

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

QWEST CORPORATION,)	DOCKET UT-063038
)	
Complainant,)	ORDER 05
)	
v.)	
)	INITIAL ORDER
LEVEL 3 COMMUNICATIONS,)	
LLC., et al)	
)	
Respondents.)	
.....)	
In the Matter of the Request of)	DOCKET UT-063055
)	
MCIMETRO ACCESS)	ORDER 02
TRANSMISSION SERVICES, LLC)	
d/b/a VERIZON ACCESS)	
TRANSMISSION SERVICES)	INITIAL ORDER
)	
and)	
)	
QWEST CORPORATION,)	
)	
For Approval of Negotiated Agreement)	
Under the Telecommunications Act of)	
1996)	
.....)	

1 **SYNOPSIS:** *This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. If this Initial Order becomes final, the Commission will 1) dismiss the complaint filed by Qwest; 2) permit the use of VNXX calling arrangements on condition that they be provided under a bill and keep intercarrier compensation system; 3) require the respondent competing local exchange carriers to compensate Qwest for the trunking capacity used to transport VNXX calls; 4) approve the Settlement Agreement and Interconnection Agreement Amendment filed by Qwest*

and Verizon Access; and 5) require Qwest to pay the amounts Broadwing claims for access charges.

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I. BACKGROUND

- 2 **NATURE OF PROCEEDING:** Qwest Corporation (Qwest) filed a complaint in Docket UT-063038 against nine competitive local exchange carriers or CLECs, alleging that the carriers' use of virtual NXX or VNXX numbering arrangements violates Qwest's access tariffs, prescribed exchange areas and state law, and is contrary to public policy.
- 3 **APPEARANCES:** Lisa A. Anderl, Associate General Counsel, and Adam Sherr, Senior Counsel, Seattle, Washington, represent Qwest. Greg Rogers and Gregg Strumberger, Regulatory Counsel, Broomfield, Colorado, and Rogelio E. Peña, Peña & Associates, LLC, Boulder, Colorado, represent Level 3 Communications, LLC (Level 3). Gregory J. Kopta, Davis Wright Tremaine, LLP, Seattle, Washington, represents Pac-West Telecomm, Inc. (Pac-West), Northwest Telephone, Inc. (NTI), and Global Crossing Local Services, Inc. (Global Crossing) (collectively, Joint CLECs). Tamar E. Finn and Frank Lamancusa, Bingham McCutchen, LLP, Washington, D.C., represent Broadwing Communications, LLC (Broadwing). Gregory L. Castle, Senior Counsel, AT&T Services, Inc., San Francisco, California, represents TCG Seattle (TCG). Charles L. Best, Associate General Counsel, Vancouver, Washington, represents Electric Lightwave, LLC (ELI). Dennis D. Ahlers, Associate General Counsel, Minneapolis, Minnesota, represents Advanced Telecom Group, Inc., d/b/a Eschelon Telecom, Inc. Gregory M. Romano, General Counsel – Northwest Region, Everett, Washington, represents MCI Metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services (Verizon Access). Richard A. Finnigan, attorney, Olympia, Washington, represents the Washington Independent Telephone Association (WITA). Calvin K. Simshaw, Associate General Counsel, Vancouver, Washington, represents CenturyTel. Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Washington Utilities and Transportation Commission's (Commission) regulatory staff (Commission Staff or Staff).

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- 4 **PROCEDURAL HISTORY.** Qwest filed this complaint on May 23, 2006, as the result of Commission final orders in Dockets UT-053036 and UT-053039.¹ In those orders the Commission dismissed Qwest's counterclaims alleging the CLECs' illegal and improper use of VNXX arrangements.² The Commission advised Qwest to file its own complaint addressing specific carriers' use of such arrangements and related intercarrier compensation issues.³
- 5 Pursuant to proper notice, the Commission convened an evidentiary hearing in this proceeding on April 23, 2007. The hearing concluded on April 27, 2007.
- 6 Prior to the evidentiary hearing, Qwest and Verizon Access filed a settlement agreement which provides that Qwest would support the dismissal of Verizon Access from this complaint proceeding in return for Verizon Access's concurrence in an interconnection agreement amendment allowing for the exchange of VNXX traffic (both voice and traffic bound for Internet service providers or ISPs) between the parties at a compensation rate of zero, that is, subject to a bill and keep arrangement.⁴
- 7 Pursuant to the terms of the settlement agreement, on March 22, 2007, Qwest and Verizon Access filed with the Commission a request for approval of an amended interconnection agreement, in Docket UT-063055. Under WAC 480-07-904, the Commission's delegation rule, the Commission's Executive Secretary issued a delegated order approving the amendment. Commission Staff filed a request for review of the delegated order. On May 8, 2007, the Commission granted review of the delegated order and consolidated its review with this complaint docket.⁵ The

¹ *Pac-West v. Qwest Corporation*, Docket UT-053036, Order 05, February 10, 2006), [PacWest Order]; see also *Level 3 Communications LLC v. Qwest Corporation*, Docket UT-053039, Order 05, (February 10, 2006), [Level 3 Order].

² VNXX arrangements involve the assignment of phone numbers in a local area, even though calls to those numbers may terminate outside the local area.

³ PacWest Order, ¶ 43; Level 3 Order, ¶ 40.

⁴ See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98, CC Docket No. 99-68, (Rel. April 27, 2001) (*ISP Remand Order*), at 3, n.6: "Bill and keep" refers to an arrangement in which neither of two interconnecting networks charges the other for terminating traffic that originates on the other network. Instead, each network recovers from its own end-users the costs of both originating traffic that it delivers to the other network and terminating traffic that it receives from the other network.

⁵ See Docket UT-063038, Order 04, Order of Consolidation; Docket UT-063055, Order 01, Order Granting Review; Consolidating Dockets (May 8, 2007).

settlement agreement and the related amendment to the interconnection agreement are discussed below in section II. F. of this Order.

II. MEMORANDUM

8 Qwest filed its complaint under RCW 80.04.110, which authorizes the Commission to hear complaints regarding rates, charges or practices of a public service company that are alleged to be unreasonable, unfair, discriminatory, or illegal. In such complaint proceedings, the complainant carries the burden of proof. CLECs who filed counterclaims also carry the burden of proof with respect to their counterclaims.

9 In this case the Commission must determine: 1) whether the CLECs' use of VNXX service constitutes an illegal toll avoidance device; 2) whether the CLECs' use of VNXX service violates public policy; 3) if VNXX traffic is permissible, what is the proper intercarrier compensation for such calls; 4) whether the Commission should approve the Qwest/Verizon Access settlement agreement (and amendment to their interconnection agreement) that allows the use of VNXX service for both ISP-bound and voice calls; and 5) what is the proper disposition of the CLECs' counterclaims.⁶

10 In order to provide a context for resolving these issues, it is useful first to identify how telecommunications providers may use VNXX service and then to review Federal Communications Commission (FCC) decisions and court orders that bear on the issues in this case.

A. What is VNXX Service and how is it used?

11 VNXX stands for Virtual NXX code.⁷ The NXX code is the second three-digit group (*e.g.*, 206-NXX-1234) of a telephone number that identifies the central office code and switch that an incumbent local exchange carrier (ILEC) will use to route a phone

⁶ Broadwing and Global Crossing filed counterclaims against Qwest asserting that Qwest owes them compensation related to Qwest originated traffic carried by the CLECs.

⁷ In a seven-digit local phone number, the first three digits identify the specific telephone company central office code which serves that number. These digits are referred to as the NXX, where N can be any number from 2 to 9 and X can be any number.

call. Switches are programmed to recognize the NXX number and to route the call according to whether the NXX number is local or long distance.⁸

- 12 Both ILECs and CLECs use VNXX or VNXX-like arrangements in providing phone services to their customers, but their services vary because ILEC and CLEC networks are configured differently from a technological perspective. An ILEC's network has as its basic unit the geographic local exchange area which houses a central office and switch. NXX numbers are assigned to correspond with these geographic local exchange areas and central office switches. An exception to this arrangement is the ILECs' Foreign Exchange (FX) service which makes use of virtual NXX numbers. FX service allows an ILEC's customer to provide callers in foreign local exchanges what would be a local number for them so that they can call the ILEC's customer without incurring a toll charge. An ILEC FX customer must purchase local service in the foreign exchange and must also purchase a retail private line to transport the non-local calls to the FX customer's home or business phone.
- 13 The CLECs' network architecture is not the same as an ILEC's. CLECs usually have one centrally-located switch that covers large geographic areas, and in some cases, an entire state. Some CLECs serve primarily ISPs and use virtual NXX arrangements to allow their ISP customers to have phone numbers that appear local so that the ISP's dial-up customers do not incur toll charges in order to connect with the internet.⁹ CLECs term this use of VNXX an "FX-like service."¹⁰ In this Order, for ease of reference, "FX-like" services will be called "VNXX" services.
- 14 Although Qwest frames this complaint as a legal dispute, the heart of the dispute is really the parties' respective claims about what, if any, intercarrier compensation is

⁸ For ease of reference, the term "long distance" as used in this Order equates to "interexchange" service. Interexchange service is traditionally comprised of toll and long distance. Toll and long distance can be distinguished based on whether a call is within or traverses the boundaries of a LATA (Local Access Transport Area). Calls between exchanges in a LATA are intraLATA toll calls; calls between LATAs are interLATA, or long distance.

⁹ An example of CLEC FX-like ISP-bound service occurs when a Qwest customer who is a dial-up customer of America Online's (AOL) internet service calls a local number, provided by AOL's CLEC, to reach AOL. Qwest's switch recognizes its customer's call as local and routes the call to the CLEC's point of interconnection (POI) with Qwest. The CLEC then delivers the call to the ISP, wherever the ISP is located.

¹⁰ Although the CLECs have different names for their VNXX or FX-like services, as the Joint CLECs acknowledge: "No party disputes that 'VNXX' provisioned FX service is used overwhelmingly to serve ISPs..." Joint CLECs Reply Brief, n.53.

due them for VNXX calls. The CLECs claim that Qwest should pay them reciprocal compensation because Qwest's end user customer terminates a call to a CLEC's network. Qwest claims that because the ISP-bound call is actually long distance, the CLECs should instead be paying Qwest access charges, just as an interexchange carrier would, for access to Qwest's local network. This intercarrier compensation dispute is discussed more fully in section II. D. of this Order.

B. Regulatory History of ISP-bound calling and VNXX Service.

- 15 Congress passed the Telecommunications Act of 1996 (the Act) to encourage competition among providers of telecommunication services.¹¹ Sections 251(a) and (b) of the Act required ILECs, among other obligations, to allow CLECs to interconnect with incumbent phone networks under interconnection agreements filed with, mediated, or arbitrated by state commissions pursuant to section 252 of the Act. Thus, CLECs may provide service to their own customers, in part through interconnection with ILEC networks. Under section 251(b)(5), ILECs and CLECs are required to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic between them. Reciprocal compensation recognizes that when a customer of a given company places a local, non-toll call to a customer of another company, the calling customer (who is a customer of the originating phone company) pays the terminating phone company for the termination of the call at the other end.
- 16 In its Local Competition Order, the FCC found that reciprocal compensation obligations under section 251(b)(5) apply only to traffic that originates and terminates within a local calling area as defined by state regulatory authorities.¹² The FCC also found that the Act preserved the distinction between local calls, to which reciprocal compensation applied, and long distance calls, to which intrastate and interstate access charges applied.¹³
- 17 This system worked well enough for typical local and long distance voice phone calls, but disputes arose around calls bound for ISPs. Some CLECs, whose only customers

¹¹ 110 Stat. 56, Publ. L. 104-104 (Feb. 8, 1996).

¹² Local Competition Provisions in the Telecommunications Act of 1996 (Local Competition Order), 11 F.C.C.R. 15499, 16013, ¶ 1034 (1996).

¹³ *Id.*, at 16013, ¶¶ 1033, 1035.

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were ISPs, received a benefit from the long duration and one-sidedness of ISP-related traffic. Because ISP-bound calls were the means by which many ILEC customers accessed the internet, those calls were often lengthy in duration. Because the ISP never uses CLEC-provided VNXX services to originate calls, the traffic patterns generally moved only in one direction – from the ILEC dial-up customer to the CLEC or ISP server. Under the reciprocal compensation system, the ILEC was required to pay the CLEC for terminating the call, but the ILEC received nothing in return because there was little or no reverse traffic flow.

18 The FCC termed this traffic imbalance condition “regulatory arbitrage” and attempted to address the situation in its 2001 *ISP Remand Order*.¹⁴ In that order, the FCC found that: 1) section 251(b)(5) required “reciprocal compensation for transport and termination of all telecommunications traffic” thus avoiding the use of the term “local;” 2) ISP-bound traffic was excluded from the reciprocal compensation arrangements required under 251(b)(5), and instead classified it as traffic destined for an information service provider, under section 251(g),¹⁵ 3) section 251(g) also encompassed inter and intrastate access calls (long distance calls) as exceptions to the section 251(b)(5) reciprocal compensation system; and 4) a new intercarrier compensation regime was implemented to avoid the regulatory arbitrage created by the imbalance of traffic destined to ISPs.¹⁶

19 The *ISP Remand Order* was appealed to the D.C. Circuit Court. In the *WorldCom* decision, the court faulted the FCC for carving out ISP-bound traffic from traffic subject to reciprocal compensation under section 251(b)(5), but did not vacate the *ISP*

¹⁴ *ISP Remand Order*, ¶¶ 3, 69 and 70.

