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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
SEP 21 2009

DOCKETED BY [Signature]

PAC-WEST TELECOMM, INC.,
Complainant,

DOCKET NO. T-01051B-05-0495
DOCKET NO. T-03693A-05-0495

vs.

QWEST CORPORATION,
Respondent.

PROCEDURAL ORDER

BY THE COMMISSION:

This matter originally came before the Arizona Corporation Commission ("Commission") as a Complaint brought by Pac-West Telcomm, Inc. ("Pac-West") against Qwest Corporation ("Qwest") to enforce the terms of the parties' amended Interconnection Agreement ("ICA"). Pac-West alleged that Qwest owed it reciprocal compensation for ISP-Bound traffic that originated on Qwest's network. The question at issue in the Complaint was whether Virtual NXX ("VNXX") ISP-bound traffic was within the scope of the parties' ISP ICA amendment. In Decision No. 68820 (June 29, 2006), the Commission concluded that Qwest owed reciprocal compensation for the VNXX ISP-bound traffic because the language of the ISP Amendment did not excluded this type of traffic from the compensation agreement.

Qwest appealed Decision No. 68820 to the federal District Court. On March 6, 2008, the District Court found that the Commission erred in not interpreting the *ISP Remand Order*. The District Court remanded the matter to the Commission to determine the proper classification of VNXX traffic.

On February 13, 2009, Pac-West filed a Motion for Summary Determination ("MSJ") in the above-captioned matter.

1 On April 9, 2009, Qwest and the Commission's Utility Division ("Staff") filed responses to
2 Pac-West's MSJ.

3 On April 30, 2009, Pac-West filed its Reply.

4 Pac-West argued that in its recent *ISP Mandamus Order*,¹ the FCC has determined that ISP-
5 bound traffic falls within the scope of section 251(b)(5) traffic, and that the FCC did not limit the
6 applicability of Section 251(b)(5) to ISP-bound calls made within a local calling area.

7 Qwest argues that Pac-West's MSJ raises a number of factual and broader policy issues that
8 cannot be summarily decided. Qwest asserts that Pac-West has not presented any evidentiary support
9 for the factual assertions it makes in its motion, and thus, the Commission must draw all inferences
10 concerning issues of fact in Qwest's favor.

11 Staff also argues that Pac-West's MSJ should be denied because it involves both questions of
12 law and fact and the Commission would be best served by an evidentiary hearing. Although Pac-
13 West relies in great part on the *ISP Mandamus Order*, Staff believes that the *ISP Mandamus Order* is
14 not the relevant inquiry.

15 After careful consideration of the pleadings, Pac-West's MSJ must be denied as there are
16 issues of fact concerning, at a minimum, how Pac-West provided service using VNXX and the
17 parties' course of dealing.

18 IT IS THEREFORE ORDERED that Pac-West's MSJ is denied.

19 IT IS FURTHER ORDERED that a **Procedural Conference** for the purpose of discussing
20 how to proceed in this matter shall commence **on October 1, 2009 at 1030 a.m.** at the Commission's
21 Tucson Offices, Room 222, 400 West Congress, Tucson, Arizona. The parties may appear
22 telephonically and should contact the Hearing Division prior to the commencement of the Procedural
23 Conference for instructions on how to participate telephonically.

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25 ...

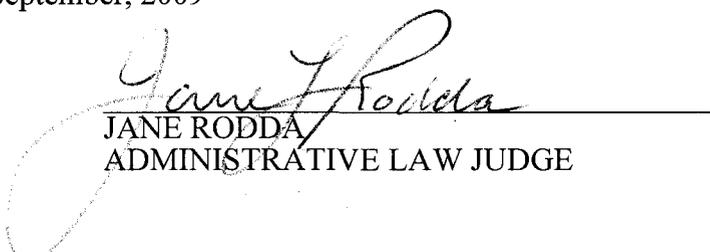
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28 ¹ *In the matter of Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 98-68, Order on Remand and Report
and Order of Further Notice of Proposed Rulemaking, FCC 08-262 (rel. November 5, 2008).

1 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
2 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

3 Dated this 17th day of September, 2009

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5 
6 JANE RODDA
7 ADMINISTRATIVE LAW JUDGE

8 Copies of the foregoing mailed/delivered
9 this 17th day of March, 2009 to:

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11 Qwest Corporation
12 20 E. Thomas Road, 16th Floor
13 Phoenix, AZ 85012

14 Tom Dethlefs
15 1801 California Street, 10th Floor
16 Denver, CO 80202-2658

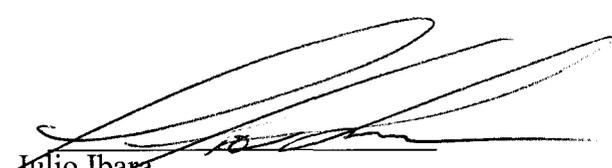
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