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BEFORE THE ARIZONA CORPORATION COMMISSION
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AZ CORP COMMISSION
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IN THE MATTER OF THE FORMAL)	DOCKET NO. T-01051B-05-0495
COMPLAINT OF PAC-WEST TELECOMM)	T-03693 X -05-0495
SEEKING ENFORCEMENT OF THE)	A
INTERCONNECTION AGREEMENT BETWEEN)	
PAC-WEST TELECOMM AND QWEST)	PAC-WEST'S RESPONSE
CORPORATION)	TO QWEST'S SUPPLEMENTAL
)	CITATIONS OF AUTHORITY
)	
)	

Pac-West Telecomm, Inc. ("Pac-West") responds to two recent supplemental authority filings made by Qwest Corporation ("Qwest"). In neither case, did the state commission alter its previous position on VNXX traffic.

1. **Oregon Public Utility Commission Order No. 05-1219**

Qwest's citation of a recent order of the Oregon PUC as support for its position on reciprocal compensation in this case is categorically wrong. The Oregon PUC decision is an order denying reconsideration of a prior order that was briefed by Qwest in this case. As Qwest openly admits, the underlying case (OPUC Order No. 05-874) did not address whether reciprocal

compensation was due for VNXX traffic. Further, the Oregon PUC's decision in the underlying case turned on two highly specific and very technical considerations that do not apply here: (1) the definition of "local/EAS" in the Oregon Interconnection Agreement ("ICA") between Pac-West and Qwest is completely different from the definition in the Arizona ICA between Qwest and Pac-West (the "Arizona ICA"), *compare* Order No. 05-1219 n. 6 with Arizona ICA, Part A, p. 5; and (2) the Oregon PUC has its own ongoing proceedings related to VNXX and FX traffic which include the complete prohibition of new FX customers since 1985 (Order No. 04-504).

In short, the Oregon PUC's decision in Order No. 05-874 (and its subsequent affirmation of that order) has no bearing on the unique contract dispute presented in this Arizona proceeding.

2. Iowa Utilities Board, Docket No. ARB-05-4

Qwest filed a Notice of Second Filing of Supplemental Authority attaching *In Re Level 3 Communications, LLC v. Qwest Corporation* ("Level 3") on December 21, 2005. Contrary to what Qwest has argued, the *Level 3* case provides direct support for the position by Pac-West that reciprocal compensation must be paid for ISP-bound traffic. In *Level 3*, at issue was whether ISP-bound traffic and VNXX ISP-bound traffic would be treated identically for compensation purposes. After careful analysis, the Iowa Utilities Board concluded that yes, both would be subject to the "bill and keep" mechanism applied in Iowa to ISP-bound traffic. *Order* p. 30 ("Historically, Iowa has applied the bill and keep mechanism to ISP-bound traffic. The Board finds that this mechanism should be maintained. . . . Therefore, the Board will approve Qwest's proposed language regarding compensation for ISP-bound and VNXX-routed ISP-bound traffic.").

If this Commission were to apply the *Level 3* decision, as Qwest advocates, VNXX ISP-bound traffic and other ISP-bound traffic would be treated identically for purposes of intercarrier

compensation, and VNXX ISP-bound traffic would thus be compensated because in Arizona carriers are entitled to compensation for ISP-bound traffic (unlike in Iowa where "bill and keep" applies). The Iowa Utilities Board's decision to treat ISP-bound traffic and VNXX ISP-bound traffic the same, therefore, *supports* Pac-West's right to compensation for all ISP-bound traffic, including VNXX ISP-bound traffic.

The decision of the Iowa Utilities Board is also consistent with the FCC's and the United State District Court of Illinois's conclusion that there can be no distinction between how all ISP-bound traffic and 251(b)(5) traffic are treated. The following excerpt from the District Court's decision explains the FCC's ISP Remand Order on this point:

The ISP Remand Order does, however, require ILECs that exchange ISP-bound traffic on a bill and keep basis to exchange section 251(b)(5) traffic on that basis as well. *Remand Order* ¶ 89. Traffic subject to section 251(b)(5), the FCC said, is all telecommunications except "exchange access, information access, and exchange services for such access provided to IXCs [interexchange carriers] and information service providers." *Id.* ¶¶ 42,46. Thus, the *Remand Order* requires ILECs to charge the same rate for local voice traffic, which is subject to section 251(b)(5), as they do for ISP-bound traffic, which is not.

