.

⁵⁹ Staff Opening Brief ¶ 117.

⁶⁰ *Id.* ¶ 100.

⁶¹ Qwest Opening Brief ¶ 107.

⁶² RCW 80.36.300(5).

D. Impact on Independent ILECs

41. This is a Qwest complaint case. WITA did not file its own complaint or sponsor any witness, and the record is devoid of any evidence that any WITA member is delivering traffic from its customers to a CLEC to terminate to any “VNXX” provisioned FX customer. No independent ILEC issues thus are properly before the Commission for resolution, and the Commission should not consider them.⁶³ WITA nevertheless contends that rural ILECs are adversely impacted through loss of access revenue and by being required to pay the cost of transporting calls from their customers to CLEC FX customers. Even if the Commission were to address these issues – which it should not – the record does not support WITA’s contentions.

42. WITA introduced no evidence that any of its members’ customers call any CLEC FX customer, so no evidentiary basis exists to support WITA’s allegation that its members are losing originating access revenues. Even if, hypothetically, a WITA member were delivering such traffic to a CLEC for termination, that rural ILEC would be “losing” originating access revenue to the same extent it does when delivering traffic to another ILEC for termination to its FX customer. WITA cannot legitimately object to a CLEC provisioning FX service when it makes no such objection to ILECs providing the same service and “depriving” rural ILECs of originating access charges on calls their customers make to those FX customers.

43. WITA further complains that “VNXX” provisioned FX service deprives rural ILECs of the revenues from the intrastate universal service rate element required to be imposed on all LECs’ access charges.⁶⁴ WITA should – but does not – make the same complaint about

⁶³ Joint CLEC Opening Brief ¶ 51.

⁶⁴ Staff raises a variation of this concern as the only issue it addresses under this heading. Staff contends that Global Crossing’s LATA-wide local calling somehow raises issues of access charge avoidance. Staff never explains this concern, which appears to have no relationship to the “VNXX” provisioning of FX service at issue in this proceeding. Global Crossing offers LATA-wide local calling to its retail customers but continues to recognize ILEC local calling areas for

ILEC FX service. That is the nature of all FX service – no access charges apply, even though the service technically results in interexchange calls. More to the point, however, WITA produced no evidence to demonstrate that the intrastate universal service fund is under-funded because access charges do not apply to FX service. WITA, therefore, cannot plausibly claim that “VNXX” provisioning of FX service has any impact on the intrastate fund from which WITA members draw universal service support.

44. WITA also alleges that “VNXX” provisioning of FX service improperly requires rural ILECs to pay for the transport of calls from the ILECs’ customers to the CLEC for termination to its FX customers, typically through Qwest’s network. Again, WITA produced no evidence of the costs it incurs, if any, to use Qwest’s network to exchange traffic – including FX traffic – with CLECs, or even if WITA members currently are exchanging *any* significant amount of locally dialed traffic with CLECs. FX traffic is considered to be local traffic when exchanged between calling parties with telephone numbers rated to the same local calling area. The Act and FCC rules require that each LEC is responsible for the costs to transport the “local” calls its customers originate to the terminating LEC for termination to its customers.⁶⁵ WITA, of course, believes that its members are exempt from these requirements, but to the extent that WITA members are subject to federal law, those rural ILECs have no more basis to complain about paying the costs to transport calls their customers hypothetically may place to CLEC “VNXX” provisioned FX service customers than about transporting calls made to ILEC FX customers.

intercarrier compensation purposes. This offering is not linked to Global Crossing’s FX service, and nothing about this offering avoids any payment of access charges. Accordingly, Staff’s concerns, whatever they may be, are misplaced and are not properly raised or considered in this docket.

⁶⁵ 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.709.

45. WITA then claims that Pac-West adds insult to injury by claiming that reciprocal compensation is due when an ILEC delivers calls to a CLEC for termination to a “VNXX” provisioned FX customer. There is no evidence that any WITA member is paying, or has been asked to pay, any such compensation, but even in the abstract, Pac-West’s position is not remarkable. Calls to FX customers by callers with numbers rated to the same local calling area have been considered “local” calls since long before the Act was passed, and at least since 1996, the carrier terminating the calls has been entitled to reciprocal compensation.⁶⁶ WITA may not want to compensate other carriers for terminating local calls that WITA members’ customers originate, but the requirement to do so is neither injurious nor insulting.⁶⁷

