**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 UT-053036**  ***(consolidated*)**  **DOCKET UT-053039**  **(*consolidated)*** |

**REBUTTAL TESTIMONY**

**OF WILLIAM R. EASTON**

**QWEST CORPORATION**

**OCTOBER 12, 2012**

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# IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, CURRENT TITLE, EMPLOYER AND BUSINESS ADDRESS.

A. My name is William Easton. I am a Wholesale Staff Director at CenturyLink Inc., the corporate parent of Qwest Corporation. My business address is 1600 7th Avenue, Seattle, Washington.

Q. ARE YOU THE SAME WILLIAM EASTON WHO FILED DIRECT TESTIMONY IN THIS DOCKET?

A. Yes

# PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to address issues raised in the testimony of Mack Greene of Level 3 and Sam Shiffman of Pac-West. My rebuttal testimony will be organized around the two key issues in this docket:

* Is Qwest entitled to refunds of previously paid non-local reciprocal compensation?
* What is the appropriate compensation for interexchange traffic?

In addition, I will discuss the Level 3 and Pac-West testimony as it relates to the Commission’s jurisdiction over this type of traffic and the Qwest traffic studies.

# REFUND OF PREVIOUSLY PAID NON-LOCAL RECIPROCAL COMPENSATION

Q. MR. GREENE ARGUES THAT REFUNDS ARE NOT APPROPRIATE UNTIL DECISIONS HAVE BEEN MADE AS TO THE APPROPRIATE COMPENSATION FOR VNXX TRAFFIC.[[1]](#footnote-1) PLEASE COMMENT.

A. Mr. Greene’s conclusion that Level 3 should not refund any money to Qwest, stating that “until those questions are resolved, it would be inappropriate to order any type of payment from one party to another”, is contradicted by the fact that significant payments have already been made by Qwest. Level 3’s argument, taken to its logical extreme, would mean that Qwest should never have been required to make payments to Level 3 in the first place. As I noted in my direct testimony, Qwest has paid Level 3 very significant amounts of reciprocal compensation and interest for traffic that this Commission has now determined is not subject to reciprocal compensation. Qwest is clearly entitled to a refund of these dollars with interest.

Level 3 speculates that the FCC might at some point determine that compensation should be paid in one direction or the other for VNXX traffic. As matters stand now, however, there is no requirement that Qwest pay Level 3 intercarrier compensation for VNXX traffic. Furthermore, there is no principled basis for concluding that Qwest should compensate Level 3 for VNXX traffic. Level 3 uses Qwest’s local exchange switching facilities and transport network to provide VNXX service to its ISP customers and must therefore compensate Qwest for the use of Qwest’s facilities. Accordingly, there is no basis to deny Qwest the refund of the money it paid under Commission orders that have since been reversed.

**Q. DO YOU AGREE WITH MR. GREENE’S CONCLUSION THAT THE TRAFFIC AT ISSUE IS INTERSTATE IN NATURE AND THAT IT IS UP TO THE FCC TO ESTABLISH A RATE.[[2]](#footnote-2)**

A. No. While I will address the jurisdiction of this traffic in a later section of the testimony, I would only point out here that this Commission has already addressed the issue of jurisdiction in its November 14, 2011 Order No. 12 in this docket:

As we discussed in the *Final VNXX Order,* ceding to the CLECs’ position might have the effect of eroding the careful distinction that exists between local and interexchange traffic. Classifying VNXX calls as interstate could undermine the authority of states to regulate intrastate interexchange telecommunications traffic and the associated revenues. For example, if all ISP-bound calls were classified as interstate traffic subject to the FCC’s rates, we could unreasonably jeopardize the existing access charge system, on which telecommunications’ companies rely to cover the costs they incur to support the services afforded the customer of another company. The small and rural local exchange companies rely heavily on these access charges to provide lower cost service to their customers and to comply with federal and state laws that compel certain benefits to rural customers. Without this support, companies serving rural populations would suffer from undercapitalization or be forced to extract lost revenue from their customers – a result contrary to the federal laws creating the rural support system. We do not believe such a far-reaching result was intended by either the FCC or any court that has taken up the VNXX question following the *ISP Remand Order*. (¶ 61).

