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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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Commissioner
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Commissioner

JOINT NOTICE AND APPLICATION OF QWEST CORPORATION, QWEST COMMUNICATIONS COMPANY, LLC, QWEST LD CORP., EMBARQ COMMUNICATIONS, INC. D/B/A CENTURY LINK COMMUNICATIONS, EMBARQ PAYPHONE SERVICES, INC. D/B/A CENTURYLINK, AND CENTURYTEL SOLUTIONS, LLC FOR APPROVAL OF THE PROPOSED MERGER OF THEIR PARENT CORPORATIONS QWEST COMMUNICATIONS INTERNATIONAL INC. AND CENTURYTEL, INC.	DOCKET NOS. T-01051B-10-0194 T-02811B-10-0194 T-04190A-10-0194 T-20443A-10-0194 T-03555A-10-0194 T-03902A-10-0194 **PAC-WEST'S NOTICE OF FILING DIRECT TESTIMONY**

Pac-West Telecomm, Inc. ("Pac-West") hereby files the attached Direct Testimony of James Falvey, Pac-West Vice President, Regulatory Affairs & Senior Counsel.

RESPECTFULLY SUBMITTED this 27th day of September 2010.

By Joan S. Burke

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Original and 13 copies of the foregoing
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Docket Control

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BEFORE THE ARIZONA CORPORATION COMMISSION

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DIRECT TESTIMONY

OF

JAMES C. FALVEY

VICE PRESIDENT, REGULATORY AFFAIRS

& SENIOR COUNSEL

ON BEHALF OF

PAC-WEST TELECOMM, INC.

SEPTEMBER 27, 2010

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS?

A. My name is James C. Falvey. I am the Vice President, Regulatory Affairs & Senior Counsel for Pac-West Telecomm, Inc. My business address is 420 Chinquapin Round Rd. Ste. 1, Annapolis, MD 21401.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am testifying on behalf of Pac-West Telecomm, Inc. ("Pac-West").

Q. PLEASE DESCRIBE YOUR POSITION AND DUTIES AT PAC-WEST.

A. As the Vice President of Regulatory Affairs at Pac-West, I am responsible for all state and federal regulatory matters, including state and federal regulatory proceedings, resolving carrier disputes, compliance issues, policy development, industry and FCC relations, and state and federal legislative activity. My responsibilities include negotiating and securing approval of interconnection agreements between Pac-West and incumbent carriers in Pac-West service territories. Similarly, if a dispute arises under one of the Pac-West interconnection agreements or tariffs, I am responsible for resolving the dispute through negotiation or litigation.

Q. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND.

A. From 1996 to present, I have represented competitive telecommunication providers on regulatory matters at the federal, state and local level. These carriers included CoreTel, espire Communications, Inc., Xspedius Communications, and Pac-West Telecomm, Inc. Prior to that, from 1994 to 1996, I represented a variety of competitive carriers in pre-

Telecom Act state competition proceedings as an associate attorney with the law firm of Swidler & Berlin. From 1990 to 1994, I practiced general commercial and antitrust litigation with the Washington, D.C. office of Johnson & Gibbs. Before law school, I was a legislative assistant to Senator Harry Reid from 1985 to 1987. I hold a law degree from the University Of Virginia School Of Law and a Bachelor's of Arts from Cornell University. Over the last sixteen years, I have handled regulatory proceedings, interconnection agreement negotiations, intercarrier compensation disputes, and complaints at the state and federal level for competitive carriers. I have testified on behalf of competitive carriers on interconnection, unbundling, resale, and intercarrier compensation issues before fifteen public service commissions.

Q. PLEASE DESCRIBE YOUR BACKGROUND WITH INTERCONNECTION NEGOTIATIONS AND ARBITRATIONS.

A. I have participated in state and federal interconnection proceedings since 1995, including pre-Act proceedings in Pennsylvania and Florida. Over the last fifteen years, I have negotiated interconnection agreements with BellSouth, GTE, Verizon, Southwestern Bell, Valor, and Qwest. I have also testified as a witness in Section 251/252 arbitrations in over ten states. In addition, I have attempted to port interconnection agreements from one AT&T state to another under the AT&T Merger requirements.