¹⁵ Section 251(g) requires each local exchange carrier to provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers.

¹⁶ The interim compensation regime established in the *ISP Remand Order* included: 1) a gradually declining maximum rate that a CLEC could charge a LEC for terminating a call to an ISP; 2) a ten percent annual traffic volume growth cap; 3) a mirroring requirement (not at issue here); and 4) a new market provision which denied CLECs compensation for serving ISPs in new markets. The FCC ultimately capped the rate a CLEC could charge a LEC for call termination at \$.0007/minutes of use (mou). Because some carriers were unable to identify ISP-bound traffic, the FCC established a rebuttable presumption that any traffic delivered to a carrier in excess of a 3:1 ratio of terminating to originating traffic is ISP-bound traffic and subject to the \$.0007/mou rate. See *ISP Remand Order*, ¶ 78.

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Remand Order.¹⁷ As a result, the substance of the interim compensation mechanism established in the *ISP Remand Order* remains in force.¹⁸

20 The only changes subsequently made to the *ISP Remand Order*'s compensation mechanism occurred as a result of the FCC's *Core Forbearance Order* issued in 2004.¹⁹ In that order, the FCC agreed to forebear enforcing the growth caps and new market provisions in the *ISP Remand Order*, but otherwise left the order's rate provisions in place.

21 Thus far in the history of this issue, the FCC and the courts chiefly addressed the issue of ISP-bound calls that were traveling between an ILEC end-user customer and an ISP server or modem also located in the same geographic local calling area as the end-user customer.²⁰ The FCC and the courts did not address the practice of assigning VNXX numbers to ISPs who have no modems or other physical facilities located in each geographic local calling area.²¹ These VNXX arrangements change the nature of the ISP-bound traffic problem because calls that appear to be local are actually traveling outside the boundaries of local calling areas like long distance calls.

22 The Commission has recently addressed the issue of ISP-bound VNXX calling arrangements, most notably in the interconnection agreement enforcement proceeding Level 3 brought against Qwest.²² In the resulting order (*Level 3 Order*) the Commission required Qwest to pay Level 3 for ISP-bound traffic pursuant to the *Core Forbearance Order*; found that all ISP-bound VNXX traffic is compensable under the *ISP Remand Order*'s interim compensation regime; dismissed Qwest's claims that VNXX arrangements are improper and illegal; and advised Qwest to pursue those claims in a separate complaint.²³

¹⁷ *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

¹⁸ *Global NAPS, Inc. v. Verizon New England, Inc.*, 427 F.3d 34, 40 (1st Cir. 2006) (citing *World Com.*, 288 F.3d at 434; *Verizon MD, Inc. V. Global NAPS, Inc.*, 377 F.3d 355, 367 (4th Cir. 2004)).

¹⁹ *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171, FCC 04-241 (Oct. 18, 2004). [*Core Forbearance Order*].

²⁰ *Qwest Corporation v. WUTC, et al*, Case No. C-06-956-JPD, 2007 WL 1071956, 484 F.Supp.2d 1160, at 1171-1172 (April 19, 2007) [*Qwest v. WUTC*].

²¹ *Id.*

²² See *Level 3 Order*; see also *Pac West Order*.

²³ *Id.*, ¶ 1.

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- 23 Qwest appealed the *Level 3 Order* to federal district court. The district court magistrate, entered a decision on April 7, 2007,²⁴ that remanded the case to the Commission, holding that the *ISP Remand Order* did not completely eliminate the distinction between “local” and “non-local” traffic for ISP-bound calls.²⁵ The court further held that even though the FCC excluded use of the word “local” from its discussion of reciprocal compensation obligations under section 251(b)(5), the FCC unequivocally excluded ISP-bound traffic from those obligations.²⁶
- 24 The court found that the *ISP Remand Order* did not address VNXX traffic,²⁷ but rather that the FCC addressed the following narrow issue: “whether reciprocal compensation obligations apply to the delivery of calls from one LEC’s end-user customer to an ISP in the same local calling area that is served by a competing LEC.”²⁸ The court further cited as support the FCC’s *amicus curiae* in a recent federal decision²⁹ which informed the court that in the *ISP Remand Order*, the agency was focused on calls between dial-up users and ISPs in a single local calling area.³⁰
- 25 Ultimately the magistrate held that the FCC has not yet addressed the issue of ISP-bound calls that cross local-exchange area boundaries and that the Commission must conclude whether such calls are “local calling area” ISP-bound traffic and thus subject to the FCC’s interim compensation regime.
- 26 This complaint proceeding originated prior to the magistrate’s remand, but nevertheless involves the identification and classification of VNXX calls according to whether they have the characteristics of long distance calls.
- 27 The first issue Qwest raises is whether VNXX calls, which the CLECs bill as local calls, are actually toll or long distance calls in disguise.

²⁴ *Qwest Corporation v. WUTC*. See *supra* n.20.

²⁵ *Qwest v. WUTC* at 1170.

²⁶ *Id.*

²⁷ *Id.*, at 1172.

²⁸ *Id.*, at 1172, quoting from *ISP Remand Order*, 16 F.C.C.R. at 9159, ¶ 13.

²⁹ *Global Naps, Inc. v. Verizon New England, Inc.*, 444 F.3d 59 (1st Cir. 2006). [*Global Naps I*].

³⁰ *Id.*, at 1174, quoting Brief for Amicus Curiae FCC, *Global NAPS I*, at 72-73.

C. Is the CLECs' use of VNXX service an illegal long distance toll-avoidance mechanism?

- 28 Qwest and Commission Staff vigorously assert that the telephone industry, state and federal law, and Commission rules adhere to a long-standing dichotomy between local and long distance calling that is, at its heart, based on the physical geographic location of the calling and the called party. They claim that although there may be exceptions to this dichotomy, such as Qwest's Foreign Exchange (FX) service, there is no exception for the CLECs use of VNXX for ISP-bound traffic and that CLECs violate the law by engaging in the practice.
- 29 Qwest contends that local traffic originates and terminates in geographically-defined local calling areas that are approved by the Commission, included in Qwest's tariffs and embodied in the parties' interconnection agreements as the means for identifying whether a call is local or non-local for billing purposes. As discussed above, long distance traffic is traffic that originates and terminates between end users located in different local calling areas as those are defined by the incumbent exchange carrier. Long distance calls may be either intrastate or interstate in nature. The telecommunications industry has developed a method of assigning telephone numbers to reflect the geographic end points of a call. Telephone numbers are composed of an NPA (area code), an NXX (central office code), and four digits that identify the end-user's phone line.
- 30 As discussed above, VNXX calls are those where the NXX, or central office code, is assigned to a person or business outside the local calling area where the central office is located. In other words, a VNXX number appears to be a geographically local call but will not actually terminate in the local calling area where the calling party is physically located.
- 31 Qwest and Staff present numerous grounds for their assertion that VNXX is illegal, including that it violates industry number assignment guidelines, Qwest's tariffs, state statutes, Commission orders, and the interconnection agreements between Qwest and the CLECs in this proceeding. Each of these is addressed below.

1. Does VNXX service violate Central Office Code Assignment Guidelines (COCAG)?

- 32 Qwest asserts that CLECs' use of VNXX for ISP-bound traffic violates industry rules that dictate the assignment of telephone numbers on a geographic basis. These industry rules or guidelines are called the Central Office Code Assignment Guidelines (COCAG).³¹ Qwest claims that adherence to these rules is mandatory because the FCC requires that the North American Numbering Plan Administrator (NANPA) administer numbering resources in an efficient, effective, fair, unbiased, and nondiscriminatory manner in accord with industry guidelines and Commission rules.³²
- 33 Staff also relies on COCAG but does not go so far as to say the guidelines are binding on the Commission. Staff suggests that COCAG reflects industry practice and the Commission's current regulatory policy, and that unless the Commission approves a new approach to geographic based numbering, the current practice remains in effect.³³
- 34 CLECs assert that COCAG is not binding on the Commission, and that the Qwest/Verizon Access settlement,³⁴ which allows VNXX for ISP-bound and voice calls, eviscerates Qwest's arguments to the contrary. In addition, the CLECs observe that even if COCAG were binding on the Commission, it explicitly allows for exceptions to geographically based numbering. CLECs note that COCAG section 2.14 reads:

It is assumed from a wireline perspective that CO [Central Office] codes/blocks allocated to a wireline service provider are to be utilized to provide service to a customer's premise located in the same rate center that the CO codes/blocks are assigned. *Exceptions exist, for example tariffed services such as foreign exchange service.* (Emphasis added).

³¹ See 47 C.F.R. §§ 52.13(b) and (d); The FCC created the North American Numbering Plan Administrator (NANPA), which is responsible for assigning and administering numbering resources, including NPA and NXX codes in an efficient and non-discriminatory manner. NANPA performs its responsibilities in accord with guidelines developed by the North American Industry Numbering Committee (INC). The INC guidelines are called COCAG.

³² 47 C.F.R. § 52.13.

³³ Staff Reply Brief, ¶ 6.

³⁴ The settlement agreement is discussed in section II. F. of this Order.

CLECs claim that this language provides for “exceptions,” in the plural and thus does not limit the number of exceptions to just FX service. CLECs argue that the VNXX service they provide is functionally the same as FX – both services assign VNXX numbers for calling that terminates outside the caller’s local calling area - and therefore qualifies as an exception. CLECs point out that the Commission recognized the functional equivalence of FX and VNXX service in the 2003 AT&T Arbitration Order³⁵ and expressed concern that CLEC network architecture, which is based on a local calling area and switch that may encompass multiple ILEC local calling areas, central offices and switches, not be a barrier to providing such services.³⁶ Finally, CLECs deny that whether the service is tariffed or Commission-approved is material to VNXX being included as an exception to the COCAG rules.

35 Qwest and Staff respond that VNXX is not the same as FX service and therefore VNXX cannot be considered an exception to the COCAG rule. Qwest argues that the physical structure of each service is different and costs are apportioned differently. Qwest asserts that with FX service, the FX customer buys local exchange service and a retail private line to transport foreign exchange calls to the FX customer’s phone. On the contrary, with VNXX, Qwest claims that neither the dial-up ISP customer nor the CLEC itself compensate Qwest adequately to transport the VNXX call,³⁷ and that they do not pay the access charges that would normally apply to a long distance call. In other words, Qwest states that in the FX scenario it is properly compensated for the FX call even though it may not receive access fees for what is otherwise a long distance call, but that CLECs do not properly compensate Qwest for their use of Qwest’s network to carry a VNXX call that is actually long distance in nature.

36 In addition, Qwest contends that the percentage of its customers that buy FX services is very small,³⁸ and that this small FX customer base better meets the dictionary definition of the term “exception” than CLEC-provided VNXX, which is of far larger

³⁵ *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, Docket UT-033035, Order 04, Arbitrator’s Report, ¶ 33 (Dec. 1, 2003). [AT&T Arbitration Order].

³⁶ *Id.*, ¶ 33.

³⁷ When a VNXX call is placed in a Qwest local calling area, the call, because it is recognized as local, travels over Qwest Local Interconnection System (LIS) trunks, to the CLEC point of interconnection (POI), even though the call is not local in the sense that it ultimately terminates beyond the boundaries of the Qwest local calling area. *See* Staff Response to Bench Request 2.

³⁸ *See* Brotherson, Exhibit 24T, at 13. Qwest represents that FX lines represent a tiny fraction (only 0.22 percent) of Qwest’s access lines in Washington whereas for many of the CLECs VNXX ISP-bound calls represent the only type of traffic they carry.

magnitude. Qwest contends that if VNXX is considered an exception to the rule, the exception would “swallow” the rule.

37 **Discussion.** The CLECs are correct that COCAG is not legally binding on the Commission. Under 47 CFR § 52.13(b)(3), the FCC designated NANPA as the organization required to comply with “guidelines of the North American Industry Numbering Committee (INC) or its successor, related industry documentation, Commission regulations and order, and the guidelines of other appropriate policy-making authorities[.]” State regulatory authorities are not similarly required to comply with COCAG under Section 52.13. Moreover, the plain language of COCAG’s Section 2.14 permits more than the one named exception – FX – to the geographic numbering system. The inclusion of the term “tariffed services” in the example is merely a qualifier for the example and does not on its face require a conclusion that all exceptions have to be tariffed services.