The irony of Mr. Greene’s position is that it was Level 3, along with Pac-West, who argued that this Commission had jurisdiction to order Qwest to make reciprocal compensation payments on this traffic. However, having received payment, Level 3 now argues that the Commission lacks jurisdiction to order a refund, even though the Commission has since reversed its previous decision.

**Q. MR. GREENE MAKES THE CLAIM THAT THIS IS A NEW CATEGORY OF TRAFFIC, NON-LOCAL ISP-BOUND TRAFFIC, AND THAT THE FCC HAS NOT DETERMINED WHAT COMPENSATION APPLIES.[[3]](#footnote-3) DO YOU AGREE?**

A. No. The FCC determined that ISP-bound traffic that physically terminates within the local calling is subject to reciprocal compensation and determined that a $.0007/MOU rate was the appropriate reciprocal compensation rate for this type of traffic. VNXX traffic, as this Commission has determined, is interexchange traffic. Contrary to Mr. Greene’s contention that no compensation regime has been established for this type of traffic, interexchange traffic has been subject to originating access charges under the switched access compensation rules that have been in place for nearly three decades.

q. mr. greene challenges the 12% annual interest rate that qwest has used in its calculation.[[4]](#footnote-4) please comment.

A. After conceding that the interconnection agreement between Qwest and Level 3 does not specify a rate of interest on late payments, Mr. Greene goes on to cite the rates the Commission has set for customer deposits and uses these rates in his calculations. What Mr. Greene fails to mention is that the 12% rate that Qwest has used in its calculations is the same 12% rate that Level 3 claimed was the proper basis for the interest amounts paid as a part of the retroactive payment made by Qwest to Level 3 in May of 2006.

**Q. IN 2006 WHEN QWEST WAS ORDERED TO PAY RECIPROCAL COMPENSATION FOR VNXX (PLUS INTEREST), DID LEVEL 3 PUT TOGETHER A CALCULATION OF WHAT IT BELIEVED TO BE THE CORRECT AMOUNT QWEST OWED?**

A. Yes. Attached as Confidential Exhibit WRE-15 is a spreadsheet that was prepared by Level 3 calculating interest amounts on the reciprocal compensation that Qwest was ordered to pay Level 3. Although the interest is calculated using daily factors, it is based on a 12% annual rate of interest. (Adding together all of the daily interest percentages for January 1, 2005 through December 31, 2005 results in a figure of 12%). Included, as part of the exhibit, is a print shot of the properties of the spreadsheet, which indicates that it was prepared by Mr. Greene.

Level 3 did not complain that this interest rate was too high when it was financially beneficial to Level 3, but, when faced with paying Qwest interest, Level 3 now believes that interest rates that are a fraction of the 12% are more appropriate. Mr. Greene’s self-serving interest rate proposal should be rejected. It only makes sense that the interest rate the parties agreed upon previously be used in the calculation of refunds now.

Q. DO YOU HAVE A FINAL COMMENT REGARDING LEVEL 3’S REFUND POSITION?

A. Yes. Although Level 3 may continue to advocate that questions exist as to what the appropriate compensation is for VNXX traffic, given that the Commission has previously ruled that VNXX traffic is not local and that reciprocal compensation does not apply, there is no question that Level 3 is not entitled to the reciprocal compensation payments that Qwest was previously ordered to make.

Q. DOES MR. SHIFFMAN’S TESTIMONY ADDRESS THE ISSUE OF REFUNDING PREVIOUSLY PAID RECIPROCAL COMPENSATION AMOUNTS FOR VNXX TRAFFIC?

A. No. Mr. Shiffman’s testimony makes no mention of the reciprocal compensation that Qwest has paid Pac-West. This is surprising given that previous Pac-West pleadings on this issue indicated that Pac-West believed there remained issues of fact related to the appropriateness of a refund.

