

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

	)	
In the Matter of the Petition for	)	DOCKET NO. UT-023042
Arbitration of an Interconnection	)	
Agreement Between	)	
	)	FOURTH SUPPLEMENTAL
LEVEL 3 COMMUNICATIONS, LLC,	)	ORDER
	)	
and	)	COMMISSION'S FINAL ORDER
	)	
QWEST CORPORATION	)	
	)	
Pursuant to 47 U.S.C. Section 252.	)	
	)	
.....	)	

1 **Synopsis:** *The Commission adopts the Interconnection Agreement language proposed by Level 3 for determining the parties' relative use of facilities on Qwest's side of the point of interconnection between the two carriers' systems. Internet Service Provider-bound traffic will be included in the relative use calculation.*

2 **Nature of Proceeding.** This is an arbitration of a clause of an interconnection agreement between Level 3 Communications, LLC. (Level 3) and Qwest Corporation (Qwest).

3 **Procedural History.** This matter was heard on due and proper notice to all parties October 28, 2002, in Olympia, Washington. Oral argument on the petition for Commission review was heard on due and proper notice to all parties before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad and Commissioner Patrick J. Oshie on January 15, 2003.

4 **Arbitrator's Report and Decision.** On November 27, 2002, Arbitrator Marjorie Schaer entered the Third Supplemental Order in this proceeding, which determined that Qwest should be allowed and Level 3 required to exclude Internet Service Provider (ISP)-bound traffic from the calculation of each party's "relative use" of interconnection facilities under a proposed interconnection agreement between the two companies.

- 5 **Petition for Review and Response.** On December 23, 2002, Level 3 filed its petition for Commission review complaining of error and seeking relief with respect to the issue addressed by the Arbitrator's Report and Decision. On January 8, 2003, Qwest filed its answer to the petition. Also on January 8, 2003, Qwest filed the signed, arbitrated Interconnection Agreement between Qwest and Level 3.
- 6 **Appearances.** Gregory L. Rogers, Level 3 Communications, LLC, and Rogelio E. Peña, Peña & Associates, LLC, Boulder, Colorado, represent Level 3 Communications. John M. Devaney and Mary Rose Hughes, Perkins Coie, LLP, Washington, D.C., and Lisa A. Anderl, in-house counsel to Qwest Corporation, Seattle, represent Qwest Corporation.

## I. PROCEDURAL HISTORY

- 7 On February 27, 2002, Level 3 commenced negotiations with Qwest with the intention to achieve an Interconnection Agreement between Level 3 and Qwest in the state of Washington. On August 6, 2002, Level 3 filed with the Washington Utilities and Transportation Commission (Commission) a petition for arbitration pursuant to 47 U.S.C. § 252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.* (Act).
- 8 Level 3 is a competitive local exchange carrier (CLEC) and has established local interconnection to provide direct inward dialing capability to its ISP customers in Washington. Qwest is an incumbent local exchange company (ILEC) as defined in 47 U.S.C. § 251(h), and provides local exchange and other telecommunications services throughout the state of Washington. The Commission has jurisdiction over the petition and the parties pursuant to 47 U.S.C. §§ 251-252 and RCW 80.36.610. The majority of terms in the Level 3 Agreement have been negotiated and agreed to by the parties.
- 9 The Commission entered an Order on Arbitration Procedure and appointed an Arbitrator on August 16, 2002. The Commission entered a Protective Order on September 26, 2002. Qwest filed its response to Level 3's petition on August 30, 2002. On September 24, 2002, a prehearing conference was held to establish a procedural schedule. On September 27, 2002, a Second Supplemental Order; Pre-

Arbitration Conference Order was entered. The Second Supplemental Order included a schedule agreed to by the parties.

