

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

QWEST CORPORATION,	)	DOCKET UT-063038
	)	
Complainant,	)	RESPONDENTS LEVEL 3'S AND
	)	BROADWING'S MOTION FOR
v.	)	LEAVE TO ANSWER PAC-WEST'S
	)	PETITION FOR
LEVEL 3 COMMUNICATIONS, LLC,	)	RECONSIDERATION OF ORDER 10
<i>et al.</i> ,	)	FINAL ORDER
	)	
Respondents.	)	
.....	)	

**MOTION FOR LEAVE TO FILE ANSWER**

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Dated: August 1, 2008

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QWEST CORPORATION,	)	DOCKET UT-063038
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**MOTION FOR LEAVE TO FILE ANSWER**

**I. INTRODUCTION AND STATEMENT OF FACTS**

1. Level 3 Communications, LLC is an international communications and information services company headquartered in Broomfield, Colorado. Level 3 is a Delaware limited liability company and its address is 1025 Eldorado Boulevard, Broomfield, Colorado 80021. The company operates one of the largest, most advanced communications and Internet backbones in the world. Broadwing Communications, LLC is a wholly owned subsidiary of Level 3 Communications, LLC. Level 3 Communications, LLC and Broadwing Communications, LLC are collectively referred to as "Level 3" in this Motion.

2. Pursuant to WAC 480-07-375, WAC 480-07-395, and WAC 480-07-850, Level 3 submits this Motion for Leave to Answer ("Level 3 Motion") Pac-West Telecomm, Inc.'s ("Pac-

West”) Motion for Clarification and/or Petition for Reconsideration of Order 10 Final Order<sup>1</sup> Upholding Initial Order (“Pac-West’s Petition”).

3. On July 28, 2008, Pac-West filed its Petition pointing out that “[n]either the Initial Order nor the Final Order ... specifies the nature and extent of the transport charges that Qwest is authorized to impose” under the Washington Utilities and Transportation Commission’s (“WUTC” or “Commission”) new rules set forth in the Final Order.<sup>2</sup> Pac-West requested that the Commission: “(1) Clarify that the compensation for transport authorized in the Final Order is limited to TELRIC-based rates for transport between the tandem serving the local calling area in which the calling party is located and the POI; [and] (2) Clarify that the compensation scheme established in the Final Order does not apply to ISP-bound traffic when the calling party and the ISP server or modem are physically located in the same local calling area.”<sup>3</sup>

**II. GRANTING LEVEL 3’S MOTION WILL PROVIDE THE COMMISSION WITH INFORMATION NECESSARY TO DEVELOP TECHNOLOGICALLY NEUTRAL RULES TO IMPLEMENT THE COMMISSION’S NEW POLICY IN PERMITTING QWEST TO IMPOSE CERTAIN TRANSPORT CHARGES ON VNXX TRAFFIC**

4. Level 3 shares Pac-West’s concerns that Qwest may exploit ambiguities in the Commission’s new rules to impose unwarranted and unjustified charges for such transport in Washington that exceed those permitted in the Final Order.<sup>4</sup> However, Level 3 believes that Pac-West’s Petition inadvertently oversimplifies the complex implementation issues that

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<sup>1</sup> *Qwest Corporation v. Level 3 Communications, et al*, Docket No. UT-063038, Order No. 10, Final Order Upholding Initial Order; Granting in Part and Denying in Part Petitions for Administrative Review (July 16, 2008) (“Final Order”). Level 3 continues to oppose the Commission’s new rules imposing bill and keep and transport charges on certain VNXX traffic. By submitting this Motion and/or its subsequent Answer Level 3 does not waive, and reserves all rights relating to these erroneous and unlawful Commission holdings contained in the Final Order.

<sup>2</sup> Pac-West Petition, ¶ 2; Final Order, ¶¶ 217, 224.

<sup>3</sup> Pac-West Petition, ¶¶ 2, 5, 7-8.

<sup>4</sup> Pac-West Petition, ¶¶ 2-3.

invariably arise under the Commission's new transport and compensation scheme in the Final Order. Most importantly, the clarifications requested by Pac-West may not ensure the Commission's new rules are non-discriminatory and technologically neutral.

5. For example, Pac-West requested that the Commission "clarify the Final Order to state that, at a minimum, an ISP is physically located in any local calling area in which the ISP's *modem or server is physically located.*"<sup>5</sup> While modifying the Final Order to make clear that the customer is located in the local calling area in which "the ISP's modem or server is physically located" for the purposes of transport charges and compensation is a step in the right direction, there are numerous other advanced network arrangements that also establish a local presence that would not be expressly captured by this clarification standing alone.