SBC urges a different interpretation of this "mirroring" provision. In its view, the provision is not violated if like traffic is treated alike. Because the ICC subjects all FX traffic, ISP-bound or otherwise, to bill and keep, SBC says its decision is sound.

SBC's interpretation contradicts the plain language of the *Remand Order*. The *Order* does not direct state commissions to treat like traffic alike, but to treat different kinds of traffic alike. It explicitly states that ILECs must charge the same rate for ISP-bound traffic, which is excluded from 251(b)(5), as it does for traffic that is subject to that section. *Remand Order* 89. Thus the issue is not whether SBC charges the same rate for both voice FX and ISP-bound FX traffic, but whether it charges the same rate for ISP-bound traffic, FX or otherwise, as it does for traffic that is subject to section 251(b)(5). The answer, according to the parties' interconnection agreement is no. . . . Because SBC charges AT&T to terminate voice traffic that is subject to section 251(b)(5), the ICC's adoption of bill and keep system for ISP-bound FX traffic violates the mirroring provision of the *Remand Order*."

AT&T Commc'ns of Ill. v. Ill. Bell Tel. Co., Inc. 2005 WL 820412 (N.D. Ill. 2005). In sum, the Pac-West/Qwest interconnection agreement and the Iowa Utilities Board decision support Pac-West's claim for reciprocal compensation.

3. Supplemental Authorities Generally

In briefing this case, Pac-West intentionally did not supply a long list of how other states have ruled on the VNXX issue. This was not because the weight of authority opposes reciprocal compensation for VNXX traffic. Indeed, many states including Michigan,¹ California,² Virginia,³ New York,⁴ Maryland,⁵ and Kansas,⁶ (to name a few) have required reciprocal compensation for ISP-bound VNXX traffic. Each case, however, revolves around the facts of a particular interconnection agreement or arbitration. In a case, as here, where an interconnection

¹ Opinion and Order, Mich. Pub. Serv. Comm'n, Oct. 14, 2004, *In re application of Telnet Worldwide, Inc., for arbitration of interconnection rates, terms, and conditions and related arrangements with Verizon-North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems*, No. U-13931, at 2004 Mich. PSC LEXIS 356.

² Decision Approving Arbitrated Agreement, Calif. Pub. Util. Comm'n, May 22, 2003, *In re Verizon Calif. Inc. Petition for Arbitration with Pac-West Telecomm, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, No. 03-05-075, at 2002 Cal. PUC LEXIS 945.

³ *Starpower Commc'ns, LLC v. Verizon South Inc.*, 17 F.C.C.R. 6873 (rel. Apr. 8, 2002) ("*Starpower F*"); *Starpower Commc'ns, LLC v. Verizon South Inc.*, 18 F.C.C.R. 23 (rel. Nov. 7, 2003) ("*Starpower IP*").

⁴ Arbitration Order, N.Y. Pub. Serv. Comm'n, Oct. 24, 2003, *Petition of Cablevision Lightpath, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Verizon New York, Inc.*, No. 03-C-0578, at 2003 N.Y. PUC LEXIS 596.

⁵ Order, Md. Pub. Serv. Comm'n, March 10, 2005, *In re Arbitration of US LEC of Maryland Inc. vs. Verizon Maryland Inc. Pursuant to 47 U.S.C. § 252(b)*, No. 79813, at 2005 Md. PSC LEXIS 6.

⁶ Order on Phase II Intercarrier Compensation, Subloop and 911 Issues, Kan. Corp. Comm'n, July 18, 2005, *In re Petition of CLEC Coalition for Arbitration against Southwestern Bell Telephone, L.P. d/b/a SBC Kansas under Section 252(b)(1) of the Telecommunications Act of 1996*, No. 16, at 2005 Kan. PUC LEXIS 868.

agreement is in dispute, the outcome hinges on the language of the agreement. In this case, the interconnection agreement clearly directs that Pac-West be compensated by Qwest at the 251(b)(5) rate (.0007) for all ISP-bound traffic.

Respectfully submitted this 9th day of January, 2006.

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