

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-

COMPLAINT OF QWEST
CORPORATION FOR AN ORDER
PROHIBITING VNXX

I. INTRODUCTION

1 Pursuant to RCW 80.04.110 and WAC 480-07-305, Qwest Corporation (“Qwest”) brings the following Complaint against Level 3 Communications LLC (“Level 3”); Pac-West Telecomm (“Pac-West), Northwest Telephone Inc. (“NTI”); TCG-Seattle (“TCG”); Electric Lightwave,

Inc. (“ELI”); Advanced TelCom Group, Inc. d/b/a Eschelon Telecom, Inc. (“Eschelon”); Focal Communications Corporation (“Focal”); Global Crossing Local Services Inc. (“Global”); and, MCI Worldcom Communications, Inc. (“MCI”) (collectively, “Respondents” or “CLECs”).¹

2 In support of its Complaint, Qwest alleges as follows: The names, addresses, and telephone numbers of the persons to whom communications should be addressed are:

Lisa A. Anderl
Adam L. Sherr
1600 – 7th Ave. Room 3206
Seattle, WA 98191
206-345-1574

3 Pursuant to WAC 480-07-370(1)(a)(ii)(B), Qwest states that the names and addresses of the respondents are set forth in Appendix A hereto.

II. PARTIES

4 Qwest is a telecommunications company as defined in RCW 80.04.010 and is an incumbent local exchange company (“ILEC”), as defined in 47 U.S.C. § 251(h). Qwest provides local exchange and other telecommunications services in the State of Washington.

5 Level 3 is registered and classified by the Commission as a competitive local exchange company (“CLEC”). Level 3 is authorized to provide switched and non-switched local exchange and long distance services in Washington.

6 Pac-West is registered and classified by the Commission as a CLEC. Pac-West is authorized to provide switched and non-switched local exchange and long distance services in Washington.

¹ Qwest is aware that mergers and acquisitions may have changed the entity names listed herein, e.g., Focal may now be “Broadwing”. However, Qwest has identified the Respondents herein by the names used in the interconnection agreements with Qwest. Qwest reserves the right to amend this complaint to correct the names of the corporate entities should the need arise.

7 NTI is registered and classified by the Commission as a CLEC. NTI is authorized to provide
switched and non-switched local exchange and long distance services in Washington.

8 Each of the other Respondent companies is also registered with the Commission as a CLEC
and is authorized to provide local and long distance services in Washington.

III. JURISDICTION

9 The Commission has jurisdiction over this Complaint and Respondents pursuant to RCW
80.01.040, RCW 80.04.110, and other statutes cited herein.

IV. SUMMARY OF COMPLAINT

10 On February 10, 2006, the Washington Utilities and Transportation Commission
("Commission") entered final orders in Docket Nos. UT-053036 and UT-053039, petitions by
Pac-West and Level 3 against Qwest for enforcement of the interconnection agreements
between the parties.² In those orders, the Commission dismissed Qwest's counterclaims,
stating that "Qwest's counterclaims address the use of VNXX arrangements generally, not the
specific issue of compensation for VNXX ISP-bound traffic. Should Qwest wish to pursue the
broader issue of VNXX generally, it may file its own complaint about specific carriers and
their behavior regarding intercarrier compensation methods."³

11 In the *Level 3* order, the Commission stated that it had previously addressed and approved
compensation for VNXX arrangements, but has not considered the propriety of these
arrangements.⁴

² *Level 3 Communications LLC v. Qwest Corporation*, Docket No. UT-053039 ("*Level 3*"). *Pac-West v. Qwest Corporation*, Docket No. UT-053036 ("*Pac-West*").

³ *Pac-West* at ¶ 43 and *Level 3* at ¶ 40.

⁴ *Level 3* at ¶ 71.

12 In this complaint, Qwest contends that VNXX numbering arrangements for routing traffic are unlawful and contrary to the public interest and public policy of the state. Qwest asks the Commission for a ruling that carriers engaged in or using such numbering arrangements, including Respondents, are in violation of state law, Qwest's tariffs, and prior Commission orders. Qwest asks the Commission to order that such arrangements are prohibited in the state of Washington, and that Respondents must cease and desist such arrangements immediately, or pay appropriate access charges for the traffic being routed via VNXX.

