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KRISTIN K. MAYES
Chairman
GARY PIERCE
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PAUL NEWMAN
Commissioner
SANDRA D. KENNEDY
Commissioner
BOB STUMP
Commissioner

2009 MAY 12 P 4:34
AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF
PAC-WEST TELECOMM, INC.,
Complainant,
vs.
QWEST CORPORATION,
Respondent.

DOCKET NO. T-01051B-08-0506
DOCKET NO. T-03693A-08-0506

NOTICE OF FILING

VERIFIED STATEMENT OF POSITION
OF QWEST CORPORATION IN
"BASEBALL" ARBITRATION OF
COMPLAINT

Qwest Corporation hereby files the enclosed Verified Statement of Position, including the exhibits attached to it. The Verified Statement of Position and associated exhibits contain information claimed to be confidential by Pac-West Telecomm, Inc. Accordingly, Qwest is filing a "Public Version" with Docket Control, and delivering a sealed "Confidential Version" to the Hearing Division for Administrative Law Judge Rodda.

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Arizona Corporation Commission
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MAY 12 2009

DOCKETED BY [Signature]

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RESPECTFULLY SUBMITTED this 12th day of May, 2009.

QWEST CORPORATION

By: 
Norman G. Curtright
Corporate Counsel
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ORIGINAL and 13 copies hand-delivered for filing this 12th day of May, 2009, to:

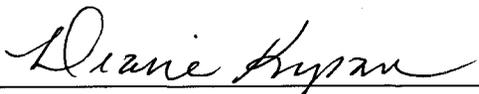
Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

COPY hand-delivered this 12th day of May, 2009, to:

Jane Rodda
Administrative Law Judge
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

COPY mailed this 12th day of May, 2009, to:

Joan S. Burke
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BEFORE THE ARIZONA CORPORATION COMMISSION

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DOCKET NO. T-01051B-08-0506
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**VERIFIED STATEMENT OF POSITION
OF QWEST CORPORATION IN
“BASEBALL” ARBITRATION OF
COMPLAINT

(PUBLIC VERSION)**

Qwest Corporation (“Qwest”) and Pac-West Telecomm, Inc. (“Pac-West”) have agreed to submit this dispute to binding arbitration. Qwest files its Statement of Position herewith. The attached Verification and its attached exhibits constitute part of this Statement of Position.

I. THE STYLE AND SCOPE OF ARBITRATION

The form of arbitration agreed upon is “baseball” arbitration, sometimes known as “pendulum” arbitration, in which the Administrative Law Judge must make her award by approving the offer of one party or the other, without making an alternative resolution. Qwest has agreed to enter this arbitration to resolve the Complaint and to liquidate and settle the parties’

1 respective financial liabilities under the current interconnection agreement (“ICA”), from the
2 effectiveness of that agreement to the effective date of a successor ICA, for the following: (i)
3 Pac-West’s liability for virtual facilities under Section 7.2.2.1.7 of the ICA, and Qwest’s liability
4 for terminating compensation for “FX-Like Traffic” under the ICA. Upon implementation of the
5 arbitral award no further liability will accrue under the current ICA for those categories of
6 charges. The arbitration does not decide or resolve any other claims or disputes, including but
7 not limited to any claims at issue under prior ICAs between Pac-West and Qwest and the matters
8 before the Commission on remand from the court in Docket Nos. T-03693A-05-0495 and T-
9 01051B-05-0495.

10
11 **II. QWEST’S BEST AND FINAL OFFER**

12
13 Qwest’s best and final financial settlement offer is that Pac-West pay \$405,241 to Qwest.
14 This payment settles Qwest’s liability for termination charges and Pac-West’s liability for virtual
15 FX-like facilities under the current interconnection agreement (“ICA”). Qwest respectfully
16 requests an arbitration decision in Qwest’s favor against Pac-West, and award payment of
17 \$405,241 to Qwest, for the reasons stated below.

18
19 **III. BACKGROUND AND OVERVIEW OF THE DISPUTE**

20
21 This dispute arises out of Pac-West’s single-minded pursuit of a business model designed
22 to collect money from Qwest, through VNXX and intercarrier compensation, rather from its own
23 customers. On November 20, 2007, the United States District Court for the District of Arizona
24 determined in its initial order¹ that the interconnection agreement (“ICA”) then in effect between

25 ¹ Order, *Qwest Corporation v. Arizona Corporation Commission et al.*, U.S. Dist. Ariz., No.
26 CV-06-2130-PHX SRB, November 20, 2007. The final order, issued March 6, 2008, modified
the initial order in respects not material to the fundamental determination that VNXX traffic does

1 Qwest and Pac-West did not require Qwest to pay Pac-West for terminating VNXX traffic. Pac-
2 West did not appeal the court's ruling and did not request to negotiate a new agreement. Instead,
3 sometime in late 2007, Pac-West initiated a request to adopt ("opt-in"), under the provisions of
4 Section 252 (i) of the Telecom Act, to the terms of an ICA that resulted from a contentious
5 arbitration between Qwest and another carrier, Level 3, involving VNXX.

6 The Level 3 arbitrated agreement (the "L3 ICA") was finally approved by the
7 Commission on December 5, 2006, in Decision No.69176. That arbitration was notably
8 contentious, because the Commission was attempting to strike a balance between its findings that
9 VNXX is not allowed in Arizona and should be discontinued, and its desire to not disrupt L3's
10 existing VNXX business, pending a generic VNXX proceeding, which had been ordered
11 separately. The Commission determined that FX-like architecture might be fashioned as an
12 interim solution.² Then, over Qwest's objections, the Commission let L3 continue its
13 architecture formerly recognized as VNXX as an interim solution, provided that L3 should
14 compensate Qwest for "virtual facilities" -- meaning private line facilities and collocations that
15 weren't ordered and don't actually exist, but which would be required if L3 were to conduct its
16 business using an actual FX or FX-like architecture.³ Under the resulting L3 ICA, Qwest bills
17 for those virtual facilities and the CLEC bills Qwest for terminating those FX-like calls.

18 The parties have agreed that Pac-West's adoption of the L3 ICA became effective on
19 March 22, 2008. Pac-West immediately started billing Qwest for terminating compensation of
20 Pac-West's VNXX traffic. However, in Pac-West's focus on continuing to receive
21 compensation from Qwest, Pac-West failed to consider that Qwest would be entitled to payment.
22 As demonstrated below, Pac-West ignored Qwest's cautions that Pac-West would incur liability
23 for bills from Qwest for virtual facilities. Pac-West failed to respond to Qwest's requests for

24
25 not fall within the plain language of the parties' ICA, and that the parties never reached
26 agreement requiring Qwest to pay Pac-West for terminating VNXX traffic.

² Decision No. 68817, p. 82

³ Decision No. 69176.

1 information to verify Qwest's assumptions about Pac-West's network, so that Qwest could
2 finalize for Pac-West the liability that Pac-West was assuming. Pac-West ignored cautionary
3 statements from Qwest about how Pac-West's lack of physical presence would create the need
4 for virtual facilities under the L3 ICA. Pac-West failed to do its due diligence on the
5 ramifications of entering into the L3 ICA.

6 Instead, Pac-West single-mindedly focused on billing Qwest. Confronted by Pac-West's
7 unshakable purpose, Qwest accepted liability for Pac-West's billings, but only with the clear
8 caveat that Pac-West was likewise liable for the virtual facilities. Qwest paid Pac-West's bills
9 for terminating compensation. Then, Qwest completed its analysis of the virtual facilities
10 charges that Pac-West owes, and on July 1, 2008 billed those amounts for the same periods for
11 which Pac-West had billed and collected, commencing with the effective date of the ICA. Qwest
12 has billed for those virtual facilities continuously since then, and Pac-West continues to bill
13 Qwest for terminating compensation. Every month, the amount Qwest billed for virtual facilities
14 exceeded the amount Pac-West was entitled to receive for terminating compensation.⁴ The
15 excess results from (i) the fact that Pac-West made a decision to limit the investment in physical
16 facilities it was willing to make in the State of Arizona, thus creating the maximum need for
17 virtual facilities under the ICA, and (ii) the fact that the volume of traffic generated by Pac-
18 West's customers was not sufficient to cover the virtual facility charges for such traffic.