Q. PLEASE DESCRIBE THE TYPE OF SERVICES PROVIDED BY PAC-WEST.

A. Pac-West is a competitive local exchange carrier ("CLEC") focused, for the last thirty years, on providing wholesale communications infrastructure services for other CLECs, wireless providers, interexchange carriers, VoIP providers, and Internet Service and other information service providers. Pac-West offers voice and data access, transport, and managed services. Pac-West's network is engineered for easy integration and connectivity of multiple communications services. Pac-West recently introduced its Telastic service, a hosted operating environment for telecom services that allows carriers and service providers to evolve their less efficient legacy telecom infrastructure into a scalable and cost-effective system. Telastic includes on-demand carrier-grade network infrastructure, streamlined operations management capabilities, and turnkey communications service applications with instant capacity.

Q. WHERE DOES PAC-WEST OPERATE?

A. Pac-West has facilities in Qwest territory in Arizona, Colorado, Idaho, Oregon, Utah, and Washington. Pac-West also competes with CenturyLink in Nevada, and has operations in California and Texas. Pac-West also partners with other companies to provide services in over 30 states across the country.

Q. DOES PAC-WEST INTERCONNECT WITH QWEST AND CENTURYLINK?

A. Yes, like most CLECs, Pac-West has to interconnect with Qwest to exchange traffic and must purchase services from Qwest, including special and switched access services. Qwest is the dominant incumbent local exchange carrier in Arizona and in the five additional states where Pac-West competes with Qwest. In addition, Pac-West is interconnected with and competes with CenturyLink in Nevada. Thus, Pac-West has experience with both companies. Because Pac-West is a wholesale customer and a competitor of both Qwest and CenturyLink, we are acutely concerned that the company resulting from the merger of CenturyTel, Inc. and Qwest Communications International, Inc. (the "Merged Entity") will use its increased market power to discriminate against smaller CLECs like Pac-West. We are particularly concerned in those instances where Qwest and CenturyLink have not been willing to abide by state or federal orders and statutes.

Q. WHAT IS PAC-WEST'S POSITION ON THE PROPOSED MERGER OF QWEST AND CENTURYLINK?

A. Pac-West is concerned that the proposed merger will accelerate anticompetitive conduct by Qwest and, consequently, harm emerging competition. If competitors cannot compete due to lost wholesale inputs, longstanding disputes, unpaid invoices, and costly interconnection requirements, end-user consumers will see higher prices, reduced service quality, and fewer product options. Pac-West believes that the Arizona Commission can reduce the likelihood of competitive harm by adopting specific and straight-forward conditions as described further below. In addition, Pac-West supports the adoption of the conditions proposed by the Joint CLECs in conjunction with merger approval.

I. <u>INTERCONNECTION</u>

Q. DOES PAC-WEST ANTICIPATE INTERCONNECTION AGREEMENT PROBLEMS WITH THE MERGED ENTITY?

A. Yes. Pac-West has had great difficulty reaching agreement with Qwest on its most recent Interconnection Agreement ("ICA") in Arizona. On August 15, 2008, Pac-West asked to opt into the XO Communications Services, Inc. ICA. Implementing this opt-in should have been a simple, straight-forward process. Instead, securing a new ICA has taken nearly two years of discussions, with Pac-West executing the new ICA on May 20, 2010, and Qwest filing the ICA on June 23, 2010. During the past two years, Pac-West has received no reciprocal compensation for terminating calls on its network from Qwest customers. Unlike some delays, which merely create uncertainty, this one had the added harm of depriving Pac-West of compensation for terminating Qwest customer traffic. This period of "no intercarrier compensation" was by agreement. Pac-West and Qwest resolved a billing dispute by amending the ICA to discontinue intercarrier compensation until a successor agreement could be executed. Pac-West never expected that it would take literally years to negotiate an ICA with Qwest. This delay was caused in large part by Qwest's insistence that Pac-West meet network location requirements imposed unilaterally by Qwest as a precondition to reciprocal compensation. Pac-West expects that the merger will draw resources away from Qwest wholesale operations and further reduce Qwest's ability, and incentive, to agree on timely interconnection arrangements.