# APPROPRIATE COMPENSATION FOR NON-LOCAL TRAFFIC

Q. MR. GREENE DEVOTES several PAGES OF HIS TESTIMONY TO A DISCUSSION OF THE SERVICE DESCRIPTIONS IN QWEST’S SWITCHED ACCESS TARIFFS AND ARGUES THAT NONE OF THE DESCRIPTIONS EXACTLY MATCH THE TRAFFIC AT ISSUE IN THIS PROCEEDING.[[5]](#footnote-5) PLEASE COMMENT.

A. As I discussed in my direct testimony, VNXX arrangements and the specific services described in the switched access tariff all pertain to interexchange access traffic. While one can argue as to whether the specific language in the tariff is a perfect match with the configuration of a VNXX call, any mismatch is a result of the fact that Level 3 and Pac-West attempted to circumvent the tariffed arrangements by employing VNXX. The tariffed arrangements were the only arrangements that Qwest made available for the origination of interexchange traffic, and it is therefore appropriate to treat Level 3’s use of Qwest local exchange switching facilities and transport network as if they had taken place through the use of the tariffed configurations. Level 3 and Pac-West have used Qwest’s local exchange switching facilities and transport network to originate interexchange calls regardless of whether such usage precisely matches any of the configurations in Qwest’s switched access tariff.

**Q. MR. GREENE ARGUES THAT “IN NO SENSE AT ALL DID THE USE OF VNXX DIALING ARRANGEMENT ‘CONCEAL’ ANYTHING.”[[6]](#footnote-6) DO YOU AGREE?**

A. No. While some in the industry may well have been aware that some carriers were using VNXX arrangements, Mr. Greene ignores the fact that the whole intent of a VNXX numbering scheme is to assign telephone numbers to make interexchange traffic appear to Qwest switches and billing systems as local traffic. To the Qwest switch, the fact that a call originated from a number associated with a particular local calling area and terminated to a number associated with the same local calling area indicates that the call is local. Mr. Greene points to the fact that Qwest is able to calculate the amount of VNXX minutes, as proof that VNXX did not “conceal” anything from anyone. However, as I discussed in my direct testimony, Qwest was forced to develop a special traffic study methodology to measure this traffic due to the fact that the existing switch recording information and systems cannot distinguish VNXX traffic from legitimate local traffic.

**Q. MR. GREENE ARGUES THAT IF QWEST BELIEVED THAT SWITCHED ACCESS APPLIED TO THESE CALLS QWEST COULD HAVE ADDED A SECTION TO THE ITS TARIFF TO SPECIFICALLY COVER VNXX CALLS.[[7]](#footnote-7) PLEASE COMMENT.**

A. Clearly, adding a specific tariff section regarding VNXX service would not make Level 3 suddenly agree that VNXX traffic is subject to switched access charges. It would merely shift the dispute as to what the appropriate compensation is for this traffic from this proceeding to a tariff approval proceeding.

Q. DO YOU AGREE WITH MR. GREENE THAT “THE THING THAT MAKES VNXX DISTINCT IS NOT WHAT QWEST DOES WITH THE CALLS – THAT IS, NOT WITH ANY ‘SERVICE’ THAT QWEST COULD BE SAID TO BE PROVIDING. WHAT MAKES IT DISTINCT IS WHAT LEVEL 3 DOES WITH THE CALLS”?[[8]](#footnote-8)

A. No. Qwest’s local exchange switching facilities and transport network have been used by Level 3 to provide an interexchange service to Level 3’s customers (ISPs). However, Qwest has been providing this access service to Level 3 without receiving the proper intercarrier compensation that other carriers rightfully pay for traffic that originates and terminates in different local calling areas (i.e. switched access charges). This is the same type of interexchange functionality that is provided by the services Mr. Greene cites from the Qwest access tariffs and is the reason that Qwest believes that switched access compensation is appropriate for VNXX traffic.

**Q. MR. GREENE DEFINES ACCESS SERVICE AS “WHAT YOU GET WHEN YOU BUY SERVICE FROM A LOCAL CARRIER’S ACCESS TARIFF AND USE THE TECHNICAL ARRANGEMENTS LAID OUT IN THAT TARIFF.”[[9]](#footnote-9) PLEASE COMMENT.**

A. The definition section of the 2003 interconnection agreement between Qwest and Level 3 defines access service as follows:

4.2 “Access Services” refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

The foregoing definition of “access services” is not limited in the manner argued by Mr. Greene. As I described above, the whole intent of a VNXX numbering scheme is to facilitate the origination of interexchange traffic and evade the appropriate originating switched access charges. Level 3’s decision to use a VNXX numbering arrangement to avoid switched access charges does not change the fact that Qwest’s network has been utilized by Level 3 to provide interexchange service to its ISP customers and that Qwest deserves to be compensated by Level 3 for the use of Qwest’s network for this interexchange traffic.

