

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

| | | |
|---------------------------------|---|-------------------------|
| PAC-WEST TELECOMM, INC., |) | DOCKET UT-053036 |
| |) | (consolidated) |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | |
| QWEST CORPORATION, |) | |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |
| |) | DOCKET UT-053039 |
| LEVEL 3 COMMUNICATIONS, |) | (consolidated) |
| LLC, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | |
| QWEST CORPORATION, |) | |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |

**REBUTTAL TESTIMONY
OF WILLIAM R. EASTON
QWEST CORPORATION**

OCTOBER 12, 2012

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1 **I. IDENTIFICATION OF WITNESS**

2
3 **Q. PLEASE STATE YOUR NAME, CURRENT TITLE, EMPLOYER AND BUSINESS**
4 **ADDRESS.**

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

8
9 **Q. ARE YOU THE SAME WILLIAM EASTON WHO FILED DIRECT TESTIMONY**
10 **IN THIS DOCKET?**

11 A. Yes

12
13
14 **II. PURPOSE OF TESTIMONY**

15
16 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

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

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

1 In addition, I will discuss the Level 3 and Pac-West testimony as it relates to the
2 Commission's jurisdiction over this type of traffic and the Qwest traffic studies.
3
4

5 **III. REFUND OF PREVIOUSLY PAID NON-LOCAL RECIPROCAL**
6 **COMPENSATION**
7

8 **Q. MR. GREENE ARGUES THAT REFUNDS ARE NOT APPROPRIATE UNTIL**
9 **DECISIONS HAVE BEEN MADE AS TO THE APPROPRIATE COMPENSATION**
10 **FOR VNXX TRAFFIC.¹ PLEASE COMMENT.**

11 A. Mr. Greene's conclusion that Level 3 should not refund any money to Qwest, stating that
12 "until those questions are resolved, it would be inappropriate to order any type of payment
13 from one party to another", is contradicted by the fact that significant payments have
14 already been made by Qwest. Level 3's argument, taken to its logical extreme, would
15 mean that Qwest should never have been required to make payments to Level 3 in the first
16 place. As I noted in my direct testimony, Qwest has paid Level 3 very significant amounts
17 of reciprocal compensation and interest for traffic that this Commission has now
18 determined is not subject to reciprocal compensation. Qwest is clearly entitled to a refund
19 of these dollars with interest.
20

21 Level 3 speculates that the FCC might at some point determine that compensation should

¹ Greene Direct p. 50.

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

9
10 **Q. DO YOU AGREE WITH MR. GREENE'S CONCLUSION THAT THE TRAFFIC**
11 **AT ISSUE IS INTERSTATE IN NATURE AND THAT IT IS UP TO THE FCC TO**
12 **ESTABLISH A RATE.²**

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

16 As we discussed in the *Final VNXX Order*, ceding to the CLECs' position
17 might have the effect of eroding the careful distinction that exists between
18 local and interexchange traffic. Classifying VNXX calls as interstate could
19 undermine the authority of states to regulate intrastate interexchange
20 telecommunications traffic and the associated revenues. For example, if all
21 ISP-bound calls were classified as interstate traffic subject to the FCC's rates,
22 we could unreasonably jeopardize the existing access charge system, on which
23 telecommunications' companies rely to cover the costs they incur to support

² Greene Direct p. 50.

1 the services afforded the customer of another company. The small and rural
2 local exchange companies rely heavily on these access charges to provide
3 lower cost service to their customers and to comply with federal and state laws
4 that compel certain benefits to rural customers. Without this support,
5 companies serving rural populations would suffer from undercapitalization or
6 be forced to extract lost revenue from their customers – a result contrary to the
7 federal laws creating the rural support system. We do not believe such a far-
8 reaching result was intended by either the FCC or any court that has taken up
9 the VNXX question following the *ISP Remand Order*. (¶ 61).

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

15
16 **Q. MR. GREENE MAKES THE CLAIM THAT THIS IS A NEW CATEGORY OF**
17 **TRAFFIC, NON-LOCAL ISP-BOUND TRAFFIC, AND THAT THE FCC HAS NOT**
18 **DETERMINED WHAT COMPENSATION APPLIES.³ DO YOU AGREE?**

19 A. No. The FCC determined that ISP-bound traffic that physically terminates within the local
20 calling is subject to reciprocal compensation and determined that a \$.0007/MOU rate was
21 the appropriate reciprocal compensation rate for this type of traffic. VNXX traffic, as this
22 Commission has determined, is interexchange traffic. Contrary to Mr. Greene’s contention
23 that no compensation regime has been established for this type of traffic, interexchange

³ Greene Direct p. 51.

1 traffic has been subject to originating access charges under the switched access
2 compensation rules that have been in place for nearly three decades.