38 In addition, the Commission’s finding in the AT&T Arbitration Order that FX and VNXX are functionally equivalent remains persuasive. The fact that CLECs have unique and differing network architectures from Qwest should not be used to prevent them from offering what is, from an end-user viewpoint, the same type of service offered by ILECs. However, even though Qwest’s FX service and the CLECs’ VNXX services are functionally equivalent, and may qualify as exceptions to the geographical basis for the COCAG numbering guidelines, mere functional equivalence does not resolve the compensation issues that are at the heart of Qwest’s complaint. These issues are addressed more fully in subsequent sections of this Order.

2. Does VNXX service violate Qwest’s tariffs?

39 Qwest and Staff claim that CLECs rely on Qwest’s network to route and transport calls as local which are really long distance without paying Qwest the appropriate access charges and transport fees. Qwest contends that CLECs could provide the same service using Qwest’s tariffed “1-800” or FX services, and in that way could properly compensate Qwest for the use of its network. Qwest alleges that the CLECs failure to use these tariffed services violates Qwest’s tariffs, state laws and Commission rules.

40 CLECs complain that what Qwest and Staff want them to do is to build a duplicate of Qwest's network infrastructure, which would be highly inefficient, unnecessary and unwarranted under the Act. CLECs observe that in order to provide FX service as Qwest does, a CLEC would have to have at least a modem, but also possibly a switch, in each Qwest local calling area. In addition, CLECs say they would incur huge costs to build out transport for VNXX calls similar to what Qwest already has in place. They claim that Qwest provides transport of the VNXX call to the CLECs' point of interconnection at no additional cost to Qwest, because the routing of a VNXX call to a CLEC point of interconnection costs no more than the routing of a local call to a CLEC point of interconnection.

41 **Discussion.** The Act established a system whereby CLECs could provide competitive telecommunications services without building the same types of networks as ILECs. Because CLEC networks take advantage of technological developments that were not available to ILECs as they were building their legacy facilities-based networks, CLEC network architecture is far more streamlined and may provide functionally equivalent services with more efficient equipment. However, as discussed above, the geographic distinction between local and long distance calls has not been abolished. A local call continues to be defined based on the ILECs' geographic local calling areas, not on the local calling areas that define the CLECs' networks. To the extent that CLECs make use of ILEC networks to provide VNXX services, they must fairly compensate ILECs, as discussed in section II. E. below. Fair compensation does not necessarily mean that CLECs have to duplicate Qwest's network in order to accomplish their service goals.

3. Does VNXX service violate state statutes?

42 Qwest asserts that CLECs' use of VNXX service is unjust and unreasonable in violation of RCW 80.36.080³⁹ and RCW 80.36.140⁴⁰ in that it requires Qwest to incur

³⁹ RCW 80.36.080 reads in pertinent part: "All rates, tolls, contracts and charges, rules and regulations of telecommunications companies, for messages, conversations, services rendered equipment and facilities supplied, whether such message, conversation or service to be performed be over one company or line or over two or more companies or lines, shall be fair, just, reasonable and sufficient."

⁴⁰ RCW 80.36.140 provides in part: "Whenever the commission shall find...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."

costs for which CLECs should compensate Qwest. Qwest alleges that the CLECs' VNXX service violates RCW 80.36.160⁴¹ because VNXX service is an unreasonable practice that results in the failure to use the toll networks of all telecommunications carriers equitably and effectively. Qwest contends that CLECs are in violation of RCW 80.36.170⁴² because they are providing facilities and services to their customers at rates, terms and conditions that avoid proper payment of access charges or toll rates and may be giving an undue preference to their customers and the customers of other local exchange carriers who are not paying a truly cost-based rate for dial-up internet.

43 CLECs characterize Qwest's discrimination arguments as either 1) a disguised challenge to the reciprocal compensation charges Qwest owes CLECs because VNXX calls are recognized and billed as local calls or 2) an attempt by Qwest to recoup mythical costs for Qwest's transport of VNXX calls. CLECs respond that Qwest incurs no additional cost to provide VNXX service to dial-up ISP customers. CLECs contend that Qwest terminates VNXX calls to the CLEC point of interconnection within the local calling area, at the same cost and using the same facilities as would be used to terminate any other local call destined to a CLEC customer. From that point of interconnection, CLECs claim they pay the cost of transporting the call, whether it travels between two points in the same Qwest-defined local calling area, or from one Qwest local calling area to another.

44 CLECs also argue that not only is their provision of VNXX not discriminatory, but that Qwest itself would be discriminating against them if CLECs were required to have a local presence (more than just the point of interconnection), such as a switch or a modem in each local exchange, in order to provide VNXX. CLECs claim such a requirement would mean CLECs would have to reproduce Qwest's historical and

⁴¹ RCW 80.36.160 provides in part: "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 ...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...2) prescribe the routing of toll messages and conversations over such connections and the practices and regulations to be followed with respect to routing; and/or 3) establish reasonable joint rates or charges."

⁴² RCW 80.36.170 provides in 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."

costly network architecture. CLECs assert that duplicating Qwest's network would be very costly and would constitute an illegal barrier to competition under the Act.

45 **Discussion.** The CLECs are correct that Qwest's statutory arguments are actually claims that the CLECs are using Qwest's network without making proper compensation to cover Qwest's costs. The CLECs are also correct that there is little if any concrete "cost" evidence on the record in this docket.

46 However, the CLECs ignore the fact that the Act established a distinction between local and long distance calls that is the present day basis for intercarrier compensation.⁴³ Under this bifurcated compensation system, a geographically-based local call requires different compensation than a long distance call. When an ILEC's end-user customer makes a long distance call, even though the ILEC transports the call to the long distance carrier's point of interconnection over the ILEC's network, which is the same ILEC network used to complete a purely local call, the compensation system works differently. The interexchange carrier pays the ILEC for access to the ILEC's network. This system remains in place and cannot be ignored regardless of any cost evidence or lack thereof.⁴⁴

47 As much as VNXX calls may be the functional equivalent of FX calls, they also bear characteristics of long distance calls and the intercarrier compensation applied to them must fairly reflect that fact or risk violation of the statutes Qwest cites. For example, RCW 80.36.080 requires that rates and tolls be reasonable. RCW 80.36.140 provides that if the Commission finds that practices of a telecommunications company are unjust or unreasonable, the Commission must determine what is just and reasonable. Under RCW 80.36.160, the Commission may prevent arbitrary and unreasonable practices with regard to the use of toll facilities. Each of these statutes bears directly on VNXX service, which effectively uses Qwest's local exchange network to provide a service that has long distance calling as one of its characteristics.

⁴³ *Qwest v. WUTC* at 1163. Simultaneously with issuing the *ISP Remand Order*, the FCC issued a notice of proposed rulemaking (NPRM) to consider whether it should review all aspects of intercarrier compensation for all calls, including ISP-bound calls. *See In Re Developing a Unified Intercarrier Compensation Regime*, 16 F.C.C.R. 9610, 2001 WL 455872 (April 27, 2001) (Intercarrier Compensation NPRM); *see also In Re Developing a Unified Intercarrier Compensation Regime*, 20 F.C.C.R. 4685, 2005 WL 495087 (March 3, 2005).

⁴⁴ *Id.*

Without proper compensation to Qwest for this use, VNXX service is unreasonable and violates Washington statutes.

4. Is VNXX service illegal under Commission “Toll Bridging” Orders?

48 Qwest and WITA point out that in prior orders⁴⁵ the Commission has prohibited practices similar to VNXX that constitute long distance access charge (toll) avoidance. These orders relate to schemes termed “toll bridging.” Toll bridging allows customers to bridge overlapping extended area service (EAS) areas by means of a device that receives calls and allows them to be transmitted to the next local calling area. For example, a caller in Bellevue could call a Renton (local) number where the device would answer and generate another (local) call to Auburn. A call directly from Bellevue to Auburn would otherwise be long distance and subject to access charges.

49 In response, the CLECs observe that the toll bridging cases did not specifically address VNXX which, they contend, is functionally quite different from toll bridging. In addition, the CLECs claim the toll bridging cases were actually focused on classifying the toll bridgers as long distance carriers. The CLECs argue that, in any event, if VNXX is the same as toll-bridging, so is the ILECs’ FX service. TCG asserts that the Commission has more recently directly addressed the use of VNXX for ISP-bound traffic in various arbitration cases⁴⁶ and found the CLECs’ VNXX (FX-like services) and Qwest’s FX service functionally equivalent. In those cases the Commission cautioned that Qwest’s narrow definition of local calling area should not be used to prevent CLECs from offering such functionally equivalent services.⁴⁷

50 **Discussion.** The CLECs are correct that toll bridging and VNXX are technologically different, and that the toll bridging cases were decided in a different era in the telecommunications industry. More recently, the Commission has actually approved

⁴⁵ See *In the Matter of Determining the Proper Classification of: U.S. MetroLink Corp.*, Second Supplemental Order, Docket U-88-2370-J (1989 Wash. UTC LEXIS 40), at *6-*7 (MetroLink), 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 UT-971515 (Feb. 9, 1999).

⁴⁶ AT&T Arbitration Order, ¶ 33; See also *In re AT&T Communications of the Pacific Northwest and TCG Seattle*, UT-033035, Order 5, Final Order Affirming Arbitrator’s Report and Decision Approving Interconnection Agreement, ¶¶ 15-16 Feb. 6, 2004. [Final AT&T Arbitration Order].

⁴⁷ Final AT&T Arbitration Order, ¶¶ 15-16.

the use of VNXX for ISP-bound traffic in various interconnection agreement arbitration and enforcement cases.⁴⁸ However, in those cases, the Commission distinguished between approving ISP-bound VNXX traffic for inclusion in interconnection agreements and ruling on whether such arrangements “are appropriate or within the law.”⁴⁹ Thus the Commission did not directly rule on the propensity of VNXX, or an FX-like service, to change intercarrier compensation flows, nor did it examine other policy reasons that might prompt limitations on the use of VNXX. These policy issues are addressed in section II. D. of this Order. While the toll bridging cases cannot be relied upon to prohibit VNXX, those cases offer examples of the Commission’s concern about the adverse effects any device or technology may have on the system of intercarrier compensation currently in place.

5. Does VNXX service violate Interconnection Agreements?

51 Qwest argues that the interconnection agreements between Qwest and the CLECs prohibit VNXX because local calling is geographically defined in the agreements, not purely based on the assigned NXX number.⁵⁰ Qwest asserts that in the AT&T Arbitration Order, the Commission upheld, for purposes of defining local calling areas in interconnection agreements, a requirement that the physical location of the originating and terminating callers must be in the same local calling area.⁵¹

52 The CLECs disagree with Qwest’s interpretation of the interconnection agreements and the AT&T Arbitration Order.

53 **Discussion:** Qwest is incorrect that interconnection agreements prohibit VNXX service per se. Although the agreements may identify Qwest’s local calling areas as the basis for determining whether a call is local or long distance for billing purposes, they contain no language specifically banning VNXX, and several actually allow for the flow of VNXX traffic in some circumstances.⁵² In fact, in the above-cited AT&T Arbitration Order, the Commission struggled with the appropriate definition of

⁴⁸ See *Level 3 Order* ¶¶ 18-30; see also *CenturyTel-Level 3 Arbitration*, Docket UT-023043, Seventh Supplemental Order, ¶¶ 1, 35 (Feb. 28, 2003).

⁴⁹ *Level 3 Order*, ¶ 35.

⁵⁰ Qwest presented as evidence portions of the interconnection agreements of each CLEC to support this assertion. See Exhibits 242, 434, 447, 477, 519, 548, 561, and 562.

⁵¹ AT&T Arbitration Order, ¶¶ 27, 38.

⁵² *Id.*

“exchange” service, noting that AT&T sought a broad definition in which the originating and terminating callers have the same NPA/NXX, regardless of their geographic locations.⁵³ The Commission observed that AT&T advocated this definition because of “its desire to provide services that compete with Qwest’s FX service.”⁵⁴ While the Commission adopted Qwest’s definition, the Commission noted that “FX service and ISP local number provisioning [VNXX] both result in a hybrid form of traffic; traffic that is neither clearly local, nor clearly interexchange [long distance], and that is largely one-way traffic.”⁵⁵

54 The Commission ultimately approved bill and keep as the form of intercarrier compensation applied to AT&T’s VNXX services that were “functionally identical to services Qwest now offers to foreign exchange customers and for internet access.”⁵⁶ Therefore, while the interconnection agreements do not prohibit VNXX service, they point up the dichotomy between allowing CLECs their broader local calling areas and yet maintaining Qwest’s local calling areas as the basis for call billing. The CLECs cannot escape the fact that VNXX calls, even though locally dialed, are not locally terminated. Under the interconnection agreements, compensation for VNXX service must reflect that fact.

55 **Conclusion.** Qwest has not met its burden to show that VNXX service per se is illegal. However, the record supports a finding that CLECs may not legally provide VNXX services unless intercarrier compensation arrangements for those services reflect the true nature of VNXX calls – that they have both local, and more importantly, long distance characteristics – and that they may create traffic imbalances that skew intercarrier compensation associated with them.

