

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

IN THE MATTER OF THE PETITION FOR
ARBITRATION OF AN INTERCONNECTION
AGREEMENT BETWEEN

LEVEL 3 COMMUNICATIONS, LLC,

and

QWEST CORPORATION

PURSUANT TO 47 U.S.C. § 252

DOCKET No. UT-023042

**LEVEL 3 COMMUNICATIONS, LLC.
MOTION FOR LEAVE TO FILE
ADDITIONAL AUTHORITY**

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ATTORNEYS FOR LEVEL 3 COMMUNICATIONS, LLC

**LEVEL 3 COMMUNICATIONS, LLC MOTION FOR LEAVE TO FILE ADDITIONAL
AUTHORITY**

Level 3 Communications, LLC (“Level 3”), by its attorneys, submits this Motion for Leave to File Additional Authority pursuant to WAC 480-09-425. In support of its motion, Level 3 states as follows:

1. A hearing in the above-captioned matter was held October 29, 2002. By the time of hearing, the dispute between the parties had been narrowed to one issue. The parties filed post-hearing briefs on November 8, 2002, and Level 3 filed a petition for administrative review on December 23, 2002. Oral Argument was held on January 15, 2003.
2. Subsequent to the filing of post-hearing briefs and Level 3’s petition for administrative review, and Oral Argument, a Recommended Decision of the Hearing Examiner was entered on January 17, 2003 in New Mexico Public Regulatory Commission Utility Case No.3803, *In the Matter of the Petition of Level 3 Communications, LLC for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Communications* (the “New Mexico Arbitration” and “Recommended Decision”). The Recommended Decision is attached hereto as Attachment 1.
3. The Recommended Decision is significant persuasive authority, and is proper for this Commission to consider in reaching its decision in this docket. The parties in the New Mexico Arbitration were Level 3 and Qwest Corporation. The New Mexico Arbitration also involved the same issue that has been contested by the parties in this proceeding, and was resolved by the hearing examiner pursuant to the same federal

authority¹ that will guide this Commission in reaching its decision. Similar to the Arizona and Minnesota decisions cited in Level 3's post-hearing brief, the Recommended Decision provides that 47 C.F.R. Section 51.703(b) prohibited a LEC such as Qwest "from assessing charges on any other telecommunications carrier for traffic originating on the network of the LEC."² The New Mexico Arbitration also provides that 47 C.F.R. Section 709(b) does not apply to the cost sharing of routing traffic originated by Qwest on Qwest's network up to the point of interconnection, noting that, "[i]f an interconnecting carrier does not send traffic back to Qwest, the FCC regulations do not require the interconnecting carrier to pay for the interconnection facilities. Those costs would be considered the originating carrier's responsibility under 47 C.F.R. Section 51.703(b)."³ Finally, in addressing Qwest's arguments that the New Mexico Commission had previously accepted language materially identical to the language proposed by Qwest in its agreement with Level 3, the New Mexico Arbitration provides that the SGAT "is a starting point in negotiations and is a continuing process."⁴

For the forgoing reasons, Level 3 respectfully requests that this Commission grant its Motion for Leave to File Additional Authority, and that the Commission take administrative notice of the Recommended Decision.

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, 16FCCRcd. 9151 (2001), *remanded Worldcom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

² *Recommended Decision* at 9.

³ *Id.*

⁴ *Id.* at 15.

RESPECTFULLY SUBMITTED this 23rd day of January, 2003.

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A. CERTIFICATE OF SERVICE

I hereby certify that the original and seven (7) copies of the foregoing LEVEL 3 COMMUNICATIONS, LLC MOTION FOR LEAVE TO FILE ADDITIONAL AUTHORITY in WUTC Docket No. UT-023042, including diskette of same in Word and Adobe format, was sent via Federal Express on this 23rd day of January, 2003, addressed to the following:

CAROLE J. WASHBURN
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And that a true and correct copy of same has been served via electronic, legal messenger and/or FedEx Priority Overnight on this 23rd day of January, 2003, properly addressed to the following:

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WASHINGTON, D.C. 20005-2011

DATED at Seattle, Washington this 23rd day of January, 2003.

JENNIFER POWERS

ATTACHMENT 1

Recommended Decision

NMPRC Utility Case No. 3803

**In the Matter of the Petition for Arbitration of Level 3
Communications, LLC for Arbitration to Resolve Issues Relating to an
Interconnection Agreement with Qwest Communications**