Q. is mr. greene correct that qwest’s pleadings in this case have never included a request for access charges?[[10]](#footnote-10)

A. No. Qwest’s answer and counterclaims specifically allege that the CLECs violated state law through VNXX arrangements and the misuse of numbering resources. The fundamental premise of the Qwest counterclaims is that the CLECs misused numbering arrangements to disguise long distance calls as local, which has the obvious effect of avoiding access charges, charges which are applicable to interexchange traffic under state law.

**Q. DO YOU AGREE WITH MR. GREENE THAT LEVEL 3 WAS NEVER PUT ON NOTICE THAT IT MIGHT BE REQUIRED TO PAY ACCESS CHARGES?[[11]](#footnote-11)**

A. No. Level 3 should have known at least since the Washington District Court’s decision in 2007 that its practices could be declared unlawful and that they could be subject to access charges for VNXX traffic. In fact, Level 3 should have been on notice since at least 2006 when the First Circuit Court of Appeals upheld a decision by the Massachusetts Commission requiring Global Naps to pay Verizon New England, Inc. originating access charges on VNXX calls. [[12]](#footnote-12)

**Q. MR. GREENE STATES THAT LEVEL 3 RELIED ON A 2003 COMMISSION RULING WHEN IT MADE THE DECISION TO INVEST IN A NETWORK TO ALLOW ISP CUSTOMERS TO SERVE THEIR SUBSCRIBERS IN WASHINGTON.[[13]](#footnote-13) ARE YOU AWARE OF THE 2003 ORDER MR. GREENE IS REFERRING TO?**

A. It is unclear exactly what order that Mr. Greene is referring to. I am not aware of a 2003 Commission order that stated that VNXX calls were not subject to switched access. I am aware of docket UT-023042 which was an arbitration of an interconnection agreement between Level 3 and Qwest. One of the issues arbitrated was whether traffic bound for ISPs should be included in “relative use” calculations which determine the compensation for interconnection trunks. The Commission ruled that ISP-bound traffic must be included in the calculation of the relative use factor. This ruling was before the Commission ruled that VNXX traffic is not “ISP-bound traffic” and is not in any way an endorsement of VNXX arrangements.

I am also aware of docket UT-021569 which was an attempt to develop an interpretive policy statement regarding the use of Virtual NPA/NXX calling patterns. This docket was closed in 2003 with the Commission concluding that:

…the complex issues and diverse interests represented in this docket cannot appropriately be addressed through the issuance of an interpretive policy statement. The Commission believes that these issues are more appropriately pursued in fact specific disputes.[[14]](#footnote-14)

# This certainly does not constitute an endorsement of VNXX arrangements. In its November 14, 2011 Order No. 12, the Commission made clear that the parties should have been clear as to how calls should be classified in Washington:

Furthermore, the rules for classifying calls as local or interexchange in Washington have been clearly delineated and understood by the parties. When the CLEC’s adopted Qwest’s local calling areas by and through their interconnection agreements, we have to believe that they understood the financial implications of their actions. No matter what innovative network or numbering arrangements have been made to facilitate ISP-bound traffic, calls are either local as defined by our rules or they are not. If they terminate outside the callers local exchange, we treat them as interexchange in nature and require compensation as such. This is the import of our *Final VNXX Order* and we believe our analysis then and now to be correct. The CLECs should bear the cost of using Qwest’s network to serve their customers. This is a fundamental principle of intercarrier compensation that is reflected in interconnection agreements between these parties and those of all other companies within our jurisdiction.[[15]](#footnote-15)

# Q. MR. GREENE DISCUSSES THE DIFFICULTIES LEVEL 3 WOULD EXPERIENCE IN COLLECTING ADDITIONAL AMOUNTS FROM ITS ISP CUSTOMERS SHOULD IT BE ORDERED TO PAY SWITCHED ACCESS.[[16]](#footnote-16) PLEASE COMMENT.