19 In late July and in August, 2008, Pac-West dithered, and started down several different
20 paths, some inconsistent with others. Pac-West asked for and received detail regarding Qwest's
21 billing. Pac-West disputed Qwest's billing, citing as a reason that Pac-West never agreed to the
22 virtual facilities, despite the fact that Pac-West never responded to Qwest's proffers of data,
23 never offered alternative information, and never challenged the accuracy of Qwest's
24 methodology or billings. (Qwest unambiguously denied Pac-West's statement of dispute.) Pac-
25 West stated that it wanted to "opt-out" of the L3 ICA. And, on August 15, 2008, Pac-West gave

26 ⁴ See Exhibit DH-1, also reproduced as Table 1, Section IV.F *infra*.

1 formal notice of its intention to opt-in to yet a different ICA.

2 Throughout, however, Pac-West continued to bill Qwest for terminating compensation
3 for its FX-like traffic. Pac-West opted into the L3 ICA to derive the benefit of the terminating
4 compensation, and it received that benefit. Pac-West billed and Qwest paid for terminating
5 compensation of FX-like traffic, and Qwest billed and Pac-West did not pay, for virtual FX-like
6 facilities. Pac-West breached the essential bargain created by the Commission when it crafted
7 the FX-like solution.

8 In that circumstance, Qwest properly rejected Pac-West's attempt to opt-in to yet another
9 agreement only five months after the L3 ICA opt-in became effective, particularly since Pac-
10 West had not paid its bills.

11 The one-sided compliance with the agreement continued for nearly another month and a
12 half, during which time Pac-West did not provide any payment, payment plan, or offer of
13 resolution. Pac-West reiterated that it never agreed to the virtual network Qwest billed, but Pac-
14 West never provided any data or support for a contending virtual network. Pac-West did not file
15 a complaint in support of its position during that time. In the meantime the excess of the
16 amounts Pac-West owed (and ignored) each month over what Qwest owed (and paid) grew into
17 higher and higher balances due from Pac-West. Ultimately, on September 23, 2008, Qwest sent
18 a formal notice of default and ten day notice of termination of services. Again, Pac-West did not
19 pay in whole or in part, or make any offer of settlement, and instead responded that it's position
20 was that Qwest' charges should have been mutually negotiated and agreed upon. Qwest
21 reiterated that Pac-West's position was untenable based on the foregoing facts. Only when
22 Qwest turned off Pac-West's access to placing orders did Pac-West file the complaint that
23 initiated this action.

24 Qwest voluntarily stayed the disconnection of Pac-West while this matter was submitted
25 for mediation. However, Qwest has not to-date released its claim for compensation of the FX-
26 like facilities, nor has Pac-West released its claim for terminating compensation. As of March

1 31, 2009, the amount Pac-West owes to Qwest, net of Pac-West's charges to Qwest and Qwest's
2 payments to Pac-West before the stipulation, was \$582,288. It increases each month. However,
3 by stipulation filed in this docket on October 16, 2008, the parties agreed to withhold payments
4 pending resolution of this dispute.

5 In the mediation that preceded this filing, both parties made settlement offers, but could
6 not close the gap that remained. Qwest's best and final offer stated above shows Qwest's
7 willingness to compromise away over 30% of its rightful income from Pac-West in the interest
8 of moving the business relationship forward.

9
10 **IV. DISCUSSION**

11
12 **A. The L3 ICA Does Not Require a Ramp-Up Time for Implementation of the**
13 **Commission's "FX-Like" Resolution.**

14 Despite the fact that Pac-West billed Qwest for terminating compensation from the
15 effective date of the agreement forward, Pac-West claims that "Qwest was obligated to exchange
16 traffic on a bill and keep basis until the interim period for designing FX-Like Traffic facilities
17 concluded."⁵ Pac-West cites Section 7.2.2.1.7.9 of the L3 ICA for support of its position that
18 "Pac-West was entitled to order and participate in the design of FX-Like facilities required" and
19 that "[t]he Agreement anticipates that the CLEC and Qwest will work together to gradually and
20 cooperatively convert Pac-West to a FX-Like service."⁶ Pac-West then concludes that under
21 Section 7.2.2.1.11, bill and keep applies since Pac-West never ordered facilities.⁷ Pac-West is
22 mistaken about the meaning of these sections of the ICA when virtual, as opposed to real,
23 facilities are at issue. "Virtual" means it is a fiction. The sole purpose of that fiction is to
24

25 ⁵ Complaint, ¶11.

26 ⁶ Complaint, ¶10.

⁷ *Id.*, ¶11.

1 provide financial compensation to Qwest.

2 A copy of Section 7.2.2.1.7 is attached as Exhibit DH-2. With the notable exception of
3 subsection 7.2.2.1.6, that Section was largely conceptualized and drafted by Qwest in order to
4 fulfill the requirements of Commission Order No. 68817. In that Decision, the Commission
5 ordered L3 and Qwest to agree on an interim replacement for VNXX, which the Commission
6 referred to as "FX-like" traffic, and that such traffic shall be routed over a direct end office trunk
7 between L3's network and the Qwest end office serving the local calling area of the origination
8 Qwest end user, and that the direct end office trunk shall be established and paid for by L3.⁸
9 There was no obvious indication in Decision No. 68817 that the trunking that would form an FX-
10 like interim solution, which was to replace VNXX, was intended to be fictitious. In mediation
11 the language L3 and Qwest had before them originally included what became Sections
12 7.2.2.1.7.3 and 7.2.2.1.7.9, but did not include the virtual facilities option embodied in 7.2.2.1.6.
13 Sections 7.2.2.1.7.3 and 7.2.2.1.7.9 state:

14 7.2.2.1.7.3 For traffic exchanged between CLEC and Qwest end users, the FX-
15 Like Traffic shall be exchanged at the Point of Interconnection (POI) located in
16 the local calling area of such Qwest end users. FX-Like Traffic shall be routed
17 over a direct end office trunk between CLEC's POI in the Local Calling Area and
18 the Qwest end office serving the Local Calling Area of the Qwest end user. The
19 direct end office trunk shall be established and be paid for by CLEC under the
20 terms of this Agreement. CLEC shall be responsible for ordering direct-final end
21 office trunking and transport from the Qwest end office in the Local Calling Area
of the Qwest end user to CLEC's POI locating [*sic*] in the Local Calling Area of
the Qwest end user.

22 7.2.2.1.7.9 CLEC will convert to the FX-like service as a project and be
23 responsible to provide network diagrams and order submission as necessary to
24 provision FX-like trunking and transport.

25 However, L3 would not accept that language, primarily arguing that the actual, physical
26 rearrangements or conversions that would be required created an unacceptable risk of customer
outages, even if done on a project basis.⁹ When Qwest and L3 could not agree, the Staff

⁸ See, Decision No. 69176 ¶4.

⁹ In telecommunications, the phrase "convert as a project" is used in the context of circuit
cutovers, that require substantial coordination between the carriers on such matters as precise

1 proposed an interpretation of the Commission's Decision No. 68817, to the effect that L3 should
2 be allowed to continue using VNXX , but it would be required to pay for facilities as if it had
3 converted. To that end, the Staff proposed new language:

4 7.2.2.1.7.6 For purpose of implementing the interim arrangement, CLEC shall
5 establish a virtual POI in each Qwest Local Calling Area for the exchange of FX-
6 Like Traffic, where CLEC does not currently have physical collocation facilities.
7 CLEC agrees to compensate Qwest via monthly payments equivalent to the MRC
8 charges for Private Line with EICT and Mux, ICDF frames and direct trunk
transport (DTT) from the virtual POI to each end office in the Local Calling Area
of the virtual POI as if facilities were provisioned to reach those Local Calling
Areas where CLEC does not currently have physical collocation facilities.

9 Staff did not delete the former language, but instead merely added Section 7.2.2.1.7.6. Qwest
10 did not agree to the new "virtual" language.¹⁰

11 The Commission approved the notion that L3 did not need to alter its architecture, but
12 should compensate Qwest for the facilities that would have been ordered if L3 had altered its
13 architecture. The Commission ordered the "virtual" facilities language proposed by the Staff,
14 along with the uncontested provisions of that section.