V. FACTS

13 There are two general traffic types relevant to this complaint – Interexchange (toll) traffic, and local traffic. Local traffic is telecommunications traffic that originates and terminates in a geographically-defined area that is approved by the Commission. These areas are called “local calling areas” or “extended area service” (“EAS”) areas. See e.g., WAC 480-120-021. These geographically-defined areas allow for an end-user customer's unlimited local calling within these areas for a Commission-approved flat rate.

14 Interexchange (toll) traffic is traffic that originates and terminates between end users located in *different* local calling areas/EAS areas – it is also commonly referred to as “long distance” traffic.

15 The type of traffic, either local or toll, is determined by the geographic boundaries of the originating and terminating local calling areas of the calling and called parties. Based on these physical end points, the telecommunications industry has developed a method of determining the general location (i.e., local calling area/EAS area) for intercarrier compensation purposes based on the assignment of telephone numbers of the originating and terminating end users. Telephone numbers are displayed in the NPA/NXX format (in which the NPA is the area code and the NXX is the central office code). The central office code is then followed by a four-

digit line number which together constitute the telephone number of the end-user's telephone line. Based on this format, which is founded on the geographic location of the calling and called parties, and the known geographic local calling area/EAS boundaries, a call is determined to be either local or long distance.

16 A Virtual NXX, or "VNXX" number is a telephone number that is assigned to a customer utilizing an NPA/NXX that is associated with a different local calling area than the one in which the customer is physically located. The term "virtual" is used to describe the fact that calls to the VNXX number are not local calls by definition, but rather the dialing pattern makes them appear to be local. This is because each VNXX number will route the seemingly local calls to the often distant location of the CLEC's customer. These calls, but for the assignment of VNXX numbering, would be rated and routed as long distance calls, because they are calls between customers geographically located in separate local calling areas. Respondents do not pay Qwest the access charges that would otherwise be due on an inbound 1+8XX service (or other applicable access charges), nor do they purchase dedicated access transport to route these calls. This allows Respondents and their customers to require Qwest to transport an unlimited volume of interexchange calls, without compensation to Qwest, from multiple local calling areas to distant local calling areas.

17 Respondents use local numbers (NXX's) to allow end users to make what appears to them to be local calls. Through the use of a routing number, the calls are routed not to destinations in the same local calling area, but rather over Qwest's inter-exchange facilities to destinations in distant local calling areas. Respondents use Qwest's local trunk groups to transport VNXX calls that may terminate to locations across the country. On the other hand non-VNXX long distance traffic terminates to locations across the country where the appropriate access charges and end user toll charges would apply. Although both VNXX and toll traffic may originate in

Washington and terminate to locations across the country, only VNXX avoids carrier access charges and end user toll.

18 Respondents rely on the ubiquitous network of Qwest (and other ILECs in the state) to provision long distance calling to their customers at no additional charge, and use this arrangement to their advantage. Because Qwest has built this network, and has incurred significant costs associated with its construction and maintenance, Qwest is unable to replicate a VNXX-like service offering to its customers that would be competitive with VNXX. In other words, there is no “other” carrier’s network that Qwest can use to obtain “free” transport as the CLECs do with VNXX. Respondents do not compensate Qwest for routing and transporting those long distance calls. Respondents’ use of VNXX is not a legitimate joint provisioning of FX or FX-type service because neither the Respondent nor its customer provisions dedicated transport or compensates Qwest at the appropriate rates for Qwest’s provision of a portion of the dedicated transport necessary to link the Respondent’s customer to the distant local calling area. Nor do Respondents compensate Qwest for the use of Qwest’s local network as an FX customer does.