Q. HOW CAN THE INTERCONNECTION NEGOTIATION PROCESS BE REFORMED TO PUT COMPTETITORS ON EQUAL FOOTING WITH QWEST?

A. First, a CLEC should be able to opt into an ICA in use by Qwest or CenturyLink with another CLEC in this state or elsewhere. The selected ICA would be effective upon filing (by the CLEC or Qwest) with any necessary revisions to follow ***after*** the ICA effective date. In other words, Qwest should be required to allow any requesting carrier to port an existing interconnection agreement, without revision. The Merged Entity would be authorized to request an order modifying the agreement ***after it is effective,*** to the extent it is not technically feasible for the Merged Entity to comply with one or more provision of the agreement. This procedure would eliminate the sort of delay experienced by Pac-West over the past two years. This portable opt-in condition would continue for a period of five years following the closing date of this Merger ("Closing Date").

Q. WHAT WILL HAPPEN IF QWEST IS PERMITTED TO MAKE CHANGES TO THE AGREEMENT PRIOR TO THE PORTING AGREEMENT'S EFFECTIVE DATE?

A. Based on Pac-West's experience with Qwest, this would create such significant delays in the ICA porting process that it would defeat the purpose of such a streamlined ICA porting condition. If Qwest is given the opportunity to redline any ported agreement, to delete portions that it determines are not acceptable, the result will be an extensive ICA porting proceeding to determine which of the redlines are justified and which are not. If porting an agreement requires a year-long proceeding to contest a series of 10 or 20 issues, CLECs such as Pac-West will be faced with the same extended time frames and extensive costs associated with negotiating a new agreement. If the Merged Entity has issues with a ported ICA once it is filed, those issues can be addressed after the ICA is filed and effective. In that manner, the vast majority of the agreement will become effective, while any contested issues are worked out by the Commission, rather than holding the entire ICA hostage to disputes over a limited number of issues.

Q. DOES PAC-WEST HAVE ANY OTHER INTERCONNECTION CONCERNS?

A. Yes. Pac-West is concerned that the Merged Entity could decide to unilaterally terminate ICAs and force CLECs into costly negotiations or arbitrations after the Closing Date. To avert this possibility, Pac-West proposes that the Merged Entity be required to allow a competitive provider to choose to extend an existing ICA for a period of three years from the Closing Date. This condition would apply to ICAs with unexpired terms and ICAs in "evergreen" status. There are often times when an agreement is working well for a CLEC, but the CLEC is nonetheless forced to expend time and resources to renegotiate the agreement. Permitting the extension of interconnection agreements will provide CLECs with a period of stability and prevent the Merged Entity from taking advantage of its new market power by immediately seeking to renegotiate the rates, terms and conditions of those agreements.

Q. HAS THIS TYPE OF EXTENSION REQUIREMENT BEEN IMPOSED BEFORE?

A. Yes. The FCC adopted a similar condition in the Verizon/Frontier Merger proceeding as a means to ensure stability and reduce the transaction costs associated with entering into new interconnection agreements. *Applications Filed by Frontier Communications Corp. and Verizon Communications Inc. for Assignment or Transfer of Control,* Memorandum Opinion and Order, WC Docket No. 09-95; FCC 10-87, May 21, 2010, Appendix C, p. 35, Condition 16 (one year). Across its six Qwest states, Pac-West has agreements that are at or near their expiration dates and this condition would make it much easier for Pac-West to carry on its business with the merged entity post-merger.