15 Level 3 implemented its ICA using the virtual language. Likewise, Pac-West has gone
16 the virtual route. Since there is not any real, physical facility necessary, there cannot be any
17 "order," and nothing to "convert as a project." Thus, the sections Pac-West relies on, Section
18 7.2.2.1.7.9 and 7.2.2.1.7.11 are inoperative for Pac-West's virtual facilities. Those sections
19 operate when there are actual facilities ordered, under Section 7.2.2.1.7.3.

20 The sole purpose of the virtual facilities is financial compensation, so billing is all there is
21 to implement. This is not a new interpretation. In the case of virtual facilities for L3 under the
22 L3 ICA, the parties billed each other and paid their respective charges back to the effective date
23 of the agreement. The same process must pertain to Pac-West.

24
25 identification of the circuits, the date, and even the time the cutovers are implemented. Typically
26 the purpose of the project is to assure minimal disruption of service to end users. Of course,
there is not a cutover necessary for virtual facilities.

¹⁰ Decision No. 69176, ¶15.

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B. Pac-West's Billing of Terminating Compensation Minutes of Use From the Effective Date Forward Belies Its Own Claims That Bill and Keep Should Apply

“Bill and keep” is a permissible arrangement carriers may enter into, in which each bears its costs for the traffic exchanged and does not bill the other. In its complaint Pac-West claims bill and keep has to apply during the ramp-up period during which Pac-West and Qwest were supposed to work out the virtual facilities. Pac-West relies in part on Section 7.2.2.1.7.11, which states, “Until the date the FX-Like Traffic facilities are in place, Qwest will exchange VNXX traffic on a bill and keep basis. The interim period begins when the FX-Like Traffic architecture has been provisioned[.]” For the reasons discussed above, no provisioning is required for virtual facilities, or it may be said that they are already provisioned. However, even assuming for purposes of discussion that there was some period of time in which something was being done with respect to ordering and provisioning the make-believe facilities, Pac-West’s billing for terminating compensation negates its own argument.

Pac-West began charging Qwest for terminating minutes of use compensation from the first day of the effectiveness of the agreement, and has billed Qwest each and every month after that. Pac-West has billed Qwest at the same time it was proclaiming that bill and keep should apply. Pac-West’s billing of terminating compensation proves that the Agreement does not provide for a ramp-up period during which the parties do not bill each other. Alternatively, assuming for argument’s sake that there is the possibility of such a ramp-up, Pac-West’s billing proves that the virtual facilities were “provisioned.”

In any event, Pac-West’s billing of terminating compensation and Qwest’s payment of those bills, create liability for Pac-West to pay for the virtual facilities, under the doctrine of equitable estoppel. Estoppel operates when one party (Pac-West in this instance) adopts a

1 position inconsistent with its previous acts, and the other party (Qwest in this case) reasonably
2 relies on the prior conduct and is consequently injured by that reliance. *Flying Diamond*
3 *Airpark, LLC v. Meienberg*, 215 Ariz. 44, 50, 156 P.3d 1149, 1155 (App. 2007). Here, Pac-West
4 began by billing Qwest for terminating compensation, unmistakably signifying under the ICA
5 that Qwest billing for virtual facilities was also to begin. Qwest paid \$***Confidential*** cash
6 to Pac-West¹¹ and instituted the billing, at no small expense.¹² Qwest's actions were reasonable
7 in the circumstances. Qwest incurred considerable expenditures of time and money, in reliance
8 on the bargain Pac-West's actions signified. This is exactly the kind of situation that the
9 estoppel remedy addresses. Pac-West should be estopped from denying its previous actions and
10 depriving Qwest of the benefit that its justifiable reliance entitles it to receive.

11
12 **C. Even Under Its Interpretation of the Virtual FX-Like Provisioning, Pac-West**
13 **Breached the Agreement By Failing to Cooperate or Respond to Qwest**

14
15 Qwest has shown that the provisioning portions of Section 7.2.2.1.7 do not apply for
16 "virtual" facilities. The alleged duty of the parties to "work together" and "cooperate" and for
17 the CLEC to "place orders" has no meaning in a virtual world. However, even if that were not
18 the case, the evidence shows that Pac-West utterly failed to meet any reasonable standard by
19 which cooperation should be measured. Its failure in that regard amounted to a breach of the
20 very obligations it claims were a prerequisite to the parties billing each other. Pac-West should
21 not be rewarded for its own failings.

22 The evidence shows that Pac-West sat on its hands. Although Pac-West chose to opt-in
23

24 ¹¹ See Exhibit DH-1.

25 ¹² There are no automated processes that support the quantification of virtual facilities required
26 under the L3 ICA, or the calculation of charges. That work must be done in person by Qwest
managers. Qwest estimates that over 70 hours of managers' time was expended just to get the
first virtual facilities billing rendered to Pac-West.

1 to the L3 ICA, and bears the burden of understanding the obligations in the agreement, Qwest
2 took pains to inform Pac-West about the need to identify facilities for billing. On February 6,
3 2008, prior to Pac-West signing the opt-in agreement, Qwest's Steve Dea wrote the following in
4 an email to Ethan Sprague of Pac-West:

5 Please be aware that per the ACC Level 3 arbitration order, the parties will have
6 to meet to agree on a FS [*sic*] like facility billing amount for LIS trunks based
7 upon the VNXX Traffic that is exchanged between the parties to reflect what Pac
West would pay if they established trunking without utilizing VNXX.

8 Notwithstanding that "heads up" from Qwest, Pac-West did not order any facilities. Nothing in
9 that regard happened after the agreement was signed, until Qwest convened a teleconference
10 with Pac-West on April 14, 2008.

11 On April 14, 2008, in a conference set up by Qwest, the Qwest team of Barb Newman,
12 Phil Linse, Scott Jamieson, Sandy Stulen, and Linda Downey met telephonically with Pac-West
13 representatives that included Sally James, Paul Deguerre, Bob Munoz and Dave Folstrom. This
14 meeting was an overview of what is required by the Level 3 ICA that Pac West opted into.
15 During that call, Pac-West specifically stated that it does not have modem banks or a switch in
16 Arizona; its only switch is in California. During this meeting Sandy Stulen explained how the
17 L3 ICA was interpreted and implemented for L3 to continue VNXX, without purchasing
18 facilities in each local calling area. Virtual collocation would be required in each "non-POI"
19 local calling area and equivalent charges for a private line would be assessed. DTT would be
20 required to connect the serving wire centers to the end offices. The information exchanged on
21 April 14 enabled Qwest to do preliminary work for the identification of locations where ICDF
22 virtual collocation would be needed, and associated virtual private lines. Pac-West stated that it
23 wished to see Qwest's analysis, which was subsequently provided in another meeting on April
24 25. During the April 25 meeting, Pac West was provided a list of wire centers that, per the terms
25 of the ICA, would require virtual collocations. Pac West was also provided a worksheet that
26 showed all the Arizona NPA NXXs assigned to Pac West and the Qwest wire centers where Pac

1 West needed private lines to support the virtual collocations. Qwest explained that the NPA-
2 NXX spreadsheet data determined where the Virtual Collocations would be required. Pac-West
3 took this information from the meeting to review and validate the data against their own
4 information. Then, nothing happened.

5 On May 5, Barb Newman of Qwest wrote in an email to Bob Munoz of Pac-West:

6 Subject: POI Info

7 Have you and your team had a chance to look over the information provided on
8 our last call? Our folks have a lot of work to do when they get the go ahead, so if
9 you could give me a status, we would really appreciate it.

10 On May 7, Mr. Hult of Qwest wrote in an email to Mr. Sprague of Pac-West that Qwest
11 would pay Pac-West's reciprocal compensation bill and that Qwest would bill Pac-West under
12 the agreement: "We will calculate the appropriate compensation to PacWest based on those
13 terms and will be issuing payment to PacWest for that traffic. Likewise, we will be issuing a bill
14 to PacWest for the Qwest facilities in the very near future and expect PacWest to remit payment
15 on that bill as well."