D. What are the public interest considerations associated with VNXX calling arrangements?

56 Having found that VNXX service per se is not illegal, the Commission must also determine whether there are public interest concerns that mandate either outright

⁵³ *Id.*, ¶¶ 25-38.

⁵⁴ *Id.*, ¶ 27.

⁵⁵ *Id.*, ¶ 35.

⁵⁶ *Id.*

prohibition or some form of limitation.⁵⁷ VNXX service raises several public policy concerns, including allocation of costs, impact on intercarrier compensation and competition, impact on consumers of dial-up internet services, and impact on independent local exchange carriers, such as those companies represented by WITA.

1. Does VNXX service have an adverse affect on cost recovery?

57 With long distance calling, the long distance carrier pays the originating local exchange carrier an originating access charge, and the terminating local exchange company a terminating access charge. The premise for this system is that the long distance carrier relies on local company phone networks to carry the long distance call. Traditionally, the local phone network, consisting of local switching and loop facilities, is the most costly part of the entire telecommunications network, and the access charge payment by long distance carriers was intended in part to help the local exchange company recover the cost of its network devoted to service for long distance calls. This system of compensation for long distance is different than the intercarrier compensation system for local calling, where usually the calling party's carrier pays for call termination.⁵⁸

58 Qwest contends that the use of VNXX service skews cost recovery under the long distance and local calling compensation systems. Because the VNXX number is recognized as a local number even if the call is terminated outside the local calling area, the originating carrier pays the terminating carrier. In other words Qwest is required to pay the CLEC whose ISP customer is ultimately receiving the call. This traffic generally only moves in the direction of the ISP and each call to the internet may be lengthy in duration. For example, Qwest provided evidence of traffic imbalances between it and Level 3 and Pac-West where well over 99 percent of the

⁵⁷ Global Crossing, NTI, and Pac-West (Joint CLECs) contend that if Qwest fails to prove the allegations contained in its complaint, the Commission should dismiss the complaint. The Joint CLECs argue that the focus of this complaint has improperly shifted to a generic examination of how and whether VNXX should be allowed. In particular, the Joint CLECs suggest that if Commission Staff or WITA seek a new policy for provisioning FX and presumably FX-like services, Staff should initiate such a proceeding. Qwest opposes these proposals. The Commission rejects this approach for several reasons. First, the Commission itself suggested that Qwest might file a complaint that would explore the ramifications of VNXX. Qwest filed this case on that basis. Second, Qwest couched most of its allegations about the legality of VNXX in terms of what compensation for the use of VNXX was appropriate. The CLECs and Staff have responded at length about the compensation issues. The parties have created a record that allows the Commission to move forward to a resolution in this proceeding.

⁵⁸ Staff Opening Brief, at 41-42.

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traffic is one way.⁵⁹ In such circumstances, Qwest asserts it does not receive “reciprocal compensation” from the CLEC, because the ISP does not terminate calls to the local calling area in return, thus skewing the typical voice calling compensation arrangement. In addition, Qwest does not receive access revenues for what it regards as a long distance call. Thus, Qwest claims its cost recovery is deficient on both scores. Qwest and Staff contend that the obvious windfall winner in this scenario is the CLEC who receives both compensation from Qwest for terminating the VNXX local call and compensation from the ISP for providing the connection to the Qwest customer.⁶⁰

59 In addition, Qwest and Staff contend that Qwest unfairly pays for transport of what are long distance calls.⁶¹ Under typical FX service, the Foreign Exchange customer buys a trunk or channel (PRI) to carry calls from the foreign exchange to the FX customer’s local exchange. Under VNXX, Qwest and Staff allege that Qwest pays for transporting the disguised long distance call on its local transport network. Staff also suggests that the Commission permitted CLECs a local network structure with fewer switches and required an ILEC to transport local calls to the CLEC switch outside the ILEC’s local calling area on the assumption that the CLEC would then bear “reciprocal” transport costs to carry the call back to the original rate center.⁶² Since there is no return call for VNXX ISP-bound traffic, the assumption of reciprocity fails.

60 Qwest contends that the ISP is the primary cost causer in this scenario and that if VNXX calls were properly considered long distance, the ISP’s CLEC would pay Qwest for access to the Qwest local exchange and then the CLEC would turn to the ISP for cost recovery. In this way Qwest would be properly compensated for the use of its network and the cost causer would be charged with costs for which it was responsible.

61 The CLECs reject these cost arguments, contending that the Qwest local service customer pays Qwest for local service, which includes ISP-bound VNXX calls. The CLECs argue this ISP-bound call is in every respect like any other local call and

⁵⁹ See Exhibits 4C to 12C.

⁶⁰ The FCC and the federal courts term this “regulatory arbitrage.” See *Qwest v. WUTC* at 1175-1176.

⁶¹ Staff Opening Brief, at 32; Staff Reply Brief, at 14, 19, 20.

⁶² *Id.*

terminates to the CLEC's point of interconnection. The CLECs assert that Qwest incurs no more cost for handling the VNXX ISP-bound call than it does for a local call. Moreover, the CLECs point out they do not shift any costs for the transport of the ISP-bound call to Qwest. The CLECs state that under Qwest's FX service, the FX customer purchases a trunk that runs from the foreign exchange to the FX customer's local exchange. However, for VNXX calls, after Qwest transports the call to the CLEC's point of interconnection, the CLEC assumes the full cost of the trunks that then carry the call to the ISP customer's end office.⁶³

- 62 Level 3 objects to Staff's characterization of the reciprocal compensation Qwest pays CLECs for terminating VNXX ISP bound calls as a windfall. CLECs claim that the \$0.0007/mou rate for such compensation mandated in the *ISP Remand Order* was intended to approximate the costs CLECs incur for terminating such calls. Level 3 claims that the FCC recognized these costs in the *Core Forbearance Order* when it abandoned mandatory bill and keep for ISP-bound calls in favor of the \$0.0007/mou of use rate.
- 63 The Joint CLECs contend that Staff's concern is mistaken that Qwest unfairly pays for transport of VNXX calls because CLECs do not transport calls back to Qwest. The Joint CLECs argue that the Act and the FCC only require symmetrical rates set at the ILEC's forward looking costs, since both the ILEC and CLEC will be providing service within the same service area, presumably at the same cost. The Joint CLECs contend that the extent of the CLEC network on its side of the point of interconnection does not effect the ILEC's requirement to pay for transport of a call up to the CLEC's point of interconnection.
- 64 **Discussion.** As discussed above, the parties provided little hard evidence about the actual costs attributable to carrying VNXX ISP-bound calls. Qwest's reliance on the theory of cost causation, rather than on any actual evidence of costs incurred, underlying its claim that VNXX improperly deprives it of revenues is unconvincing. By the same token, Level 3 provides no evidence of actual costs that it recovers from charging Qwest a reciprocal compensation rate of \$0.00007/mou for terminating VNXX calls. However, the CLECs did not seriously dispute Qwest's evidence of the traffic imbalances related to VNXX calling or that evidence shows the significant opportunity for arbitrage that exists under the current intercarrier compensation

⁶³ Level 3 Initial Brief, at 24, 35.

system related to ISP-bound calls. Moreover, the traditional local/reciprocal compensation, long distance/access charge compensation regime is still in place, regardless of what costs may actually be involved.

65 Nevertheless, based on the record before it, the Commission can make some reasoned assumptions about costs. For example, it is reasonable to assume that Qwest incurs some additional costs for transporting VNXX calls to CLEC points of interconnection over Qwest's Local Interconnection System (LIS) trunks, and it is reasonable to assume that CLECs may incur some costs related to terminating VNXX calls. These assumptions plus a variety of other factors constitute the basis for the Commission's approval in part of Staff's proposal, as discussed in section II.E.

2. Does VNXX service have an adverse impact on the access charge regime and universal service?

66 On the premise that the access charge regime was created to allow the local exchange company to recover the costs of its network related to providing long distance service, Qwest contends that if access charges are not imposed on VNXX calls, it will not be able to recover those costs.⁶⁴ Qwest claims that as a result, its local network customers may be required to pay more for local service in order to recover those long distance-related costs, thus subsidizing VNXX ISP-bound dial-up service.⁶⁵ By the same token, Qwest suggests that it is possible that other cost recovery mechanisms might serve as substitutes for access charge revenues.

67 Staff and WITA voice a concern that the access charge system supports universal service. Historically, the universal service rate element was part of the access charges long distance carriers paid ILECs for originating or terminating long distance calls. Revenues from the universal service rate element support local phone service for rural customers who cost more to serve. However, Staff notes that the FCC exempted Enhanced Service Providers (ESPs) from paying access charges, as long as they purchased local business service and transport in each local area they wished to serve.⁶⁶ Staff suggests that CLECs serving ISP customers are in an analogous

⁶⁴ Qwest Reply Brief, at 49.

⁶⁵ *Id.*, at 48.

⁶⁶ See Staff Opening Brief, at 41-42. Under WAC 480-120-540(3), the Commission authorizes local exchange companies to apply a universal service rate element as part of its charges to interexchange carriers for terminating access to the public switched network. The money from the universal service rate

situation and should be exempted from paying access charges as long as other compensatory mechanisms are in place. Staff states that the original calculation of access charges occurred long before dial-up ISP service came into existence.⁶⁷

68 WITA disagrees, contending that VNXX is a major threat to the access charge system. WITA claims that under the access charge reform the Commission ordered in 2000 in Docket UT-971140, universal service revenues are no longer dependent on a cost calculation, but are based on the actual number of access minutes from year to year.⁶⁸ Thus, WITA argues, if access minutes decline, revenues go down. In its reply brief, Staff acknowledged that “WITA may raise a valid point.”⁶⁹

69 The CLECs counter that imposing access charges on ISP-bound VNXX traffic would likely create a windfall for Qwest because Qwest has provided no evidence of the actual cost incurred for access service. Moreover, they point out that Qwest’s FX service evades access charges. In any event, the CLECs contend that universal service would not be harmed if the Commission denies Qwest access charge relief because the universal service rate element is not based on dial-up ISP minutes of use. In addition, the CLECs point out that terminating access charges on voice services are what support universal service in Washington, not originating access on data services.

70 **Discussion.** There is little if any hard evidence of cost of service on this record. Without evidence as to what the costs of providing access service are, the Commission cannot determine whether imposing access charges would result in an under or overrecovery of those costs. In any event, Qwest has engaged in a settlement agreement under which it proposes to forgo access charge revenues in lieu of other compensation. Also, TCG and AT&T (the latter is not a party to this case) provide their VNXX services under a bill and keep arrangement which similarly

element is used to support telephone service in rural areas of the state where costs to serve individual customers are higher than in population dense urban areas. Staff further points out that the public-switched network carries both voice and information communications. The FCC has allowed enhanced service providers (ESPs) that provide only information or computer processing services an exemption from paying access charges, and hence from paying the universal service rate element. However, Staff asserts ESPs must purchase local business lines in each local calling area where they seek to receive local calls and bear the cost of transporting calls over private lines to distant computer centers. Staff contends that the FCC recognized that the calls to ESPs are interexchange, but because ESPs purchased such private lines, the FCC exempted the ESPs from having to pay interstate access charges.

⁶⁷ Staff Opening Brief, at 44.

⁶⁸ WITA Reply Brief, at 13.

⁶⁹ Staff Reply Brief, at 28.

allows for no access charge payments to Qwest. Apparently, the collection of access revenues per se is not crucial to Qwest's business plan.

71 In addition, while it would not be good public policy to allow current local or toll customers to subsidize dial-up ISP service, the Commission cannot determine on this record what if any cross-subsidization is actually taking place. There is no information on the record about how much the local exchange service customer may be contributing, through local rates, to support dial-up ISP service, even though Qwest claims VNXX ISP-bound calling creates an unrecovered cost for Qwest.

72 Nevertheless, the Commission's main concern is the impact on the access charge system and universal service if VNXX arrangements are used to provide services other than dial-up ISP service, such as voice. FX service and ISP-bound VNXX service create fewer concerns related to access charges and universal service. FX is a VNXX voice service that does not involve the payment of access charges. Because FX service constitutes a relatively small number of Qwest's lines, the impact on access charge revenues is minimal.⁷⁰ Non-voice VNXX traffic bound for ISPs is extensive one-way traffic,⁷¹ but it has never been subject to access charges – the original (non-VNXX) dial-up ISP service was not available when the access charge system was established⁷² and VNXX dial-up ISP service has not been included in determining access charges because it is locally-dialed and has been billed as local. The real issue is with the possible expansion of VNXX traffic, aside from FX, for voice communication, so that calls that currently are long distance, subject to access charges and universal service rate elements, are no longer part of that compensation regime. The Commission considers whether this might create outcomes unacceptable from a public interest point of view in section II. E. of this Order where it considers Staff's proposal for resolution of this case.

3. Does VNXX service have an adverse effect on competition?

73 Qwest, Staff, and WITA discount the possible negative effect on competition should VNXX service be prohibited or permitted with limitations. Qwest seems to

⁷⁰ See Brotherson, Exh. 24T, at 13. It is uncertain, however, how many minutes of use can be attributed to FX traffic.

