

ORIGINAL



BEFORE THE ARIZONA CORPORATION

RECEIVED

03

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JEFF HATCH-MILLER
Chairman
WILLIAM MUNDELL
Commissioner
MARC SPITZER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN MAYES
Commissioner

2006 JUL 12 P 3:19

AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission

DOCKETED

JUL 12 2006

DOCKETED BY [Signature]

IN THE MATTER OF THE FORMAL
COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT OF
PAC-WEST TELECOMM, INC.
AGAINST QWEST CORPORATION

DOCKET NO. T-03693A-05-0875
T-01051B-05-0875

**QWEST CORPORATION'S
AMENDED ANSWER TO PAC-
WEST TELECOMM'S FIRST
AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT;
QWEST'S SECOND AMENDED
COUNTERCLAIM**

Respondent Qwest Corporation ("Qwest") hereby amends its response and answers to the First Amended Complaint for Declaratory Judgment ("Complaint") filed by Pac-West Telecomm, Inc. ("Pac-West") on April 11, 2006. Qwest further files its Second Amended Counterclaims against Pac-West. For the reasons set forth herein, Qwest asserts that the Arizona Corporation Commission ("Commission") should dismiss the Complaint in all respects.

RESPONSE TO ALLEGATIONS IN THE COMPLAINT

Qwest hereby responds to Pac-West's allegations. Unless specifically admitted in this section, Qwest denies each and every allegation in Pac-West's Complaint.

1. Qwest is a public service corporation qualified to do and is doing business in Arizona. Qwest is an incumbent local exchange company providing local exchange and other telecommunication services throughout Arizona.

2. Qwest acknowledges that Pac-West and Qwest are parties to an Interconnection Agreement ("ICA") between Qwest and Pac-West Telecomm, Inc., dated

1 September 30, 1999, which was approved in Commission Decision No. 62137 on
2 December 14, 1999.

3 3. Qwest admits that the ICA and subsequent amendments govern the parties'
4 respective interconnection and payment obligations. Further, Qwest admits that a dispute
5 has arisen between Qwest and Pac-West regarding their respective payment obligations
6 under the ICA. Qwest denies that this dispute involves the location of interconnection or
7 requirements to maintain the physical network on either parties' side of the Point of
8 Interconnection ("POI").

9 4. Qwest admits that Pac-West and Qwest entered into the InterLCA
10 Amendment on September 11, 2000, for the purpose of allowing Pac-West to obtain
11 interconnection as described in that amendment from Qwest.

12 5. Qwest asserts that Section 1.3 of Attachment 1 to the InterLCA Amendment
13 speaks for itself.

14 6. Qwest denies the allegation that Section 1.5 of Attachment 1 to the
15 InterLCA Amendment is applicable to miles of any facility other than an InterLCA
16 Facility. Qwest further denies that Section 1.5 of Attachment 1 to the InterLCA
17 Amendment is applicable to miles where there is not a mutual, reciprocal exchange of
18 local calls.

19 7. Qwest admits that Pac-West and Qwest entered into the Single Point of
20 Presence ("SPOP") Amendment on January 12, 2001, for the purpose of allowing Pac-
21 West to obtain interconnection as described in that amendment from Qwest.

22 8. Qwest admits sending new invoices to Pac-West, for re-calculated transport
23 and switching services, after the United States District Court for the District of Arizona
24 vacated a portion of Commission Decision No. 66385 on December 17, 2004.

25 9. Qwest denies the allegation that Qwest erroneously charged Pac-West for
26 DTT ordered pursuant to the original ICA. Qwest denies the allegation that Section 3.1 of
27 Attachment 4 to the ICA requires Qwest to provide Pac-West DTT at virtually no cost to
28 Pac-West.

1 COUNTERCLAIMS

2 17. Qwest brings these Counterclaims against Pac-West as a result of Pac-
3 West's breach of the terms and conditions of the ICA, as amended. This Counterclaim
4 consists of three counts as follows:

5 COUNT I

6 **(Breach of Interconnection Agreement - Payment)**

7 18. Qwest incorporates paragraphs 1 through 17, above.

8 19. Despite continued interconnection with Qwest facilities and services
9 rendered pursuant to the ICA, Pac-West has wrongfully withheld payment of
10 \$541,539.98. Qwest has properly billed these amounts, pursuant to the ICA and related
11 amendments. Pac-West has not made any payments to Qwest under the ICA since May,
12 2005. That amount is immediately due and payable to Qwest. Because the
13 interconnection is still in place, the amount owed increases each month. Pac-West should
14 pay all past due amounts, currently due amounts, and make future payments timely.
15 Without waiving its right to receive compensation, Qwest should also be entitled to
16 disconnect Pac-West if it fails to pay amounts ordered to be paid.

17 COUNT II

18 **(In the Alternative--Breach of Interconnection Agreement - Service)**

19 20. Qwest incorporates paragraphs 1 through 19, above.

20 21. Upon information and belief, all traffic originated by Qwest's end users that
21 is bound for Pac-West is ISP bound traffic. Despite this, Pac-West has obtained all of its
22 interconnection facilities and continues to take service from Qwest pursuant to the SPOP
23 Amendment.

