

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

PAC-WEST TELECOMM, INC.

Petitioner,

v.

QWEST CORPORATION,

Respondent.

DOCKET NO. UT-053036

DOCKET NO. UT-053039

(consolidated)

---

LEVEL 3 COMMUNICATIONS, LLC,

Petitioner,

v.

QWEST CORPORATION,

Respondent.

**DIRECT TESTIMONY OF  
SAM SHIFFMAN  
ON BEHALF OF  
PAC-WEST TELECOMM, INC.**

**September 7, 2012**

1 **I. INTRODUCTION**

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

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

6 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

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

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

12 A. I have served at executive and managerial levels in the communications and IT  
13 industry for approximately 20 years. Key projects and achievements include  
14 architecting, deploying, and managing from the ground up several different  
15 national and metro networks, including: (a) one of the first Ethernet-based  
16 Optical IP networks that provided broadband services to businesses and off-  
17 campus students in private dormitories and apartments, (b) one of the first Internet  
18 Services Providers in Texas, and (c) several nationwide IP backbones and VoIP  
19 networks that have processed billions of communication sessions. Additionally I  
20 hold multiple patents in the IP communications field, served on the Customer  
21 Advisory Board of Alcatel North America, and have been invited to speak as a

1 leader and visionary at conferences hosted by Cisco, Alcatel, NexTone, the  
2 Federal Communications Commission (FCC), VON, CompTel, and TEXALTEL.

3  
4 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY REGULATORY**  
5 **AGENCY?**

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

9  
10 **Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?**

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

12  
13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

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

1 **II. TESTIMONY**

2  
3 **Q. WHAT DO YOU UNDERSTAND TO BE THE NATURE OF THE**  
4 **UNRESOLVED FACTUAL ISSUES IN THIS PROCEEDING?**

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

9  
10 **Q. WAS THE VNXX TRAFFIC THAT PAC-WEST TERMINATED FOR**  
11 **QWEST VOICE TRAFFIC OR ISP-BOUND TRAFFIC?**

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

14  
15 **Q. WHAT IS THE BASIS FOR THAT CONCLUSION?**

16 A. Based on my review of Pac-West's business records, the vast majority of Pac-  
17 West's Washington customers were Internet, or Enhanced, Service Providers  
18 (ISP), so, it reasonably follows that the calls to those ISPs by Qwest customers  
19 were predominantly for the purpose of connecting to the Internet via the ISP. I  
20 say "substantially" all of the traffic because it's likely some modest number of  
21 calls each month were to office administrative lines that Pac-West provided to the

1 ISPs and other customers in addition to the lines associated with dial-up Internet  
2 access.

3  
4 **Q. IN THIS PROCEEDING, REFERENCE HAS BEEN MADE TO “ISP**  
5 **MODEMS AND SERVERS” IN DESCRIBING THE TERMINATING**  
6 **POINT OF A CALL. DOES PAC-WEST HAVE ANY SUCH EQUIPMENT**  
7 **PHYSICALLY LOCATED IN THE STATE OF WASHINGTON?**

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

**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

1 produced – as Qwest objects to producing call detail records but has yet to offer  
2 access to alternative underlying data that was used to generate its "summary  
3 reports." Without access to the underlying data it is impossible to ascertain the  
4 veracity of Qwest's analysis and whether it is a reliable basis for testimony in this  
5 case.

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

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

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

11 A. Pac-West filed a voluntary petition for relief under Chapter 11 of the U.S.  
12 Bankruptcy Code in the United States Bankruptcy Court for the District of  
13 Delaware on April 30, 2007. The Court entered an order confirming Pac-West's  
14 plan of reorganization on November 19, 2007. The effect of the plan of  
15 reorganization was to discharge any potential claims incurred prior to the  
16 November 19, 2007 confirmation date and to permanently enjoin any parties  
17 seeking to pursue such claims. The reorganization plan may be viewed online  
18 through the Bankruptcy Court's Case Management/Electronic Case Filing  
19 website, <https://ecf.deb.uscourts.gov>, in Case No. 07-10562(BLS).<sup>1</sup> The relevant

---

<sup>1</sup> 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.

1 paragraphs relating to discharge and permanent injunction are found at §§ 11.1  
2 and 12.2 of the plan, respectively.

3

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

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

8

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

16 A: There are many, but two of the most significant categories of issues include: (1)  
17 discrimination against and damage to Pac-West; and (2) harm to rural and low-  
18 income consumers seeking Internet access. First, at no point in time did Qwest  
19 provide reasonable notice to Pac-West that it sought to levy access charges on  
20 VNXX ISP-bound traffic. And even now, Qwest's newly-asserted claims in this  
21 case would apply only to Pac-West and Level 3, not all of the other carriers in the  
22 state that offered VNXX services from 2004 onward. Second, if carriers like Pac-



1 West and Level 3 did not offer these VNXX services, Qwest's customers would  
2 be left to pay toll charges to access the Internet – hitting the rural and low-income  
3 populations the hardest – the very populations for whom federal and state  
4 regulators seek to improve access to the Internet.

5

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

7 A. Yes.

8

9