- 10 On September 17, 2002, Qwest filed with the Commission a Motion to Dismiss, or in the Alternative, for Summary Determination arguing, "as a matter of law, Level 3's request must be rejected." *Motion, p. 2*. By letter dated September 20, 2002, the parties were asked to come to the prehearing conference prepared to discuss what factual disputes, if any, remained in the proceeding. The schedule in the Second Supplemental Order included a date for prefiling of simultaneous direct testimony of October 9, 2002, and a schedule for resolution of this motion. On October 9, 2002, Qwest filed with the Commission the direct testimony of Larry B. Brotherson. On October 10, 2002, Level 3 filed with the Commission the direct testimony and three exhibits of William P. Hunt. Also on October 10, 2002, Level 3 filed with the Commission its Opposition to Qwest's motion for Summary Determination. On October 16, 2002, Qwest filed with the Commission Corrected Direct and Rebuttal Testimony of Larry B. Brotherson and a Reply in Support of Its Motion to Dismiss or, in the Alternative, for Summary Determination. Also on October 16, 2002, Level 3 filed with the Commission the Rebuttal Testimony of William P. Hunt.
- 11 An arbitration hearing was held on October 28, 2002. Arbitrator Dennis Moss substituted for Arbitrator Marjorie Schaer at the hearing. Arbitrator Schaer read the transcript and exhibits from the hearing and prepared the Arbitrator's Report and Decision (Report) entered as the Third Supplemental Order in this proceeding on November 27, 2002. The Report determined that Qwest should be allowed and Level 3 required to exclude ISP-bound traffic from the calculation of each party's "relative use" of interconnection facilities under their proposed interconnection agreement. The Report also provided a schedule for the remainder of the proceeding.
- 12 On December 23, 2002, Level 3 filed its petition for Commission review complaining of error and seeking relief with respect to the issue addressed by the Report. On January 8, 2003, Qwest filed its answer to the petition. Also on January 8, 2003, Qwest filed the signed, arbitrated Interconnection Agreement between Qwest and Level 3.

- 13 Chairwoman Marilyn Showalter, Commissioner Richard Hemstad and Commissioner Patrick J. Oshie heard oral argument on the petition for Commission review on January 15, 2003.

## II. DISCUSSION AND DECISION

### A. The Commission's Duty Under the Telecommunications Act of 1996

- 14 Two central goals of the Act are the nondiscriminatory treatment of carriers and the promotion of competition. The Act contemplates that competitive entry into local telephone markets will be accomplished through interconnection agreements between ILECs and CLECs, which will set forth the particular terms and conditions necessary for the ILECs to fulfill their duties under the Act. 47 U.S.C. § 251(c)(1). Each interconnection agreement must be submitted to the Commission for approval, whether the agreement was negotiated or arbitrated, in whole or in part. 47 U.S.C. § 252(d).
- 15 The Act provides that in arbitrating interconnection agreements, the state commission is to: (1) ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC under Section 251; (2) establish rates for interconnection services, or network elements according to Section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C. § 252(c).

### B. Issue Presented

- 16 Qwest and Level 3 have engaged in largely successful negotiations toward an interconnection agreement. Both parties agree that there is one remaining topic to be resolved. That is whether the Commission should include traffic bound to ISPs in "relative use" calculations for two-way trunking facilities in the interconnection agreement between Level 3 and Qwest.
- 17 Level 3 and Qwest have agreed to an interconnection arrangement whereby Level 3 will interconnect with Qwest using dedicated trunks from Qwest's network to Level 3's point of interconnection (POI). Level 3 will pay the nonrecurring charge to activate the trunks. Level 3 and Qwest have agreed that financial responsibility for the interconnection facilities should be based on each

party's relative use of the facilities, and they have agreed that relative use will be determined by the amount of traffic that each party originates over those facilities. Under relative use, Qwest would apply a credit against Level 3's monthly recurring charges for any traffic originated by Qwest that is terminated to Level 3.