46. Finally, WITA manufactures evidence in an attempt to create a new issue that is wholly unrelated to “VNXX” provisioning of FX service. Based on Qwest’s cross-examination of Global Crossing’s witness, WITA claims that Global Crossing is engaging in access bypass and creating phantom traffic. That allegation is baseless and patently false. Ms. Peters testified that Global Crossing exchanges all traffic with Qwest and independent ILECs in the Seattle LATA over local interconnection trunks to a single point within that LATA.⁶⁸ WITA states:

If the traffic is handed to Qwest as a local interconnection service traffic over local LIS trunks, then the traffic would be treated by Qwest as local/EAS traffic and no access record is developed and

⁶⁶ *E.g.* Ex. 501T (Pac-West Sumpter Response) at 15, line 14 through 16, line 2.

⁶⁷ WITA is further appalled that Pac-West would maintain a price list requiring payment of reciprocal compensation in the absence of an interconnection agreement. WITA, of course, neglects to mention that most of its members refuse to negotiate interconnection agreements with CLECs claiming exemption from any such requirement. WITA also conveniently ignores the fact that rural ILECs filed local traffic termination tariffs requiring compensation from wireless carriers in the absence of an interconnection agreement until the FCC put a halt to that practice and enabled ILECs to formally request negotiations for interconnection agreements with wireless carriers. *See, e.g., T-Mobile USA, Inc., et al. Petition for Declaratory Ruling: Lawfulness of ILEC Wireless Termination Tariffs*, CC Docket Nos. 01-92, *et al.*, Declaratory Ruling and Report and Order, 20 FCC Rcd. 4855 (2005). WITA’s argument thus is disingenuous, as well as far beyond the scope of this proceeding.

⁶⁸ TR. at 674-81 (Global Crossing Peters).

transmitted to the rural ILEC so that access can be billed on that traffic. Global Crossing is disguising its access traffic as local traffic. Thus, not only do some CLECs want to use the incumbent's trunking to leverage their own VNXX services and avoid not only access charges and transport costs, some even use their services to disguise what even the CLEC itself would describe as access traffic.⁶⁹

There is no evidence in the record of how Qwest treats traffic sent by Global Crossing over local interconnection trunks with Qwest for ultimate termination to a rural ILEC, or whether Qwest creates an access record for toll calls, or even if any such traffic exists. There certainly is no evidence that Global Crossing is making any attempt whatsoever to "disguise" access traffic. To the contrary, Ms. Peters testified that Global Crossing understands that access traffic is identified based on the originating and terminating NPA/NXXs and that Global Crossing pays access charges on that traffic.⁷⁰ The Commission, therefore, should disregard this fabricated and irrelevant issue that WITA is raising for the first time in its post-hearing brief.

47. There is no evidentiary basis in the record for any Commission finding that "VNXX" provisioning of FX service has any impact whatsoever on independent ILECs. If WITA has an issue with FX service and the evidence to support a claim, WITA should bring its own complaint. Until that time, WITA has no basis for any of its contentions, and the Commission should reject them as unsupported and beyond the scope of Qwest's complaint.

E. Other Public Policy Considerations

48. The Joint CLECs do not address any additional public policy considerations.

⁶⁹ WITA Opening Brief ¶ 32 (emphasis in original).

⁷⁰ TR. at 676, lines 5-20 (Global Crossing Peters).

V. STAFF PROPOSAL

49. The Joint CLECs oppose Staff's proposal to permit "VNXX" provisioning of FX service only for ISPs and without intercarrier compensation as discriminatory, anticompetitive, failing to consider critical issues for VoIP providers and their customers, and otherwise inconsistent with state and federal law.⁷¹ Staff does not address these issues but contends that immediate cessation of compensation for "VNXX" provisioned FX service to ISPs is appropriate because the FCC in its *ISP Remand Order* "did not even consider that CLECs might be able to continue receiving reciprocal compensation without even having to incur the expense of locating modems or servers in each local calling area."⁷² Compensation for ISP-bound traffic, however, like reciprocal compensation, recovers *switching* costs, not loop costs,⁷³ and is set at a level that is a fraction of the forward-looking costs the Commission established for local switching.⁷⁴ The FCC compensation rate does not enable CLECs to recover their costs to terminate calls to ISPs regardless of the location of the ISP modem. The location of the modem or server thus is irrelevant to the costs underlying intercarrier compensation for ISP-bound traffic and cannot justify Staff's proposal to eliminate such compensation.