16 On May 7, Ms. Newman again wrote to Mr. Munoz by email:

17 Do you have any information on the spreadsheet from Qwest yet? Has your
18 replacement been named? We are anxious to get started as it will be quite a
19 process from our side.

20 Mr. Munoz responded on May 9 that Pac-West was going to have an internal call and that "Ethan
21 or Sally will get back with you afterwards."

22 However, no one from Pac-West got back with Qwest. Accordingly, Qwest went about
23 calculating the bill for virtual facilities based on the last information Qwest had furnished to Pac-
24 West. Qwest followed the exact same compensation plan the Commission required in the L3
25 ICA, applied to Pac-West's specific architecture. The first bill was rendered on July 1, 2008.
26 The worksheets containing the calculations of the bill were transmitted to Pac-West on July 8,
2008. Pac-West asked for the same information again on July 24, evidencing that Pac-West had

1 let two weeks go by without analyzing the data.

2 Qwest's bill was subsequently disputed by Pac-West, incredibly on the grounds that
3 "there was supposed to be a coordinated effort on determining where the POIs should be and as a
4 result of the POI discussion, we'd agree upon the costs." Pac-West further stated that the
5 discussions were never completed and mutually agreed upon by the both companies. Pac-West's
6 grounds for dispute simply don't hold up, as Qwest explained at the time.¹³ The series of
7 meetings and emails outlined above demonstrate that Qwest told Pac-West the process, showed
8 Pac-West the wire center data that would determine the quantities of virtual collocations and
9 private lines, and asked Pac-West to verify that information so that the rates could be applied.
10 The evidence shows that Pac-West never responded.

11 Nor is there any indication that Pac-West proposed any alternative methods of
12 proceeding, or questioned Qwest's methodology, or disagreed with the virtual collocations that
13 were indicated and would need to be served by private lines. Pac-West cannot claim that it was
14 deprived of the opportunity for "working together" or for "cooperation." Pac-West did neither.

15 Pac-West's nonresponsiveness amounted to a breach of its contractual obligation.
16 Indeed, in its Complaint Pac-West admits that it did not comply with the ICA. Pac-West states,
17 "Pac-West did not submit a project request, network diagram, or an order for the FX-Like
18 facilities as required under the Agreement."¹⁴

19 Pac-West should not be rewarded for its own inaction.

20
21 **D. Pac-West's Purported Opt-In of the XO ICA Never Became Effective.**

22
23 On August 15, 2008, six weeks after Qwest's initial billing for virtual facilities, Ethan
24 Sprague of Pac-West wrote a letter to Larry Christensen of Qwest, stating that Pac-West was

25 ¹³ See, Exhibit DH-3, email from Linda Downey of Qwest to Sally James of Pac-West, August
26 19, 2008.

¹⁴ Complaint, ¶10. (Emphasis added).

1 adopting another ICA, the XO agreement, in its entirety.¹⁵ Sprague declared that “Pac-West is
2 adopting the Terms without any substantive revisions and will not negotiate any changes in the
3 Terms.” Further, Sprague declared, “[T]hat all references to the “effective Date . . . and like
4 provisions in the Terms shall, for purposes of this adoption, be deemed to refer to the Adoption
5 effective Date.” Qwest responded, “[S]ince Pac-West is already in default of its payment
6 obligations, Qwest is under no obligation to consider Pac-West’s request under the Agreement
7 for alternate agreements or amendments to the Agreement.”¹⁶

8 **1. Pac-West’s Billings Demonstrate That It Continued to Operate Under the L3**
9 **ICA**

10 Qwest anticipates that Pac-West will argue that Qwest was obligated to process the opt-
11 in, and that it should be effective as of the date of the opt-in request. Because the XO ICA does
12 not provide for virtual facilities, Pac-West will claim that Qwest’s bills under the L3 ICA for
13 virtual facilities after August 15 were a nullity.

14 Pac-West’s arguments are belied by its own actions. Pac-West continued to bill Qwest
15 for minutes of terminating compensation under the L3 ICA, after August 15. Pac-West’s
16 rendering of those bills is completely inconsistent with its subsequent theory that it had exited
17 the L3 ICA and was immediately conducting business under the new XO ICA, since no
18 compensation for VNXX would be owed if the new XO ICA were effective. In fact, Pac-West
19 has continued to bill under the L3 ICA every month since then. Pac-West would have the
20 arbitrator believe that it billed, but really didn’t think it was entitled to do so—a ridiculous
21 proposition.

22 Qwest notes that not only did Pac-West bill for minutes—Pac-West accepted payment
23 from Qwest for one month after Pac-West’s purported opt-in to another agreement. Pac-West’s
24 claim that it had exited the L3 ICA rings hollow when one considers that Pac-West continued to

25 _____
26 ¹⁵ Exhibit DH-4

¹⁶ Exhibit DH-5

1 take revenue from that ICA.

2
3
4 **2. Agreements by Adoption Are Subject to the Reasonable Concurrence of the**
5 **ILEC. and Are Not Immediately Effective; Qwest Rightfully Denied Pac-West's**
6 **Opt-In Because Pac-West Was In Default.**

7 Qwest was within its rights to refuse recognition of Pac-West's purported opt-in.

8 When a CLEC is in default, as was Pac-West at the time, permitting it to opt-in to another
9 agreement without curing the default is bad public policy as well as poor business practice. To
10 permit serial opt-ins without a corresponding requirement that the opting entity be current on
11 payments would open the door to serial defaults, without normal business remedies that cut
12 losses. An ILEC should not be compelled to continue to provide service to defaulted customers
13 any more than any other business may be compelled to sell their goods and services to customers
14 who have not paid their bills.

15 Pac-West did nothing to address the past due problem. Pac-West notified Qwest that it
16 disputed the bill, to be sure, but after Qwest denied the dispute Pac-West had options it did not
17 pursue. Pac-West could have paid the bill under protest, preserving the dispute, but clearing the
18 way for the new opt-in. Or, Pac-West could have invoked arbitration under the dispute
19 resolution provisions of the ICA. Pac-West could have filed a complaint with the Commission,
20 and ultimately did, but not until October, long after Pac-West contends that it wanted to exit the
21 L3 ICA and enter the XO ICA. In short, Pac-West did not pay, and did not do anything to clear
22 the path for the opt-in it wanted. Under these circumstances Qwest's only rational business
23 choice was to deny the opt-in.¹⁷

24 ¹⁷ Pac-West did not ask for the opt-in again until April 9, 2009. Qwest responded, "Qwest is
25 willing to use the XO agreement as the form for the new agreement to be negotiated between
26 Qwest and Pac-West at this time because it appears that the parties will be able to agree upon the
process for submitting their dispute of the current ICA for binding resolution. That was not the
case when Pac-West raised the question last summer." Exhibit DH-6.

1 **E. Even If Qwest Had Accepted the Opt-In, It Could Not Be Effective August 15**

2
3 Even if Qwest had accepted Pac-West's notice of adoption of the XO ICA, the resulting
4 agreement would not have become effective as of the August 15 adoption notice date.
5 Agreements adopting other interconnection agreements terms are interconnection agreements as
6 well, and must be submitted to the state commission for approval under Section 252(e) of the
7 Act. Under Section 252(e)(4), an agreement not approved by the state commission shall be
8 deemed approved if not rejected within thirty (30) days in the case of an arbitrated agreement
9 submitted by the parties, or within ninety (90) days in the case of a negotiated agreement
10 submitted by the parties. For the reasons stated below, Pac-West's request requires negotiation,
11 and therefore it would have been on the ninety (90) day schedule for approval and effectiveness.

12 Even if the XO ICA opt in did not require negotiation, it could not be effective on the
13 date Pac-West requested it, as demonstrated by the course of events that transpired when Pac-
14 West adopted the L3 ICA in 2008. At that time, Pac-West provided Qwest a notice substantially
15 similar, reciting that "[T]he 'Effective Date,' the date of effectiveness thereof, and like
16 provisions in the Terms shall, for purposes of this adoption, be deemed to refer to the Adoption
17 Effective Date."¹⁸ However, Qwest's practice, and course of dealing between these companies,
18 is that the actual document embodying the agreement is a subsequently executed letter of
19 agreement. The letter of agreement for Pac-West's adoption of the L3 ICA provides:

20 The Parties shall request the Commission to expedite its review and approval of
21 this Letter Agreement. This Letter Agreement shall become effective upon such
22 approval.¹⁹

23 The Commission issued its administrative closure of Qwest's request for approval of Pac-West's
24 opt-in of the L3 ICA thirty (30) days after the letter agreement was filed. The adopted agreement

25
26 ¹⁸ Exhibit DH-7.