- 18 Qwest wants to exclude ISP-bound traffic from the calculation of relative use of the facilities; Level 3 proposes to include it. Level 3 provides local exchange service exclusively to ISPs and will originate no traffic on its side of the network to be terminated on Qwest's side of the network. Therefore, if ISP-bound traffic were excluded from relative use, Qwest would apply no credit to the monthly charges owed by Level 3 and Level 3 would pay all of the costs associated with Qwest's customers' use of Qwest's network to reach Level 3's ISP customers. If, however, the ISP-bound traffic were included, Qwest would be solely responsible for those recurring costs.

### **C. Arbitrator's Report and Decision**

- 19 As a general matter, the Report is limited to the disputed issues presented for arbitration. *47 U.S.C. § 252(b)(4)*. The parties were required to present proposed contract language on all disputed issues to the extent possible, and the Arbitrator had the discretion to either adopt or disregard proposed contract language in making decisions. Contract language adopted pursuant to arbitration remains subject to Commission approval. *47 U.S.C. § 252(e)*. The Arbitrator had determined that the Commission should exclude Internet traffic from the calculations of each party's interconnection facilities in the interconnection agreement between Level 3 and Qwest.
- 20 The Report agrees with Qwest's claims that the Commission had considered in Docket No. UT-003013<sup>1</sup> whether Internet traffic should be included in the originating traffic that determines each party's relative use, and that the

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<sup>1</sup> Thirty-Second Supplemental Order; Part B Order; Line Splitting; Line Sharing Over Fiber Loops; OSS; Loop Conditioning; Reciprocal Compensation; and Nonrecurring and Recurring Rates for UNEs, *Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination*, Docket No. UT-003013, ¶¶ 113, 114 (June 21, 2002) (32nd Supplemental Order).

Commission recognized that under FCC rules, state Commissions do not have authority to determine intercarrier compensation for Internet-bound traffic.<sup>2</sup>

21 The Commission held in its 32<sup>nd</sup> Supplemental Order in Docket No. UT-003013:

Whereas the FCC has concluded that ISP-bound traffic is interstate traffic, this traffic should be excluded from the consideration of interconnection facilities cost-sharing. We may revisit our decision excluding ISP-bound traffic as further judicial and federal regulatory review occurs.

In the 38<sup>th</sup> Supplemental Order, the Commission again excluded ISP-bound traffic from the determination of the proportion of traffic each carrier delivers to the other for local termination.<sup>3</sup> In paragraph 61 the Commission again emphasized:

The Part B Order further stated that the Commission may revisit this decision as further judicial and regulatory review of the nature of ISP-bound traffic occurs.

22 The Report determined that the Arbitrator was bound to follow the Commission's decision. Consequently, it accepted Qwest's proposed language and rejected Level 3's proposal.

#### **D. Petition for Commission Review**

23 In seeking review, Level 3 argues that the Commission's decision in Docket No. UT-003013 should not bind the Commission's decision in this arbitration. Level 3 acknowledges that the Commission previously has adopted Qwest's position on relative use in Docket No. UT-003013, but argues that it was not a party to that proceeding. Qwest and Level 3 presented to the Commission the same arguments with respect to relative use as were presented to the Arbitrator.

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<sup>2</sup> Thirty-Eighth Supplemental Order; Final Reconsideration Order, Part B, *Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination*, Docket No. UT-003013, at ¶ 64 (Sept. 23, 2002) (38<sup>th</sup> Supplemental Order). 47 C.F.R. § 51.709.

<sup>3</sup> Thirty-Eighth Supplemental Order; Final Reconsideration Order, Part B, *Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination*, Docket No. UT-003013, at ¶ 64 (Sept. 23, 2002) (38<sup>th</sup> Supplemental Order).