19 Qwest’s service offering that permits a customer to have a local presence in a distant local calling area is called foreign exchange (FX) service. A description of the service may be found in Qwest’s Exchange and Network Services Tariffs and Price Lists, Section 5.1.4. A Qwest customer in Seattle purchasing FX service may obtain a local number in Olympia, or elsewhere in the Seattle LATA. The customer purchasing FX service is required to pay for a presence in the distant local office where Qwest provisions the service and also to pay for the dedicated transport that Qwest provisions between the distant central office and the customer’s premise. Qwest cannot offer this service for free, and Qwest requires customers who desire this service to pay for the facilities used and costs incurred to provide it.

20 VNXX has widespread and significant implications for the entire access compensation system established in Washington and elsewhere. Respondents want to allow their customers to avoid paying toll charges for long distance calls and are, in essence, providing an inbound 1+8XX-type service, for which they should be financially responsible. Further, some of the Respondents also seek to force ILECs like Qwest to pay them for routing and transporting toll calls for Respondents (through the intercarrier compensation provisions in their interconnection agreements). This has had severe financial consequences on Qwest, and erodes the financial support that toll and/or originating switched access charges provide to local rates, and distorts the compensation scheme (including universal service funding) underlying the public switched telephone network.

VI. CAUSES OF ACTION

A. Violation of Qwest's Access Tariffs

21 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

22 Respondents may lawfully offer their end users the ability to receive calls from throughout the state of Washington such that the calling party would not be charged a toll charge. In order to do so, Respondents could purchase one of two services from Qwest's access tariff. Respondents could purchase the "800 Data Base Access Service" from Qwest's Access Service Tariff, WN-U 44, Section 6.2.6, or they could purchase an FX product with Feature Group A access, under Section 6.2.1. Either service would enable the Respondents' end users to receive calls from throughout the state without the calling party experiencing a toll charge – in the same way that VNXX does today, but with lawful and proper compensation paid to Qwest for the use of its ubiquitous network. Failure to purchase the appropriate services out of the access tariff places Respondents in violation of Qwest's tariffs, state laws, and Commission rules.

B. Violation of Prescribed Exchange Areas

23 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

24 Pursuant to RCW 80.36.230, the Commission is granted the power to prescribe exchange area boundaries and/or territorial boundaries for telecommunications companies. The Commission has exercised that authority by promulgating rules, including WAC 480-120-021. The Commission defines "**Exchange**" as a *geographic* area established by a company for telecommunications service within that area. "**Interexchange**" means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another. "**Interexchange company**" means a company, or division thereof, that provides long distance (toll) service.

25 The Commission has accepted Qwest's tariffs, which define its exchanges as geographic areas. See, Section 5 of Qwest's Exchange and Network Services tariff. Qwest has also defined local calling based on geographic areas, and the location of the customer's premises. Some or all of the Respondents have concurred in Qwest's local calling areas. However, to the extent that they allow and enable VNXX calling without payment of appropriate compensation for interexchange calls, Respondents are in violation of prescribed exchange areas.

C. Violation of RCW 80.36.080 Rates, services, and facilities.

26 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

27 RCW 80.36.080 provides, in pertinent part:

All rates, tolls, contracts and charges, rules and regulations of telecommunications companies, for messages, conversations, services rendered and equipment and facilities supplied, whether such message, conversation or service to be performed be over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable and sufficient,

28 Respondents' use of VNXX numbering and routing without charging their end users for that service constitutes a violation of 80.36.080, which requires rates to be fair, just, and reasonable. Respondents' customers receive the benefit of access to a state-wide toll network, without contribution to the costs of maintaining and supporting that network.

D. Violation of State Law, RCW 80.36.140 Rates and services fixed by commission, when.

29 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

30 RCW 80.36.140 provides, in pertinent part:

Whenever the commission shall find, after such hearing that the rules, regulations or practices of any telecommunications company are unjust or unreasonable, or that the equipment, facilities or service of any telecommunications company is inadequate, inefficient, improper or insufficient, the commission shall determine the just, reasonable, proper, adequate and efficient rules, regulations, practices, equipment, facilities and service to be thereafter installed, observed and used, and fix the same by order or rule as provided in this title.

