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September 26, 2005

By Federal Express

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol St NE #215
Salem OR 97301

Re: Docket IC9

Enclosed for filing in the above-referenced docket, please find the original and five copies of:

(1) Application of Pac-West Telecomm, Inc., for Rehearing or Reconsideration of Order No. 05-874; and

(2) Certificate of Service.

If you have any questions regarding this filing, please give me a call. Thank you for your assistance.

Sincerely yours,

Davis Wright Tremaine LLP

Melissa K. Geraghty

Melissa K. Geraghty
Assistant to Gregory J. Kopta

Enclosures
cc: Service List

SEA 1694878v1 51546-1
Seattle

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

IC9

In the Matter of PAC-WEST TELECOMM, INC. vs. QWEST CORPORATION Complaint for Enforcement of Interconnection Agreement	)

APPLICATION OF PAC-WEST TELECOMM, INC., FOR REHEARING OR RECONSIDERATION OF ORDER NO. 05-874

Pursuant to ORS 756.561 and OARS 800-014-0095, Pac-West Telecomm, Inc. ("Pac-West") respectfully applies to the Commission for rehearing or reconsideration of its decision in Order No. 05-874 ("Commission Order"). The grounds for the application are discussed below and are summarized as follows:

(a) The portion of the Commission Order that Pac-West contends is erroneous is the disposition of Issue 5, *i.e.*, whether the relative use factor ("RUF") included in Article V, Section D.2.d, of the interconnection agreement ("ICA") between Pac-West and Qwest Corporation ("Qwest") applies to "VNXX" traffic transported over direct trunk transport ("DTT") facilities.

(b) The portion of the record, laws, rules, or policy on which Pac-West relies to support the application include the ICA, including the ISP Amendment, and Federal Communications Commission ("FCC") orders, federal statutes, and federal court decisions cited and discussed below.

(c) Pac-West requests that the order be changed to recognize that "VNXX" traffic bound for Internet service providers ("ISPs") is treated the same as other ISP-bound traffic and is

included in the calculation of the RUF used to determine each carrier's responsibility for the costs of the facilities used to interconnect their networks.

(d) Pac-West's requested change would alter the outcome by reversing the Commission's resolution of this issue and requiring Qwest to compensate Pac-West for the portion of the interconnection facilities that Qwest uses to send all ISP-bound traffic rated within the same local calling area to Pac-West.

(e) The grounds for rehearing or reconsideration are errors of law that are essential to the decision and good cause for further examination of the treatment of "VNXX" ISP-bound traffic, incumbent local exchange carrier ("ILEC") foreign exchange ("FX") traffic, and the effect on consumers and local competition in Oregon.

Pac-West further requests oral argument before the Commission as part of the Commission's consideration of the application due to the importance of this issue to consumers of telecommunications services and the development of local exchange competition in Oregon, as well as the need to thoroughly discuss the applicable federal law on this issue.

INTRODUCTION

The Commission Order does not resolve the foundational issue at the core of the Parties' dispute: which statutory category should apply to the locally dialed "VNXX" traffic at issue in this case – section 251(b)(5) of the Telecommunications Act of 1996 ("Act") or section 251(g) of the Act? The Commission erroneously excluded "VNXX" traffic (locally dialed traffic that originates in one exchange and is terminated to a foreign exchange) from the RUF calculation without determining the legal classification of such traffic. The Commission must determine if this traffic falls into section 251(b)(5) or is excluded by section 251(g). The "VNXX" traffic at issue in this case (locally dialed FX traffic, also called "VNXX" traffic) is properly categorized as 251(b)(5)

traffic, is subject to the FCC's *ISP Remand Order*,[1] and must be included in the RUF calculation.[2]

The correct categorization of "VNXX" traffic must be based on the disposition of similar traffic prior to the effective date of the Act. The analysis is in three parts:

1. Did the same traffic exist prior to the Act,
2. If so, was such traffic exchanged between carriers prior to the Act, and
3. If so, was such traffic subject to access charges or some other form of intercarrier compensation prior to the 96 Act?

Based on such an evaluation, the Commission must determine if the traffic at issue is properly categorized as section 251(b)(5) traffic or section 251(g) traffic. If such traffic existed before the Act and was subject to access charges prior to the Act, then that traffic is properly categorized as 251(g). All other traffic is 251(b)(5) traffic. Those are the only two possible categories.