¹⁹ Exhibit DH-8.

1 was not effective before then. There is no reason to believe that an adoption of the XO ICA
2 would follow a different or swifter course. Even in the highly unlikely event that a letter of
3 agreement for adoption was filed the same day as Pac-West's notice, it would not have been
4 deemed approved until September 15.

5 But, as noted above, the XO ICA requires significant negotiation. As Qwest has stated to
6 Pac-West:

7 Sections 7.3.10.5.1 and 7.3.11.1 state that the facilities and relative use
8 methodologies and numbers were specific to the characteristics of XO's network
9 and traffic characteristics with Qwest. As a result a direct opt-in would not apply,
as PacWest is not similarly situated to XO in terms of its traffic types and
interconnection architecture.²⁰

10 The text of the XO ICA clearly states that Sections 7.3.10.5.1 and 7.3.11.1 do not apply to other
11 carriers.²¹ Carrier-specific negotiations are required, necessarily placing the matter into the
12 category of an "agreement adopted by negotiation" under Section 252(e) of the Act, for which
13 the "deemed approved" time period is ninety days. The practice of the Arizona Commission has
14 uniformly been to let interconnection agreements (not expressly rejected) become effective by
15 operation of law, meaning that when Qwest files the Pac-West adoption of the XO ICA, it will
16 become effective ninety days later. There is no reason to think that some different or swifter
17 course of action would occur in this matter.

18 **F. Qwest's Best and Final Offer of Financial Settlement Is a Compromise That**
19 **Equates to An Effective Date for Opt-In of the XO ICA One Month After Pac-**
West's Opt-In Notice

20 As shown above, Pac-West entered into the L3 ICA in order to continue its revenue
21 stream from Qwest for terminating compensation for VNXX traffic. In furtherance of that
22 objective, Pac-West billed Qwest for terminating compensation, and accepted the payment. Pac-
23 West notified Qwest of intent to adopt another agreement but as shown above, Qwest was not
24 obligated to allow Pac-West to adopt another agreement (the XO ICA) when Pac-West had not
25

26 ²⁰ Exhibit DH-6.

²¹ Those sections of the XO ICA are reprinted at Exhibit DH-9.

1 cured its nonpayment under the existing agreement. Any Pac-West claim that the XO ICA
2 became immediately effective upon notice is completely inconsistent with Pac-West's continued
3 billings for FX-like (VNXX) traffic under the agreement it sought to exit. However, Qwest is
4 willing to compromise. Accordingly, Qwest's best and final offer to resolve this dispute equates
5 to the amounts that are owed to Qwest under a scenario in which Pac-West's adoption of a bill
6 and keep agreement became effective one month after Pac-West sent its notice—September 15,
7 2008. Qwest's best and final offer is \$405,241.

8 Table 1 shows the monthly billing totals going each way for each month since the
9 effective date of the current Pac-West agreement. Also shown are the amounts Qwest paid and
10 has withheld. Pac-West has not made any payments to Qwest. If the cross billings were netted
11 out, and with Qwest's payments credited, Pac-West owes Qwest \$***Confidential***, as of the
12 end of March, 2009. Qwest's best and final offer is less than 70% of what Pac-West now owes.
13 Qwest's proposed resolution also cuts off further accumulation of liability that Pac-West has
14 under the current ICA. Further, Qwest's best and final offer does not assess interest that is due
15 under the ICA for late payments, which amounts to an additional \$***Confidential*** that
16 Qwest's position compromises away.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

TABLE 1²²

As Billed Detail

Billed Date	MOU Date	Qwest Owes PacWest for Reciprocal Compensation		PacWest Owes Qwest for Facilities FX Facility Billed	Net Difference Due Qwest	Accumulated Difference Due Qwest
		ISP and Voice \$ Paid	ISP and Voice \$ Withheld			
Split Month	3/23/2008					
5/1/2008	4/30/2008					
6/1/2008	5/31/2008					
7/1/2008	6/30/2008					
8/1/2008	7/31/2008					
9/1/2008	8/31/2008			***CONFIDENTIAL***		
10/1/2008	9/30/2008					
11/1/2008	10/31/2008					
12/1/2008	11/30/2008					
1/1/2009	12/31/2008					
2/2/2009	1/31/2009					
3/2/2009	2/28/2009					
4/3/2009	3/31/2009					

ICA Opt-in Analysis

	Opt-in Date			
	15-Aug 0 Days	15-Sep 30 Days	15-Oct 60 Days	15-Nov 90 Days
Rev Billed EOM addl 1/2 Month Rev Due Qwest				
Witheld Exp EOM addl 1/2 month Witheld Exp Due Pwest		***CONFIDENTIAL***		
Net Amount Due Qwest				

Table 1 also shows calculations of the amounts that would be owed according to four

²² Table 1 is reproduced from Exhibit DH-1.

1 filing this 12th day of May, 2009, to:

2 Docket Control
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington
Phoenix, Arizona 85007

5 **COPY** hand-delivered
6 this 12th day of May, 2009, to:

7 Jane Rodda
8 Administrative Law Judge
9 Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

10 **COPY** mailed
11 this 12th day of May, 2009, to:

12 Joan S. Burke
13 OSBORN MALEDON, P.A.
14 2929 North Central Ave.
21st Floor
Phoenix, Arizona 85012-2793

15
16
17 

1 are attached as exhibits.

2 6. Exhibit DH-1 attached to this Verification is a true summary of the billings and
3 payments between Qwest and Pac-West with respect to the contested charges.

4 7. Exhibits DH-2 through DH-9 are true and correct copies of documents existing in
5 Qwest's business records.

6

7

8



Dan E. Hult

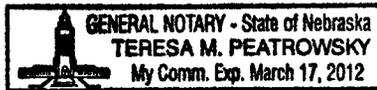
9

SUBSCRIBED AND SWORN to before me this 11 day of May by Dan E. Hult..

10

WITNESS my hand and official seal.

11


Notary Public

13

14 [SEAL]

Address:

15

16

My Commission Expires: March 17, 2012

17

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EXHIBIT DH-1

REDACTED

Pac-West / Qwest Billing Dispute
A.C.C. Docket No. T-01051B-08-0506

As Billed Detail

Billed Date	MOU Date	Qwest Owes PacWest for Reciprocal Compensation	ISP and Voice \$ Paid	ISP and Voice \$ Withheld	Pacwest Owes Qwest for Facilities	FX Facility Billed	Net Difference Due Qwest	Accumulated Difference Due Qwest
-------------	----------	--	-----------------------	---------------------------	-----------------------------------	--------------------	--------------------------	----------------------------------

Split Month	3/23/2008							
5/1/2008	4/30/2008							
6/1/2008	5/31/2008							
7/1/2008	6/30/2008							
8/1/2008	7/31/2008							
9/1/2008	8/31/2008							
10/1/2008	9/30/2008							
11/1/2008	10/31/2008							
12/1/2008	11/30/2008							
1/1/2009	12/31/2008							
2/2/2009	1/31/2009							
3/2/2009	2/28/2009							
4/3/2009	3/31/2009							

CONFIDENTIAL

ICA Opt-in Analysis

	Opt-in Date		
15-Aug	0 Days	15-Sept	30 Days
		15-Oct	60 Days
		15-Nov	90 Days

Rev Billed EOM
 addl 1/2 Month
 Rev Due Qwest

Withheld Exp EOM
 addl 1/2 month
 Withheld Exp Due Pwest

Net Amount Due Qwest

CONFIDENTIAL

EXHIBIT DH-2

7.2.2.1.7 Exchange of FX-Like Traffic

7.2.2.1.7.1 Qwest and CLEC have been ordered by the Commission to implement an interim replacement for Virtual NXX (VNXX) which shall be referred to as "FX-Like Traffic".