Q. WHAT OBLIGATIONS WILL THE MERGED ENTITY HAVE WITH REGARD TO INTERCONNECTION?

A. The Merged Entity, after the Closing Date, will remain the largest incumbent local exchange carrier ("ILEC") and the largest Bell Operating Company ("BOC") in Arizona. Pac-West is concerned that the Merged Entity may disclaim its obligations under sections 251/252 and 271 of the Telecommunication Act because CenturyLink is not currently a BOC (271 obligations) or an ILEC (251/252 obligations) in Arizona. Pac-West recommends that, as a merger condition, the Commission prohibit the Merged Entity from arguing in Arizona that it is not an ILEC subject to sections 251/252 or a BOC subject to the 14-point competitive checklist found in section 271 of the Telecommunications Act.

Q. WHAT IS THE VALUE TO PAC-WEST OF SECTION 271 AND WHY ARE YOU CONCERNED THAT THE MERGED ENTITY MIGHT TRY TO AVOID THOSE OBLIGATIONS?

A. The critical role of sections 251 and 252 are well known. But Section 271 also plays an integral role in ensuring that a Regional Bell Operating Company like Qwest continues to comply with the core unbundling, interconnection, and compensation provisions, among others, of the Telecommunications Act. Section 271 gives CLECs an opportunity to bring anticompetitive practices to the attention of the FCC and to ensure enforcement of key provisions of the Act, including Qwest's obligation post-merger to offer rates that meet the just and reasonable and nondiscriminatory standard for a wholesale offering pursuant to Section 271(c)(2)(B).

Q. HOW ELSE MIGHT THE ICA NEGOTIATION PROCESS BE SIMPLIFIED?

A. Much of the ICA turmoil experienced by Pac-West in the past three years resulted directly from searching for an available "opt-in" ICA so as to avoid Qwest's form contract which was heavily biased against CLEC interests. Pac-West's preferred course would have been to use the Pac-West ICA as the starting point for negotiating a new agreement. Qwest, however, was consistently unwilling (and remains unwilling today) to use anything other than its standard form interconnection agreement (http://www.qwest.com/wholesale/clecs/negotiations.html). Pac-West requests that as of the Closing Date, the Merged Entity be required to permit a carrier to use its own existing interconnection agreement as the basis for negotiating a new or successor interconnection agreement. Allowing a CLEC to use its existing interconnection agreement as a starting point for negotiations would be another way to reduce the transaction costs associated with entering into a new interconnection agreement. CLECs are familiar with their own interconnection agreements and are not likely to face unexpected interpretations or consequences if the starting point is their own agreement.

II. INTERCARRIER COMPENSATION FOR ISP-BOUND TRAFFIC

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISP-BOUND TRAFFIC COMPENSATION?

A. As a condition of this merger, the Commission should prohibit Qwest from requiring that carriers have a "local calling area" presence in order to be compensated for terminating a Qwest customer ISP-Bound call. Qwest's argument -- that a "local calling area" presence is required – has been squarely rejected by the FCC since November 2008. CLECs need not have a presence in the "local calling area" to be eligible for reciprocal compensation for ISP Bound traffic. Section 251(b)(5) of the Telecommunications Act imposes a duty on all LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[1] Since the FCC's *Order on Mandamus* in November 2008, it has been clear that the term "telecommunications" under the Act is not "limited geographically ('local,' 'intrastate,' or 'interstate') or to particular services...."[2] In that Order, the FCC further explained that ISP-bound traffic was subject to Section 251(b)(5), and "that section 251(b)(5) is not limited only to the transport and termination of certain types of telecommunications traffic, such as local traffic."[3] The D.C. Circuit, the court with jurisdiction to review this FCC decision, fully affirmed the FCC's decision.[4] Pac-West's initial complaint on the VNXX issue was filed with the Commission in July 2005, and Pac-West has now litigated this issue with Qwest in Arizona for in excess of five years. Yet despite the clear federal holding that a carrier such as Pac-West serving an ISP is entitled to be compensated for terminating another carrier's traffic, Qwest persists in refusing to pay Pac-West, arguing that section 251(b)(5) ***is*** somehow still limited to local traffic. This argument flatly contradicts the FCC's and the D.C. Circuit's orders concluding that there is no such local limit to section 251(b)(5) traffic or to the obligation to compensate Pac-West for ISP-bound traffic.