VNXX traffic, in the form of ILEC FX traffic, predates the Act. The Commission, therefore, need only determine whether adjacent ILECs exchanging locally dialed FX traffic billed each other access charges prior to the Act to determine the correct legal classification of locally dialed FX traffic (including "VNXX" traffic). If such traffic was subject to access charges prior to the Act, then it is properly categorized as 251(g) traffic. If, however, such traffic was not subject to access charges, then it is now properly treated as 251(b) traffic; it is covered by the ICA, and it is subject to the RUF provisions.

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[1] *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98 & 99-68, FCC 01-131, Order on Remand and Report and Order (rel. April 27, 2001).

[2] This traffic has the following characteristics: (1) calls are between two customers, (2) each customer is served by a different LEC, (2) the two customers' local service includes telephone numbers that are assigned to the same local calling area, (3) one or both of the customers receive their local service in a foreign local calling area – Foreign Exchange service, (4) when one customer calls the other, the call is treated as a local call for the calling customer, (5) to complete the calls between the customers, the two LECs must exchange the traffic over facilities that

Without this critical classification, the Commission cannot resolve the issues in this proceeding, and the Parties will not be able to resolve other issues related to routing and rating of traffic. All traffic exchanged between wireline LECs must be treated according to the same rules. Because the Commission has yet to identify whether FX and "VNXX" traffic is subject to 251(b) or 251(g), Pac-West is unable to determine the business rules for operating in this state. Pac-West requests that the Commission reconsider its order and entertain oral argument on the classification of VNXX traffic and the resulting impact on the ICA between Pac-West and Qwest.

DISCUSSION

The Commission Order concludes that the RUF does not apply to "VNXX" traffic transported over direct trunk transport ("DTT") facilities.[3] The Commission Order states essentially two reasons for this determination: (1) The FCC's *ISP Remand Order* that was incorporated into the ICA through the ISP Amendment did not alter contractual obligations to transport traffic and thus does not encompass issues related to compensation for DTT facilities; and (2) the terms of the ICA apply only to the transport of "local" traffic, and "VNXX" traffic is not "local." Neither of these reasons accurately reflects applicable federal law and its incorporation into the ICA.

A. The *ISP Remand Order* and the D.C. Circuit Decision on Review Require Qwest to Pay Its Proportional Costs of Interconnection Facilities that Carry "VNXX" ISP-Bound Traffic.

The Commission Order correctly states, "The ISP Amendment [to the ICA] executed by Pac-West and Qwest was designed to reflect the terms of the *ISP Remand Order*."[4] The Commission Order then provides, however, that "the ISP Remand Order 'did not alter contractual obligations to transport traffic,' including the requirements in § 51.709(b) and the

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interconnect the two networks of the two LECs.

[3] Commission Order at 34-37.

[4] Commission Order at 36.

RUF," and concludes that "issues relating to compensation for DTT facilities – including the transport of VNXX traffic – are not encompassed by the ISP Amendment."[5] This conclusion reflects an erroneous interpretation of federal law. The *ISP Remand Order*, in conjunction with the D.C. Circuit's decision on review, requires the RUF to include ISP-bound traffic, including "VNXX" ISP-bound traffic.

1. Transport cost sharing applies to all facilities used to exchange section 251(b)(5) traffic, not just "local" traffic.

The FCC in its *ISP Remand Order* corrected a "mistake" in an earlier FCC order by eliminating use of the phrase "local traffic" to determine the types of traffic to which the compensation obligations in 47 U.S.C. §§ 251(b)(5) and 251(d)(2) apply and held that those sections apply to all telecommunications not excluded by section 251(g):

> [W]e modify our analysis and conclusion in the *Local Competition Order*. There we held that "[t]ransport and termination of *local* traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 251(d)(2)." We now hold that the telecommunications subject to those provisions are all such telecommunications not excluded by section 251(g). In the *Local Competition Order*, as in the subsequent *Declaratory Ruling*, use of the phrase "local traffic" created unnecessary ambiguities, and we correct that mistake here.[6]

The FCC went on to conclude that ISP-bound traffic is excluded by section 251(g), but the D.C. Circuit Court of Appeals reversed that conclusion. The court held that section 251(g) does not exclude ISP-bound traffic exchanged between local exchange carriers ("LECs") from section 251(b)(5):

> [I]t seems uncontested – and the [FCC] declared in the Initial Order – that there had been *no* pre-Act obligation relating to

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[5] *Id.*

[6] *ISP Remand Order* ¶ 46 (quoting *Implementation of the Local Competition Provisions in the Act*, FCC 96-325, CC Docket Nos. 96-98 & 95-185, First Report and Order (rel. Aug. 8, 1996) ("*Local Competition Order*")) (emphasis in original) (footnotes omitted).