24 22. Paragraph 9 of the SPOP Amendment states "SPOP in the LATA is not
25 available for the sole purpose of delivering ISP bound, interstate in nature, traffic."
26 Therefore, Pac-West's conversion of all of its InterLCA Facilities to SPOP/DTT and other
27 LIS facilities pursuant to the SPOP Amendment was inappropriate and contrary to the
28 SPOP Amendment. Accordingly, Pac-West should only be able to obtain interconnection

1 facilities that cross local calling area ("LCA") boundaries pursuant to the InterLCA
2 Amendment.

3 23. Because the provisions of the InterLCA Amendment are applicable to Pac-
4 West's traffic and the facilities used to exchange that traffic, Qwest is currently owed
5 \$1,212,094.70 for service rendered since August 2003 to January 2006. This calculation
6 has RUF-related volumes subtracted from it. Calculation of RUF-related volumes was
7 determined by using 20 miles of all facilities in Arizona, from 2000 through January 2006.
8 However, no RUF should be subtracted in cases where Pac-West has employed its
9 unlawful VNXX scheme.

10 **COUNT III**

11 **(In the Alternative – Breach of Interconnection Agreement – Service)**

12 24. Qwest incorporates paragraphs 1 through 23 above.

13 25. Section 1.7 of the InterLCA Amendments states "The LIS InterLCA Facility
14 may be used only to transport local exchange traffic between USW and Pac-West
15 customers located within the USW local calling area."

16 26. Upon information and belief, Qwest asserts that Pac-West has ordered
17 facilities and services pursuant to the InterLCA Amendment, even though there is no local
18 exchange traffic between Qwest customers and a Pac-West customer located within the
19 Qwest local calling area.

20 27. Services or facilities ordered by Pac-West which do not qualify under the
21 InterLCA Amendment should be charged the private line rate.

22 **COUNT IV**

23 **(In the Alternative--Breach of Interconnection Agreement - Service)**

24 28. Qwest incorporates paragraphs 1 through 27, above.

25 29. Pac-West employs its disguised intraLATA interexchange routing scheme
26 known as VNXX, which violates state law and the ICA. Pac-West may not use LIS
27 facilities of any kind for its VNXX service. Pac-West should be required to compensate
28

1 Qwest at the rates applicable to tariffed private line services and special access where Pac-
2 West has employed VNXX.

3 **RELIEF REQUESTED**

4 **WHEREFORE**, Qwest respectfully requests the Commission provide the
5 following relief:

6 A. Deny all the relief requested by Pac-West in its Complaint;

7 B. Invalidate all Pac-West claims for credits seeking or bills charging for DTT
8 facilities ordered by Pac-West pursuant to the original ICA or InterLCA Amendment, and
9 issue a decision ordering Pac-West to pay Qwest for all amounts owed pursuant to the
10 ICA, which amount is \$541,539.98, as of April 2006, and to pay current charges timely;

11 C. Alternatively, issue a decision ordering Pac-West to pay Qwest for all
12 amounts owed pursuant to the ICA if all service is to be rated under the InterLCA
13 Amendment;

14 D. Alternatively, issue a decision ordering Pac-West to pay Qwest for all
15 amounts owed pursuant to the ICA for all service where there is no local exchange of
16 traffic between a Pac-West customer located in the same local calling area as the Qwest
17 customer.

18 E. Declare Pac-West's service ineligible for rating under the SPOP
19 Amendment;

20 F. Prohibit Pac-West from routing VNXX traffic to Qwest utilizing LIS
21 facilities;

22 G. Order Pac-West to pay Qwest for Pac-West's previous and future unlawful
23 use of LIS facilities in an amount equal to private line service, where Pac-West has either
24 ordered facilities that do not qualify under the InterLCA Amendment, or where Pac-West
25 has utilized its VNXX scheme; and

26 H. Any and all other equitable relief that the Commission deems appropriate.
27
28

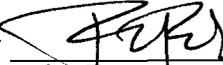
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPECTFULLY SUBMITTED this 12th day of July, 2006.

Norman Curtright
QWEST CORPORATION
20 E. Thomas Road, 16th Floor
Phoenix, AZ 85012
(602) 630-2187

-and-

FENNEMORE CRAIG, P.C.

By 
Timothy Berg
Theresa Dwyer
Patrick J. Black
3003 N. Central Ave, Suite 2600
Phoenix, Arizona 85012
(602) 916-5421

Attorneys for Qwest Corporation

ORIGINAL and 15 copies hand-delivered for
filing this 12th day of July, 2006, to:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 12th day of July, 2006 to:

Amy Bjelland
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

Christopher K. Kempley, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

1 COPY of the foregoing mailed/e-mailed
2 this 12th day of July, 2006 to:

3 Joan S. Burke
4 OSBORN MALEDON PA
5 2929 North Central, Ste. 2100
6 Phoenix, AZ 85012
7 Attorneys for Pac-West Telecomm, Inc.

8 

9 1807784

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28