Q. WHAT HAS QWEST DEMANDED WITH RESPECT TO ISP-BOUND TRAFFIC

[1] 47 U.S.C. § 251 (b)(5)
[2] *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, ¶ 8 (rel. November 5, 2008) ("*ISP Mandamus Order*").
[3] *ISP Mandamus Order* ¶ 8, ¶¶17-22.
[4] *Core Comm'ns, Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010).

A. Qwest has, for years, refused to pay Pac-West anything for what it has categorized as "VNXX" ISP-bound traffic. Even worse, CenturyLink, has demanded in its service territory that Pac-West pay originating access charges on such traffic. Both positions violate the FCC *ISP Mandamus Order*[5] and FCC regulations.[6] FCC orders and implementing regulations simply do not permit a "local" traffic pre-condition for ISP-bound traffic compensation.

Q. WHAT ARE THE DETAILS OF THE VNXX ISP-BOUND TRAFFIC DISPUTE?

A. Pac-West provides service to a large number of ISPs and offers virtual NXX (VNXX) arrangements, which are locally dialed ISP-bound calls originated by a caller physically located outside the local calling area. These arrangements allow Pac-West's ISP customers to offer their competitive services over a broader service territory and help bring new competitive ISP alternatives to Arizona. In Arizona, Qwest has refused to compensate Pac-West for terminating Qwest customer traffic when Pac-West utilizes a VNXX arrangement for terminating the customer call. Pac-West has sought termination at the level set by the FCC in the *ISP Remand Order* for ISP-bound traffic --$0.0007 cents per minute -- which is a much lower rate than the rate ILECs bill for the termination of local traffic. It is also the lowest FCC-mandated rate for any type of traffic exchange. Yet Qwest continues to refuse to pay at that rate and continues to litigate. In July of 2005, when this litigation was initiated in Arizona by Pac-West, parties could have reasonably differed on what federal law required. In 2006, the Commission ordered Qwest to pay Pac-West for all ISP-Bound traffic – including VNXX

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[5] *ISP Mandamus Order*, ¶ 8.
[6] 47 C.F.R. § 51.703(b).

traffic – based on the Pac-West/Qwest ICA amendment requiring compensation for ISP-bound traffic.[7] Since that time, the FCC has issued orders supporting the Commission's conclusion that this traffic is compensable and rejecting the contrary conclusion that only local traffic is eligible for reciprocal compensation.

Q. WHAT HAS BEEN THE COURSE OF THE QWEST'S LITIGATION TO DATE?

A. Qwest has been successful in extending the life of its challenge to the Arizona Commission's VNXX orders, and is continuing to find ways to extend the life of the dispute. Although it is not necessary to provide great detail regarding the appeal process, it is worth noting that the case was initially filed in 2005, decided on by the Commission in 2006, appealed by Qwest to federal district court and remanded to the Commission by the district court in March of 2008. That decision was then appealed to the Ninth Circuit by Level 3 Communications, and again remanded to the Commission in 2010 as a "non-final order." In the remand proceeding, Qwest has recommended a hearing to explore issues that are at best tangential to the core legal issues. It is very easy to see how Qwest could – with modest effort – cause the case to continue for four more years. This proceeding presents the perfect opportunity for the Commission to require that Qwest resolve several longstanding intercarrier compensation disputes and cease the endless litigation.

Q. WHAT IS THE IMPACT OF QWEST'S ONGOING INTRANSIGENCE ON THIS ISSUE?

[7] Pac-West v. Qwest, Decision No. 68820; Docket No. T-01051B-05-0495 and T-03693A-05-0495 (complaint filed on July 13, 2005).