⁷¹ *Id.*, at 40-49 and Exh. 4C-12C.

⁷² See Blackmon, Exh. 401T.

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acknowledge that CLECs might be adversely affected by outright prohibition or limitations on VNXX. However, Qwest claims that CLECs chose to build their networks as they did, and that it is unfair for them to expect to be compensated as if they had built a network like Qwest's.

74 Staff contends that its proposal to allow VNXX service only for ISP-bound calls on a bill and keep basis will allow CLECs to continue to provide what is a declining type of internet service based on a more equitable compensation system which will also prevent further erosion of access revenues to WITA members.

75 The CLECs contend that VNXX service allows them to compete with Qwest's FX service in a manner that reflects the more streamlined characteristics of CLEC networks. The CLECs claim that to prevent them from using VNXX service would be anticompetitive and a violation of the Act. The CLECs also object to Staff's proposal to limit the use of VNXX service to ISP-bound traffic and to impose a bill and keep compensation regime. The CLECs claim that FX is a voice service and that in order to fully compete with FX, they should not be limited in how they use VNXX service. The CLECs continue to argue that they are entitled under the Act to reciprocal compensation for VNXX calls because those calls are locally-dialed.

76 WITA contends that banning the use of VNXX service by large CLECs who serve national ISP providers would allow rural ISP providers a chance to flourish. In the alternative, WITA claims that Commission approval of VNXX service for ISP-bound calls would be bad public policy because it would encourage reliance on outmoded dial-up internet access.

77 **Discussion.** The Commission is persuaded that permitting the use of VNXX service will not harm competition, and that, in fact, the Act may require that VNXX service be permitted as the competitive functional equivalent of FX service. As noted above, the Commission recently affirmed an Arbitrator's Report finding that CLECs are entitled to offer services that are functionally equivalent to Qwest's FX Service.⁷³ Moreover, the Commission must consider whether under section 253 of the Act,

⁷³ Final AT&T Arbitration Order, ¶ 14.

prohibiting VNXX service would constitute an impermissible barrier to competition from CLEC telecommunications companies.⁷⁴

78 In any event, no matter what ruling the Commission were to make with regard to VNXX service, dial-up internet is at the very least in stasis or declining as a method of connecting to the internet. Permitting continued use of VNXX service for dial-up service will likely not affect that trend. WITA provided no evidence that would support its contention that there are “mom and pop” rural ISP providers who would jump at the chance to offer dial-up service. Moreover, WITA’s contention contradicts its argument that encouraging dial-up service is bad public policy.

4. Would prohibiting VNXX service have an adverse effect on consumers?

79 Qwest points out that in Colorado and Iowa, ISP-bound traffic is exchanged on a bill and keep basis and CLECs are required to pay TELRIC rates for transport of that traffic. Qwest asserts that this has not prevented Level 3 and other CLECs from providing ISP-bound service in those states.⁷⁵

80 Even if this were not the case, Qwest and WITA suggest that it would be bad public policy for the Commission to encourage continued provision of dial-up internet service by creating possible subsidies for that service, especially when dial-up service is fast being replaced by broadband for internet connections.

81 Staff contends that a large portion of dial-up internet service is now reliant on VNXX service.⁷⁶ Staff asserts that current dial-up customers would be unlikely to pay toll charges for internet access if access charges were applied to VNXX traffic. The

⁷⁴ Section 253(a) provides: “No State or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”

⁷⁵ Qwest Reply Brief, at 50.

⁷⁶ This is supported by a recent study Level 3 cites in its Initial Brief, at 50, n.20, that 22 percent of Americans rely on dial-up internet service. The Commission notes that WITA included a motion to strike this study in its reply brief on the basis that the study was not presented in evidence. However, the study was conducted by Pew Research, a reputable research company and is consistent with other testimony on the record in this case. No party disputes that dial-up internet service has been declining. *See* Neinast, Exh. 541T at 5. WITA’s motion to strike is denied.

result would be a severe disruption for CLECs, their ISP customers and the ISP's dial-up customers.⁷⁷

82 The CLECs argue that prohibiting FX-like VNXX services or requiring such services to be provided without Qwest paying reciprocal compensation would 1) eliminate CLECs' FX-like offerings 2) make Qwest the only available provider of such services and/or 3) force dial-up users to switch to broadband service whether they want it or not.

83 **Discussion.** The Commission agrees with the CLECs and Staff that prohibiting VNXX service for ISP-bound calls might have an adverse impact on current consumers of dial-up internet service. Moreover, prohibiting VNXX service while continuing to allow the functionally-equivalent FX service might result in a violation of the Act. The Commission has determined that VNXX service is not per se illegal, but should be prohibited only when fair compensation is not paid for it. The record shows that other jurisdictions, including Iowa, Colorado, Oregon, and Texas, require CLECs to provide VNXX ISP-bound service under a bill and keep compensation system and that this has had no apparent ill-effect on consumers of dial-up. In Washington, both TCG and AT&T provide VNXX ISP-bound service on a bill and keep basis, without evidence of harm to their customers.⁷⁸

84 **Conclusion.** There is no adverse public interest impact from allowing continued provision of VNXX service for ISP-bound service, provided fair intercarrier compensation is in place. Dial-up internet service is a limited market. Nevertheless, it is an important service, particularly in areas of the state where the availability of higher speed broadband connections are limited or nonexistent. Consumers who can do so are shifting to broadband for internet access. Nevertheless, preserving the ability of current dial-up consumers to rely on that service is consistent with the public interest.

E. Staff's Proposal

85 **1. Description.** Commission Staff proposes that the Commission allow the CLECs to use VNXX arrangements for the limited purpose of providing ISP-bound dial-up

⁷⁷ Staff Opening Brief, at 46.

⁷⁸ Initial Brief of TCG, at 4.

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service (as opposed to allowing VNXX arrangements for all purposes, including voice traffic), at a reciprocal compensation rate of zero (bill and keep).⁷⁹ Staff argues that since VNXX is used to serve the bulk of ISP-bound dial-up customers, and customers would refuse to pay long distance charges for the service, prohibiting VNXX service, or requiring CLECs to pay access charges for those calls, would not serve the public interest. Staff also points out that VNXX service promotes a greater overall efficiency by allowing CLECs to aggregate traffic at their points of interconnection, rather than requiring them to duplicate facilities in every ILEC local calling area.

86 Staff also suggests that since Qwest no longer would pay CLECs reciprocal compensation for VNXX calls under bill and keep, the Commission could eliminate the requirement that CLECs pay reciprocal compensation to Qwest for calls the CLEC delivers to Qwest for termination to a Qwest FX customer, and require Qwest to pay for any transport of such a call.⁸⁰

87 Staff further proposes that CLECs be required to pay Qwest for transport of VNXX calls at TELRIC-based rates.⁸¹ Staff recommends 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.”⁸²

88 Staff recommends the Commission adopt its approach on an interim basis only, in light of the FCC’s pending review of all forms of intercarrier compensation.⁸³ Staff further recommends that the parties address VNXX service with appropriate industry standards bodies.

89 As justification for recommending a bill and keep compensation system, Staff contends bill and keep is consistent with the *ISP Remand Order’s* planned eventual elimination of intercarrier compensation for ISP-bound calling. In that order, the FCC set up a gradually stepped down reciprocal compensation rate as a way of eliminating the underlying arbitrage problem resulting from the ILECs’ obligation to pay CLEC ISP providers reciprocal compensation for ISP-bound traffic.

⁷⁹ See Staff Opening Brief, at 47-49.

⁸⁰ Staff Response to Bench Request 2.

⁸¹ Staff Reply Brief, at 15; *see also* Staff Response to Bench Request 2.

⁸² Staff Response to Bench Request 2.

⁸³ FCC 2001 Intercarrier Compensation NPRM.

- 90 Staff further contends that in the *ISP Remand Order* the FCC's gradually stepped down interim compensation applied only to the provision of ISP-bound service where ISPs actually placed modems or servers in each ILEC local calling area. Staff posits that faced with the situation, as here, where ISPs have no such local presence, it is appropriate to move to bill and keep immediately.
- 91 Finally, Staff would prohibit the use of VNXX service for voice or other types of traffic. In keeping with the arbitrator's decision in the AT&T Arbitration Order, Staff is concerned that allowing VNXX for all types of traffic may "implicate[s] 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."⁸⁴ Relying on a New Hampshire study, Staff expresses concern about the potential for abuse of local calling areas and the access charge system if VNXX arrangements are allowed for voice services.⁸⁵ However, Staff acknowledged that if the Commission were to allow VNXX arrangements for voice, then the same compensation system Staff recommends for ISP-bound VNXX calls would be appropriate.⁸⁶
- 92 **2. Objections to Staff's proposal.** WITA opposes Staff's proposal on the grounds that VNXX service "drives the proverbial truck"⁸⁷ through the current access charge regime. WITA contends that allowing VNXX service would so reduce access and universal service revenues as to severely harm the independent, rural telephone companies.⁸⁸

⁸⁴ Final AT&T Arbitration Order, ¶ 15.

⁸⁵ Williamson, TR. 474.

⁸⁶ Staff Response to Bench Request 2.

⁸⁷ WITA Initial Brief, at 7.

⁸⁸ On August 20, 2007, WITA filed a motion requesting permission to respond to Commission Staff's Response to Bench Request No. 2. With the motion, WITA filed its response to the Staff response. Bench Request No. 2 asked Staff to confirm and clarify its proposal with regard to CLEC payment of transport for VNXX calls. Staff filed its response to the bench request, essentially consolidating recommendations it had already made on the record and in its post-hearing briefs. In its motion, WITA contends that Staff's response to the Bench Request is incomplete because it fails to consider transport from rural telecommunications companies involving VNXX traffic. WITA addresses the issue by recommending 1) CLECs offering VNXX services should be treated as though a point of interconnection (POI) has been established between the CLEC and the rural company; 2) CLECs be responsible for 100 percent of the cost of transport to the POI; 3) CLECs pay for the portion of the route from the POI to the rural company's switch based upon the proportion of traffic originated to the CLECs' dial-up internet services compared to the total traffic on those trunks. The rate for the transport service should be the WITA company's tariffed special access rate.

93 Most of the CLECs⁸⁹ also oppose Staff's proposal but for different reasons. Level 3 contends that bill and keep, as contemplated under the *ISP Remand Order*, "has long since been repudiated by subsequent events, including lifting of the cap and new markets rule."⁹⁰ Level 3 argues that federal law and Commission precedent require that CLECs be compensated for the costs they incur to terminate traffic. Level 3 objects to Staff's prohibition on voice VNXX service, stating that it would have severe consequences for the CLECs' voice VNXX customers.

94 The Joint CLECs also object to Staff's voice prohibition. The Joint CLECs argue that contrary to the Commission's AT&T Arbitration Order which characterized CLEC VNXX and ILEC FX services as functionally equivalent, a voice prohibition would strike at the very center of that equivalence, since FX is primarily a voice service.

95 TCG suggests that Staff's concern about abuses related to voice VNXX traffic is ill founded. TCG points out that Staff bases its concern about voice VNXX on a report prepared by New Hampshire commission staff, rather than on its own Washington-

Commission Staff, Broadwing, Level 3, the Joint CLECs and TCG filed objections to WITA's motion and response.

In its filed objections, Commission Staff confirmed that its transport recommendation included traffic originating from rural LEC customers via EAS trunks which would then be carried over local interconnection facilities between Qwest and the CLEC. Mr. Linse's testimony confirms that Qwest already bears the full cost of EAS trunking between its switch and its meet point with rural LECs. Linse, TR. 200-201.

Beyond considering Staff's confirmation of its position on transport, which is clearly based on the record in this case, the Commission declines to further consider WITA's motion. There is no support on this record for WITA's transport recommendations, even though WITA had ample opportunity to provide witnesses and evidence. Considering WITA's recommendations at this phase of the proceeding would require reopening the record, a dubious course of action in light of the fact that this is a complaint proceeding initiated by Qwest against various CLECs. Over the course of this proceeding, WITA's participation was welcome, particularly in terms of shedding light on the Qwest/CLEC conflict. Nevertheless, we are persuaded that WITA's transport issues fall outside the scope of the proceeding. Finally, WITA's proposals are disingenuous insofar as WITA companies, for the most part, claim they are exempt under the Act from entering into interconnection agreements under sections 251 and 252. Therefore, WITA companies do not have direct connections with CLECs offering VNXX services and have no points of interconnection. Moreover, under FCC rules, it is the CLECs that request interconnection from ILECs, and not the reverse, as WITA seems to suggest. Finally, even if virtual POI's were to be established, under the Act, interconnection facilities must be priced at TELRIC rates, not at the tariffed "rate of return" rates WITA recommends.

⁸⁹ TCG already provides service pursuant to an interconnection agreement with Qwest that permits the exchange of ISP-bound VNXX traffic on a bill and keep basis. See TCG Initial Brief, at 4.

