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BEFORE THE ARIZONA CORPORATION COMMISSION

2009 JAN 15 P 4:43

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Arizona Corporation Commission

DOCKETED

JAN 15 2009

DOCKETED BY

PAC-WEST TELECOMM, INC.,  
Complainant,

QWEST CORPORATION,  
Respondent.

) DOCKET NOS. T-01051B-05-0495  
) T-03693A-05-0495

) PAC-WEST TELECOMM, INC.  
) POSITION STATEMENT

Pac-West Telecomm, Inc. ("Pac-West") files the following position statement pursuant to the procedural order dated December 19, 2008.

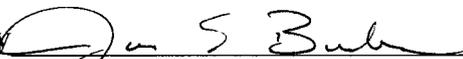
The legal issue presented by this dispute was resolved by the FCC on November 5, 2008, with the issuance of the FCC's order *In the Matter of Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. November 5, 2008) ("*Remand Order*"). The *Remand Order* issued by the FCC has the full force and effect of federal law. *Southwestern Bell Tel. Co. v. Brooks Fiber Commc'ns of Okla., Inc.*, 235 F.3d 493, 499 (10<sup>th</sup> Cir. 2000); *Southwestern Bell Tel. Co. v. Pub. Uti. Comm'n of*

*Tex.*, 208 F.3d 475, 482 (5<sup>th</sup> Cir. 2000); *AT&T Commc 'ns of Cal., Inc. v. Pacific Bell*, No. C 97-0080 SI, 1998 WL 246652, \* 14 (N.D. Cal. May 11, 1998) ("The FCC is empowered to announce its ruling by order rather than codified regulation, and its orders have full force and effect of law."), *aff'd*, 203 F.3d 1183 (9th Cir. 2000).

Pac-West will file a dispositive motion, requesting judgment as a matter of law in this matter based on the *Remand Order*, on or before January 30, 2009. The only issue relevant to the resolution of this dispute is whether the traffic at issue is 251(b)(5) traffic. If this case is not resolved by Pac-West's dispositive motion, Pac-West requests an opportunity to supplement this issues list, and will do so expeditiously.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of January 2009.

OSBORN MALEDON, P.A.

By   
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ORIGINAL + 15 copies of the foregoing  
filed this 15<sup>th</sup> day of January, 2009, with:

Docket Control  
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Phoenix, Arizona 85007

COPIES of the foregoing hand-delivered  
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