3
4 **Q. MR. GREENE CHALLENGES THE 12% ANNUAL INTEREST RATE THAT**
5 **QWEST HAS USED IN ITS CALCULATION.⁴ PLEASE COMMENT.**

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

12
13 **Q. IN 2006 WHEN QWEST WAS ORDERED TO PAY RECIPROCAL**
14 **COMPENSATION FOR VNXX (PLUS INTEREST), DID LEVEL 3 PUT**
15 **TOGETHER A CALCULATION OF WHAT IT BELIEVED TO BE THE**
16 **CORRECT AMOUNT QWEST OWED?**

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

⁴ Greene Direct pp. 51 – 52.

1 of the exhibit, is a print shot of the properties of the spreadsheet, which indicates that it was
2 prepared by Mr. Greene.

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

9
10 **Q. DO YOU HAVE A FINAL COMMENT REGARDING LEVEL 3'S REFUND**
11 **POSITION?**

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

17
18 **Q. DOES MR. SHIFFMAN'S TESTIMONY ADDRESS THE ISSUE OF REFUNDING**
19 **PREVIOUSLY PAID RECIPROCAL COMPENSATION AMOUNTS FOR VNXX**
20 **TRAFFIC?**

21 A. No. Mr. Shiffman's testimony makes no mention of the reciprocal compensation that
22 Qwest has paid Pac-West. This is surprising given that previous Pac-West pleadings on

1 this issue indicated that Pac-West believed there remained issues of fact related to the
2 appropriateness of a refund.
3
4

5 **IV. APPROPRIATE COMPENSATION FOR NON-LOCAL TRAFFIC**
6

7 **Q. MR. GREENE DEVOTES SEVERAL PAGES OF HIS TESTIMONY TO A**
8 **DISCUSSION OF THE SERVICE DESCRIPTIONS IN QWEST'S SWITCHED**
9 **ACCESS TARIFFS AND ARGUES THAT NONE OF THE DESCRIPTIONS**
10 **EXACTLY MATCH THE TRAFFIC AT ISSUE IN THIS PROCEEDING.⁵**
11 **PLEASE COMMENT.**

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

⁵ Greene Direct pp. 29 – 33.

1 whether such usage precisely matches any of the configurations in Qwest's switched access
2 tariff.

3
4 **Q. MR. GREENE ARGUES THAT "IN NO SENSE AT ALL DID THE USE OF VNXX**
5 **DIALING ARRANGEMENT 'CONCEAL' ANYTHING."**⁶ **DO YOU AGREE?**

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

17
18 **Q. MR. GREENE ARGUES THAT IF QWEST BELIEVED THAT SWITCHED**
19 **ACCESS APPLIED TO THESE CALLS QWEST COULD HAVE ADDED A**

⁶ Greene Direct p. 33.

1 **SECTION TO THE ITS TARIFF TO SPECIFICALLY COVER VNXX CALLS.⁷**

2 **PLEASE COMMENT.**

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

7
8 **Q. DO YOU AGREE WITH MR. GREENE THAT “THE THING THAT MAKES**
9 **VNXX DISTINCT IS NOT WHAT QWEST DOES WITH THE CALLS – THAT IS,**
10 **NOT WITH ANY ‘SERVICE’ THAT QWEST COULD BE SAID TO BE**
11 **PROVIDING. WHAT MAKES IT DISTINCT IS WHAT LEVEL 3 DOES WITH**
12 **THE CALLS”?⁸**

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

⁷ Greene Direct p. 35.

⁸ Greene Direct pp. 36-37.

1 **Q. MR. GREENE DEFINES ACCESS SERVICE AS “WHAT YOU GET WHEN YOU**
2 **BUY SERVICE FROM A LOCAL CARRIER’S ACCESS TARIFF AND USE THE**
3 **TECHNICAL ARRANGEMENTS LAID OUT IN THAT TARIFF.” PLEASE**
4 **COMMENT.**

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

7 4.2 “Access Services” refers to the interstate and intrastate switched access
8 and private line transport services offered for the origination and/or termination of
9 interexchange traffic.

10
11 The foregoing definition of “access services” is not limited in the manner argued by Mr.
12 Greene. As I described above, the whole intent of a VNXX numbering scheme is to
13 facilitate the origination of interexchange traffic and evade the appropriate originating
14 switched access charges. Level 3’s decision to use a VNXX numbering arrangement to
15 avoid switched access charges does not change the fact that Qwest’s network has been
16 utilized by Level 3 to provide interexchange service to its ISP customers and that Qwest
17 deserves to be compensated by Level 3 for the use of Qwest’s network for this
18 interexchange traffic.

19
20 **Q. IS MR. GREENE CORRECT THAT QWEST’S PLEADINGS IN THIS CASE**
21 **HAVE NEVER INCLUDED A REQUEST FOR ACCESS CHARGES?¹⁰**

⁹ Greene Direct p. 37.

