**BEFORE THE WASHINGTON**

**UTILITIES AND TRANSPORTATION COMMISSION**

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| PAC-WEST TELECOMM, INC.  Petitioner,  v.  QWEST CORPORATION,  Respondent.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  LEVEL 3 COMMUNICATIONS, LLC,  Petitioner,  v.  QWEST CORPORATION,  Respondent. | DOCKET NO. UT-053036  DOCKET NO. UT-053039  (consolidated) |

**DIRECT TESTIMONY OF**

**SAM SHIFFMAN**

**ON BEHALF OF**

**PAC-WEST TELECOMM, INC.**

**September 7, 2012**

# I. INTRODUCTION

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Sam Shiffman and my business address is 6500 River Place Blvd., Bldg. 2, Ste. 200, Austin, Texas 78730.

**Q. By whom are you employed and in what capacity?**

A. I am the Executive Vice President of UniPoint Holdings, Inc. UniPoint and Pac-West entered into a merger agreement in September 2011 and continue to work toward closing.

**Q. PLEASE DESCRIBE YOUR RELEVANT WORK EXPERIENCE.**

A. I have served at executive and managerial levels in the communications and IT industry for approximately 20 years. Key projects and achievements include architecting, deploying, and managing from the ground up several different national and metro networks, including: (a) one of the first Ethernet-based Optical IP networks that provided broadband services to businesses and off-campus students in private dormitories and apartments, (b) one of the first Internet Services Providers in Texas, and (c) several nationwide IP backbones and VoIP networks that have processed billions of communication sessions. Additionally I hold multiple patents in the IP communications field, served on the Customer Advisory Board of Alcatel North America, and have been invited to speak as a leader and visionary at conferences hosted by Cisco, Alcatel, NexTone, the Federal Communications Commission (FCC), VON, CompTel, and TEXALTEL.

**Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY REGULATORY AGENCY?**

A. I have given written testimony to state utility commissions in Texas, Arkansas, and Oklahoma on behalf of CLECs seeking certification and in interconnection negotiations. I have also briefed FCC staff on several occasions.

**Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?**

A. This testimony was prepared on behalf of Pac-West Telecomm, Inc.

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. The purpose of my testimony is to provide factual documentation and background relating to (i) Pac-West’s network and customer arrangements during the time period in question, and (ii) Pac-West’s bankruptcy proceedings which commenced on April 30, 2007. The factual information I provide is intended to assist the Administrative Law Judge and Commission in determining the amount and type of traffic that was exchanged between Pac-West and Qwest, and whether and to what extent the traffic is subject to the Commission’s jurisdiction.

# II. TESTIMONY

**Q. WHAT DO YOU UNDERSTAND TO BE THE NATURE OF THE UNRESOLVED FACTUAL ISSUES IN THIS PROCEEDING?**

A.My understanding is that there are legal issues as to which types of traffic are subject to the Commission’s jurisdiction. But when that “bucket” is finally defined, we need to determine the actual amount of traffic in the bucket, what compensation rate applies, and who is to be compensated.

**Q. WAS THE VNXX TRAFFIC THAT PAC-WEST TERMINATED FOR QWEST VOICE TRAFFIC OR ISP-BOUND TRAFFIC?**

A. Substantially all of the VNXX traffic originating from Qwest’s customers and terminating to Pac-West’s customers was ISP-bound traffic.

**Q. WHAT IS THE BASIS FOR THAT CONCLUSION?**

A. Based on my review of Pac-West’s business records, the vast majority of Pac-West’s Washington customers were Internet, or Enhanced, Service Providers (ISP), so, it reasonably follows that the calls to those ISPs by Qwest customers were predominantly for the purpose of connecting to the Internet via the ISP. I say “substantially” all of the traffic because it’s likely some modest number of calls each month were to office administrative lines that Pac-West provided to the ISPs and other customers in addition to the lines associated with dial-up Internet access.

**Q. IN THIS PROCEEDING, REFERENCE HAS BEEN MADE TO “ISP MODEMS AND SERVERS” IN DESCRIBING THE TERMINATING POINT OF A CALL. DOES PAC-WEST HAVE ANY SUCH EQUIPMENT PHYSICALLY LOCATED IN THE STATE OF WASHINGTON?**

A.Yes.As previously provided to Qwest in response to discovery in this proceeding, Pac-West maintained equipment in Tukwila, Washington, to which all dial-up traffic for the state of Washington was routed. The lease for the Tukwila office was executed in September 1999. The equipment was removed in late 2007 (corresponding with Pac-West’s emergence from bankruptcy).

In 2010, Pac-West installed network equipment in three different Washington markets and notified Qwest of the installations via email. It is also my understanding that Qwest previously produced said email as part of the discovery process in this proceeding.