A. Mr. Greene’s lament does nothing to change the fact that it is Qwest who has been denied compensation for the access services that have been provided to Level 3. For years, Qwest has been required to provide switching and transport services for this interexchange traffic without proper compensation and, in fact, has compensated Level 3 for this interexchange traffic. The financial advisability of Level 3’s product offerings, including VNXX numbering arrangements for its ISP customers, and the rates that Level 3 charges to ISPs for such services are not at issue in this docket and have no bearing on the question of whether Qwest is entitled to appropriate compensation for access services it has provided to Level 3.

**Q. PAC-WEST’S MR. SHIFFMAN ALSO ASSERTS THAT AT NO TIME DID QWEST PROVIDE REASONABLE NOTICE TO PAC-WEST THAT IT SOUGHT TO LEVY ACCESS CHARGES ON VNXX TRAFFIC.[[17]](#footnote-17) DO YOU AGREE?**

A. No. Like Level 3, Pac-West should have known at least since the Washington District Court’s decision in 2007 that its practices could be declared unlawful and that it could be subject to access charges for VNXX traffic. Again, Like Level 3, Pac-West should have been on notice since at least 2006 when the First Circuit Court of Appeals upheld a decision by the Massachusetts Commission requiring Global Naps to pay Verizon New England, Inc. originating access charges on VNXX traffic.

**Q. MR. SHIFFMAN ALSO CLAIMS THAT WITHOUT VNXX SERVICES, QWEST CUSTOMERS WOULD BE LEFT TO PAY TOLL CHARGES TO ACCESS THE INTERNET.[[18]](#footnote-18) ARE THERE OTHER WAYS THAT CARRIERS CAN OFFER DIAL-UP ISP TRAFFIC WITHOUT FORCING CUSTOMERS TO PAY TOLL CHARGES?**

A. Certainly. One such option is for Pac-West to place modems in the local calling areas. Another option is to provide dial-up access via an 800 number. Under this option, the end-user calling his or her ISP would not incur toll charges. I agree that, under this approach, access charges would still be incurred by the ISP who purchased the 800 service, but such an approach is fully consistent with cost causation principles and avoids subsidization of dial-up service by customers who do not use dial-up service, a result clearly rejected by the *ISP Remand Order’s* statement that “[t]here is no public policy rationale to support a subsidy running from all users of basic telephone service to those end-users who employ dial-up Internet access.”).[[19]](#footnote-19)

**Q. FINALLY, MR. SHIFFMAN RAISES THE ISSUE THAT ASSESSING ACCESS CHARGES IN THIS PROCEEDING WOULD IMPACT ONLY LEVEL 3 AND PAC-WEST, NOT ALL OF THE CARRIERS IN THE STATE THAT HAVE OFFERED VNXX SERVICE.[[20]](#footnote-20) PLEASE COMMENT.**

A. The reason that compensation for the Level 3 and Pac-West traffic is before the Commission is that Level 3 and Pac-West brought this complaint to the Commission. Qwest is certainly free to pursue access charges from other carriers who use VNXX or to pursue agreements regarding compensation for VNXX traffic, as it has done with other carriers in the state, such as MCI.

1. **JURISDICTION OF VNXX TRAFFIC**

**Q. DO YOU AGREE WITH MR. GREENE’S CLAIM THAT THE TRAFFIC AT ISSUE IN THIS PROCEEDING FALLS OUTSIDE THE SCOPE OF THE INTERCONNECTION AGREEMENT?[[21]](#footnote-21)**

A. No. Mr. Greene’s assertion is not supported by the language in the interconnection agreement. While the agreement does not mention VNXX ISP traffic, as I noted previously, this is not a new category of traffic. While the FCC previously carved out ISP traffic that physically terminates within the same originating local calling area as a special category, no such carve out has been made for non-local ISP traffic. In fact, this traffic, as this Commission has determined, is interexchange traffic. The interconnection agreement addresses the types of traffic that will be exchanged between the parties including IntraLATA toll traffic. The agreement also incorporates by reference the rates from Qwest’s tariffs.