7.2.2.1.7.2 Qwest and CLEC have been ordered by the Commission to establish a methodology for the exchange of FX-Like Traffic as an interim replacement for VNXX. The interim use of FX-Like Traffic, as described in this Section, shall be allowed to continue until such time as the Commission issues a decision resolving the issues concerning the use of VNXX.

7.2.2.1.7.3 For traffic exchanged between CLEC and Qwest end users, the FX-Like Traffic shall be exchanged at the Point of Interconnection (POI) located in the local calling area of such Qwest end users. FX-Like Traffic shall be routed over a direct end office trunk between CLEC's POI in the Local Calling Area and the Qwest end office serving the Local Calling Area of the Qwest end user. The direct end office trunk shall be established and paid for by CLEC under the terms of this Agreement. CLEC shall be responsible for ordering direct-final end office trunking and transport from the Qwest end office in the Local Calling Area of the Qwest end user to CLEC's POI locating in the Local Calling Area of the Qwest end user.

7.2.2.1.7.4 Intercarrier compensation for FX-Like Traffic exchanged between CLEC and Qwest during the interim period shall be \$0.0007 per MOU consistent with the rate for ISP-bound traffic established by the FCC.

7.2.2.1.7.5 FX-Like Traffic, for a Qwest end user originated call, is not tandem switched.

7.2.2.1.7.6 For purposes of implementing the interim arrangement, CLEC shall establish a virtual POI in each Qwest Local Calling Area for the exchange of FX-Like Traffic where CLEC does not currently have physical collocation facilities. CLEC agrees to compensate Qwest via monthly payments equivalent to the MRC charges for Private Line with EICT and Mux, ICDF frames and direct trunk transport (DTT) from the virtual POI to each end office in the Local Calling Area of the virtual POI as if facilities were provisioned to reach those Local Calling Areas where CLEC does not currently have physical collocation facilities. CLEC also agrees to make a one time payment to Qwest to reimburse Qwest as if Qwest had constructed ICDF collocation in each Local Calling Area where CLEC does not currently have physical collocation at this time.

7.2.2.1.7.7 If CLEC requires FX-Like Traffic arrangements with other LECs or wireless carriers, then CLEC is responsible for ordering FX-Like transit facilities from the POI in the applicable Local Calling Area and will have financial responsibility for direct trunking to the tandems for the exchange of transit traffic.

7.2.2.1.7.8 CLEC shall designate all Local Routing Numbers so that FX-Like Traffic associated with number portability routes directly from the Qwest end office to CLEC.

7.2.2.1.7.9 CLEC will convert to the FX-Like service as a project and be responsible to provide network diagrams and order submission as necessary to provision all FX-Like trunking and transport.

7.2.2.1.7.10 Qwest has negotiated this arrangement under protest to comply with the Commission's Order which requires the Parties to implement an interim "FX-Like" arrangement pending the resolution of the Generic VNXX Docket. By implementing the foregoing arrangement related to FX-Like Traffic, neither Party waives its right to advocate in the Commission's Generic VNXX Proceeding or any other proceeding (including an appeal), positions inconsistent with the interim arrangements herein.

7.2.2.1.7.11 CLEC shall cease using VNXX as of the date FX-Like Traffic facilities are in place or August 28, 2006 which ever is later. Until the date the FX-Like Traffic facilities are in place, Qwest will exchange VNXX traffic on a bill and keep basis. The interim period begins when the FX-Like Traffic architecture has been provisioned and continues until the Commission issues a Decision resolving the issues concerning the use of VNXX.

7.2.2.2 IntraLATA LEC Toll Traffic.

7.2.2.2.1 IntraLATA LEC Toll traffic shall be delivered to Qwest at the Access Tandem Switch or via separate trunks to Qwest's End Office Switch(es), as designated by CLEC.

7.2.2.3 Transit Traffic

7.2.2.3.1 Qwest will accept traffic originated by CLEC for termination to another CLEC, existing LEC, or wireless Carrier that is connected to Qwest's local and/or Access Tandem Switch. Qwest will also terminate traffic from these other Telecommunications Carriers to CLEC. For purposes of the Agreement, transit traffic does not include traffic carried by Interexchange Carriers. That traffic is defined as Jointly Provided Switched Access.

7.2.2.3.2 To the extent Technically Feasible, the Parties involved in transporting transit traffic will deliver calls to each involved network with CCS/SS7 protocol and the appropriate ISUP/TCAP messages to facilitate full Interoperability and Billing functions.

7.2.2.3.3 The originating company is responsible for payment of appropriate rates to the transit company and to the terminating company. In the case of IntraLATA LEC Toll traffic where Qwest is the designated IntraLATA Toll provider for existing LECs, Qwest will be responsible for payment of appropriate usage rates.

EXHIBIT DH-3

From: Downey, Linda [mailto:Linda.Downey@qwest.com]
Sent: Tuesday, August 19, 2008 1:13 PM
To: Sally James
Cc: Stulen, Sandra; Nodland, Jeff; Nielsen, Joshua; Lund, Alan; Lund, Callis; Hult, Dan E; Ethan Sprague; Newman, Barb
Subject: RE: Dispute Resolution for Pac-West Telecomm Inc. (2821) AZ ID63614 7/1/08

Sally,

You state in your message to Callis that Pac West has made every effort to work with Qwest to identify the charges applicable under the ICA and that Qwest has not asked for any additional information. Qwest is unclear as to what information you think Pac West could or should provide to Qwest in order for Qwest to issue a bill per the terms of the ICA.

On April 14, 2008 the Qwest team of Barb Newman, Phil Linse, Scott Jamieson, Sandy Stulen and Linda Downey (me) met with Pac West representatives that included you, (Sally James), Paul Deguerre, Bob Munoz, and Dave Folstrom. This meeting was a general overview of what the language required in the Level 3 ICA that Pac West opted into in Arizona. During this meeting Sandy Stulen explained that private line was required in all areas where Pac West did not have a POI in the local calling area. In addition, a virtual collocation would also be required in each "non-POI" local calling area and DTT would be required to connect the serving wire centers to the end offices. During this meeting, you specifically asked if the private line mileage was to the collocation which Sandy answered in the affirmative.

Representatives from both teams again met on April 25, 2008. During this meeting Pac West was provided with a list of wire centers that, per the terms of the ICA, would require Virtual Collocations. Pac West was also provided a worksheet that showed all the Arizona NPA NXX assigned to Pac West and the Qwest wire centers where Pac West needed private lines to support the Virtual Collocations. Qwest explained that it was the NPA-NXX spreadsheet data that determined where the Virtual Collocations would be required. Pac West took this information from the meeting to review and validate the data against their own information.

Barb Newman followed up with Bob Munoz on May 7, 2008 asking if Pac West had an opportunity to review that data supplied at the April 25th meeting. Bob responded on May 9th that Pac West "had an internal call yesterday and there will be another on sometime Monday. Ethan or Sally will get back to you afterwards."

Neither you nor Ethan ever did get back to Barb or anyone else at Qwest. On July 8, 2008 Barb forwarded to you the spreadsheet that calculated the private line (including the cost of virtual collocations) billing to Pac West per the terms of the ICA. Again, you did not contact Qwest to ask questions or to dispute the charges.

Your dispute has been denied in full and continues to be denied as Pac West has never indicated what billing components are being disputed and why Pac West believes the billed

components are not in compliance with the ICA. Qwest respectfully requests that Pac West remit payment for these now past due amounts.

Linda Downey
402-422-4163

EXHIBIT DH-4

Pac-West

August 15, 2008

Qwest Corporation
Director Interconnection Agreements
1801 California Street, Room 2410
Denver, CO 80202
Via EMAIL (IntAgree@qwest.com) and OVERNIGHT MAIL

Re: Pac-West Telecomm, Inc. Notice of Adoption of Interconnection Agreement - ARIZONA

Please be advised that pursuant to Section 252(i) of the Telecommunications Act of 1996, and by its signature below, Pac-West Telecomm, Inc. ("CLEC" or "Pac-West"), adopts in its entirety, without revisions and as they are in effect on the date of this letter, the terms of the Interconnection Agreement between Qwest Corporation ("Qwest") and XO Communications Services, Inc. in the State of Arizona that was approved by the Arizona Corporation Commission in Docket Number T-01051B-08-0272, T-04302A-08-0272 on May 28, 2008 (the "Underlying Agreement"). Pac-West is adopting the Terms without any substantive revisions and will not negotiate any changes in the Terms. Therefore, Qwest should not consider this to be a request to initiate negotiations pursuant to Section 252 of the Act.