Let me just clarify an important point: describing a dialup Internet call as “terminating” at a "modem” is overly simplistic, does not fully account for the end-to-end nature of dialup Internet traffic, and is ultimately inaccurate. A modem is only one transition point in the life of a dial-up Internet call. Defining Internet dial-up as “terminating” at a modem, would be like defining a butterfly’s life as terminating at the cocoon.

Q: **PLEASE DESCRIBE THE TRAFFIC DATA THAT PAC-WEST HAS BEEN ABLE TO OBTAIN DURING THE DISCOVERY PHASE OF THIS PROCEEDING.**

A:Pac-West spent hundreds of man-hours locating tape back-ups of switch call detail records (CDRs) and restoring those records. We have provided summary reports to Qwest for specific time periods, and have offered to provide the raw call record data if desired by Qwest. In contrast, Qwest has repeatedly objected to Pac-West’s request for CDRs or other raw data supporting Qwest’s summary reports.

**Q: IS PAC-WEST CONTINUING TO WORK ON LOCATING AND RESTORING TRAFFIC DATA RELEVANT TO THIS PROCEEDING?**

A:Yes.  Pac-West is continuing to review data from its records as they become available.  The task has been formidable given the age of the data, dealing with outmoded physical media used for storing data and Pac-West’s limited staff and resources. Nonetheless, over the past month Pac-West has located and procured operational equipment necessary to read the archived tapes, and has retrieved a substantial sample of data for the relevant period in this case.  Importantly, Pac-West data are key to  allowing an “apples-to-apples” comparison with Qwest data, and verifying the accuracy of each.  At this point, however, the parties do not appear to have consensus on the format or type of traffic data that should be produced – as Qwest objects to producing call detail records but has yet to offer access to alternative underlying data that was used to generate its "summary reports."  Without access to the underlying data it is impossible to ascertain the veracity of Qwest's analysis and whether it is a reliable basis for testimony in this case.

**Q: HAS PAC-WEST EVER RECEIVED AN INVOICE FROM QWEST FOR ACCESS CHARGES RELATING TO VNXX CALLS IN WASHINGTON?**

A. No, there is no record of Pac-West having received such an invoice or invoices.

**Q. WHEN DID PAC-WEST FILE FOR BANKRUPTCY, AND WHAT WAS THE OUTCOME?**

A. Pac-West filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware on April 30, 2007. The Court entered an order confirming Pac-West’s plan of reorganization on November 19, 2007. The effect of the plan of reorganization was to discharge any potential claims incurred prior to the November 19, 2007 confirmation date and to permanently enjoin any parties seeking to pursue such claims. The reorganization plan may be viewed online through the Bankruptcy Court’s Case Management/Electronic Case Filing website, <https://ecf.deb.uscourts.gov>, in Case No. 07-10562(BLS).[[1]](#footnote-1) The relevant paragraphs relating to discharge and permanent injunction are found at §§ 11.1 and 12.2 of the plan, respectively.

**Q: DID QWEST ASSERT A CLAIM FOR ACCESS CHARGES RELATING TO VNXX CALLS IN WASHINGTON PRIOR TO THE CLAIMS BAR DATE?**

1. No, there is no record of Qwest having made such a claim.

**Q. UNDERSTANDING THAT PAC-WEST HAS ASSERTED SEVERAL COMPELLING LEGAL ARGUMENTS AS TO WHY QWEST IS PROHIBITED FROM COLLECTING ACCESS CHARGES FROM PAC-WEST ON VNXX ISP-BOUND TRAFFIC, BASED ON YOUR BUSINESS EXPERIENCE AND PERSPECTIVE, WHAT DO YOU SEE AS THE PRACTICAL AND POLICY ISSUES WITH APPLYING ACCESS CHARGES TO VNXX ISP-BOUND TRAFFIC?**

A: There are many, but two of the most significant categories of issues include: (1) discrimination against and damage to Pac-West; and (2) harm to rural and low-income consumers seeking Internet access. First, at no point in time did Qwest provide reasonable notice to Pac-West that it sought to levy access charges on VNXX ISP-bound traffic. And even now, Qwest’s newly-asserted claims in this case would apply only to Pac-West and Level 3, not all of the other carriers in the state that offered VNXX services from 2004 onward. Second, if carriers like Pac-West and Level 3 did not offer these VNXX services, Qwest’s customers would be left to pay toll charges to access the Internet – hitting the rural and low-income populations the hardest – the very populations for whom federal and state regulators seek to improve access to the Internet.

**Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes.

1. See *Final Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates (With Technical Amendments), dated November 19, 2007.* [↑](#footnote-ref-1)