

QWEST CORPORATION

STATE: Washington  
DOCKET NO: UT-063038/UT-063055  
CASE DESCRIPTION: Qwest VNXX Complaint, Docket UT-063038; Request of Verizon Access and Qwest for Approval of Negotiated Agreement, Docket UT-063055  
INTERVENOR: Bench Requests  
REQUEST NO: BCH 01-003

REQUEST:

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:

Qwest recommends that this matter be consolidated with issues to be considered by the Commission in the remand from the District Court's decision in the appeal of Dockets UT-053036 and UT-053039. *Qwest Corporation v. Washington Util. & Transp. Comm'n*, 484 F.Supp.2d 1160, 1167 (W.D. Wa. 2007) ("*Qwest*"). The Commission should consolidate these matters because the issues in this case, by definition, include the issue remanded to the Commission by the District Court and the record is complete on the remand issue.

The Court's specific charge to the Commission on remand states:

On remand, the WUTC is simply directed 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. *Qwest*, 484 F.Supp.2d at 1177

Thus, the issue remanded to the Commission is very narrow: Under the current Level 3 and PacWest interconnection agreements ("*ICAs*") and under Washington law should Level 3's and PacWest's VNXX traffic be classified as local or interexchange for compensation purposes?

The proper classification of VNXX calls on remand is determined:

The language of the *ICAs* between Qwest and Level 3 and Qwest and PacWest (see Exhibit 477, Level 3 ICA; Exhibit 519, PacWest ICA; Qwest's Opening Brief, ¶¶ 47-48):

State law that defines the local/interexchange traffic distinction (see Qwest Opening Brief at ¶¶ 21-36; Qwest Reply Brief at 16-41):

The price lists filed by Level 3 and Pac West (which set forth their criteria for classification) (see Level 3 price list, Exhibit 474, at Original Pages 64-65; PacWest price list, Exhibit 518, Original Page 13 and First Revised Pages 21-22; Qwest Opening Brief, ¶¶ 45-46), and

Qwest tariffs (see definitions of "exchange," "local exchange," "local service," and "local service area" in Qwest's Exchange and Network Services Tariff (WN U-40), at § 2.1, at original page 6)

Unchallenged and extensive evidence on each of these issues (including extensive prefiled and live testimony) was accepted into the record in this matter. Thus, the record is more than adequate to determine the issue remanded to the Commission in *Qwest*.

In a recent pleading, Level 3 stated that the remand should be based on the individual facts as to Level 3 and PacWest. The record in this docket is replete with precisely those facts. It is difficult to conceive what additional facts would be elicited in a separate remand docket on either factual or legal issues.

Consolidating the remand proceeding with this docket will cause no harm to other parties, as they are not parties to the remand proceeding. There is no factual or policy reason that prevents the resolution of the remand in this docket--the law certainly favors unnecessary duplication of proceedings and waste of both regulatory and party resources. The remand proceeding involves three private parties: *Qwest*, Level 3 and PacWest. Thus, resolution of the remand issues in this docket will have no direct impact on any other party.