In addition to the federal adoption authority cited above, the Interconnection Agreement currently in effect between Qwest and Pac-West authorizes Pac-West to opt into a new interconnection agreement. See Section 1.8 and 5.2.2.1 of the Arbitrated Agreement between Qwest Corporation and Level 3 Communication, LLC (adopted by Pac-West and approved by the Commission in Docket No. T-01051B-08-0107, T-0369A-08-0107, March 22, 2008 ("Current ICA")).

The Current ICA provides that "CLECs with a current Interconnection Agreement may opt into, through Section 252(i) of the Act, any provision of the SGAT or an existing Agreement by executing an appropriate amendment to its current Interconnection Agreement." See Section 1.8. Also, "[p]rior to the conclusion of the term specified above, CLEC may obtain Interconnection services under the terms and conditions of a then-existing SGAT or agreement to become effective at the conclusion of the term or prior to the conclusion of the term if CLEC so chooses." See Section 5.2.2.1.

"Pac-West Telecomm, Inc." shall be substituted in place of "XO Communications Services, Inc." throughout the Underlying Agreement wherever appropriate in the Terms and all references to the "Effective Date," the date the effectiveness thereof, and like provisions in the Terms shall, for purposes of this adoption, be deemed to refer to the Adoption Effective Date.

Pac-West

Please prepare any documents necessary to effect this adoption and forward them to me as soon as possible. I will sign on behalf of Pac-West. All legal and tax notices should be sent to:

Pac-West Regulatory
4210 Coronado Avenue
Stockton, CA 95204

If you have any questions regarding this adoption notice, please contact Ethan Sprague at 209-926-3416 or esprague@pacwest.com.

Sincerely,



Ethan Sprague
Vice President Regulatory

cc: Qwest Corporation Law Department, Attention: General Counsel, Interconnection
Maureen Scott, Arizona Corporation Commission
Richard Boyles, Arizona Corporation Commission
Joan Burke, Osborn Maledon, P.A, Counsel to Pac-West

EXHIBIT DH-5



Larry Christensen
Director – Interconnection Agreements
1801 California Street, Room 2430
Denver, CO 80202
303-896-4686
larry.christensen@qwest.com

via email and overnight mail

August 25, 2008

Mr. Ethan Sprague
Vice President Regulatory
4210 Coronado Avenue
Stockton, CA 95204
esprague@pacwest.com

Re: *Response to Letter of August 15, 2008 and Notice of Default of Interconnection Agreement*

Dear Mr. Sprague:

This letter is in response to your letter of August 15, 2008 in which you request, on behalf of PacWest Telecomm, Inc. ("PacWest"), to adopt an interconnection agreement between XO Communications Services, Inc. and Qwest Corporation ("Qwest"). As discussed below, Qwest is not required to entertain PacWest's request, due to PacWest's default of the current Interconnection Agreement (the "Agreement") between Qwest and PacWest in its payment obligations.

As you well know, PacWest adopted a current interconnection agreement, which was effective March 22, 2008 with an explicit expiration date of June 29, 2009. The Agreement forbids the exchange of VNXX traffic, utilizing, per Commission order, what is referred to as, "FX-Like Traffic," and requiring payment for facilities as discussed in Section 7.2.2.1.7 and its subsections. Section 7.2.2.1.7.4 required Qwest to pay terminating compensation for the FX-Like Traffic, and Section 7.2.2.1.7.6 and other subsections required PacWest to pay Qwest for the facilities used to carry the FX-Like Traffic. Qwest has already paid PacWest and, according to the process established in the Agreement, established the facility billing and sent invoices to PacWest. However, PacWest has refused to comply with the payment obligations and compensate Qwest according to the terms of the Agreement.

PacWest has not legitimately disputed the invoices pursuant to Section 5.4.4 of the Agreement, thus, pursuant to Section 5.4.2 of the Agreement, this letter also serves as notice that Qwest will discontinue processing any orders from PacWest under the Agreement ten (10) business days after the date of this letter. In addition, since PacWest is already in default of its payment obligations, Qwest is under no obligation to consider PacWest's request under the Agreement for alternate agreements or amendments to the Agreement. In addition, Qwest does not waive, and specifically

reserves its rights to pursue further rights claims and/or actions available to it, including but not limited to disconnection of PacWest facilities and cessation of providing services under the Agreement.

Upon PacWest's compliance with the terms and conditions of the Agreement, Qwest will duly consider PacWest's request in your letter and respond accordingly. Please let me know if you have any questions or need any further information, thank you in advance for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Christensen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Larry Christensen

cc: Jeff Nodland, Qwest Corporate Counsel
Maureen Scott, Arizona Corporation Commission
Richard Boyles, Arizona Corporation Commission
Joan Burke, Osborn Maledon, P.A, Counsel to Pac-West

EXHIBIT DH-6

Norman Curtright
Corporate Counsel
20 E. Thomas Road, 16th Floor
Phoenix, AZ 85012

602 630 2187 Direct
303 383 8484 Fax
norm.curtright@qwest.com

April 16, 2009



Joan S. Burke, Esq.
Osborn Maledon
2929 North Central Avenue
Twenty-First Floor
Phoenix, AZ 85012-2793

Re: Pac-West Telecomm, Inc. Request for Opt-In

Dear Joan:

This is written in response to your letter of April 10, 2009, regarding Pac-West's request to opt-in to the XO interconnection agreement. Qwest is willing to use the XO agreement as the form for the new agreement to be negotiated between Qwest and Pac-West at this time because it appears that the parties will be able to agree upon the process for submitting their dispute of the current ICA for binding resolution. That was not the case when Pac-West raised the question last summer.

However, as I am sure you are aware, Sections 7.3.10.5.1 and 7.3.11.1 state that the facilities and relative use methodologies and numbers were specific to the characteristics of XO's network and traffic characteristics with Qwest. As a result, a direct opt-in would not apply, as PacWest is not similarly situated to XO in terms of its traffic types and interconnection architecture. Qwest suggests that we schedule a meeting between PacWest and Qwest as soon as possible to discuss PacWest's unique network and traffic and to negotiate those provisions to PacWest's characteristics. Please let me know who would participate for PacWest and how we can get this scheduled as quickly as possible.

Very truly yours,

A handwritten signature in black ink that reads 'Norm Curtright'.

Norman G. Curtright

EXHIBIT DH-7

VIA EMAIL (intagree@qwest.com) AND OVERNIGHT MAIL

Manager - Interconnection Agreements
Qwest Corporation
1801 California Street, 24th Floor
Denver, Colorado 80202

Re: Pac-West Telecomm, Inc. Notice of Adoption of Interconnection Agreement - ARIZONA

Please be advised that pursuant to Section 252(i) of the Communications Act (the "Act"), Pac-West Telecomm, Inc. ("Pac-West"), hereby adopts in their entirety, without revisions and as they are in effect on the date of this letter, the terms of the Arizona Interconnection Agreement between Level 3 Communications, LLC ("Level 3") and Qwest Corporation ("Qwest"), dated December 14, 2006 and filed with the Arizona Corporation Commission on December 19, 2006 in Docket Nos. T-01051B-05-0350 and T-03654A-05-0350 ("Terms"). Pac-West is adopting the Terms without any substantive revisions and will not negotiate any changes in the Terms. Therefore, Qwest should not consider this to be a request to initiate negotiations pursuant to Section 252 of the Act.

Pac-West shall be substituted in place of "Level 3 Communications, LLC" and "Level 3" wherever appropriate in the Terms and all references to the "Effective Date," the date of effectiveness thereof, and like provisions in the Terms shall, for purposes of this adoption, be deemed to refer to the Adoption Effective Date.