A. Qwest's litigation over reciprocal compensation has had the dual effect of forcing Pac-West to provide services without compensation, while saddling Pac-West with the exposure associated with significant (albeit meritless) compensation claims. When Qwest lost this issue to Pac-West back in 2006, Qwest was required to make payment on past due reciprocal compensation invoices for ISP-bound traffic. However, in connection with its ongoing litigation, Qwest asserted a clawback claim, that if Qwest were to prevail ultimately in its ongoing litigation, Pac-West would be required to pay back approximately $1M in payments made by Qwest in Arizona, for traffic exchanged prior to 2006. Qwest insisted that it obtain a written commitment to this clawback claim when Pac-West was exiting from bankruptcy, a special claim that few other participants in the proceeding required. Four years later, Qwest continues to assert this claim and Pac-West continues to carry this exposure on its books, despite the fact that the FCC rejected the basis for Qwest's claim in 2008. If not required to follow FCC rules and orders, Qwest could force Pac-West to carry this burden for another four years, simply by continuing to litigate.

Q. IS THIS THE ONLY CLAWBACK CLAIM ASSERTED BY QWEST AND CENTURYLINK AGAINST PAC-WEST?

A. No. In fact, there is an additional clawback claim of approximately $2M on the same issue in Washington State, for a total of $3M in claims by Qwest. In addition, CenturyLink has asserted a separate dispute on the same issue in Nevada, although CenturyLink takes the more aggressive position that originating access applies to VNXX traffic. Not only does CenturyLink not remit reciprocal compensation to Pac-West, but actually claims that Pac-West owes CenturyLink originating access charges for ISP-bound traffic. The CenturyLink claim is for over \$4M, bringing the total VNXX claims by the two companies to over \$7M. Pac-West has, with respect to all of the claims, pointed out that the law was explained by the FCC as of November 2008, and that there is no legal gravamen for the disputes. But neither Qwest nor CenturyLink has been willing to recognize the FCC's *ISP Mandamus Order*, nor the D.C. Circuit decision affirming it. The strategy of each company has been to subject Pac-West to unwarranted exposure by extending the life of these claims through litigation.

Q. ARE THERE OTHER REPERCUSSIONS OF QWEST'S INTRANSIGENCE?

A. Yes. Since the establishment of Qwest's clawback claim, Pac-West agreed to exchange VNXX traffic at bill and keep under its prior interconnection agreement. This was an accommodation that Pac-West agreed to in order to carry on with its business. As discussed above, however, Qwest position on this issue – compensation for VNXX traffic – caused tremendous delay in executing a new ICA. Even when the agreement was executed, Qwest delayed a month before filing the agreement with the Commission. As a result, Pac-West has not been paid for Qwest customer calls, terminated on the Pac-West network, for literally years.

Q. WHEN PAC-WEST BEGINS TO INVOICE QWEST UNDER THE NEW AGREEMENT, WILL THERE BE RESTRICTIONS ON ITS ABILITY TO INVOICE FOR VNXX TRAFFIC?

A. Yes. Qwest continues to refuse to pay reciprocal compensation for VNXX traffic, unless CLECs agree to locate facilities in each local calling area, thereby "qualifying" for reciprocal compensation pursuant to Qwest's view that only local traffic is subject to reciprocal compensation. This "local only" Qwest requirement, however, has been rejected by the FCC and the D.C. Circuit Court of Appeals. As the FCC has explained, it is irrelevant whether an ISP- bound call is called "local" or "non-local" from a local exchange carrier's standpoint. Yet, even when Pac-West begins billing again in Arizona, it will be saddled with this illegal limitation. In summary, the impact on Pac-West is threefold: 1) a burdensome clawback of over $1M; 2) an overextended bill and keep arrangement under the prior agreement; and 3) an illegal and burdensome requirement to locate equipment in every local calling area, creating an artificial and inefficient network that has no basis in the law.

