WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO BENCH REQUEST

DATE PREPARED: August 15, 2007
CASE NO.: UT-063038
REQUESTER: UTC

WITNESS: Commission Staff
RESPONDER: Jonathan Thompson
TELEPHONE: (360) 664-1225

BENCH REQUEST NO. 2:

To Commission Staff:

In Staff's proposal for resolution of this case, Staff recommends allowing CLECs to use VNXX only for ISP-bound traffic under a bill and keep compensation system. In neither its Opening Brief nor its Reply Brief, in the sections devoted to discussing the proposal directly, does Staff include a requirement that CLECs pay Qwest for transport of VNXX ISP-bound calls. However, Staff does discuss the issue of proper compensation for transport in other sections of its briefs. For example, at page 1 of Staff's Reply Brief, Staff would relieve Qwest of the expense of providing local interconnection facilities for the transport of VNXX traffic to the CLEC point of interconnection.

On page 14 of Staff's Reply Brief, Staff states that "it is preferable to require the CLEC to bear the TELRIC rate for the transport facilities (by allowing Qwest to exclude VNXX traffic from the relative use factor (RUF) for interconnection facilities)."

Please clarify what Staff recommends with regard to CLEC payment of transport costs related to VNXX ISP-bound traffic. Please state whether similar compensation for transport would be appropriate for VNXX voice traffic should the Commission permit it.

RESPONSE:

Qwest provides two-way Local Interconnection Service trunk facilities for the purpose of interconnecting with requesting CLECs to exchange local telecommunications traffic. In many cases, these Qwest-provided trunks transmit traffic from various local calling areas throughout a LATA to centralized CLEC points of presence (in many cases, a CLEC has a single point of presence).

Although Qwest provides the facilities for transmitting traffic between the two carriers' networks, the interconnecting CLECs are required to share the cost. Under FCC rules, Qwest recovers from the CLEC the cost of the proportion of trunk capacity that is used by the CLEC to send traffic from the CLEC's network for termination on Qwest's network, as compared with the proportion of that trunk capacity that is used to send traffic that terminates on the CLEC's network.

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47 C.F.R. § 51.709(b) provides:

> The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

Staff's recommendation is that Qwest be allowed to recover from the CLEC the costs of the proportion of trunk capacity that is used by the CLEC to send traffic that will terminate on Qwest's network *as well as* the proportion of that trunk capacity that is used by the CLEC for VNXX (interexchange) traffic. (Under staff's recommendation, VNXX arrangements would only be allowed for ISP-bound traffic). As required by the rule, Qwest would bear the cost of the proportion of the trunk capacity that is used by Qwest to send local traffic that terminates on the CLEC's network.

Staff believes that the justification for allowing VNXX arrangements for ISP-bound traffic is that it has become widespread and to disallow it now, or apply access charges to it, would be disruptive to users of dial-up ISP service. Staff does not believe that this justification extends to VNXX when it is used for purposes other than ISP access.

Staff is concerned that although VNXX ISP-bound traffic will most likely continue to decrease due to the availability of broadband capacity to more consumers, other VNXX traffic may continue to grow, as seen in other states, exacerbating existing inter-carrier compensation issues, such as phantom traffic, for all ILECs, and in particular the rural LECs. However, Staff recognizes the commission may decide to allow CLECs to provide an FX-like service, in competition with the ILECs, without being required to obtain special access or private line facilities to every local calling area (or even to have any physical presence in the local calling area), but instead to utilize local interconnection facilities. If the Commission agrees with that CLEC argument and allows VNXX for voice and other service, then Staff believes that the same compensation scheme Staff recommends for ISP-bound VNXX traffic is, under that condition, a reasonable compensation scheme for other types of VNXX traffic. Staff agrees with the analysis of the California Commission that a reasonable compensation scheme is one that does not create

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> an incentive that distorts marketplace investments by requiring incumbents to either subsidize its [sic] competitors or shift costs to local exchange customers for inter-exchange traffic that is destined beyond the origination rate center. Such policy would encourage CLECs to become providers of termination facilities, to collect reciprocal compensation and thereby avoid investment in multiple points of interconnection, switching, and transport, and result in less network redundancy than facilities based competition economics would otherwise dictate.[1]

Staff believes that setting compensation at bill-and-keep and requiring the CLEC to pay the TELRIC rate for trunking capacity it utilizes to provide an FX-like service reduces this market distorting incentive.

The California commission requires the payment of reciprocal compensation on VNXX traffic, but the CLEC must pay the originating ILEC an offsetting call origination charge for transporting the call.[2] Staff believes that the California approach, while analytically correct from the standpoint of requiring the CLEC to pay for the transport it receives from the ILEC, does not achieve the competitive neutrality that it takes as its benchmark. This is because it allows the CLEC to purchase its transport from the ILEC at TELRIC rates for shared transport, while the ILEC's FX customer has to pay much higher retail private line rates for the same functionality.[3] While it is admittedly imprecise, Staff believes it is preferable to require the CLEC to bear the lower TELRIC rate for the transport facilities (by allowing Qwest to exclude VNXX traffic from the proportion of the trunk capacity between the carriers' networks for which it is responsible), but to reduce the reciprocal compensation rate on VNXX ISP-bound traffic to zero (*i.e.*, bill-and-keep).

As noted at paragraph 32 of Staff's reply brief, the commission also could relieve CLECs of the obligation to pay reciprocal compensation to Qwest for calls the CLEC delivers to Qwest for termination to a Qwest FX customer, and require Qwest to bear the cost of transmission facilities dedicated to the transmission of traffic between two carriers' networks to the extent

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[1] *Re Pacific Bell Telephone Company*, California Public Utilities Commission, Application 02-03-059, Decision 03-05-031, 2003 WL 21212003, at *5 (May 8, 2003).

[2] *Id.* at *4, 5; *In the Matter of Verizon California, Inc. (U-1002I-C) Petition for Arbitration with Pac-West Telecomm, Inc. (U5266-C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, California Public Utilities Commission, Application 02-06-024, Decision 03-05-075, pp. 7, 8 (May 22, 2003).

[3] 2003 WL 21212003, at * 7 (Cal. P.U.C. May 8, 2003); Cal. PUC Decision 02-06-076 at 28 (July 5, 2002) http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/17122.pdf ; Brotherson, Exh. No. 24T, 5:4 – 5:12.

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they are used to transport traffic that terminates to a Qwest FX customer. This is the effect of the interconnection agreement amendment between Qwest and Verizon Access and also appears to be the arrangement between Qwest and TCG.