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BEFORE THE WASHINGTON STATE UTILITIES  
AND TRANSPORTATION COMMISSION

QWEST CORPORATION,

Plaintiff,

v.

LEVEL 3 COMMUNICATIONS, LLC; PAC-  
WEST TELECOMM, INC.; NORTHWEST  
TELEPHONE INC.; TCG-SEATTLE;  
ELECTRIC LIGHTWAVE, INC.;  
ADVANCED TELCOM GROUP, INC.;  
FOCAL COMMUNICATIONS  
CORPORATION; GLOBAL CROSSING  
LOCAL SERVICES INC.; and, MCI  
WORLDCOM COMMUNICATIONS, INC.,

Defendants.

Docket No. UT-063038

RESPONDENT TCG-SEATTLE'S  
RESPONSE TO BENCH REQUEST  
NO. 3

In response to Bench Request No. 3, Respondent, TCG Seattle ("TCG") does not object to consolidation of the issues the U.S. District Court remanded to the Commission in Dockets UT-053036 and UT-053039 for decision in this proceeding. The Commission, however, should strictly limit the ability of parties to re-litigate issues already litigated in this proceeding and should conduct the remainder of the proceeding in such a manner that parties not involved in Dockets UT-053036 and UT-053039 are not required to bear additional cost and expense to participate in issues unrelated to them.

1 2 Under WAC 480-07-320, TCG recognizes that the Commission has broad discretion to  
2 consolidate two or more matters where the facts or principles of law are related, and can do  
3 so prior to or after hearing, *see*, i.e. Docket Nos. UG-060256 Order No. 4 and UG-061286  
4 Order No.1, *In re WUTC v. Cascade Natural Gas and Cost Management Services, Inc. v.*  
5 *Cascade Natural Gas Corporation* (Sept. 2006) at 3. TCG's reservation, at this late  
6 juncture, is that the VNXX complaint case brought by Qwest against TCG and various  
7 other Respondents has been thoroughly litigated over an 18-month period. The Complaint  
8 was originally filed in May 2006, and the week-long hearing in this matter concluded in  
9 April, 2007. Following extensive post-hearing briefing and replies, entrance of the Initial  
10 Order on October 5, 2007, and the flurry of various Petitions for Administrative Review of  
11 the Initial Order, Answers to Petitions for Administrative Review and even Replies to  
12 Answers, this proceeding is ripe for decision. Now, based on arguments raised by some  
13 Respondents and the Complainant in late-stage Reply briefings that allude to the impact of  
14 the U.S. District Court's decision in *Qwest v. WUTC, et al.* 484 F. Supp.2d 1160 (2007),  
15 there is inquiry from the Commission as to whether the proceedings, under Docket Nos.  
16 UT-053036 and UT-053039 (the "Remand proceedings"), in view of the Court's decision,  
17 should be conjoined on review for decision with the VNXX Complaint case.

18  
19 3 While TCG does not oppose the consolidation of these proceedings for decision in theory,  
20 it is concerned that it not become embroiled in the Remand proceedings in the context of  
21 potential protracted and expensive evidentiary proceedings and/or briefing. If additional  
22 evidence and/or legal argument is called for, TCG would not expect the Commission to  
23 necessarily require other Respondent companies, who did not participate in the earlier  
24 proceedings, to become involved in further participation in the Remand proceedings.  
25 However, if consolidated, TCG would wish to reserve its right under general due process

1 principles to respond to evidence or legal arguments that implicate its position in the  
2 VNXX Complaint case or the interconnection agreement approved in Docket No. UT-  
3 033035 (Feb. 6, 2004), should they be raised in the Remand proceedings.

4 Thus, TCG does not oppose consolidation with the hope and anticipation that any  
5 consolidated proceeding will not involve relitigation of the case in UT-063038, and will not  
6 require additional cost and expense to argue issues in the Remand proceedings that do not  
7 bear either on the position of TCG or points of fact and law already addressed exhaustively  
8 in the underlying VNXX Complaint proceeding.

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11 DATED this 4th day of February, 2008.

12  
13 Respectfully submitted,

14 WILLIAMS, KASTNER & GIBBS PLLC

15  
16 By 

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