



Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE WASHINGTON, D.C. SHANGHAI

GREGORY J. KOPTA
Direct (206) 757-8079
gregkopta@dwt.com

SUITE 2200
1201 THIRD AVENUE
SEATTLE, WA 98101

TEL (206) 622-3150
FAX (206) 757-7700
www.dwt.com

August 31, 2007

Via Federal Express

Ms. Carole J. Washburn
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504

RECEIVED
RECORDS MANAGEMENT
07 SEP - 14 AM 8:31
STATE OF WASH
UTIL. AND TRANS.
COMMISSION

Re: Docket No. UT-063038

Dear Ms. Washburn:

Enclosed for filing in the above-referenced docket, please find the original and 7 copies of the *Joint CLEC Opposition to and Comments on WITA Motion to Allow Response to Staff Response to Bench Request No. 2 and Certificate of Service*.

Thank you for your assistance.

Very truly yours,

Davis Wright Tremaine LLP

Denise Ratti
Assistant to Gregory J. Kopta

Enclosures
cc: Service List

and CLECs. The WITA Motion is simply another attempt to improperly expand the issues in this proceeding beyond the issues raised in Qwest's complaint. If WITA wants the Commission to address rural carrier concerns, WITA should file its own complaint. WITA should not be permitted to broaden the scope of this docket with unsupported facts and unsolicited proposals, particularly now, when the evidentiary record is closed and post-hearing briefing has been concluded.

3. The Joint CLECs also object to the Notice. The Administrative Law Judge granted WITA's motion before providing parties any opportunity to respond to the WITA Motion. The Notice compounds this error by permitting unsolicited and unsworn factual information to be included in the record long after the evidentiary hearings have been concluded on a subject that is far beyond the scope of any legitimate issues raised in Qwest's complaint. Commission consideration of this information and this issue, without prior notice of the expansion of the scope of this docket and full opportunity to conduct discovery and confront witnesses sponsoring this information at evidentiary hearings, is inconsistent with the Commission's procedural rules, as well as with principles of administrative law and fundamental due process.

4. Subject to, and without waiver of, these objections, the Joint CLECs provide the following substantive response to the information contained in the WITA Motion.

5. The Joint CLECs agree that rural companies generally do not have interconnection agreements with CLECs. Rural companies claim exemption from the negotiation and interconnection agreement requirements of Section 251 of the Telecommunications Act of 1996 ("Act") and thus refuse even to discuss negotiating interconnection agreements with CLECs. Rural companies similarly refuse to develop

TELRIC pricing for interconnection or to connect directly with CLECs. As a practical matter, moreover, the volume of traffic between rural companies and CLECs is miniscule to none, which would make direct network connection financially infeasible.

6. A point of interconnection (“POI”) between interconnected carriers’ networks is established in the parties’ interconnection agreement. Because the rural companies refuse to negotiate interconnection agreements, and because the volume of traffic between rural companies and CLECs is *de minimus* (to the extent it exists at all), generally no POI is established between these carriers. The Joint CLECs have no knowledge of the location of POIs between rural companies and Qwest, nor are the Joint CLECs aware of the extent to which rural companies are responsible for the costs of any portion of the transport between their switches and the Qwest tandem those switches subtend.

7. Even the unsupported factual statements contained in the WITA Motion do not support WITA’s “suggestion” for transport cost responsibility for “VNXX” traffic between rural companies and CLECs. First and foremost, the record is devoid of evidence that any such traffic exists, relegating WITA’s “suggestion” to being a solution in search of a problem. WITA also provides no information on whether rural companies incur any costs at all to transport traffic from their switch to the Qwest tandem. It is possible, if not likely, that Qwest provides and pays for the entirety of those transport facilities in at least some instances, which would result in the rural company receiving a windfall if it were authorized to charge a CLEC for such transport. In addition, WITA provides no factual or legal basis for the Commission to establish POIs between rural companies and CLECs. If WITA members refuse to negotiate interconnection agreements, they should not be entitled to request that the Commission unilaterally

establish interconnection terms and conditions, particularly in a Qwest complaint case with inadequate record support.

8. WITA, moreover, ignores the California Commission's resolution of the very issue that WITA is attempting to raise in this proceeding. That Commission conducted a specific inquiry to examine this issue and found, based on a far more complete record than WITA has presented here, that rural companies (called "Small LECs"), like the larger ILECs, are required to pay reciprocal compensation for "VNXX" traffic, including transport from the rural company switch to its POI with the ILEC:

VNXX traffic is properly subject to reciprocal compensation. We thus conclude that consistent with the Act, the Small LEC remains responsible for transiting VNXX calls originated by its customers that terminate at the end office served by a CLEC. In situations where the Small LEC originates a VNXX call intended for an end user served by a CLEC with which the Small CLEC is only indirectly connected, the Small LEC is still obligated to transport the call to its point of interconnection with the ILEC, as an intermediary. In this situation, the ILEC would provide the transit service for the small LEC, and the arrangement between the Small LEC and the ILEC would determine how the ILEC recovers costs for transiting such calls. The Small LEC still remains responsible for routing the call to the carrier of the called party.¹

9. The California Commission found no basis to treat rural companies any differently than the larger ILECs with respect to reciprocal compensation for "VNXX" traffic. That Commission required AT&T and Verizon to pay reciprocal compensation to CLECs for terminating "VNXX" calls but required the CLECs either to pay for transport "from the rate center where the calling party physically resides to the point of

¹ *In re Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, et al.*, Rulemaking 95-04-043, *et al.*, Decision 07-02-031, Opinion Regarding Treatment of Virtual NXX Calls With Respect to Small Local Exchange Carriers at 10 (Feb. 15, 2007).

interconnection closest to the switch used for delivering calls to the rate center where the call terminates,” or to extend the “point of interconnection to the ILEC tandem switch serving the end office of the originating traffic.”² The California Commission “conclude[d] that by requiring the Small LECs to pay reciprocal compensation for VNXX calls on the same basis as required for the major ILECs, a competitive environment is promoted for the provision of service to ISPs in the rural areas served by the Small LECs.”³ That commission addressed the lack of interconnection agreements (and corresponding absence of reciprocal compensation rates) between rural companies and CLECs by requiring “for any Small LEC that does not voluntarily agree to negotiate terms and conditions of intercarrier compensation for VNXX arrangements on the basis of a ‘rural telephone company’ exemption, we shall require that the CLEC tariff apply as the default.”⁴

10. The Commission should not establish any reciprocal compensation arrangement between rural companies and CLECs in this docket because that issue is well outside the scope of Qwest’s complaint. If the Commission overrules the Joint CLECs’ objection and nevertheless addresses that issue in this proceeding, the Commission should reject WITA’s “suggestion” for transport compensation. The Commission instead should require the originating carrier to pay for the transport from that carrier’s switch to the terminating carrier’s switch as required under the Act and FCC rules. Alternatively, the Commission should adopt the California Commission’s solution and should require the

² *Id.* at 17-18.

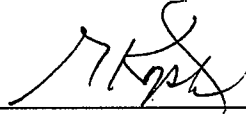
³ *Id.* at 33.

⁴ *Id.* at 35-36.

rural company to pay reciprocal compensation, including any transport of “VNXX” traffic from its switch to its POI with Qwest, and should hold the CLEC responsible for only the transport from that POI to the CLEC switch based on the transit rate established between the rural carrier and Qwest.

DATED this 31st day of August, 2007.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Global Crossing Local
Services, Inc., and Pac-West Telecomm, Inc.

By  _____
Gregory J. Kopta
WSBA No. 20519