**Q. DO YOU AGREE WITH MR. GREENE THAT THESE CALLS DO NOT BEGIN AND END IN WASHINGTON AND THEREFORE THIS COMMISSION HAS NO JURISDICTION?[[22]](#footnote-22)**

A. No. Mr. Greene argues that the end point of the call is not the modem, but that the calls continue on to the Internet. Based on Mr. Greene’s description of call flows, the conversion from Time Division Multiplexing (“TDM”) to IP protocol happens at the modem. Therefore, the termination point on the Public Switched Telephone Network (“PSTN”) is in fact the modem.

The primary function of an ISP is to receive a call as an end user on the PSTN and to route that call to the Internet. That function is performed by the modem and Mr. Greene has testified that Level 3 performs the modem function, among other ISP functions, on behalf of its ISP customers. Accordingly, the modem is properly viewed as the termination point for intercarrier compensation purposes.

Mr. Greene’s own testimony acknowledges the importance of the location of the modem:

In my view, the location of the modem has no significance in determining the end points of an ISP-bound call.  That being said, I understand that the FCC’s special intercarrier compensation regime for ISP-bound traffic applies where the calling party and the modem are physically located in the same local calling area.  Now, Level 3 believed (and believes) that that regime ***also*** applies to VNXX ISP-bound traffic, but we understand that the courts have ruled against that position in this case.  (p. 47)

Since the location of the modem was the pivotal issue in the ISP Remand Order, it makes no sense to disregard the significance of the modem location in this proceeding. The FCC has held that local ISP bound traffic was to be exchanged at the $0.0007/MOU rate. This is based on the logic that the traffic is “local” for purposes of compensation because it originates and terminates in the same local calling area based on the location of the modem. The logical corollary is that when a customer makes a non-local call – disguised or otherwise, it is a toll call based on the location of the modem, just as it is in the case of local ISP calls.

**Q. DO THE FCC DECISIONS CITED BY MR. GREENE ADDRESS THE TERMINATION POINT OF A CALL TO AN ISP FOR INTERCARRIER COMPENSATION PURPOSES?**

A. No. The FCC decisions cited by Mr. Greene address the termination point of ISP call for jurisdictional purposes, which I understand to be a separate matter. The issue in this case is where a call to an ISP terminates for intercarrier compensation purposes. The long-standing access charge rule has been that an ISP is treated as an end user for purposes of applying access charges. While there was a debate in the industry for sometime as to whether an ISP is an end user for reciprocal compensation purposes, the FCC finally resolved that issue in its *ISP Mandamus Order* when it determined that a call to an ISP located within the caller’s local calling area terminates at the ISP.

**Q. IF THE MODEM IS NOT THE ENDPOINT OF CALLS TO ISPS SERVED BY LEVEL 3, WHAT HAPPENS TO THE SIZE OF QWEST’S REFUND CLAIM?**

A. It would increase significantly. Qwest has paid Level 3 reciprocal compensation for calls originating in the Seattle local calling area on the basis that the Level 3 Seattle modem is where the calls terminate. If the modem is not the termination point, then Level 3 would be required to refund all of the payments made by Qwest to Level 3 for reciprocal compensation because none of its ISP traffic would in fact qualify as calls delivered to an ISP located in the caller’s local calling area, the only type of traffic that is compensable under the FCC’s *ISP Remand Order*. Qwest would then be entitled to a significantly larger refund.

**Q. DID THE DISTRICT COURT DETERMINE THAT THIS COMMISSION HAS JURIDICTION OVER THIS TRAFFIC?**

A. Yes. As the Commission noted in its Order 12 in this docket:

The court therefore remanded the decisions to the Commission with instructions to:

reinterpret the *ISP-Remand Order* as applied to the parties’ interconnection agreements, and classify the instant VNXX calls, for compensation purposes, as within or outside a local calling area, to be determined by the assigned telephone numbers, the physical routing points of the calls, or any other chosen method within the WUTC’s discretion.