- 24 Level 3 claims that in this proceeding it has presented factual evidence and substantive legal arguments that support its position, which the Commission did not consider previously. First, the Commission's earlier analysis did not consider binding FCC interconnection rules, such as FCC Rule 51.703(b), which require Qwest to deliver its originating telecommunications traffic to the POI at no charge to Level 3. Second, the Commission improperly applied a terminating compensation rule, FCC Rule 51.709, to require the sharing of costs for interconnection facilities according to the relative local traffic flow over that facility. Third, other arbitration decisions not considered by the Commission, including the Federal Arbitration Order<sup>4</sup> and decisions by the Arizona<sup>5</sup> and New York<sup>6</sup> commissions and the Minnesota<sup>7</sup> arbitrator support Level 3's position.
- 25 Level 3 argues that Rule 709(b) does not apply to this situation because it addresses only the financial responsibility for traffic originated by the interconnecting carrier and sent back to be terminated on Qwest's network (as opposed to responsibility for traffic that Qwest originates). Level 3 also contends that the ISP Remand Order<sup>8</sup> addressed the rates for transport and termination of traffic that has passed the POI, as opposed to the costs of interconnection facilities on Qwest's side of the network.
- 26 Level 3 argues that Rule 703(b) applies, and this rule prohibits LECs from charging other carriers for traffic that originates on the LEC's network.

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<sup>4</sup> *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, ¶ 52 (Wireline Comp. Bureau, rel. July 17, 2002) ("Federal Arbitration Order").

<sup>5</sup> *Opinion and Order, In the Matter of the Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 253(b) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996, With Qwest Corporation Regarding Rules, Terms and Conditions for Interconnection*, Dkt. Nos. T-03654A-00-0882 and T-01051-B-00-0882, Decision No. 63550, 10 (Ariz. Corp. Com., April 10, 2001).

<sup>6</sup> *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Inter-carrier Agreement with Verizon New York, Inc.*, Case 02-C-0006, Order Resolving Arbitration Issues, 5-10 (N.Y. P.S.C. May 24, 2002).

<sup>7</sup> *Petition of Level 3 Communications, LLC, for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Communications*, MPUC P5733,421/IC-02-1372, Arbitrator's Recommended Decision, 9 (Minn. PUC Nov. 1, 2002) ("Minnesota RD").

<sup>8</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Inter-carrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd. 9151 (2001), remanded *Worldcom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002)(Remand Order).

- 27 At oral argument, Level 3 also argued that a newly entered FCC decision on Qwest's 271 application<sup>9</sup> (Qwest 9 State 271 Order) makes plain that the Commission's interpretation of 47 C.F.R. § 51.709 read that rule too broadly. The issue is highlighted at paragraph 325 of the Qwest 9 State 271 Order. There, the FCC acknowledges that the issue has been addressed by several state commissions with differing outcomes. *See, ftn. 1178*. The FCC goes on to state that the issue is a new interpretive dispute that it has not yet addressed and that an outcome either way is not a per se violation of the Act or FCC Rules.
- 28 Qwest relies primarily on the FCC regulation concerning the rate structure for transport and termination of telecommunications traffic, 47 C.F.R. § 51.709(b), and the FCC's ISP Remand Order, which addressed reciprocal compensation for ISP-bound traffic. Because the FCC has excluded ISP-bound traffic from the reciprocal compensation obligations of 47 U.S.C. § 251(b)(5), Qwest contends that this traffic also must be excluded from relative use calculations that determine compensation for interconnection facilities. Qwest also relies on this Commission's decision to exclude ISP-bound traffic in Docket No. UT-003013.
- 29 Qwest continues to argue that in considering and reconsidering this issue in Docket No. UT-003013, the Commission ruled unequivocally that Internet traffic should be excluded from ILEC/CLEC allocations of financial responsibility for interconnection facilities. The Commission decided that each party should pay the other in proportion to the amount of traffic each carrier delivers to the other over those facilities for local termination, excluding ISP-bound traffic.
- 30 Given the Commission's conclusion that it is bound by 47 C.F.R. § 51.709, Qwest argues that Level 3's other arguments cannot change this conclusion. Qwest claims that analysis of FCC interconnection rules, such as FCC Rule 51.703(b), analysis of whether the Commission improperly applied a terminating compensation rule, FCC Rule 51.709, to require the sharing of costs for interconnection facilities according to the relative local traffic flow over that facility, and consideration of other arbitration decisions cannot alter the precedent established by the Commission's orders in UT-003013. Therefore,

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<sup>9</sup> *Application of Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Dkt. No. 02-314, FCC No. 02-332 (rel. Dec. 23, 2002) (*Qwest 9-State 271 Order*).