⁹⁰ Level 3 Reply Brief, at 52.

based study. TCG observes that the New Hampshire Commission has not prohibited VNXX for voice. Rather, New Hampshire permits CLEC FX service if the CLEC has sufficient presence in a local exchange market. TCG concludes that sound public policy would encourage CLECs to provide FX-like services in competition with ILECs and would address abuses in complaint proceedings.

96 **Discussion.** Contrary to Level 3's assertions, the *ISP Remand Order's* conclusions about regulatory arbitrage related to ISP-bound traffic and the FCC's rationale for moving toward a bill and keep compensation methodology for that traffic have not been repudiated.⁹¹ However, federal courts have interpreted the *ISP Remand Order's* conclusions as limited to ISP-bound traffic exchanged within an ILEC-defined local calling area.⁹² The order did not address whether reciprocal compensation was required for calls between such local calling areas, such as the VNXX calls that cross local calling area boundaries at issue in this proceeding.⁹³ State commissions retain the authority to establish rates for that portion of ISP-bound traffic,⁹⁴ including implementing a bill and keep compensation system. Several state commissions, including Oregon, Colorado, Iowa and Texas have followed this path.

97 Staff's proposal that the Commission adopt bill and keep as the compensation mechanism for VNXX ISP-bound traffic in this proceeding offers a fair, just, and reasonably balanced resolution to the traffic imbalance problems and skewed intercarrier compensation, described above, that result from VNXX service. Under Staff's proposal, CLECs do not have to pay access charges and Qwest does not pay reciprocal compensation for originating or terminating VNXX traffic. Moreover, regarding compensation for transporting VNXX calls, the Commission believes that requiring CLECs to pay for the transport of such calls is fair and reasonable based on the comparison of VNXX service to Qwest's FX service, under which the FX customer pays for transport of the FX call.

98 We make clear here that in adopting Staff's VNXX transport cost recovery recommendation that CLECs bear the TELRIC-based cost of transporting VNXX calls, we require CLECs to compensate Qwest for the transport of such calls only to

⁹¹ *Qwest v. WUTC*, at 1175.

⁹² *Id.*, at 1172.

⁹³ *Id.*, at 1173.

⁹⁴ *Id.*, at n.10.

the extent the calls actually use Qwest transport facilities. To the extent VNXX calls use CLEC-owned or other third party-provided transport facilities, no compensation to Qwest would be appropriate.

- 99 The Commission is not persuaded, based on the record in this case, that allowing VNXX ISP-bound calling would have the Draconian effect on WITA revenues as WITA suggests. VNXX ISP-bound minutes bear no prior connection with access charge or universal service calculations nor would they be included in future access charge minutes. Even if the Commission were to require the payment of access charges for such calls there would be little impact on WITA revenues because it is unlikely that ISP customers would be willing to incur long distance charges for dial-up service, eliminating the possibility of access and universal service revenues from such calls.
- 100 **3. Allowing VNXX for voice traffic.** Adopting Staff’s proposal for VNXX ISP-bound traffic still leaves for resolution whether the Commission should permit the use of VNXX service for voice and other types of traffic, as the CLECs request, and as reflected in the Qwest/Verizon settlement agreement.
- 101 In the AT&T Arbitration Order, the arbitrator expressed concern about defining local calls based only on NPA/NXX (the definition CLECs espouse in this case) because it would raise “too many imponderables not fully developed on the record in this arbitration.”⁹⁵ In this proceeding, Staff raises the concern that allowing VNXX service for voice calls would constitute one of the “imponderables.” Furthermore, Staff argues that no evidence is required to conclude that voice VNXX constitutes illegal long distance (toll) bypass which should be prohibited. Staff claims that the New Hampshire study it reviewed showed that there are many companies waiting for the opportunity to take improper advantage of such toll bypass opportunities. Staff also points out that here in Washington, Global Crossing is offering LATA-wide “local calling” to a business customer in the Seattle local calling area.⁹⁶
- 102 Staff notes that several other state commissions have addressed this issue in slightly different ways. California recently authorized the use of VNXX traffic for all purposes, requiring ILECs to pay terminating reciprocal compensation and CLECs to

⁹⁵ AT&T Arbitration Order, ¶ 34.

⁹⁶ Staff Opening Brief, at 46; Brotherson, Exh. 24T, at 48.

pay an origination charge at TELRIC rates for transporting the call.⁹⁷ New Hampshire permits VNXX service arrangements for ISP-bound traffic by assigning a special statewide “information access NXX.”⁹⁸ However, New Hampshire declined to decide what compensation to apply to such traffic, leaving it up to the FCC to determine this. New Hampshire also allowed voice VNXX service only for CLECs who maintain a “local nexus” in the local calling area from which they seek to offer the service.⁹⁹ Oregon allows VNXX service for ISP-bound calls, imposes bill and keep for that traffic, requires the CLEC to pay for the transport of VNXX ISP-bound traffic at private line rates instead of TELRIC rates,¹⁰⁰ but outlaws FX and voice VNXX service.

103 Staff rejects the California approach as needlessly complicated and faults the New Hampshire approach because it does not require the CLEC to provision a private line for its VNXX service.¹⁰¹

104 **Discussion.** Considering the myriad of factors related to VNXX traffic, the Commission is persuaded that allowing VNXX traffic for all purposes is the best possible course from a public policy standpoint. Allowing VNXX traffic for all purposes allows CLECs to be fully competitive with ILEC FX services and should provide benefits to Washington consumers in the form of more service options and lower prices. As discussed above, adopting a bill and keep compensation system eliminates ILEC revenue issues related to toll-bypass – that is, while Qwest does not receive access charge revenues, neither does it have to pay reciprocal compensation.¹⁰² In addition, while CLECs do not receive reciprocal compensation

⁹⁷ *Re Pacific Bell Telephone Company*, California Public Utilities Commission, Application 02-03-059, Decision 03-05-031, 2003 WL 21212003, at 4, 5 (May 8, 2003); *In the Matter of Verizon California, Inc. (U-10021-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, at 7, 8 (May 22, 2003).

⁹⁸ *Investigation as to Whether Certain Calls are Local, DT 00-223, Independent Telephone Companies and Competitive Local Exchange Carriers – Local Calling Areas, DT 00-054, New Hampshire Public Utilities Commission*, Final Order, Order No. 24,080, at 53-54 (October 28, 2002).

⁹⁹ *Id.*, at 56-57.

¹⁰⁰ *In the Matter of Level 3 Communications, LLC, Petition for Arbitration of an Interconnection Agreement with Qwest Corporation, Pursuant to Section 252(b) of the Telecommunications Act*, 2007 WL 978413, at 2, 4-5, 20, 26, 28 (Ore. PUC, March 14, 2007).

¹⁰¹ Staff Reply Brief, at 15.

¹⁰² The Commission agrees with Staff that the California approach, under which all VNXX traffic, including voice, is permitted, is more complicated than necessary. Although the New Hampshire approach has merit, it too is not without flaws: like the California solution, it also is complicated and it does not

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revenues, neither do they have to expend resources to have a physical presence in every Qwest local exchange area. The requirement that CLECs pay for transport of VNXX calls also removes any advantage CLECs have from providing an FX-like or long distance service without paying for the transport of the traffic.

105 The Commission acknowledges that allowing VNXX voice traffic may, in theory, cause erosion of access revenues because, unlike dial-up internet calls, which were never part of the access charge regime, long distance voice calls that have been subject to access charges will no longer be subject to access charges, but rather will be subject to bill and keep. Nevertheless, there is little evidence on the record in this case that significant VNXX voice calling will occur in the near term. Staff offered the example of Global Crossing offering LATA-wide local calling through VNXX service but provided no detail regarding the number of customers or minutes actually involved. Staff also testified about the potential for abuse of voice VNXX in the New Hampshire study. While the New Hampshire study may be somewhat instructive, it is not a substitute for evidence of a problem with regard to voice VNXX in Washington. As Mr. Vasington testified, “the door has been open to non-ISP bound [VNXX] traffic for some time and there just hasn’t been much non-ISP bound traffic.”¹⁰³ With regard to WITA’s concerns that severe erosion of access and universal service revenues would occur if voice VNXX traffic is permitted, WITA supplied no witness or evidence of its own to support its claims.

106 The Commission expects that the parties will be vigilant to report abuses or problems that occur with the use of VNXX for voice calls. Also, the Commission presumes that implementing a bill and keep/transport charge compensation system may cause CLECs to more carefully consider whether they can or will use VNXX service for voice or other purposes. Without evidence as to how VNXX service might actually be eroding access charge and universal service revenues, it is premature to ban or limit its use.

107 A final consideration underlying the decision to authorize the use of VNXX traffic for voice is a technical one. The only method the parties have advanced for how to

resolve compensation issues. In view of the length of time it has taken the FCC to address and review intercarrier compensation issues in the pending 2001 NPRM, the Commission concludes that an interim compensation system should be adopted.

¹⁰³ Williamson, TR. 942 and TR. 944-945.

distinguish a VNXX voice call from a VNXX ISP-bound call is the use of traffic studies, which are highly contentious.¹⁰⁴ Allowing VNXX service for voice with an appropriate, albeit interim, intercarrier compensation system in place avoids that dilemma and is the best way to maintain competitive neutrality based on the record in this case.

F. Should the Commission approve the Qwest/Verizon Access settlement agreement?

1. The settlement agreement.

108 On March 7, 2007, Qwest and Verizon Access filed a confidential settlement agreement that resolves their disputes in this proceeding. The settlement agreement:

- Allows for the exchange of VNXX voice and ISP-bound traffic between the two parties.
- Is a 14-state agreement and is not available on a state-by-state basis.¹⁰⁵
- Agrees to a “unitary rate” applicable in Washington for local voice and local ISP traffic exchanged between the parties of \$0.00078651.¹⁰⁶
- Agrees to a Percent Compensable Minute Factor (PCMF) that will determine which traffic exchanged by the parties is subject to the unitary rate.¹⁰⁷
- Allows for a review of the initial unitary rate and PCMF after one year to address any changes in the mix of local voice, ISP traffic, and VNXX traffic or changes in the state voice rate or FCC ISP rate.
- Agrees to a relative use factor (RUF) that allocates cost responsibility for local transport (LIS trunks).

¹⁰⁴ See Williamson, TR 945-46. In his testimony, Mr. Williamson responded to a question from the bench about how the parties would determine which VNXX minutes were ISP-bound and which were voice. Mr. Williamson acknowledged he did not know how this would occur and trusted that the majority of the industry would follow the Commission’s order if voice VNXX service were to be prohibited.

¹⁰⁵ Qwest explains that the calculation of the “unitary rate” for exchange of traffic between the parties is based on the inclusion and weighting of the rates in all 14 of the states where Qwest operates as an ILEC. See Qwest Opening Brief, at 45.

¹⁰⁶ *Id.*, at 46. Qwest explains that the unitary rate for Washington was calculated based on historic company specific usage data from the twelve states where the rate will be applicable, and also takes into account the current approved voice rates in each state as well as the FCC rate for local ISP traffic.

¹⁰⁷ *Id.* The PCMF is the ratio of a) the amount of local voice traffic, plus local ISP-bound traffic to b) the amount of VNXX traffic plus local voice traffic and local ISP bound traffic. A PCMF is calculated for each party’s originated traffic. This allows Qwest to avoid paying terminating compensation on VNXX minutes and makes all VNXX minutes subject to bill and keep.

- Agrees to requesting approval of an interconnection agreement amendment capturing the provisions of the settlement agreement.¹⁰⁸

2. Standard for review.

109 The Commission may approve settlement agreements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest.¹⁰⁹ The Commission reviews the proposed amendment to the Qwest/Verizon Access interconnection agreement, which is part of the settlement agreement, under section 252(e)(2)(A) of the federal Act. The Commission may reject the amendment if it discriminates against a telecommunications carrier not a party to the agreement, or it is not consistent with the public interest, convenience and necessity.

3. Is the Settlement Agreement lawful and does it serve the public interest?

110 Staff recommends the Commission approve the settlement agreement as it applies to VNXX ISP-bound traffic, but not as it applies to VNXX service otherwise. As discussed above, Staff argues that since VNXX service is by definition “toll bypass,” allowing its use for voice traffic would diminish access charge revenues and universal service support for rural and independent phone companies.

111 WITA concurs, pointing out that adopting the settlement agreement would mean that what was formerly access traffic would be eliminated. As discussed above, WITA observes that the universal service rate element is collected on both the originating and terminating end of an interexchange call, thus for every Qwest/Verizon VNXX call under the settlement agreement, the universal service charge would no longer be collected at either end.

¹⁰⁸ The parties filed a request for approval of the interconnection agreement amendment in Docket UT-063055. On May 8, 2007, the Commission ordered that docket to be consolidated with this proceeding for purposes of reviewing the amendment simultaneously with its consideration of the settlement agreement. The Commission permitted the amendment to become effective immediately pending this review.

¹⁰⁹ WAC 480-07-750(1).

