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 TELECOM, INC. d/b/a ESCHELON TELECOM, INC., FOCAL COMMUNICATIONS CORPORATION, GLOBAL CROSSING LOCAL SERVICES, INC., and MCI WORLDCOM COMMUNICATIONS, INC. Respondents.	DOCKET UT-063038 COMMISSION STAFF RESPONSE TO WITA RESPONSE TO COMMISSION STAFF'S RESPONSE TO BENCH REQUEST NO. 2

1 Commission Staff hereby responds to Judge Mace's August 22, 2007, Notice of Opportunity to Respond to WITA's Response to Staff Response to Bench Request No. 2.

2 WITA's motion to allow response to Staff's response to Bench Request No. 2 states: "The purpose of this request is not to challenge the substance of Staff's response, but to point out that Staff's response is incomplete in that it does not include a discussion of transport from rural telecommunications company territory involving VNXX traffic." Staff disagrees that its response was incomplete. Part of the relief that WITA seeks appears to be

unnecessary, while part would be inappropriate given the posture of the case and lack of support on this record.

I. FACTS

3 In paragraphs 1-7 of WITA's "rural transport discussion," WITA states a number of facts about how Qwest and rural LECs interconnect for the purpose of exchanging extended area service (EAS) traffic (e.g., between Tenino Telephone Company's exchange and Qwest's Olympia exchange for the purpose of allowing customers of one company to make locally-rated calls to customers of the other company within a "community-of-interest"[1]). The facts presented in these paragraphs of WITA's response are consistent with the evidence in the record.[2]

4 Staff agrees with WITA that EAS interconnection between Qwest and rural telephone companies presents an opportunity for CLECs to extend the reach of their VNXX "local number presence" not only to Qwest exchanges, but also to the exchanges of rural LECs, when the rural LEC's exchange is within an EAS boundary shared with Qwest. Thus, an Internet service provider that is a customer of a CLEC utilizing VNXX arrangements could provide its customers residing in Tenino's exchange with a local number for Internet access. The call would travel from Tenino's switch over an EAS trunk to Qwest's network, where Qwest's switch would recognize the number as a CLEC number and direct the call via local interconnection trunks to the CLEC's point of interconnection in Seattle, where the CLEC would send the call on to an Internet gateway, also located in Seattle.[3]

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[1] *See* WAC 480-120-265.
[2] *See* Linse, Tr. at 199:12—204:9.
[3] *Id.*

5 In paragraph 8, WITA reiterates its position that VNXX should not be allowed even for dial-up Internet services. WITA then states that "if the Commission is inclined to create an exception for dial-up Internet services or to otherwise authorize VNXX services, the transport issues involved with rural telephone companies should be considered. This is an item Commission Staff overlooked in response to Bench Request No. 2."

6 In response to Bench Request No. 2, Staff had clarified its recommendation with regard to transport costs for VNXX traffic as follows:

> 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.

WITA essentially seeks to expand Staff's recommendation with two additional "suggestions" set out in Paragraph 9 of WITA's filing. Staff responds to these two suggestions in turn, below.

7 It may help clarify the issue to think of the transport for VNXX traffic that originates from a rural telephone company as having three parts: (1) transport over an EAS trunk from the rural company switch to a meet point with Qwest (typically at the exchange boundary between Qwest and the rural LEC), (2) transport over the EAS trunk from that meet point to Qwest's switch, and (3) transport from Qwest's switch to the CLEC's point of interconnection over local interconnection service trunk facilities. Staff's recommendation concerned only the third part—the cost of the local interconnection service trunks between Qwest's switch and the CLEC's point of interconnection.

II. ANALYSIS

1. Responsibility for transport costs from the EAS meet point to Qwest's switch and from Qwest's switch to the CLEC's point of interconnection

8 The first part of paragraph 9 states WITA's "suggestion" that:

> the CLEC offering VNXX services should be treated as though a POI has been established between that CLEC and the affected rural telephone company at the rural telephone company's exchange boundary. The CLEC should be responsible for one hundred percent of the cost of transport to that POI.