¹⁰ Greene Direct p. 38.

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

7

8 **Q. DO YOU AGREE WITH MR. GREENE THAT LEVEL 3 WAS NEVER PUT ON**
9 **NOTICE THAT IT MIGHT BE REQUIRED TO PAY ACCESS CHARGES?**¹¹

10 A. No. Level 3 should have known at least since the Washington District Court's decision in
11 2007 that its practices could be declared unlawful and that they could be subject to access
12 charges for VNXX traffic. In fact, Level 3 should have been on notice since at least 2006
13 when the First Circuit Court of Appeals upheld a decision by the Massachusetts
14 Commission requiring Global Naps to pay Verizon New England, Inc. originating access
15 charges on VNXX calls.¹²

16

17 **Q. MR. GREENE STATES THAT LEVEL 3 RELIED ON A 2003 COMMISSION**
18 **RULING WHEN IT MADE THE DECISION TO INVEST IN A NETWORK TO**
19 **ALLOW ISP CUSTOMERS TO SERVE THEIR SUBSCRIBERS IN**

¹¹ Greene Direct pp. 38 – 39.

¹² *Global Naps Inc. v. Verizon New England, Inc.*, 444 F.3d 59 (1st Cir. 2006).

1 **WASHINGTON.¹³ ARE YOU AWARE OF THE 2003 ORDER MR. GREENE IS**
2 **REFERRING TO?**

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

12
13 I am also aware of docket UT-021569 which was an attempt to develop an interpretive
14 policy statement regarding the use of Virtual NPA/NXX calling patterns. This docket was
15 closed in 2003 with the Commission concluding that:

16 ...the complex issues and diverse interests represented in this docket cannot
17 appropriately be addressed through the issuance of an interpretive policy
18 statement. The Commission believes that these issues are more appropriately
19 pursued in fact specific disputes.¹⁴

20
21 This certainly does not constitute an endorsement of VNXX arrangements. In its

¹³ Greene Direct p. 40.

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

1 November 14, 2011 Order No. 12, the Commission made clear that the parties should have
2 been clear as to how calls should be classified in Washington:

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

17
18 **Q. MR. GREENE DISCUSSES THE DIFFICULTIES LEVEL 3 WOULD**
19 **EXPERIENCE IN COLLECTING ADDITIONAL AMOUNTS FROM ITS ISP**
20 **CUSTOMERS SHOULD IT BE ORDERED TO PAY SWITCHED ACCESS.¹⁶**
21 **PLEASE COMMENT.**

22 A. Mr. Greene's lament does nothing to change the fact that it is Qwest who has been denied
23 compensation for the access services that have been provided to Level 3. For years, Qwest

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

¹⁶ Greene Direct p. 39.

1 has been required to provide switching and transport services for this interexchange traffic
2 without proper compensation and, in fact, has compensated Level 3 for this interexchange
3 traffic. The financial advisability of Level 3's product offerings, including VNXX
4 numbering arrangements for its ISP customers, and the rates that Level 3 charges to ISPs
5 for such services are not at issue in this docket and have no bearing on the question of
6 whether Qwest is entitled to appropriate compensation for access services it has provided
7 to Level 3.

8
9 **Q. PAC-WEST'S MR. SHIFFMAN ALSO ASSERTS THAT AT NO TIME DID**
10 **QWEST PROVIDE REASONABLE NOTICE TO PAC-WEST THAT IT SOUGHT**
11 **TO LEVY ACCESS CHARGES ON VNXX TRAFFIC.¹⁷ DO YOU AGREE?**

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

18
19 **Q. MR. SHIFFMAN ALSO CLAIMS THAT WITHOUT VNXX SERVICES, QWEST**
20 **CUSTOMERS WOULD BE LEFT TO PAY TOLL CHARGES TO ACCESS THE**

¹⁷ Shiffman Direct p. 7.

1 **INTERNET.¹⁸ ARE THERE OTHER WAYS THAT CARRIERS CAN OFFER**
2 **DIAL-UP ISP TRAFFIC WITHOUT FORCING CUSTOMERS TO PAY TOLL**
3 **CHARGES?**

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

13
14 **Q. FINALLY, MR. SHIFFMAN RAISES THE ISSUE THAT ASSESSING ACCESS**
15 **CHARGES IN THIS PROCEEDING WOULD IMPACT ONLY LEVEL 3 AND**
16 **PAC-WEST, NOT ALL OF THE CARRIERS IN THE STATE THAT HAVE**
17 **OFFERED VNXX SERVICE.²⁰ PLEASE COMMENT.**

18 A. The reason that compensation for the Level 3 and Pac-West traffic is before the

¹⁸ Shiffman Direct p. 8.

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

²⁰ Shiffman Direct p. 7.