Q. HAS THIS ISSUE BEEN RESOLVED BY OTHER INCUMBENT LOCAL EXCHANGE CARRIERS OUTSIDE THE QWEST REGION?

A. Yes. Unlike Qwest, which continues to dig its heels in on this issue, the issue of VNXX traffic has long since been resolved in other parts of the country. For years, BellSouth has made a 9-state agreement available throughout the BellSouth region that allows for LATA-wide VFX at the $0.0007 rate. Similarly, the issue has been resolved in California for several years, again, with payment for all ISP-bound traffic, including VNXX traffic at $0.0007. AT&T has also offered a 13-state amendment in states ranging from Arkansas to Connecticut to Texas to Wisconsin that provides for VNXX in the same compensation range across a broad footprint. These agreements often require interconnection at each tandem, which itself is an onerous requirement. But these carriers have long since put this issue behind them, unlike Qwest, which is clinging to claims stemming from traffic exchanged nearly a decade ago, and will not come to terms on reasonable VNXX arrangements anywhere in its territory.

Q. WHY ADDRESS THIS ISSUE IN THE MERGER PROCEEDING?

A. It was July 2005 when Pac-West filed a complaint with the Arizona Commission to recover reciprocal compensation payments owed by Qwest for ISP-Bound traffic. The Commission ruled in Pac-West's favor on June 29, 2006.[8] Qwest has not ceased litigating that dispute despite rulings by the FCC and the D.C. Circuit Court of Appeals clarifying that ISP-Bound traffic need not be local to be compensated. The Merged Entity may continue refusing to pay carriers the reciprocal compensation owed under federal law because to delay is to win if your adversary has fewer resources. Of particular concern to Pac-West is the fact that CenturyLink has taken an even more extreme postion than Qwest, arguing in Nevada that originating access charges apply to VNXX traffic, despite the fact that the federal rules clearly preclude applying access charges to section 251(b)(5) traffic originated by a local exchange carrier.[9] The Commission should be concerned that the Merged Entity could go from bad to worse on this issue and take an even more aggressive position on intercarrier compensation owed to smaller carriers. The Merged Entity will have even greater pressure and leverage to drag out disputes where payment is otherwise required. Pac-West asks that the Commission resolve this issue before the merger is approved by instructing Qwest to abide by the FCC's rules and orders, and to make payment for all ISP-bound traffic, including VNXX traffic, at the reciprocal compensation rate without regard to the geographic reach of the call.

III. CONDITIONS PROPOSED BY JOINT CLECS

[8] ACC Decision No. 68820 (2006).
[9] 47 C.F.R. §51.703(b).

Q. DOES PAC-WEST ALSO SUPPORT THE CONDITIONS PROPOSED BY THE JOINT CLECS?

A. Yes. Telephone carrier competition in Arizona is good for consumers, good for the State's economy, and critical for business growth in general. Competitors have a proven track record of providing new and innovative services, improved customer service and lower prices for consumers. With this in mind, the Commission promulgated the Arizona Competitive Telecommunications Services Rules in 1992. Arizona also welcomed competitors when the Telecommunication Act of 1996 opened the public switched telephone network to competition. The proposed acquisition of Qwest, by an independent local exchange carrier which serves mostly rural areas, threatens to undermine Arizona's substantial progress in promoting competition. For this reason, Pac-West supports the conditions proposed by the Joint CLECs. These conditions are designed to continue local competition in Arizona by preserving the systems and processes that already exist (*e.g*, OSS, QPAP, and arbitration process). In addition, many of the Joint CLEC conditions address concerns that are of critical importance to Pac-West, such as improved interconnection negotiation requirements. Without the Joint CLEC conditions, telecommunications competition in Arizona will be vulnerable.

Q. **PLEASE SUMMARIZE YOUR TESTIMONY**

A. Neither Qwest nor CenturyLink have shared with competitors their post-merger plans for wholesale services. This is problematic. The Merged Entity could embrace its role as a wholesale provider, dismiss its appeals challenging carrier compensation awards, and maintain and improve its wholesale systems. Alternatively, the Merged Entity could continue litigating lost cases, persist in withholding intercarrier compensation, and cease supporting its wholesale systems and operations. To avert this second scenario, Pac-West requests that the Arizona Commission impose the conditions identified above, as well as the conditions proposed by the Joint CLECs. Only by imposing conditions will the Commission ensure that Arizona remains a pro-competitive, innovative, and affordable state for competitive telecommunications.

Q. **DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes.

4843-8802-3815, v.