Thus, the court held that the Commission has authority to classify VNXX traffic, and if appropriate, to establish a reasonable compensation scheme for such traffic. No party sought review of this decision. (¶ 32)

**Q. HAS THIS COMMISSION ITSELF PREVIOUSLY DETERMINED THAT IT HAS JURISDICTION OVER THE TRAFFIC AT ISSUE IN THIS PROCEEDING?**

A. Yes. As I discussed earlier, this Commission asserted its authority over VNXX traffic when it made the determination in the VNXX Complaint case that VNXX numbering was legal. Having made that determination, the issue in this case is determining the appropriate compensation for such traffic. I would also add that, as I discussed in my direct testimony, the interconnection agreements between the parties specify compensation for the various types of traffic exchanged and that the Commission clearly has the authority to settle disputes which arise over the interpretation of interconnection agreements.

## VI. TRAFFIC STUDY ISSUES

**Q. DID LEVEL 3 PRODUCE ITS OWN ANALYSIS OF THE AMOUNT OF VNXX TRAFFIC AT ISSUE IN THIS PROCEEDING?**

A. No. Mr. Greene’s testimony does include a calculation of total dial-up ISP minutes in the state of Washington for the relevant time period, but does not provide a calculation of how much of the total dial-up MOUs were VNXX. Qwest has been unable to verify the total minutes as they do not match the bills that have been provided to Qwest in discovery, nor do they match any of our internal records.

**Q. DOES LEVEL 3 CHALLENGE QWEST’S VNXX CALCULATIONS?**

A. No. Mr. Greene acknowledges that Qwest has a means of identifying VNXX minutes[[23]](#footnote-23) and states on page 49 of his testimony that he does not contest the amount of traffic that Mr. Brotherson attributed to VNXX traffic. The VNXX minutes in Mr. Brotherson’s affidavit are the same Level 3 VNXX minutes contained in the calculations in my direct testimony.

**Q. DID PAC-WEST PRODUCE ITS OWN ANALYSIS OF THE AMOUNT OF VNXX TRAFFIC AT ISSUE IN THIS PROCEEDING?**

A. No. As I discussed in my direct testimony, Qwest asked Pac-West multiple data request questions that were designed to allow us to validate our VNXX calculation against the Pac-West data. Pac-West was unable, or unwilling, to provide the requested information.

**Q. DOES PAC-WEST CHALLENGE QWEST’S VNXX CALCULATIONS?**

A. Not directly. Mr. Shiffman argues that Pac-West has not been provided with call detail records that would allow it to ascertain the veracity of Qwest’s analysis. As I discussed in my direct testimony, Qwest has explained to Pac-West that CDRs do not contain information on the physical location of the originating and terminating callers. CDRs, as the name implies, contain records regarding the details of the call. The originating and terminating phone numbers are in the CDRs, but since the VNXX numbering scheme is used precisely to make interexchange calls look like local calls, the CDRs would have simply implied that all of the traffic was local (based on the to/from telephone numbers) and thus, would not have provided helpful information. Pac-West requested Qwest’s traffic studies in May of this year, and Qwest has provided a significant amount of data regarding Qwest’s VNXX calculations which should have allowed Pac-West to analyze the numbers.

## VII. SUMMARY/CONCLUSION

Q. pLEASE SUMMARIZE YOUR TESTIMONY.

A. There are two key issues in this docket:

* Is Qwest entitled to refunds of previously paid non-local reciprocal compensation?
* What is the appropriate compensation for non-local traffic?

With regard to the first issue, neither Pac-West nor Level 3 offers any credible reason why Qwest is not entitled to a full refund of the previously paid VNXX reciprocal compensation. Level 3 now argues that this Commission lacks jurisdiction to order a refund of the amounts Qwest has paid to Level 3 for the VNXX traffic. The irony of Level 3’s position is that it was Level 3, along with Pac-West, who argued that this Commission *did* have jurisdiction to require Qwest to make payments on this same traffic. However, having received payment, Level 3 now argues that the Commission lacks jurisdiction to order a refund, even though the Commission has since reversed its previous decision. The Pac-West testimony makes no mention of the amounts paid by Qwest for VNXX traffic that this Commission has now determined is not subject to reciprocal compensation.