> intercarrier compensation for ISP-bound traffic. The best the [FCC] can do on this score is to point to pre-existing LEC obligations to provide interstate access to ISPs. Indeed, the [FCC] does not even point to any pre-Act, federally created obligation for LECs to interconnect to each other for ISP-bound calls. And even if this hurdle were overcome, there would remain the fact that § 251(g) speaks only of services provided "to interexchange carriers and information service providers"; LECs' services to other LECs, even if en route to an ISP, are not "to" either an IXC or to an ISP.[7]

The D.C. Circuit did not address, much less disturb, the FCC's determination that section 251(b)(5) governs all telecommunications that is not excluded by section 251(g), and the court found that ISP-bound traffic is not excluded by section 251(g). As a result, ISP-bound traffic is governed by section 251(b)(5) and associated FCC rules, including the rules requiring cost sharing for the interconnection facilities that carry that traffic.

The Commission Order reaches the same result for non-"VNXX" ISP-bound traffic but uses a slightly different rationale, *i.e.*, that the *ISP Remand Order* does not change DTT cost sharing requirements, which continue to apply to "local" traffic, including ISP-bound traffic.[8] The *ISP Remand Order* does not *change* those requirements, but it broadens their scope. The FCC no longer limits the traffic carried over interconnection facilities to "local" traffic. Instead, the FCC now applies section 251(b)(5) and implementing rules, including FCC Rule 51.709(b), to all traffic that is not excluded by section 251(g). The D.C. Circuit held that section 251(g) does not exclude ISP-bound traffic. Interconnection facilities used to exchange ISP-bound traffic thus are subject to the cost sharing requirements of the Act and FCC rules. Accordingly, the *ISP Remand Order* as modified by the D.C. Circuit requires Qwest to pay the costs of DTT used to deliver ISP-bound traffic to Pac-West, and the Commission Order errs in reaching a contrary conclusion.

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[7] *WorldCom, Inc. v. F.C.C.*, 288 F.3d 429, 433-34 (D.C. Cir. 2002).

[8] Commission Order at 28-31.

2. The *ISP Remand Order* applies to *all* ISP-bound traffic between telephone numbers rated within the same local calling area.

Implicit in the Order is the belief that the *ISP Remand Order* applies only to ISP-bound traffic between a customer and an ISP modem physically located within the same local calling area. That belief is incorrect. The first sentence in the first paragraph of the FCC's *ISP Remand Order* provides, "In this Order, we reconsider the proper treatment for purposes of intercarrier compensation of telecommunications traffic delivered to Internet service providers (ISPs)." By its plain language, the *ISP Remand Order* applies to *all* ISP-bound traffic between telephone numbers assigned to the same local calling area. Qwest has disagreed, pointing to statements in that order and the D.C. Circuit's decision that "an ISP's end-user customers *typically* access the Internet through an ISP server located in the same local calling area."[9] While that is true of end-users located in urban areas, it certainly is not the case for end-users who live in more rural locations, and nothing in this language or the body of the FCC's order limits the applicability of the order to such narrow circumstances.

The Washington Utilities and Transportation Commission reached that same conclusion after quoting the first sentence of the *ISP Remand Order*:

> The FCC's order, thus, introduces its subject matter as encompassing all telecommunications traffic delivered to ISPs and not some subset of that universe as CenturyTel contends. The FCC's order is consistent in this regard throughout its discussion and nowhere suggests that its result is limited to the narrow class of ISP-bound traffic that CenturyTel argues is the scope of its application. It is the case, as CenturyTel argues, that both the FCC and the appeals court refer to the traffic that terminates at an ISP within the caller's local area, but they do so not to limit their scope to this subset of ISP-bound calls. Rather, both emphasize that even when the traffic remains in the local area it is not to be treated for

[9] *ISP Remand Order* ¶ 10 (emphasis added); *see Worldcom*, 288 F.3d at 430.

compensation purposes as local traffic.[10]