9 Staff does not object to clarifying that its recommendation does not anticipate rural LECs paying any portion of the cost of transporting VNXX traffic—at least on Qwest's side of the meet point with the rural LEC. This seems to be the thrust of the WITA's first suggestion in paragraph 9. When Staff says that Qwest should recover the costs of the proportion of local interconnection service trunk capacity that is used by the CLEC for "VNXX traffic," Staff means to include traffic originating from rural LEC customers via EAS trunks, which is then "transited" over local interconnection facilities between Qwest and the CLEC. Qwest witness Mr. Brotherson confirmed that this would be the result of Qwest's proposed settlement with Verizon Access.[4]

10 Additionally, Qwest witness Mr. Linse confirmed that Qwest already bears the full cost of the EAS trunking between its switch and its meet point with the rural LEC.[5]

11 Consequently, under Staff's proposal as well as under the proposed settlement between Qwest and Verizon Access, rural LECs would pay no portion of the cost of transporting VNXX traffic, at least on Qwest's side of the rural LEC's exchange boundary (meet point), even when that traffic originates from a rural LEC customer as a result of EAS interconnection between Qwest and the rural LEC.

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[4] Tr. 335:12—337:15.
[5] Tr. 200:4—201:14.

12 Staff does not understand, however, why it would be necessary for the Commission to treat the "CLEC offering VNXX services . . . as though a POI has been established between that CLEC and the affected rural telephone company at the rural telephone company's exchange boundary" or what this might entail.

13 Very similar issues were addressed by the California Public Utilities Commission in a recent opinion.[6] As discussed in Staff's response to Bench Request No. 1 and in Staff's brief, the California Commission had, in previous dockets, determined that the ILEC could properly assess transport charges on the CLEC arranging for the VNXX route even though the call originated on the ILEC's network (and even though California decided as a matter of state law to require the ILEC to pay the CLEC reciprocal compensation).[7] In the above-cited Small LEC docket, the Small LECs argued that a similar principle should apply in their case. The Small LECs were apparently concerned that either the CLEC or the ILEC might attempt to recover "transiting" charges from the Small LEC in proportion to VNXX calls originating from the Small LEC's customers.[8] The California Commission agreed with the Small LECs that this should not occur, concluding:

> Absent an alternate arrangement between a Small LEC and a CLEC, the Small LEC must deliver its VNXX traffic to its meet-point with the intermediary ILEC, as applicable, who will then transit such traffic to the ILEC-CLEC point of interconnection. *The CLEC shall be financially responsible for indirectly exchanged VNXX traffic from the Small LEC-ILEC meet point to the ILEC-CLEC point of interconnection.* [Emphasis added.][9]

2. Responsibility for transport costs from the rural company's switch to the EAS meet point

14 The second part of WITA's recommendation in paragraph 9 is that:

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[6] *Opinion Regarding Treatment of Virtual NXX Calls with Respect to Small Local Exchange Carriers ("Small LEC Opinion"),* 2007 WL 845917 (Cal.P.U.C. Feb. 15, 2007).
[7] Staff Response to Bench Request No. 2, at p. 3, fn. 2.
[8] *See Small LEC Opinion* at **5, 6.
[9] *Id.* at **12, 18 (Conclusion of Law # 6).

> [S]ince the CLEC is the one receiving benefit of the VNXX service, the CLEC should then pay for the portion of the route from the POI to the rural company's switch based upon the proportion of traffic that is originated to the CLEC's dial-up Internet service compared to the total traffic on that trunk. The rate for such service should be at the rural company's tariffed rate for special access services.

15 Staff does not believe that any record has been developed in this docket for this "suggestion" (which is really a request for relief). The suggestion to require CLECs to make payments to rural LECs, with whom they have no interconnection agreements, is beyond the scope of Qwest's complaint. WITA has neither sponsored testimony nor cited precedent for this proposal. Staff believes it is also unclear how, as a technical matter, the volume of VNXX traffic on EAS trunks could be determined.

DATED this 4th day of September, 2007.

Respectfully submitted,

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