31 The Respondents' use of VNXX is a practice that is unjust and unreasonable, in that it requires Qwest to incur costs that should be compensated by the Respondents, who may then more appropriately obtain compensation from their end users.

E. Violation of RCW 80.36.160, Physical connections may be ordered, routing prescribed, and joint rates established

32 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

33 RCW 80.36.160 provides:

In order to provide toll telephone service where no such service is available, or to promote the most expeditious handling or most direct routing of toll messages and conversations, *or to prevent arbitrary or unreasonable practices* which may result in the failure to utilize the toll facilities of all telecommunications companies equitably and effectively, the commission may, on its own motion, or upon complaint, notwithstanding any contract or arrangement between telecommunications companies, investigate, ascertain and, after hearing,

by order (1) require the construction and maintenance of suitable connections between telephone lines for the transfer of messages and conversations at a common point or points and, if the companies affected fail to agree on the proportion of the cost thereof to be borne by each such company, prescribe said proportion of cost to be borne by each; and/or (2) prescribe the routing of toll messages and conversations over such connections and the practices and regulations to be followed with respect to such routing; and/or (3) establish reasonable joint rates or charges by or over said lines and connections and just, reasonable and equitable divisions thereof as between the telecommunications companies participating therein.

34 By implementing and promoting VNXX services with their end users, Respondents are engaging in unreasonable practices, resulting in a failure to utilize the toll networks of all telecommunications carriers equitably and effectively, in violation of RCW 80.36.160.

F. Violation of RCW 80.36.170 Unreasonable Disadvantage Prohibited

35 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

36 RCW 80.36.170 provides in relevant part:

No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation, or locality, or subject any particular person, corporation, or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

37 By providing facilities and services to their customers at rates and on terms and conditions that avoid proper payment of access charges and/or toll rates, Respondents are subjecting Qwest and other ILECs in the state to undue prejudice or disadvantage in violation of RCW 80.36.170. To the extent that the VNXX services are not provided under contract, Respondents are also giving an undue preference to their customers, and the customers of other local exchange carriers such as Qwest.

G. VNXX is Contrary to the Public Interest in the State of Washington

38 Qwest reasserts and realleges the statements set forth in paragraphs 1-20.

39 The Commission has previously articulated that while the state has a policy to promote diversity in the supply of telecommunications services, that policy falls short of a duty to underwrite or subsidize developing competition. The Commission explained that such a subsidy would be the result of a ruling that allowed carriers to escape its obligation of making an appropriate contribution toward the fixed and variable costs associated with accessing the public switched telecommunications network.⁵

40 As with toll bridgers, Respondents offer no innovation in service or technology, merely a subterfuge under which it avoids paying access charges. VNXX is contrary to the public interest for the same reasons that EAS bridging is contrary to the public interest, and should be prohibited for the same reasons that EAS bridging is prohibited.

VII. RELIEF REQUESTED

41 Qwest respectfully requests the Commission enter an order:

42 (1) holding that VNXX violates state law and Qwest's tariff and is otherwise contrary to the public interest,

43 (2) prohibiting Respondents from using VNXX numbering by assigning NPA/NXXs in local calling areas other than the local calling area where the customer is physically located or has a physical presence,

⁵ See, Commission orders in *In the Matter of Determining the Proper Classification of: U.S. MetroLink Corp., Second Supplemental Order p. 7*, Docket No. U-88-2370-J (1989), and *In the Matter of Determining the Proper Classification of United & Informed Citizen Advocate Network, Fourth Supplemental Order, Commission Decision and Final Cease and Desist Order*, Docket No. UT-971515 (1999) ("*U & I CAN*").

- 44 (3) requiring that Respondents cease their misuse of such telephone numbering resources,
- 45 (4) requiring that Respondents properly assign telephone numbers based on the actual physical
location of its customer, and
- 46 (5) requiring that Respondents comply with Qwest's access tariffs if they wish to enable toll-
free long distance calling for their own customers and the customers of other local exchange
companies.
- 47 Qwest also requests that the Commission grant such other and further relief that the
Commission deems appropriate.

DATED this 22nd day of May, 2006.

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