A federal District Court in Connecticut more recently reviewed the same statements from the *ISP Remand Order* and the subsequent D.C. Circuit opinion remanding that Order, and the court reached essentially the same conclusion as the Washington Commission:

> What these statements, taken by themselves, do not reveal is how the FCC proceeded to answer that question in the *ISP Remand Order*. In answering the question, the FCC: (a) disclaimed the use of the term "local," (b) held that all traffic was subject to reciprocal compensation unless exempted, (c) held that all ISP-bound traffic was exempted because it is "information access," (d) held that all ISP-bound traffic was subject to the FCC's jurisdiction under section 201, and (e) proceeded to set the compensation rates for all ISP-bound traffic. In short, though the FCC started with the question whether "local" ISP-bound traffic was subject to reciprocal compensation, it answered that question in the negative on the basis of its conclusion that all ISP-bound traffic was in a class by itself.[11]

The Connecticut District Court concluded that "the language of the *ISP Remand Order* is unambiguous – the FCC concluded that section 201 gave it jurisdiction over all ISP-bound traffic, and it proceeded to set the intercarrier compensation rates for such traffic."[12] The Order, therefore, errs in treating "VNXX" ISP-bound traffic differently than other ISP-bound traffic for purposes of DTT cost sharing.

3. The Oregon District Court decision is inapplicable.

The Commission Order further errs by relying on the Oregon District Court's

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[10] *In re Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC, and CenturyTel of Washington, Inc.*, WUTC Docket No. UT-023043, Fifth Supplemental Order, Arbitrator's Report and Decision ¶ 35 (Jan. 2, 2003), *aff'd* Seventh Supplemental Order (Feb. 28, 2003).

[11] *Southern New England Tel. Co. v. MCI WorldCom Communications, Inc.*, 359 F. Supp. 229, 231-32 (D. Conn. 2005).

[12] *Id.* at 231.

unpublished decision in *Qwest v. Universal Telecom, Inc.*[13] In that case, the District Court interpreted an ICA that had not been amended to incorporate the *ISP Remand Order*. Like the Commission, the court concluded that the *ISP Remand Order* does not apply in the absence of an amendment incorporating its terms into the ICA.[14] The court relied on two statements in the *ISP Remand Order*, including footnote 149, to reinforce that decision.[15] The court thus did not reach any conclusions about whether that FCC order would affect carriers' transport obligations if it were incorporated into an ICA.

The Commission Order misconstrues and misapplies the court's discussion. The court held that the *ISP Remand Order* did not alter *any* of the contractual obligations in the ICA before the court because the requirements of the FCC order were not included in that ICA. The Commission Order, however, erroneously interprets the court's decision as finding that "the FCC never intended that the *ISP Remand Order* would affect the relative use requirements applicable to the transport of ISP-bound traffic set forth in § 51.709(b)."[16] The District Court said no such thing, and its decision provides no support for the Commission's interpretation of the *ISP Remand Order*.

B. The ISP Amendment Incorporates the FCC's Redefinition of the Traffic Subject to Section 251(b)(5).

The second basis for the Commission's resolution of Issue 5 is that "[t]he terms of the Pac-West/Qwest ICA clearly specify that the RUF applies only to transport of 'local' traffic."[17] The Commission Order again relies on the District Court decision in *Universal* for the proposition that

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[13] Civil No. 04-6047-AA, Opinion and Order (Dec. 15, 2004) ("*Universal*").

[14] *Id.* at 12-13.

[15] *Id.* at 11.

[16] Commission Order at 30.

[17] Commission Order at 36.

"'VNXX traffic does not meet the definition of "local" because it does not originate and terminate in the same LCA or EAS; instead, it crosses LCAs and EASs.'"[18] As discussed above, however, the FCC no longer limits the applicability of section 251(b)(5) to "local" traffic, but applies that section and the FCC's implementing rules to all traffic that is not excluded by section 251(g), including ISP-bound traffic between telephone numbers rated within the same local calling area. The Commission's use of the term "local" with respect to the traffic carried over interconnection facilities thus is inconsistent with federal law and impermissibly narrows the scope of the traffic governed by the ICA.

The ISP Amendment, however, expressly incorporates the requirements of the *ISP Remand Order* into the ICA. The references to "local" and "local traffic" in the ICA, therefore, must be construed to mean "traffic that is not excluded by section 251(g)," as required by the *ISP Remand Order*. As so interpreted to conform to federal law, the language in the ICA applying the RUF to the transport of "local" traffic necessarily includes "VNXX" ISP-bound traffic.