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

5
6
7 **V. JURISDICTION OF VNXX TRAFFIC**

8
9 **Q. DO YOU AGREE WITH MR. GREENE'S CLAIM THAT THE TRAFFIC AT**
10 **ISSUE IN THIS PROCEEDING FALLS OUTSIDE THE SCOPE OF THE**
11 **INTERCONNECTION AGREEMENT?**²¹

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

21

²¹ Greene Direct p. 42.

1 **Q. DO YOU AGREE WITH MR. GREENE THAT THESE CALLS DO NOT BEGIN**
2 **AND END IN WASHINGTON AND THEREFORE THIS COMMISSION HAS NO**
3 **JURISDICTION?**²²

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

9
10 The primary function of an ISP is to receive a call as an end user on the PSTN and to route
11 that call to the Internet. That function is performed by the modem and Mr. Greene has
12 testified that Level 3 performs the modem function, among other ISP functions, on behalf
13 of its ISP customers. Accordingly, the modem is properly viewed as the termination point
14 for intercarrier compensation purposes.

15
16 Mr. Greene's own testimony acknowledges the importance of the location of the modem:

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

24
25 Since the location of the modem was the pivotal issue in the ISP Remand Order, it makes

²² Greene Direct pp. 44-45.

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

8
9 **Q. DO THE FCC DECISIONS CITED BY MR. GREENE ADDRESS THE**
10 **TERMINATION POINT OF A CALL TO AN ISP FOR INTERCARRIER**
11 **COMPENSATION PURPOSES?**

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

20
21 **Q. IF THE MODEM IS NOT THE ENDPOINT OF CALLS TO ISPS SERVED BY**
22 **LEVEL 3, WHAT HAPPENS TO THE SIZE OF QWEST’S REFUND CLAIM?**

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

9

10 **Q. DID THE DISTRICT COURT DETERMINE THAT THIS COMMISSION HAS**
11 **JURISDICTION OVER THIS TRAFFIC?**

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

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

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

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

24

25 **Q. HAS THIS COMMISSION ITSELF PREVIOUSLY DETERMINED THAT IT HAS**

1 A. No. Mr. Greene acknowledges that Qwest has a means of identifying VNXX minutes²³
2 and states on page 49 of his testimony that he does not contest the amount of traffic that
3 Mr. Brotherson attributed to VNXX traffic. The VNXX minutes in Mr. Brotherson's
4 affidavit are the same Level 3 VNXX minutes contained in the calculations in my direct
5 testimony.

6

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

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

12

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

14 A. Not directly. Mr. Shiffman argues that Pac-West has not been provided with call detail
15 records that would allow it to ascertain the veracity of Qwest's analysis. As I discussed in
16 my direct testimony, Qwest has explained to Pac-West that CDRs do not contain
17 information on the physical location of the originating and terminating callers. CDRs, as
18 the name implies, contain records regarding the details of the call. The originating and
19 terminating phone numbers are in the CDRs, but since the VNXX numbering scheme is
20 used precisely to make interexchange calls look like local calls, the CDRs would have
21 simply implied that all of the traffic was local (based on the to/from telephone numbers)

²³ Greene Direct p. 35.

1 and thus, would not have provided helpful information. Pac-West requested Qwest's
2 traffic studies in May of this year, and Qwest has provided a significant amount of data
3 regarding Qwest's VNXX calculations which should have allowed Pac-West to analyze the
4 numbers.

5
6
7 **VII. SUMMARY/CONCLUSION**

8
9 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

10 A. There are two key issues in this docket:

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

14 With regard to the first issue, neither Pac-West nor Level 3 offers any credible reason why
15 Qwest is not entitled to a full refund of the previously paid VNXX reciprocal
16 compensation. Level 3 now argues that this Commission lacks jurisdiction to order a
17 refund of the amounts Qwest has paid to Level 3 for the VNXX traffic. The irony of Level
18 3's position is that it was Level 3, along with Pac-West, who argued that this Commission
19 *did* have jurisdiction to require Qwest to make payments on this same traffic. However,
20 having received payment, Level 3 now argues that the Commission lacks jurisdiction to
21 order a refund, even though the Commission has since reversed its previous decision. The
22 Pac-West testimony makes no mention of the amounts paid by Qwest for VNXX traffic

1 that this Commission has now determined is not subject to reciprocal compensation.

2

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

15

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

20

21 For all of these reasons, Qwest respectfully requests that this Commission require Level 3
22 and Pac-West to refund, with interest, reciprocal compensation amounts that have been

1 paid by Qwest for VNXX traffic. Qwest further requests that Level 3 and Pac-West be
2 required to properly compensate Qwest for the use of its network and the access service it
3 has provided using the tariffed interexchange rates that these carriers have intentionally
4 avoided for years through the use of VNXX arrangements.

5

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

7 A. Yes, it does.