6. In the modern high-technology networks deployed by CLECs and increasingly ILECs today, the traditional modem and other functions that may establish a physical presence in a local calling area often reside in software operating on distributed processors that utilize standard protocols. These network functions and components may be geographically distributed across the network. Moreover, equipment vendors, carriers deploying advanced technologies, and ISPs with their own network infrastructure often do not narrowly characterize their deployed network components as providing a modem function or server function because these narrow characterizations are somewhat obsolete. Further, in the current age, ISPs often lease or license technology, software and equipment from underlying providers rather than purchase separate readily identifiable equipment of their own.

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<sup>5</sup> Pac-West Petition, ¶ 7 (emphasis added).

7. Finally, Level 3 agrees with Pac-West's assessment that by requiring CLECs to terminate VNXX traffic from Qwest on a bill and keep basis and to pay for the transport from the local tandem to the POI, the Commission has severely reduced the financial viability of providing dial up Internet access to a large part of Washington. Thus, Level 3 would request further that the Commission establish measures that permit CLECs to exit transport arrangements without unjust penalty or delay when they engage in efforts to discontinue services to customers in response to the Commission's new rules which invariably will render many markets economically unviable.

8. The Commission has repeatedly recognized that its rules must be both technologically neutral and must not discriminate pursuant to both state and federal law. For example, the Initial Order observes that:

The Act established a system whereby CLECs could provide competitive telecommunications services without building the same types of networks as ILECs. Because CLEC networks take advantage of technological developments that were not available to ILECs as they were building their legacy facilities-based networks, CLEC network architecture is far more streamlined and may provide functionally equivalent services with more efficient equipment.<sup>6</sup>

The Commission acknowledges its obligation under federal and state law to reach a technologically neutral resolution of the issues before it that do not favor one network architecture over another. As the Commission put it in the Final Order, the Commission seeks to establish "a fair and competitively neutral compensation regime" that "recognizes and addresses

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<sup>6</sup> *Qwest Corporation v. Level 3 Communications, et al*, Docket No. UT-063038, Order No. 5, Initial Order, ¶ 41 (Oct. 5, 2007) ("Initial Order"). The Final Order and Initial Order also "acknowledged the Commission's prior finding in the AT&T Arbitration Order that CLECs typically deploy different switch and transport network architectures from those ILECs have employed historically and that this difference should not be used as a basis to prevent CLECs from offering VNXX services that are functionally equivalent to the ILECs' FX services." See, e.g., Final Order, ¶¶ 211, 216, 233.

the differences between CLEC and ILEC network architectures.”<sup>7</sup> A policy that discriminates in favor of legacy technologies over advanced technologies would be unlawful and would have the perverse effect of impeding the deployment of new technologies.

9. Accordingly, Level 3 should be permitted to Answer Pac-West’s Petition to clarify these factual issues and ensure that the Final Order is implemented in a technologically neutral manner. Because modern technology is not static and carriers deploy their networks and services in diverse manners, Level 3 encourages the Commission to entertain Pac-West’s Petition and permit Level 3 to submit additional network and technological information so that the Commission may make an informed decision that does not have unintended consequences or discriminate against CLECs and other communications companies.

#### **REQUEST FOR RELIEF**

10. WHEREFORE, Level 3 respectfully requests that the Commission grant Level 3’s Motion and the following relief:

- (1) Permit Level 3 to File an Answer to Pac-West’s Petition addressing the issues raised herein and by Pac-West’s Petition and;
- (2) Grant such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

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<sup>7</sup> See, e.g., Final Order, ¶¶ 211, 223, 233.

DATED this 1st day of August, 2008.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, Jeffrey R. Strenkowski, hereby certify that on the day of August 1, 2008, true and correct copies of Level 3 Communications, LLC's and Broadwing Communications, LLC's Motion for Leave to Answer Pac-West Telecomm, Inc.'s Motion for Clarification and/or Petition for Reconsideration of Order 10 Final Order Upholding Initial Order was served on all parties of record in this proceeding listed below via electronic mail and first class mail. In addition, the original plus twelve (12) copies were submitted to the Executive Secretary of the Commission and a courtesy copy was provided to the Honorable Judge Rendahl.

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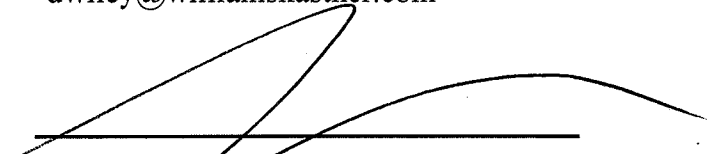
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Dated this 1st day of August, 2008