The Oregon District Court decision does not support a different result. Again, the court was interpreting an ICA that had not incorporated the requirements of the *ISP Remand Order*. The court's discussion of "VNXX" traffic was solely within the context of the language of that ICA. The court never even mentions the *ISP Remand Order* in that entire discussion because the court had previously held that order inapplicable to the interpretation of the ICA.[19] The District Court decision in *Universal*, therefore, does not purport to interpret the substantive requirements in the *ISP Remand Order*, and the Commission Order errs by construing that decision as doing so.

The Commission Order also fails to consider the FCC's analysis of this issue under virtually

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[18] *Id.* (quoting *Universal* at 11).

[19] *See Universal* at 17-21.

identical circumstances. In *Starpower Communications LLC v. Verizon South*,[20] the parties' ICA relied on the definition of "local service" in the Verizon South tariff as "'telephone service furnished between customer's stations located within the same exchange area.'"[21] Verizon South contended that this definition excluded "VNXX" traffic, as the Commission Order concluded. The FCC disagreed, finding that Verizon South's conduct under the tariff, not just the tariff itself, was determinative, and Verizon rates and routes calls based on telephone numbers, not the physical location of the calling and called parties:

> [The FCC] expressly found that Verizon South's ***conduct*** in rating and routing ISP-bound traffic determines whether traffic is local under the Tariff. . . . Verizon South stipulated that, in determining whether traffic is local under the Tariff, it looks to the respective telephone numbers of the call's parties, not the parties' physical location. Verizon South cannot now distance itself from this stipulation by arguing that local traffic, in fact, is something different from what it plainly considered local traffic to be when rating and billing calls under the Tariff. Thus, Verizon South's acknowledged treatment of virtual NXX calls as local under the Tariff establishes its contractual obligation to pay reciprocal compensation for Starpower's delivery of such calls under the Agreement.
>
> We also find relevant Verizon South's concession that it engaged in the very same conduct that it now alleges is unlawful when done by Starpower. Specifically, Verizon South billed and collected reciprocal compensation for calls placed by a CLEC customer to a Verizon South Foreign Exchange customer with a "local" NXX, even when those calls were between parties physically located in different local calling areas. Verizon South has failed to demonstrate why its contractual obligation to Starpower should be different from its own practice.[22]

Similarly here, Qwest has never disputed that it rates and routes calls according to the telephone numbers of the calling and called parties, and that Qwest does not – and cannot – consider the

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[20] FCC 03-278, File No. EB-00-MD-19, Memorandum Opinion and Order (rel. Nov. 7, 2003).

[21] *Id.* ¶ 12 (quoting Verizon South Tariff).

[22] *Id.* ¶¶ 13-14 (emphasis in original and footnotes omitted).

physical location of those parties. The language in Qwest's tariff that the Commission Order finds dispositive, therefore, is anything but and does not support the Commission's conclusion.

The FCC, moreover, found that even if it were to look at the language of the tariff in isolation, it would reach the same conclusion that Verizon South must compensate Starpower for the "VNXX" traffic that Verizon South delivers to Starpower:

> Even if we focus exclusively on the language of the Tariff, as Verizon South urges us to do, Verizon South's argument that virtual NXX traffic is not compensable under the Agreement still fails. First and foremost, the Tariff does not expressly address whether the "location" of a customer station turns on physical presence or number assignment, so Verizon South's course of performance in implementing the Tariff – which relied exclusively on the latter – is compelling. . . . In short, the Tariff's conception of local traffic includes all traffic for which a customer is billed at a local rate, regardless of the customer's physical location.[23]

The Qwest tariff language is virtually identical and subject to the same interpretation, *i.e.*, that FX or "VNXX" traffic is included in "local" traffic. The Commission Order, therefore, erroneously relies on the language in Qwest's tariff to conclude that Qwest is not responsible for the costs of DTT used to deliver "VNXX" ISP-bound traffic to Pac-West.

