

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO BENCH REQUEST

DATE PREPARED: February 4, 2008
CASE NO.: UT-063038
REQUESTER: UTC

WITNESS: Jonathan Thompson
RESPONDER: Jonathan Thompson
TELEPHONE: (360) 664-1225

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:

Commission Staff believes it would be appropriate for the Commission to consolidate with this docket the issues remanded by the District Court in Dockets UT-053036 and UT-053039.

In 2005, Pac-West and Level 3 separately filed petitions with the Commission for enforcement of their respective interconnection agreements with Qwest.¹ Both alleged Qwest owed them reciprocal compensation for calls made by Qwest local exchange customers to the dial-up ISPs that are customers of Pac-West and Level 3.

This complaint case (UT-063038) was initiated by Qwest, at the Commission's invitation,² as a vehicle for addressing Qwest's counterclaims against Pac-West and Level 3 in those dockets (UT-053036 and UT-053039).

Qwest's claims in this docket include an assertion that VNXX traffic is not local traffic but is, instead, interexchange traffic that is neither properly routed over local interconnection trunks, nor properly subject to reciprocal compensation under Qwest's interconnection agreements with Pac-West and Level 3.³

While this complaint was pending, the Federal District Court reversed the Commission's orders in the Pac-West and Level 3 enforcement cases and remanded those cases back to the Commission for a determination, under state law, of whether VNXX traffic is local ("within a

1 Petition [of Pac-West] for Enforcement of Interconnection Agreement, Docket UT-053036 (June 9, 2005); Level 3 Communications, LLC's Petition For Enforcement Of Interconnection Agreement With Qwest Corporation, Docket UT-053039 (June 21, 2005).

2 Order No. 05, ¶ 43, Docket No. UT-053036 (Feb. 10, 2006); Order No. 05, ¶ 40 (Feb. 10, 2006).

3 Complaint of Qwest Corporation for an Order Prohibiting VNXX, ¶ 22 (May 22, 2006).

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local calling area”) and therefore subject to the ISP Remand Order’s compensation scheme, or between local calling areas, and therefore subject to access charges or some other state-determined compensation.⁴ That question was squarely raised by Qwest’s counterclaims in Dockets UT-053036 and UT-053039, and is also central to the issues raised by Qwest’s complaint in this docket. Because of these common legal issues, consolidation would be consistent with WAC 480-07-320.

Additionally, the Initial Order already addressed counterclaims by Broadwing and Global Crossing against Qwest for reciprocal compensation on VNXX traffic that are very similar to Pac-West and Level 3’s claims in UT-053036 and UT-053039.⁵

Although there are a number of parties in the instant complaint proceeding that were not party to UT-053036 and UT-053039, and did not make counterclaims against Qwest for reciprocal compensation as Pac-West and Level 3 did in those dockets, those parties would not be prejudiced by consolidation so long as the Commission does not purport to decide any potential claims between those companies and Qwest for past compensation.

⁴ *Qwest Corp. v. Washington Utilities and Transp. Com’n*, 484 F.Supp.2d 1160, 1176-77 (W.D. Wash. 2007).

⁵ Initial Order ¶¶ 118-139.