50. With respect to "VNXX" provisioned FX service for voice customers, Staff relies on the Commission's decision in the AT&T arbitration with Qwest to support its proposal that the Commission ban such service. That decision, including the language Staff quotes, supports the opposite conclusion. The Commission agreed that AT&T should be permitted to offer services that are functionally equivalent to Qwest's FX and local number presence service for

⁷¹ Joint CLEC Opening Brief ¶¶ 53-59.

⁷² Staff Opening Brief ¶ 126.

⁷³ *Local Competition Order* ¶ 1057.

⁷⁴ The FCC set a rate of \$0.0007 per minute of use for ISP-bound traffic, while the Commission established call termination rates for Qwest and interconnecting carriers of \$0.0018 per minute of use. *See, e.g.,* Qwest SGAT, Ex. A, Section 7.6.

ISPs but nevertheless rejected AT&T's proposed contract language because "it also implicates other potential services that it would be better to consider on a case-by-case basis as one carrier or another seeks to implement new services."⁷⁵ Staff's proposal would *prohibit* CLECs from offering FX service that is functionally equivalent to Qwest's FX service, as well as any other service that could be provided through "VNXX" provisioning, without any case-by-case analysis of such services. Staff's nebulous and wholly unsupported fear of abuse of "VNXX" provisioned FX service for voice customers does not and cannot justify Staff's proposal to make such service unlawful.

VI. QWEST/MCI VERIZON ACCESS SETTLEMENT

51. The Joint CLECs have nothing to add to their discussion of these issues in their Opening Brief.

VII. CARRIER-SPECIFIC ISSUES

A. Level 3/Broadwing Counterclaim.

52. The Joint CLECs do not take any position on this issue.

B. Global Crossing Counterclaim.

53. Global Crossing demonstrated its entitlement to the compensation for which it has billed Qwest.⁷⁶ Qwest addresses Global Crossing's counterclaim in a single paragraph of its Opening Brief, claiming simply, without record citation, that "Global freely admits that all of the disputed minutes are in connection with VNXX traffic" which Qwest contends is not subject to intercarrier compensation.⁷⁷ Global Crossing, however, has never admitted, freely or otherwise, that any of the traffic for which it seeks compensation from Qwest is "VNXX."

⁷⁵ Staff Opening Brief ¶ 127 (quoting Docket No. UT-033035, Order No. 05, ¶ 15).

⁷⁶ Joint CLEC Opening Brief ¶¶ 63-66 (and record evidence cited therein).

⁷⁷ Qwest Opening Brief ¶ 158.

Rather, Ms. Peters testified that the traffic is *not* “VNXX.”⁷⁸ Qwest produced no evidence to the contrary. Qwest, on the other hand, does not dispute the accuracy of the amounts in dispute and that those amounts are associated with locally dialed traffic exchanged between the parties.⁷⁹ Regardless of whether the Commission permits, prohibits or restricts “VNXX” provisioning of FX service, Global Crossing is entitled to the reciprocal compensation that it seeks in its counterclaim.

C. Other Carriers (Listed Individually).

54. The Joint CLECs do not address any other carriers.

VIII. CONCLUSION/RECOMMENDATIONS

55. Qwest has failed to carry its burden to prove that “VNXX” provisioned FX service is unlawful. Indeed, even Qwest cannot continue to maintain the allegations in its complaint after entering into an agreement to permit Verizon Access to provide such service. The Commission, therefore, should deny Qwest’s complaint and grant Global Crossing’s counterclaim without further consideration of all of the extraneous issues that Qwest, WITA, and Staff have attempted to inject into this proceeding.

56. Even if the Commission converts this proceeding into the generic investigation of the public policy implications of “VNXX” that the Commission has repeatedly avoided in the past, the Commission should conclude that CLECs should continue to be permitted to offer “VNXX” provisioned FX service to ISPs and voice customers and that traffic terminated to such customers be treated like any other section 251(b)(5) traffic. “VNXX” provisioned FX service is indistinguishable from ILEC FX service, poses no threat to the access charge regime, and provides consumers with an effective alternative to comparable ILEC service offerings. Such

⁷⁸ Ex. 441T (Global Crossing Peters Direct) at 4-5.

⁷⁹ Tr. at 326-330 (Qwest Brotherson).

service – and associated intercarrier compensation – is fully consistent with the public interest and should continue to be permitted.

RESPECTFULLY SUBMITTED this 29th day of June, 2007.

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