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BEFORE THE ARIZONA CORPORATION COMMISSION

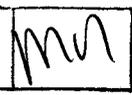
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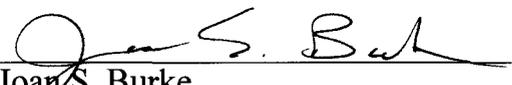
IN THE MATTER OF THE FORMAL
COMPLAINT OF PAC-WEST TELECOMM
SEEKING ENFORCEMENT OF THE
INTERCONNECTION AGREEMENT
BETWEEN PAC-WEST TELECOMM AND
QWEST CORPORATION

) DOCKET NOS. T-01051B-05-0495
) T-03693A-05-0495
)
) **RESPONSE OF PAC-WEST**
) **TELECOMM, INC. TO QWEST**
) **CORPORATION'S MOTION FOR**
) **JUDGMENT PURSUANT TO**
) **MANDATE**
)

Plaintiff Pac-West Telecomm, Inc. ("Pac-West") responds to the Motion for
Judgment Pursuant to Mandate filed by Qwest Corporation ("Qwest") on July 25, 2008.

Dated this 11th day of August 2008.

OSBORN MALEDON, P.A.

By 
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MEMORANDUM OF POINTS AND AUTHORITIES

I. The District Court Order

Qwest's Motion for Judgment Pursuant to Mandate ("Motion for Judgment") asks the Commission to enter an order requiring Pac-West to refund amounts previously paid by Qwest to Pac-West pursuant to Commission Order. Such an order, if issued, would be directly contrary to the district court's order. The district court advised the parties in this case as follows: "[n]o party to this action can achieve the ultimate result they seek until the ACC definitively categorizes VNXX" and "no party may rely on this Order to argue that a particular result is required." *See* Notice of Final Order and Remand (hereinafter "Order"), Exhibit A, at 22, 23. Incredibly, the Motion for Judgment entirely fails to mention this admonition, and presumes the district court's directive can be ignored by the Commission. It cannot. Qwest's Motion for Judgment should be dismissed and proceeding consistent with the district court's order initiated.

II. Award of Compensation Subject to Order

Although entirely ignored by Qwest's Motion for Judgment, the district court provides the Commission with substantial discretion and a clear road map for resolving this compensation issue:

The Court is instructing the ACC to determine the most appropriate compensation regime for VNXX, thus, the Court will not enter the order as requested by Qwest. To do so would recognize that access charges are the method of compensation to be applied to VNXX-that is not the Court's decision to make.

Order at 22. Effectively, the Commission must resolve “whether VNXX was ever subject to reciprocal compensation under §251(b)(5) prior to entry of the *ISP Remand Order*.” Order at 12. The traffic at issue is either subject to §251(b)(5), and thus reciprocal compensation applies, or “instead subject to the access charges preserved by § 251(g).” Order at 16. As was the case in *Verizon California, Inc. v. Peevey*, the Commission must not “make [its] determination under the *Telecommunications Act* or the *FCC’s* rules for reciprocal compensation,” rather the historical treatment of VNXX traffic -- as compensable under 251(b)(5) *or* subject to access charges under 251(g) – depends on how that traffic was treated prior to 1996. 462 F.3d 1142, 1151, 1157-58 (9th Cir. 2006) (CPUC did not abuse its discretion in concluding that locally dialed and locally rated traffic is subject to reciprocal compensation).

The question raised by the district court remand is amenable to briefing by the parties and this is a case which requires expedited treatment. The interconnection agreement between Pac-West and Qwest, which was the basis for Pac-West’s claim, was terminated by Qwest on December 10, 2007. Thus, this dispute raises no prospective payment issues. Delay, however, in reaching resolution of this issue has emerged as a material problem. Pac-West first sought recovery on this claim in early 2004. The arbitrator hired, pursuant to the dispute resolution provisions of the parties’ interconnection agreement, concluded that Pac-West was entitled to full compensation beginning January 1, 2004. (AAA Case #77Y181-00385-02 (JAG Case No. 221368) December 2, 2004.) Likewise, the Commission in Decision No. 68820 concluded that

Pac-West was entitled to payment. Despite these decisions, Pac-West has not had use of the compensation it is owed. Pac-West agreed, at Qwest's insistence, that the funds paid by Qwest following Decision No. 68820 be escrowed in connection with Pac-West's general provision of adequate assurance in Bankruptcy Case No. 07-10562 (BLS) (Bankr. D. Del.). Pac-West would like use of these funds to complete infrastructure improvements in Arizona and strengthen its position as a competitive carrier.

Pac-West proposes the following expedited schedule for resolving this remand issue:

- | | |
|--|--------------------|
| Simultaneous briefs filed by Qwest and Pac-West | September 12, 2008 |
| Brief by Staff (if Staff chooses to participate) | September 26, 2008 |
| Simultaneous response briefs by Qwest and Pac-West | October 9, 2008 |
| Recommended order and open meeting consideration | November 2008 |

Pac-West would be available for a procedural conference to discuss this proposed schedule and any related questions raised by the remand Order.

Dated this 11th day of August 2008.

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ORIGINAL + 15 copies of the foregoing
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