- 112 The CLECs' chief objection to the settlement agreement is that by its terms Qwest is agreeing to the exchange of VNXX traffic, while in its complaint in this proceeding Qwest unequivocally argues that VNXX is illegal and should be prohibited. TCG does not oppose the settlement agreement, for the most part, because the agreement reflects the way VNXX traffic is handled in TCG's agreement with Qwest. However TCG does object to the 14-state opt-in requirement. Neither ATI nor ELI opposes the agreement. However Level 3, Broadwing and the Joint CLECs vigorously oppose the agreement.
- 113 Level 3 contends that the settlement agreement and interconnection agreement amendment are discriminatory under sections 252(c)(2) and 252(d)(1) which require that "any rate for interconnection" must be "nondiscriminatory." Level 3 also points out that section 251(c)(1) requires the ILEC interconnection with a CLEC to be "at least equal in quality to that provided by the LEC to itself or to any other party to which the carrier provides interconnection" on "rates, terms and conditions that are just, reasonable and nondiscriminatory." Level 3 alleges that in the settlement agreement, Qwest allows Verizon Access to carry all types of VNXX calls over interconnection trunks at a unitary rate, but would not offer that same rate to CLECs. Level 3 contends that Qwest instead would offer a methodology for calculating a rate that would be unfavorable to CLECs because CLECs handle a much higher percentage of VNXX traffic than Verizon Access. Level 3 contends that this would force Level 3 to treat ISP-bound VNXX traffic as interstate and to pay access charges to Qwest for that traffic.
- 114 The Joint CLECs reiterate Level 3's argument that implementing the settlement agreement would be discriminatory and not in the public interest because Qwest does not offer the same terms to other CLECs. The Joint CLECs complain that the requirement that CLECs adopt the terms of the agreement on a 14-state basis means that CLECs would have to replace their existing interconnection agreements or amend their agreements in every state. The Joint CLECs contend that Qwest's 14-state opt in requirement effectively denies the terms of the settlement agreement to CLECs.
- 115 **Discussion.** The Commission concludes that it should approve the settlement agreement and the interconnection agreement amendment as non-discriminatory and consistent with the public interest and convenience, as discussed in the section of this Order addressing Staff's proposal and other prior sections. Implementing the

settlement agreement and the amendment offers customers of Verizon Access a competitive option, VNXX service for ISP-bound traffic and for other services, including voice, under a system that provides fair and reasonable compensation for both Qwest and Verizon Access.

- 116 The Commission rejects as unfounded Level 3's argument that the interconnection agreement amendment is discriminatory because it would not offer the same "rate" to Level 3 as is afforded Verizon Access. Nowhere in any of the statutory language Level 3 cites in support of its argument is there a requirement that the same rate apply in all and every circumstance. It is sufficient that the methodology for calculating the rate be the same. Mr. Brotherson, in cross-examination about the settlement agreement, agreed that a CLEC seeking to opt in to the same interconnection agreement amendment would be subject to the same formula for calculating the unitary rate as applied to Verizon Access, even though the actual rate might differ.¹¹⁰ The Commission acknowledges that Verizon Access may have a different traffic balance with Qwest than other CLECs and this may cause a different rate to apply to those CLECs using the same methodology. But this does not mean that the resulting rate would be discriminatory.
- 117 The Commission is not persuaded by the CLECs' objections to Qwest's stated 14-state opt-in requirement. Such objections are better left to a proceeding related to an actual opt-in request.

G. CLEC Counterclaims

- 118 Two CLEC carriers, Broadwing¹¹¹ and Global Crossing, filed counterclaims against Qwest in this proceeding, claiming that Qwest owed them money for reciprocal compensation, access charges, universal service and interest. This Order addresses each carrier's claims below.

¹¹⁰ Brotherson, TR. 956-57.

¹¹¹ Broadwing recently purchased Focal Communications and is a wholly-owned subsidiary of Level 3. *See* Meldazis, Exh. 241T; TR. 727-728.

1. Broadwing's counterclaims

119 Broadwing claims that as of October 28, 2006, Qwest owed it a total of \$1,235,368.54 for traffic exchanged with Broadwing in the state of Washington.¹¹² Broadwing breaks the disputed charges into three separate categories: 1) charges for FX-like traffic; 2) charges for minutes that exceeded growth caps under the *ISP Remand Order*; and 3) access charges.¹¹³

120 Qwest contends it has not been able to fully analyze Broadwing's claims because Broadwing's numbers are not sufficiently detailed and the dollar amounts do not match Qwest's records.¹¹⁴

121 This Order addresses Broadwing's claims according to the three categories of charges identified above.

a. Charges for FX-like traffic.

122 Broadwing claims that sometime after the FCC issued the *Core Forbearance Order*, Qwest stopped paying reciprocal compensation for traffic it considered to be VNXX traffic, because Qwest considers the reciprocal compensation charges for termination of that traffic unlawful.¹¹⁵ The amount in question is \$986,724.¹¹⁶ Qwest asserts that VNXX traffic is interexchange traffic, not local traffic, and thus not subject to reciprocal compensation termination charges. Broadwing asserts that VNXX, or FX-like traffic, is compensable local traffic, no less than traffic Qwest would consider local under its own definition of local.

123 In the alternative, Broadwing claims that even if the Commission finds that Qwest does not owe reciprocal compensation for VNXX traffic, Qwest still owes the amount in full because Qwest cannot identify which part of this traffic is geographically local and which is VNXX traffic.¹¹⁷ Broadwing asserts this is due to Qwest's reliance on trunk group records for billing support. Broadwing contends that Qwest's trunk

¹¹² McNeil, Exh. 301T, at 8.

¹¹³ Broadwing Initial Brief, at 6-11.

¹¹⁴ Qwest Opening Brief, at 47-48. Qwest claims the amount in dispute is approximately \$1.157 million.

¹¹⁵ Broadwing Initial Brief, at 6.

¹¹⁶ McNeil, Exh. 305T, at 4.

¹¹⁷ *Id.*, at 7.

group records count all traffic flowing to Broadwing's switch, whether local or not. Broadwing points out that it has only one switch, located in Seattle, serving all of Washington. Therefore, when a Qwest customer in Seattle calls a Broadwing customer in Seattle, the call goes to the Broadwing switch, just as when a Qwest customer in Tacoma calls a Broadwing customer in Tacoma. Thus, under Qwest's tracking method, any call that does not originate in Seattle will be considered VNXX traffic.

124 Qwest points out that Broadwing bills traffic as local based on VNXX numbers rather than on the geographic location of the call's end points.¹¹⁸ Qwest contends that this violates the parties' interconnection agreement which defines local traffic according to geographic endpoints.¹¹⁹ Qwest further responds that it relies on both trunk group records and traffic imbalances to determine whether a call is local or VNXX traffic. In any event, Qwest asserts that the burden of proof is on Broadwing to support its claims, and Broadwing failed to provide evidence to show that the traffic for which it is billing Qwest is local under the parties' interconnection agreement.

125 **Discussion.** Qwest is correct that Broadwing has the burden of proof with regard to its counterclaims and that Broadwing has failed to meet that burden with regard to its bills to Qwest for local traffic termination. This Order concludes that VNXX calls have the characteristics of interexchange calls for which appropriate compensation must be made. This Order further concludes that bill and keep is the appropriate compensation system for VNXX traffic. Broadwing has not shown that any of the local VNXX calls for which it is billing Qwest are local in the geographical sense of the word. Without such evidence, Broadwing's counterclaims are unsupported and must be denied.

b. Charges that exceeded growth caps under the *ISP Remand Order*.

126 Broadwing claims that Qwest refuses to pay approximately \$318,000¹²⁰ in charges for ISP-bound calls that Qwest claims exceeded the growth caps established in the *ISP Remand Order*.¹²¹ Broadwing asserts that the terms of the *ISP Remand Order* were

¹¹⁸ Meldazis, TR. 725-726.

¹¹⁹ Qwest Opening Brief, at 52.

¹²⁰ Broadwing Initial Brief, at 8.

¹²¹ See *ISP Remand Order*, ¶ 86. The *ISP Remand Order* imposed a ten percent growth cap on ISP-bound minutes (for geographically local ISP-bound calls) for which CLECs could receive reciprocal

included in the parties' interconnection agreement which made explicit that the ten percent growth caps ended December 31, 2003. Broadwing claims that after that date, all ISP-bound minutes were compensable at the rate of \$.0007 per minute. The period during which this bill accrued is January 1, 2004, to October 8, 2004.

127 Qwest contends that the amount in question is related to VNXX traffic minutes for which it owes Broadwing no reciprocal compensation. Qwest further contends that, in any event, the growth caps remained in effect.¹²²

128 **Discussion.** Broadwing bears the burden of proof with regard to its counter claims and has failed to meet that burden. Broadwing provided no evidence to distinguish between geographically local ISP-bound calls and VNXX calls. The *ISP Remand Order* addressed only geographically local ISP-bound calls in establishing the interim compensation regime and growth caps. As discussed above, interexchange or non-local ISP-bound calls, which would include VNXX calls, were excluded from reciprocal compensation requirements under the terms of that order.

129 Moreover, the interconnection agreement between the parties defines local calls in terms of Qwest's geographic local calling areas, not in terms of Broadwing's local calling area.¹²³ Unless Broadwing demonstrates that the ISP-bound calls Qwest terminated are geographically local, Broadwing cannot bill these calls as local under the interconnection agreement. This Order finds such geographically non-local calls to be subject to a bill and keep compensation system, and thus exempt from reciprocal compensation.

c. Access Charges.

130 Broadwing claims that Qwest owes \$225,304.60 in access charges.¹²⁴

compensation, as part of its eventual shift to a bill and keep compensation regime for ISP-bound calls. The FCC mandated the caps "for the first two years." The ten percent growth caps ended December 31, 2003.

¹²² Qwest Reply Brief, at 57.

¹²³ Exhibit 242, at 7: "Traffic Type" is the characterization of intraLATA traffic as "local" (local includes EAS), or "toll" which shall be the same as the characterization established by the effective tariffs of the incumbent local exchange carrier as of the date of this agreement.

¹²⁴ McNeil, Exh. 305T, at 4.

- 131 Qwest responds that the toll minutes related to these charges are not attributable to Qwest traffic, but rather are transit or third-party traffic.¹²⁵ Qwest explains that it provides intra-LATA toll service in Washington to customers located in Qwest local territories who purchase local service from Qwest. All Qwest intraLATA toll traffic is recorded at the originating end office. These records are used to bill the end-user and the call detail is posted in the Qwest Toll Usage Tracking (TUT) database. The billing data identifies the exchange and duration of the call. This data provides other LECs the necessary information to bill for terminating access.
- 132 Qwest contends it pays access charges on intraLATA toll traffic for which it is the retail toll provider, but because Broadwing has provided insufficient detail regarding its access charges, Qwest is unable to determine whether Broadwing's charges are accurate. Qwest believes that Broadwing has included access charges attributable to wireless traffic and traffic that transits Qwest network destined for other local exchange carriers. Qwest claims that its tandem switch simply connects these calls, but this does not mean that Qwest is the originator of the call. Qwest points out that even if Broadwing currently excludes third-party calls, it cannot have done so prior to the end of 2005, when Broadwing first began to purchase transit records from Qwest.¹²⁶ According to Qwest, its records show that Broadwing has overbilled Qwest by \$216,384.71.¹²⁷
- 133 **Discussion.** With regard to Broadwing's access charge claim, the company has met its burden of proof. Broadwing witness McNeil provided a detailed account of how the company identifies and separates transit traffic from Qwest terminated traffic:

Broadwing's switch generates call data records that contain the calling party and called party numbers, which we refer to ...as "ANIs." No intermediate transiting information is included in the call data record. Using industry databases, the origination and termination ANIs are queried to determine the Operating Company Number ("OCN") that is associated with each ANI. In order to determine the originating and terminating OCNs, the mediation process uses the following

¹²⁵ Qwest Opening Brief, at 58.

¹²⁶ Qwest Reply Brief, at 58.

¹²⁷ Qwest Opening Brief, at 59.

logic: For the originating end of the call, if the originating LRN [Local Routing Number] is present, it is used. Otherwise, the originating number is used. The NPA-NXX of the originating LRN or the originating number is compared to the TPM [Terminating Point Master] file from Telcordia to determine the originating OCN. For the terminating end of the call, if the terminating LRN is present, it is used. Otherwise, the terminating number is used. The NPA-NXX of the terminating LRN or the terminating number is compared to the TPM file from Telcordia to determine the terminating OCN. All calls are billed based on the OCNs that either originated or terminated the call. Broadwing would only bill Qwest for calls that originated with a Qwest OCN.¹²⁸

From this explanation, it appears that Broadwing has taken pains to ensure that Qwest is billed only for calls that it originates, as opposed to calls it carries for third-parties. It is clear there is a disparity in the records of the two parties, but the difference in results does not require a conclusion that Broadwing's methodology is incorrect.

