

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

QWEST CORPORATION,	)	DOCKET NO. UT -063038
	)	
Complainant,	)	
	)	
vs.	)	
	)	
LEVEL 3 COMMUNICATIONS LLC;	)	
PAC-WEST TELECOMM, INC.;	)	JOINT RESPONSE OF
NORTHWEST TELEPHONE INC.; TCG-	)	ADVANCED
SEATTLE; ELECTRIC LIGHTWAVE,	)	TELECOM, INC. AND ELECTRIC
INC; ADVANCED TELECOM GROUP,	)	LIGHTWAVE, LLC. TO POST-
INC. D/B/A ESCHELON TELECOM, INC.;	)	HEARING BENCH REQUEST
FOCAL COMMUNICATIONS	)	NO. 3
CORPORATION; GLOBAL CROSSING	)	
LOCAL SERVICES, INC; AND, MCI	)	
WORLDCOM COMMUNICATIONS,	)	
WORLDCOM COMMUNICATIONS, INC.	)	
	)	
Respondents	)	

Advanced Telecom, Inc. (ATI) and Electric Lightwave, LLC (ELI) submit this response to Post-Hearing Bench Request No. 3, issued by the Washington Utilities and Transportation Commission (Commission) on January 23, 2008.

**POST-HEARING BENCH REQUEST NO. 3:**

In view of the most recent briefing in this proceeding on the issues of whether the Initial Order addressed the issues the District Court remanded to the Commission in Dockets UT-053036 and UT-053039 and whether the Commission should address those issues in this proceeding, the Commission is considering consolidating the remand proceeding with this docket for decision. Please identify any concerns or objections you may have with the Commission consolidating these proceedings.

**RESPONSE:** ATI and ELI object to the consolidation of these two proceedings at this time. Our concern is both procedural and substantive. These two matters are at different procedural steps in the administrative process and involve different parties and

different legal and factual issues. ATI and ELI are only parties to Docket UT-063038 (the “Complaint Case”) and have not participated in Dockets UT-053036 and UT-053039 (the “Remand Case”). ELI and ATI are unfamiliar with the issues and arguments in the Remand Case and have not addressed them in this proceeding. It would be a violation of administrative due process to introduce new subject matter into this proceeding at a time when all proceedings are effectively completed, an Initial Order issued, and Petitions for Review and responses already filed. Parties in this docket, who are not parties in the Remand Case will have had no chance to respond to issues and arguments raised in that proceeding.

This is important because the two proceedings are fundamentally different proceedings. The Remand Proceeding is a retrospective proceeding that involves interpretation of a particular contract between two parties in light of the facts and law applicable to the situation of those parties and the provisions in their particular contract. The Complaint proceeding is a strictly forward-looking proceeding to assess the legality of the continued use of VNXX. ELI and ATI have objected to the Initial Order’s attempt to go further than that and impose a new regulatory scheme for VNXX in that proceeding. But, even if one were to accept that such a step was permissible, to the extent that the Initial Order addresses issues like compensation for and conditions of the provision of VNXX, those can only be forwarding looking. The order in the Complaint proceeding cannot change the rights of parties under existing interconnection agreements retroactively—and certainly no one in the Complaint proceeding was on notice that that was the scope of that proceeding. Each party to the Complaint case and all other

telecommunications carriers that are not parties to either proceeding have a right to have their own interconnection agreements evaluated on their own terms.

There is no question that the Commission has known about and explicitly permitted the use of VNXX to date. The Complaint Case has been an inquiry into the legality of "VNXX" under Washington law and not an inquiry into the interpretation of the parties' interconnection agreements with Qwest or a rulemaking on intercarrier compensation issues. Mixing this Complaint Case with an interconnection agreement proceeding may lead to an outcome that is unfair to other carriers who have different terms in their agreements or who use and provide VNXX in a manner different than the parties to that particular agreement.

In summary, the VNXX Complaint Case and the Remand Case should each be decided on the basis of its individual record, facts, and context. Once that is done the Commission can address whether a reconciliation of the two orders is necessary and if so, how it should be accomplished.

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