When addressing the appropriate compensation for this VNXX traffic, Level 3 again ducks behind the issue of jurisdiction, despite the fact that this Commission has already determined that it has jurisdiction in this matter in light of the federal court’s remand instructions to classify the VNXX calls for compensation purposes. Level 3 also argues that the VNXX traffic does not precisely match any of the configurations in Qwest’s switched access tariff, a position undermined by the fact that any mismatch is a result of the fact that Level 3 circumvented the tariff requirements through the use of VNXX. In its testimony on the issue of appropriate compensation, Pac-West, like Level 3, claims that Qwest failed to provide reasonable notice that it sought to levy access charges on the VNXX traffic. It also expresses concerns about potential impacts on dial up customers, but offers no logical arguments as to why switched access charges are not the appropriate compensation for traffic that this Commission has determined is interexchange.

Neither party presents a credible challenge to Qwest’s VNXX studies and calculations. Level 3 states that it does not challenge Qwest’s VNXX calculations and Pac-West, without offering its own calculations, simply states that it is unable to verify Qwest’s numbers.

For all of these reasons, Qwest respectfully requests that this Commission require Level 3 and Pac-West to refund, with interest, reciprocal compensation amounts that have been paid by Qwest for VNXX traffic. Qwest further requests that Level 3 and Pac-West be required to properly compensate Qwest for the use of its network and the access service it has provided using the tariffed interexchange rates that these carriers have intentionally avoided for years through the use of VNXX arrangements.

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

A. Yes, it does.

1. Greene Direct p. 50. [↑](#footnote-ref-1)
2. Greene Direct p. 50. [↑](#footnote-ref-2)
3. Greene Direct p. 51. [↑](#footnote-ref-3)
4. Greene Direct pp. 51 – 52. [↑](#footnote-ref-4)
5. Greene Direct pp. 29 – 33. [↑](#footnote-ref-5)
6. Greene Direct p. 33. [↑](#footnote-ref-6)
7. Greene Direct p. 35. [↑](#footnote-ref-7)
8. Greene Direct pp. 36-37. [↑](#footnote-ref-8)
9. Greene Direct p. 37. [↑](#footnote-ref-9)
10. Greene Direct p. 38. [↑](#footnote-ref-10)
11. Greene Direct pp. 38 – 39. [↑](#footnote-ref-11)
12. *Global Naps Inc. v. Verizon New England, Inc.,* 444 F.3d 59 (1st Cir. 2006). [↑](#footnote-ref-12)
13. Greene Direct p. 40. [↑](#footnote-ref-13)
14. *In the matter of developing an interpretive and policy statement on the use of NPA/NXX calling patterns.* Docket UT-021569. Notice of Docket Closure, July 21, 2003 [↑](#footnote-ref-14)
15. *Pac-West Telecomm, Inc. v. Qwest Corporation*, Docket UT-053036, and *Level 3 Communications, LLC v. Qwest Corporation*, Docket UT-053039 (Consolidated), Order 12, Order Denying Pac-West’s Motion for Summary Determination; Denying Level 3’s Motion for Summary Determination; Granting in Part and Denying in Part Qwest’s Motion for Summary Determination; and Denying Qwest’s Motion to Strike, or in the Alternative File a Reply, (November 14, 2011). ¶77 [↑](#footnote-ref-15)
16. Greene Direct p. 39. [↑](#footnote-ref-16)
17. Shiffman Direct p. 7. [↑](#footnote-ref-17)
18. Shiffman Direct p. 8. [↑](#footnote-ref-18)
19. *Order on Remand and Report and Order,* CC Dockets 96-98, 99-68, FCC 01-131, ¶¶ 3-7 (April 27, 2001) (“*ISP Remand Order*”).  *¶* 87 [↑](#footnote-ref-19)
20. Shiffman Direct p. 7. [↑](#footnote-ref-20)
21. Greene Direct p. 42. [↑](#footnote-ref-21)
22. Greene Direct pp. 44-45. [↑](#footnote-ref-22)
23. Greene Direct p. 35. [↑](#footnote-ref-23)