2. Global Crossing counterclaims

134 Global Crossing claims that Qwest owes it reciprocal compensation for the period September 15, 2005, through January 31, 2007.¹²⁹

135 Qwest disputes this claim, stating that Global Crossing is billing Qwest for the termination of VNXX traffic which is geographically non-local and thus not subject to reciprocal compensation under the *ISP-Remand Order*.¹³⁰

136 Global Crossing responds that it does provide FX service but does not serve ISPs and does not provide VNXX service as Qwest defines it.¹³¹

¹²⁸ McNeil, Exh. 305T, at 5.

¹²⁹ Joint CLEC Opening Brief, at 30; *see also*, Peters, Exh. 441T, at 3 and confidential Exh. 442C.

¹³⁰ Qwest Opening Brief, at 59; Qwest Reply Brief, at 58-59.

¹³¹ Joint CLEC Opening Brief, at 31.

137 Qwest points out that Global Crossing admits that it rates calls based on dialed numbers, not on the geographic location of its customers, which Qwest contends is a violation of the parties' interconnection agreement.¹³² Qwest asserts that its interconnection agreement with Global Crossing, similar to the agreement between Broadwing and Qwest, requires that whether a call is local or not depends on the geographic location of customers.¹³³ In addition, Qwest cites other evidence that Global Crossing allows its own customers to call throughout the LATA without incurring toll charges¹³⁴ and that it would route calls from Seattle to Olympia over local trunks, not toll trunks.¹³⁵ Qwest claims that the latter practice disguises interexchange VNXX calls improperly routed over local trunks.¹³⁶

138 **Discussion.** Global Crossing has not met its burden of proof showing that the traffic for which it is billing Qwest is local as defined by Qwest's local calling areas. Global Crossing may claim that its traffic is not VNXX, but Qwest has provided enough evidence to cast doubt on that claim. Mr. Brotherson's testimony stating that Global Crossing provides LATA-wide local calling is sufficient to conclude that the company may be using VNXX arrangements to circumvent proper intercarrier compensation.¹³⁷ In order to prevent improper billing it is essential for a CLEC to provide a means of verifying the geographically local nature of the traffic for which it seeks to be compensated. Global Crossing has not done so with regard to its counterclaim here.

H. Conclusion.

139 Qwest has not met its burden of proof showing that VNXX service is illegal per se. However the evidence shows that VNXX traffic may be permitted as long as appropriate and fair intercarrier compensation applies to that traffic. Staff's proposal to allow VNXX service for ISP-bound traffic under a bill and keep system, with CLECs required to compensate Qwest for transport at TELRIC rates, is fair and reasonable.

¹³² Peters, Exh. 441T, at 3; Peters TR. 665-666, 672.

¹³³ *Id.*

¹³⁴ *Id.*, 674.

¹³⁵ *Id.*, 675.

¹³⁶ Qwest Reply Brief, at 59.

¹³⁷ Brotherson, Exh. 24T, at 48.

- 140 Staff's proposal should be extended to allow VNXX traffic to include voice, as is contemplated under the settlement agreement and interconnection agreement amendment between Qwest and Verizon Access. The Commission is persuaded that on this record there is no evidence of erosion of access charges or other harms that would support prohibiting VNXX voice traffic, especially if it is provided under a bill and keep/transport payment compensation regime. Therefore, the Commission concludes that adopting the settlement agreement and approving the Qwest/Verizon Access interconnection agreement amendment would serve the public interest.
- 141 Finally, with regard to the Broadwing and Global Crossing counterclaims, with the exception of Broadwing's claim for \$225,304.60 for access charges from Qwest, the counterclaimants failed to meet their burden of proof and the claims should be dismissed.

III. FINDINGS OF FACT

- 142 Having discussed above in detail the evidence provided in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings.
- 143 (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate local calling areas and call rating for telecommunications carriers operating in the state.
- 144 (2) Qwest is an incumbent local exchange carrier operating under the Commission's jurisdiction in the state of Washington.
- 145 (3) Respondents are competing local exchange carriers operating in the state of Washington, subject to the Commission's authority to regulate local calling areas and determine call rating for local calls.
- 146 (4) VNXX calls are calls made using telephone numbers that appear to be local but are in reality non-local or interexchange calls.

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- 147 (5) Respondents use VNXX calling arrangements for their customers without paying compensation that reflects the non-local, or interexchange, characteristics of VNXX calls.
- 148 (6) Bill and keep, or zero compensation, is the appropriate, fair, just and reasonable compensation system between CLECs and Qwest for VNXX calls.
- 149 (7) VNXX traffic makes use of Qwest's local interconnection service (LIS) trunks without compensating Qwest for the use of those trunks.
- 150 (8) The appropriate compensation for transport of VNXX calls over Qwest's LIS trunks is the TELRIC trunking rate.
- 151 (9) The terms of the settlement agreement and interconnection agreement amendment between Qwest and Verizon Access allow for the use of VNXX arrangements under a bill and keep compensation system and require Verizon Access to pay Qwest for transport of VNXX calls.
- 152 (10) Broadwing's method for billing Qwest for access charges is reasonable and supports its counterclaim against Qwest for access charge payments in the amount of \$225,304.60.

IV. CONCLUSIONS OF LAW

153 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 154 (1) The Commission has jurisdiction over the subject matter of, and all parties to, these proceedings.
- 155 (2) Qwest has failed to meet its burden of proof showing that the Commission should prohibit VNXX calling arrangements.

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- 156 (3) VNXX calls have the characteristics of interexchange, non-local calls and are permissible only if bill and keep intercarrier compensation is applied to such calls and only if CLECs compensate Qwest for transport of such calls at TELRIC rates.
- 157 (4) The Commission should approve the settlement agreement between Qwest and Verizon Access because the settlement terms are lawful, supported by the record and consistent with the public interest.
- 158 (5) The interconnection agreement amendment between Qwest and Verizon Access should be approved because it does not discriminate against any non-party to the agreement and is consistent with the public interest, convenience and necessity.
- 159 (6) Broadwing and Global Crossing failed to carry their burden of proof to support their counterclaims for billing charges against Qwest, except for Broadwing's claim for access charges billed to Qwest.

V. ORDER

THE COMMISSION ORDERS:

- 160 (1) Qwest Corporation's complaint that VNXX service is illegal and should be prohibited is dismissed.
- 161 (2) CLECs may only provide VNXX service under a bill and keep compensation system with CLECs required to purchase transport for VNXX traffic from Qwest Corporation at TELRIC rates.
- 162 (3) The Settlement Agreement and Interconnection Agreement Amendment between Qwest Corporation and MCI Metro Access Transmission Services, LLC, d/b/a Verizon Access, are approved.
- 163 (4) Qwest Corporation must pay Broadwing Communications, LLC, \$225,304.60 in access charges.

- 164 (5) All other counterclaims of Broadwing Communications, LLC, and Global Crossing Local Services, Inc., are dismissed.

DATED at Olympia, Washington, and effective October 5, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and three (3) copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

GLOSSARY OF TELECOMMUNICATIONS TERMS

TERM	DESCRIPTION
Access charges	The charges imposed on long distance carriers by local exchange carriers to cover the local exchange carriers' network costs for carrying the long distance call. Also called toll charges.
Area Code	See definition of NPA
Bill and Keep	An arrangement in which neither of two interconnecting networks charges the other for terminating traffic that originates on the other network. Instead, each network recovers from its own end-users the costs of both originating traffic that it delivers to the other network and terminating traffic that it receives from the other network.
Broadband	A transmission facility, usually composed of fiber optics, providing increased bandwidth through multiple, simultaneous communication channels. <i>(From Newton's, at page 123.)</i>
Central Office	A building where the local loops are connected to switches to allow connection to other customers; also referred to as a wire center where there are several switches functioning as a switch exchange. <i>(From Newton's, at page 157.)</i>
CLEC	Competitive local exchange company. Not an ILEC, and generally subject to very limited regulation.
COAG	Central Office Code Assignment Guidelines, industry guidelines for the assignment of phone numbers
Dial-up	Refers to a method of connecting to the Internet via an Internet service provider (ISP) by using a modem and a standard telephone line. <i>(From Newton's, at page 239.)</i>
EAS	Extended Area Service. A service in which customers in one local service area may call customers in an adjacent local service area without a toll charge. <i>(From Newton's, at page 306.)</i>
End Office	A central office to which a telephone customer is connected. <i>(From Newton's, at page 292.)</i>
ESP	Enhanced Service Provider
FCC	Federal Communications Commission, the federal agency charged with regulating certain aspects of telecommunications

TERM	DESCRIPTION
Foreign Exchange (FX)	A service provided by incumbent local exchange carriers whereby a customer is assigned a phone number that is not a local number for the customer but rather is assigned to a different or foreign local exchange. Under FX service, the customer must purchase local service in the foreign exchange and a retail line to transport any calls from the foreign exchange.
ILEC	Incumbent local exchange company; a company in operation at the time the Act was enacted (August 1996).
Interconnection	Connection between facilities or equipment of a telecommunications carrier with a local exchange carrier's network under Section 251I(2).
Interconnection Agreement	An agreement between an ILEC and requesting telecommunications carrier (which may be a CLEC) addressing terms, conditions and prices for interconnection, services or network elements pursuant to Section 251.
IP	Internet Protocol
ISDN	Integrated Services Digital Network. A technology intended to provide an internationally accepted standard for voice, data and signaling, to make all transmission circuits digital from end-to-end, and to bring more bandwidth to personal computers. (<i>From Newton's at 427-428</i>).
ISP	Internet Service Provider
IXC	Interexchange carrier, i.e., a long-distance carrier. That may provide service between LATAs.
LATA	Local Access and Transport Area. A service area for Bell Operating Companies.
LIS Trunks	Trunks used by ILECs to carry local telecommunications traffic
Local calling area	Local service area. A geographic area in which telephones may make calls without incurring toll charges. (<i>From Newton's at 473</i>).
Modem	Acronym for Modulator/Demodulator. Equipment that converts digital signals to analog signals and vice versa. (<i>From Newton's at 512</i>).
MOU	Minutes of use.
NANPA	The North American Numbering Plan Administrator, which is responsible for assigning and administering numbering resources, including NPA and NXX codes in an efficient and non-discriminatory manner. NANPA performs its responsibilities in

TERM	DESCRIPTION
	accord with guidelines developed by the North American Industry Numbering Committee (INC). The INC guidelines are called COCAG.
NPA	The first three digits of the ten-digit phone number, also known as the Area Code.
NXX	The second three-digit group (e.g. 206-NXX-1234) of a telephone number that identifies the central office code and switch that an ILEC will use to route a phone call.
Origination	A call placed by a telephone subscriber.
PCMF	Percent Compensable Minute Factor. A factor used to determine rates for traffic exchanged by carriers.
POI	Point of Interconnection. The location where two carriers connect their networks to exchange traffic.
PRI	Primary Rate Interface. The ISDN equivalent of a T-1 circuit, delivering 23B+D at 1.544 megabits per second. B stands for Bearer, or 64,000 bits per second. (Faster than BRI, Basic Rate Interface, delivering 2B+D over one or two pairs). (<i>Newton's</i> , at 624.)
QTUT	Qwest Toll Usage Tracking. A database of call details for Qwest intraLATA toll traffic.
Reciprocal compensation	A compensation system that recognizes that when a customer of a given company places a local call (not long-distance, to which access charges apply), the calling customer (originating phone company) pays the company serving the customer to whom the call terminated for the termination of the call at the other end.
Retail	Services provided by one carrier to another that are not subject to TELRIC pricing or subject to Section 251 of the Act.
RUF	Relative Use Factor
Section 251 (a) and (b)	The sections of the Act that requires ILECs to allow CLECs to interconnect with ILEC phone networks under interconnection agreements and that require the establishment of reciprocal compensation arrangements for the transport and termination of telecommunications traffic between ILECs and CLECs.
Section 252	The portion of the Act that provides state commissions with the authority to mediate or arbitrate interconnection agreements between ILECs and CLECs.

TERM	DESCRIPTION
Telecom Act or “Act”	Telecommunications Act of 1996, 110 Stat. 56, Public Law 104-104; Feb. 8, 1996.
TELRIC	Total Element Long Run Incremental Cost – A method of determining the cost, and thus, prices for network elements using a forward-looking process, rather than the existing network of a carrier.
Termination	The end point of a telephone call.
Toll avoidance device	A method by which a customer or a company illegally avoids the payment of toll charges for long-distance calls.
Toll bridging	A device that allows customers to bridge overlapping EAS areas. The device receives calls and allows them to be transmitted to the next local calling area, thus avoiding toll or access charges.
Toll Charges	See definition of access charges.
Transport	Lines or connections used to transmit voice or data through a carrier’s network. Transport media include copper wire, fiber optics, microwave, or satellite. <i>(From Newton’s Telecom Dictionary, at page 815.)</i>
Trunk	A communication line between two switching systems. A single trunk, capable of carrying a single conversation, referred to as DS0.
VNXX	The assignment of phone numbers in a local area, even though calls to those numbers may terminate outside the local area.
VOIP	Voice over Internet Protocol.
WITA	Washington Independent Telephone Association.
Wholesale	Services provided by one carrier to another pursuant to section 251 of the Act and generally through TELRIC pricing.