

OPEN MEETING AGENDA ITEM

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Commissioner Jeff Hatch-Miller, Chairman
Commissioner William A. Mundell
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Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Re: Pac-West Telecom, Inc. v. Qwest Corporation
Docket Nos. T-01051B-05-0495, T-03693A-05-0495

Dear Commissioners:

I am responding to the letter written to the Commission by Hank Carabelli, the President and CEO of Pac-West, filed on May 30, 2006. The Commission is wise to take its time in fully considering this matter, because Pac-West's mode of operation fundamentally alters long-standing operational and regulatory distinctions between local and long distance service in Arizona.

Consider the example of a call from Flagstaff to Phoenix. That is a long distance call. For a normal long distance call, the caller pays the toll charges to his or her interexchange carrier (the "IXC"), and the IXC pays originating local access to the local exchange carrier used by the calling party, which is Qwest in my example. A variation is that a business in Phoenix that wants to make it easy for people in Flagstaff to call might buy an inbound 800 number, where the Phoenix business pays the toll for the customers calling from Flagstaff or other distant locations. Originating local access is still paid by the IXC to Qwest if the call originates from a Qwest customer. The Pac-West service offering to its customers (who are Internet Service Providers or "ISPs") is essentially the same as an inbound 800 service. Pac-West carries calls from Qwest customers in Flagstaff to Pac-West ISP customers in Phoenix. However, the problem arises because Pac-West manipulates the numbering and routing system, and assigns local Flagstaff numbers to the Phoenix ISP. Because of that manipulation, long distance calls are disguised so that they appear to be local calls. Because of Pac-West's use of local numbers there is no way for Qwest to tell that calls to those numbers are not local calls. These calls are carried over local interconnection trunks that Pac-West orders from Qwest

when Pac-West is operating in its alter ego role as a competitive local services provider. The calls go to Pac-West's single point of interconnection in the LATA (over trunks that are supposed to be used for exchange of *local* traffic) and from there are routed at the Phoenix end to the ISP. When these long distance calls are completed in this manner, Pac-West evades payment of access charges that should be made on long distance calls, and which other IXCs pay. In the course of carrying on this disguised long distance business, Pac-West violates a number of Arizona rules that establish clear distinctions between local calling and long distance calling – and which require all carriers to play by the same local calling area rules. (See R14-2-1305(A), which is just one rule in this regard).

The routing scheme I have described is called "Virtual NXX" or "VNXX." *VNXX calls are geographically and legally long distance calls, because they originate and terminate in different local calling areas.* In the Commission's 2004 order in the AT&T/Qwest arbitration, the Commission refused to define local exchange service in a way that would have permitted VNXX. (See Decision No. 66888). Likewise, the proposed arbitration decision in the Level 3 / Qwest interconnection arbitration reaches the same conclusion, and is pending approval of the Commission. (See the ROO in Docket No. T-03654A-05-0350). Pac-West, however, never brought VNXX before the Commission, and never informed Qwest that it was using VNXX dialing arrangements; instead, Pac-West unilaterally implemented VNXX. Pac-West apparently wants its case decided before you consider the pending Level 3 matter. As the recommended orders currently stand, they conflict with each other in that one allows Pac-West to continue to use VNXX, at least for now, while the Level 3 order appears to ban it, at least for now. Also, both cases require an interpretation of the FCC's *ISP Remand Order* on identical issues.

While the Commission is not required to take the Level 3 arbitration and the Pac-West complaint up at the same Open Meeting, there are important legal and regulatory principles shared by the two cases, and the Commission is wise to have each in view as it decides the other. In short, these are important policy matters and legal interpretations that require consistency. The best way to do that is just how the Commission has done so far—by scheduling both matters on the same day.

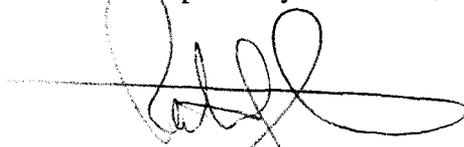
In addition, Pac-West's letter leaves several incorrect impressions that must be addressed.

- Pac-West states that it has been terminating calls from Qwest customers without receiving payment, since January 2004. In fact, Qwest has paid over \$1.2 million to Pac-West for terminating *local* ISP traffic. It is only Pac-West's attempt to receive terminating compensation for its VNXX *long distance* calls that Qwest disputes.

- Pac-West talks about its attempts to compete against the ILEC Qwest. However, the business Pac-West seeks compensation for in its Complaint is not local exchange business at all. It is intrastate long distance, which is a competitive market, but one in which Pac-West wishes to have an advantage over the IXCs that compete and play by the rules.
- Pac-West implies that the private arbitration in 2004 addressed the VNXX ISP traffic issue, and that Qwest has refused to comply with the arbitration order. In fact, the 2004 arbitration did not address the issue of whether long distance ISP traffic is subject to compensation at all.

Qwest believes that the Commission is acting prudently in its scheduling of the Pac-West and Level 3 cases. To date, neither case has been allowed to go before the Commission without the other. Those were prudent scheduling decisions, and a different approach is not warranted now.

Respectfully submitted,



Patrick J. Quinn
State President - Qwest Corporation

Original and 15 copies filed with
Docket Control this 2nd day of June, 2006

Two copies hand delivered on this
2nd day of June, 2006 to:

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Judge Bjelland, Hearing Division
Ernest G. Johnson, Director, Utilities Division
Maureen Scott, Legal Division
Brian McNeil, Executive Secretary
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