C. The Commission Should Conduct Oral Argument on Pac-West's Application.

The issue of the treatment of "VNXX" ISP-bound traffic is of significant importance not just to Pac-West but to Oregon consumers, particularly those who do not live in urban areas, and to the competitive telecommunications industry as a whole. ISPs cannot economically place a modem in every local calling area in Oregon. FX or "VNXX" service enables ISPs to offer reasonably priced dial-up Internet access to all local exchange customers. Indeed, there is no reason to believe that Qwest does not offer the same type of service to ISPs, including its unregulated affiliate that provides dial-up Internet access. Qwest seeks to competitively

[23] *Id.* ¶¶ 13-14 (emphasis in original and footnotes omitted).

disadvantage Pac-West by increasing Pac-West's costs to serve ISP customers by refusing to pay Qwest's proportional share of the interconnection facilities used to transport "VNXX" ISP-bound traffic.

Indeed, in the wake of the Commission Order, Qwest is refusing to pay for any interconnection facilities that are not located in the same local calling area as Pac-West's switch, regardless of where Pac-West's customers are located. Similarly, Qwest considers its FX service as different than "VNXX" and as subject to reciprocal compensation and DTT cost sharing under section 251(b)(5). Qwest routes and rates traffic to and from its FX customers according to the number assigned to those customers and not their physical location. Qwest, therefore, is refusing to pay for its proportion of the costs for DTT used to deliver "VNXX" traffic to CLECs while insisting that CLECs pay for DTT used to deliver calls to Qwest's FX customers. At a minimum, "VNXX" and FX traffic must be treated the same for rating (whether the traffic is access traffic or reciprocal compensation traffic) and for routing (whether it can ride local interconnection facilities or should be routed over access facilities). The Commission Order does not address this issue or the broad impact of excluding "VNXX" traffic from the requirements of section 251(b)(5) and makes no finding as to its appropriate legal classification.

The result of the Commission Order and Qwest's aggressive interpretation of that order, will be fewer – or possibly no – alternatives for dial-up Internet access outside the metropolitan areas of Oregon. ISPs will be forced (a) to obtain FX service from Qwest, (b) incur substantial costs to deploy servers in every local calling area, or (c) discontinue offering service in certain areas – which inevitably will be the non-urban areas of the state. Qwest is the only one who comes out ahead in these circumstances. Qwest is seeking deregulation of its business services throughout Oregon in Docket No. UX 29, which if granted would permit Qwest to charge

excessive rates to ISPs for FX services if CLECs effectively cannot offer an alternative. Even if ISPs choose to abandon areas rather than pay Qwest's FX rates, Qwest can be assured that its affiliate will obtain service from Qwest, given that the money is being transferred from one pocket to another. That affiliate, moreover, would then be free to charge a higher rate for dial-up Internet access in those areas where it does not face competition.

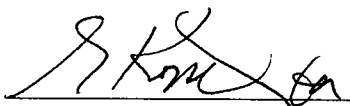
Consumers and competitors are the losing parties under the Commission Order. Consumers in less populous areas will pay more for Internet access. ISPs will also pay more for the services they need or will forego serving these areas, and Pac-West and other competitive service providers will be limited in their ability to provide services to ISPs accordingly. The Commission should carefully consider these consequences, as well as the requirements of federal law, in determining the disposition of Pac-West's application. Oral argument, as well as written briefs, will greatly assist the Commission to do so. Pac-West, therefore, strongly urges the Commission to conduct oral argument on Pac-West's application.

CONCLUSION

The Commission Order errs in interpreting the ISP Remand Order and the ICA not to require Qwest to pay for its proportional share of the interconnection facilities used to exchange "VNXX" ISP-bound traffic with Pac-West. The Commission, therefore, should conduct oral argument on this issue and should modify the Commission Order to require Qwest to pay for the portion of the DTT facilities used to deliver locally dialed traffic to Pac-West.

DATED this 26th day of September, 2005.

DAVIS WRIGHT TREMAINE LLP



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CERTIFICATE OF SERVICE
Docket IC9

I hereby certify that on the date given below the original and five copies of **Application of Pac-West Telecomm, Inc., for Rehearing or Reconsideration of Order No. 05-874**; and this **Certificate of Service**, in the above-referenced docket, were sent by Federal Express, overnight delivery, and by electronic filing to:

Public Utility Commission of Oregon
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On the same date, a true and correct copy was sent by regular U.S. Mail, postage prepaid, and by email:

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DATED this 26th day of September, 2005.

By: Melissa K. Geraghty
Melissa K. Geraghty

SEA 1694875v1 51546-1
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