Please prepare any documents necessary to effect this adoption and forward them to me as soon as possible. I will sign on behalf of Pac-West. All legal and tax notices should be sent to:

Pac-West Regulatory
4210 Coronado Avenue
Stockton, CA 95204

If you have any questions regarding this adoption notice, please contact Ethan Sprague at (209) 926-3416 or esprague@pacwest.com.

Sincerely,



Wallace W. Griffin
President and Chief Executive Officer

cc: Kurt F. Gwynne, Reed Smith LLP, Counsel to Qwest
Norman G. Curtright, Qwest Corporate Counsel/Arizona
Michael S. Terrien, Jenner & Block LLP, Counsel to Pac-West
Jean L. Kiddoo, Bingham McCutchen LLP, Counsel to Pac-West

EXHIBIT DH-8

Norman Curtright
Corporate Counsel
20 E. Thomas Road, 16th Floor
Phoenix, AZ 85012

602 630 2187 Direct
303 383 8484 Fax
norm.curtright@qwest.com



RECEIVED

2008 FEB 21 P 4: 31

AZ CORP COMMISSION
DOCKET CONTROL

February 21, 2008

Docket Control
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Re: In the Matter of Adoption of the Wireline Interconnection
Agreement between Level 3 Communications, LLC and Qwest
Corporation by Pac-West Telecomm, Inc., in the State of Arizona

Dear Madam or Sir:

Qwest Corporation hereby files the following for approval under Section 252 (a) and (e) of the Telecommunications Act of 1996:

Wireline Adoption Interconnection Agreement (the "Adoption Agreement") between Pac-West Telecomm, Inc. ("Pac-West") and Qwest Corporation ("Qwest"). By the Adoption Agreement, Pac-West adopts in its entirety under Section 252(i) the terms of the underlying Interconnection Agreement between Qwest and Level 3 Communications, LLC, which was approved by the Commission on January 17, 2007 (the "Underlying Agreement").

Please contact the undersigned if you have any questions concerning the enclosed.
Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Norman G. Curtright', written over a horizontal line.

Norman G. Curtright

Enclosures

cc: Qwest Corporation
Director Interconnection Agreements
1801 California Street, Room 2410
Denver, CO 80202

Mr. Ethan Sprague
Pac-West Telecomm, Inc.
Regulatory Department
4210 Coronado Avenue
Stockton, CA 95204



January 31, 2008

Mr. Ethan Sprague
Pac-West Telecomm, Inc.
Regulatory Department
4210 Coronado Avenue
Stockton, California 95204

Dear Mr. Sprague,

We have received your request that, under Section 252(i) of the Telecommunications Act of 1996, Pac-West Telecomm, Inc. ("CLEC") wishes to adopt, in its entirety, the terms of the Interconnection Agreement and any associated amendments, if applicable, (the "Underlying Agreement") between Level 3 Communications, LLC and Qwest Corporation ("Qwest"), that was approved by the Commission on January 17, 2007, as an effective agreement in the State of Arizona. CLEC is incorporated in the State of California. We understand you have a complete copy of the Underlying Agreement.

By their respective signatures below, Qwest and CLEC ("the Parties") intend that this letter serves as their agreement ("Letter Agreement") for CLEC to adopt the Underlying Agreement under the following terms and conditions:

1. The Parties shall request the Commission to expedite its review and approval of this Letter Agreement. This Letter Agreement shall become effective upon such approval. If for some reason the Commission rejects all or part of the Letter Agreement either party may at its option declare the remainder of the Agreement void and be excused from any performance thereunder. In the event that the Parties currently have an existing Interconnection Agreement, once this Letter Agreement is approved by the Commission, this Letter Agreement shall replace the existing Interconnection Agreement its entirety for the state of Arizona. However, nothing relieves the CLEC from fulfilling all obligations incurred under the prior Agreement

2. Notwithstanding the mutual commitments set forth herein, The Parties are entering into this Letter Agreement without prejudice to any positions they have taken previously, or may take in the future, in any legislative, regulatory, or other public forum addressing any matters, including those relating to the types of arrangements contained in the Underlying Agreement. During the proceeding in which the Commission is to review and approve the Letter Agreement, Qwest may point out that it has objected, and continues to object, to the inclusion of the terms and conditions to which it objected in the proceedings involving the approval of the Underlying Agreement.

3. CLEC adopts the terms and conditions of the Underlying Agreement for interconnection with Qwest Corporation and in applying the terms and conditions, agrees that Pac-West Telecomm, Inc. be substituted in place of "Level 3 Communications, LLC" throughout the Underlying Agreement wherever the latter appears.

4. Qwest requests that notice to Qwest Corporation as may be required under the Underlying Agreement shall be provided as follows:

Qwest Corporation
Director Interconnection Agreements
1801 California Street, Room 2410
Denver, CO 80202

With copy to
Qwest Corporation Law Department
Attention: General Counsel, Interconnection
1801 California Street, 10th Floor
Denver, CO 80202

Phone - 303-965-3029
Email - IntAgree@qwest.com

Phone: 303-383-6553
Email: Legal.Interconnection@qwest.com

CLEC requests that notice to CLEC as may be required under the Underlying Agreement shall be provided as follows:

Mr. Ethan Sprague
Pac-West Telecomm, Inc.
Regulatory Department
4210 Coronado Avenue
Stockton, California 95204
esprague@pacwest.com

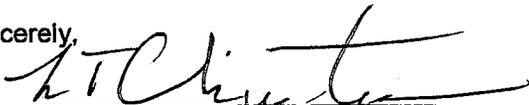
5. CLEC represents and warrants that it is a certified provider of local telecommunication service in the State of Arizona and that this Agreement will cover services in that state only.
6. Please sign all three original copies of this letter, and overnight them within thirty (30) days to:

Manager of Interconnection
Qwest Corporation
1801 California St, Suite 2420
Denver, CO 80202
Phone: 303-965-3029

After thirty (30) days Qwest may rescind its willingness to consider the Agreement's terms and conditions.

7. Please note that Qwest will file this Letter Agreement with the appropriate state commission for approval; however, some state commissions will not approve the Letter Agreement until the CLEC is certified by the state commission. You may want to contact the appropriate state commission to determine the requisite filing guidelines.

Sincerely,



Date

2/18/08

Qwest Corporation
L.T. Christensen
Director - Interconnection Agreements
1801 California Street, Suite 24th Floor
Denver, Colorado 80202

I agree to all terms and conditions contained in this letter as indicated by my signature below:

Pac-West Telecomm, Inc.



Signature

Ethan Sprague
Name Printed

VP Regulatory
Title

February 15, 2008
Date

EXHIBIT DH-9

basis to review inventories and to adjust thresholds and billing for going forward purposes.

7.3.10.5 Determination of Facility Volumes for CLEC Billing of EF and DTT at DS1 Levels

7.3.10.5.1 Qwest and CLEC agree that the structure of the billing methodology in Section 7.3.10.4 and payment matrix specifically identified below reflects the actual network configuration and local traffic exchanged between the Parties. The specific network configuration and traffic characteristics of this exchange of traffic are unique to the networks and traffic patterns between each other and the factors set forth below are not applicable, nor valid with any other party.

7.3.10.5.2 Table Summary of Billing Methodology:

Number of DS1's in Service	1-15	16-56	57-66	67-84	85-94	95-112	113-122	Above 122 – pattern continues
Rate CLEC will bill for these circuits	DS1 rate	Zero rated	DS1 rate	Zero rated	DS1 rate	Zero rated	DS1 rate	Above 122 – pattern continues

7.3.10.5.3 Example of Billing Methodology:

Assume CLEC has 60 DS1s that they are entitled to bill to Qwest. The bill will show 19 DS1 (1-15 plus 57, 58, 59, 60) at the DS1 rates reflected in Exhibit A and 41 DS1s (16-56) will be zero rated.

7.3.11 Qwest and CLEC Traffic Specific RUFs

7.3.11.1 Qwest and CLEC agree that the RUF percentages specifically identified below reflect the actual traffic exchanged between the Parties over LIS trunks. The specific traffic characteristics of this exchange of traffic are unique to the traffic patterns between each other and the factors set forth below are not applicable, nor valid with any other party.

State	TQW RUF	QC (TQW) RUF	AFY RUF	QC (AFY) RUF
AZ	58%	42%	79%	21%