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BEFORE THE ARIZONA CORPORATION

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Arizona Corporation Commission

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AZ CORP COMMISSION  
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COMMISSIONERS

BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

PAC-WEST TELECOMM, INC.

Complainant,

vs.

QWEST CORPORATION,

Respondent.

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

PROCEDURAL ORDER

BY THE COMMISSION:

On July 13, 2005, Pac-West Telecomm, Inc. ("Pac-West") filed a formal complaint with the Arizona Corporation Commission ("Commission") against Qwest Corporation ("Qwest" now known as "Qwest Corporation dba CenturyLink") seeking to enforce an Interconnection Agreement between the parties. The dispute was whether Qwest was required to pay reciprocal compensation to Pac-West for terminating Internet Service Provider ("ISP") traffic, including VNXX traffic.<sup>1</sup> Qwest made counterclaims, alleging that use of VNXX was not permitted and that the traffic in question was not subject to the FCC's compensation rate for ISP-bound traffic. In Decision No. 68820 (June 29, 2006) the Commission found that Qwest must compensate Pac-West for ISP traffic regardless of whether it physically originated and terminated in the same local calling area. Qwest appealed the Decision to the federal district court.

In March 2008, the United States District Court of Arizona remanded the matter back to the Commission to determine whether VNXX traffic was local traffic subject to reciprocal compensation, interexchange traffic subject to access charges, or traffic subject to some other form of intercarrier

<sup>1</sup> VNXX traffic does not physically originate and terminate in the same local calling area, but based on the phone number assigned, appears to do so from the perspective of the calling party.

1 compensation. In the remanded proceeding at the Commission, the parties filed pre-hearing briefs and  
2 supplemental authorities on outstanding issues; the schedule was suspended so that parties could  
3 pursue settlement discussions, which proved unsuccessful; and ultimately oral argument was held on  
4 June 12, 1012, and the matter taken under advisement.

5 On April 4, 2013, Pac-West filed a Notice of Bankruptcy indicating that Pac-West filed for  
6 relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court,  
7 Western District of Texas, Austin Division, Case Number 13-10573-hem. Pac-West expressed the  
8 belief that the bankruptcy filing stays further proceedings in this docket pursuant to 11 U.S.C. § 362,  
9 until further order of the Bankruptcy Court.

10 By Procedural Order dated April 23, 2013, the parties were asked to file comments on  
11 whether the Pac-West bankruptcy filing prevents the Hearing Division from issuing a Recommended  
12 Opinion and Order (“ROO”) in this complaint matter and/or the Commission from taking action on  
13 that ROO.

14 On May 10, 2013, the Commission’s Utilities Division (“Staff”) and Qwest filed Comments;  
15 and on May 13, 2013, Pac-West filed its Comments.

16 Pac-West states that the portion of the proceeding that seeks to enforce a money judgment  
17 against Pac-West is stayed in its entirety by the automatic stay provisions of the Bankruptcy Code.  
18 Pac-West asserts that Qwest’s claims, once determined, will be subject to the priority scheme under  
19 the Bankruptcy Code, but at this point in the bankruptcy proceeding, it is too early to determine if  
20 there will be any distribution to unsecured creditors. Pac-West states that to spend significant  
21 amounts of resources to determine the amount of a claim that might not be paid, or will not be paid a  
22 significant dividend, is wasted energy. Pac-West requests that this proceeding be abated for six  
23 months in order to allow time to gauge the significance of any outcome and to allow Pac-West to  
24 devote its efforts towards reorganizing.

25 Qwest asserts that Pac-West’s bankruptcy filing does not automatically stay all proceedings in  
26 this docket to enforce the Interconnection Agreement between the parties, although Qwest does agree  
27 that its counterclaims against Pac-West are stayed. Qwest argues that the issues on remand from the  
28 district court involving the Complaint for Enforcement as filed by Pac-West are not stayed because

1 these claims at inception were asserted by, not against Pac-West. Qwest acknowledges that the  
2 enforcement of a final order entered in its favor on Pac-West's Complaint would be subject to the  
3 priority and distribution provisions of the Bankruptcy Code; and to the extent the Commission  
4 reversed its ruling in Decision No. 68820, the monetary consequence would be treated as a claim  
5 under those priority and distribution schemes. Qwest states that it does not object to the Commission  
6 forbearing from action at this time (pending further developments in a similar proceeding between  
7 these parties before the Washington Utilities and Transportation Commission). Qwest recommends  
8 that the Commission hold this docket open, with further action possible upon request of any party and  
9 that periodic status reports would be appropriate.

10 Staff states that the language of the automatic stay clearly provides that the stay is applicable  
11 only to actions "against" the debtor and that most courts have held that the stay is not applicable to  
12 offensive actions by the debtor. Staff states that the test is whether the proceeding was initiated by or  
13 against the debtor, and that where, as here, the proceeding is subsequently appealed, the subsequent  
14 appellate proceedings are not deemed to be "against the debtor" within the meaning of the automatic  
15 stay provisions. Staff states that in this case, the action was clearly initiated by Pac-West against  
16 Qwest to seek enforcement of an Interconnection Agreement and Qwest's appeal of the  
17 Commission's initial ruling did not change the nature of the proceedings to be one against the debtor.  
18 Staff acknowledges, however, that Qwest's counterclaims against Pac-West would be stayed. Staff  
19 believes that the Commission could determine the appropriate classification of VNXX and other  
20 issues remanded from the district court, but not any counterclaims brought by Qwest, and that any  
21 action brought by Qwest to recover upon or enforce a Commission order outside of the Bankruptcy  
22 Court proceeding would be barred. From a practical perspective, given that Qwest's counterclaims  
23 would be stayed, Staff sees no merit in the Commission's proceeding going forward at this time. Staff  
24 recommends that Pac-West be required to give status updates and that the Commission re-commence  
25 these proceedings upon either Pac-West's or Qwest's request.

26 Based on the underlying procedural history and legal authorities cited by the parties, it  
27 appears that the automatic stay provisions of the Bankruptcy Code would not prevent the  
28 Commission from determining the proper classification of VNXX traffic. However, the Commission

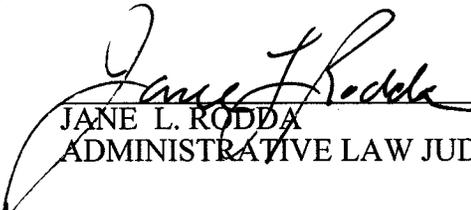
1 would be stayed from taking action to determine Qwest's counterclaims against Pac-West. For  
2 practical reasons, no party recommends that the Commission take further action in this docket at this  
3 time.

4 IT IS THEREFORE ORDERED that this docket is held in abeyance pending a written  
5 request by either party to issue a Decision, or otherwise re-commence proceedings.

6 IT IS FURTHER ORDERED that Pac-West shall file periodic status reports updating the  
7 Commission on its Bankruptcy proceedings, in particular how they affect this matter; the first such  
8 report shall be due by November 29, 2013, and thereafter quarterly, or sooner if there is a  
9 significant development that impacts this matter.

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

12 Dated this 10th day of July, 2013

13  
14   
15 JANE L. RODDA  
ADMINISTRATIVE LAW JUDGE

16 Copies of the foregoing mailed/delivered  
17 this 10th day of July, 2013 to:

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By   
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