Qwest argues, the "Qwest version" of the language in subsections 7.3.1.1.3, 7.3.1.1.3.1, and 7.3.2.2.1 of Appendix A to this Order should be approved as a matter of law.

### **E. Commission Discussion and Decision**

31 We pause first to acknowledge the success Level 3 and Qwest achieved in negotiating the vast majority of the terms that will govern their business arrangements. The interconnection agreement crafted by the parties is 280 pages in length and includes numerous interrelated provisions, only one of which was submitted for arbitration. We commend the parties for this accomplishment.

32 Level 3 and Qwest agree that the division of financial responsibility for recurring costs for interconnection transport facilities should be based upon each party's relative use of the facilities. The parties also agree that relative use will be determined by the amount of traffic that each party originates over those facilities. Their only disagreement concerns whether Internet traffic should be included in the originating traffic that determines each party's relative use.

33 This dispute involves two different obligations in the Federal Act: (1) the obligation to interconnect with other carriers; and (2) the obligation to pay reciprocal compensation for the transport and termination of calls that originate on one carrier's network and terminate on another carrier's network. *47 U.S.C. §§ 251(a), (b)(5)*. See also *47 C.F.R. § 51.5* ("*Interconnection*" does not include the transport and termination of traffic).

34 The Act imposes different obligations on carriers, depending on whether the carrier is originating or terminating the call. The originating carrier (which the parties agree will always be Qwest, given the services Level 3 plans to provide initially) is obligated to carry the call to the POI between the carriers' networks. Until relatively recently, this outcome was inevitable under *47 C.F.R. § 51.703(b)*, which provides that a "LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."

35 The concept of relative use to determine financial responsibility for interconnection facilities is contained in *47 C.F.R. § 51.709(b)*, which states that the carrier providing dedicated facilities to transmit traffic can recover only the

costs of the portion of the facilities used by the interconnecting carrier to send traffic that will terminate on the providing carrier's network. The rule makes plain that when the interconnecting carrier (Level 3) sends no traffic back to the providing carrier (Qwest), the interconnecting carrier is not obliged to pay anything for the interconnection facilities. Rather, the cost is the originating carrier's responsibility.

- 36 In contrast, reciprocal compensation is an arrangement between two carriers in which each carrier receives compensation from the other carrier "for the transport and termination on each carrier's network facilities" of telecommunications traffic that originates on the network facilities of the other carrier. Therefore, reciprocal compensation isn't an issue until after the traffic is handed over from one carrier to another at the POI.
- 37 Qwest argues that the FCC amended the relative use rule in its most recent order addressing ISP-bound traffic, with the effect of excluding ISP-bound traffic from relative use calculations. Qwest argues further that because the FCC has exempted ISP-bound traffic from reciprocal compensation obligations, the ISP Remand Order also must be read to exclude this traffic from the relative use calculation to apportion costs of interconnection. The Commission does not accept this conclusion. Nothing in the text of the ISP Remand Order suggests that it applies to any functions other than transport and termination on the terminating side of the POI.
- 38 Even if the Commission were to agree that Rule 709(b) is directed to "telecommunications traffic," this does not mean that the rule would exclude ISP-bound traffic from relative use. The rule apportions the cost of interconnection trunking based on the amount of traffic *originated* by the interconnecting carrier. Qwest essentially wants to apply the relative use rule in reverse that is, that the relative use calculation should charge Level 3 for calls originating with Qwest's customers and terminating on Level 3's network. Second, this reading simply would mean that Rule 709(b) is inapplicable to transmission facilities dedicated to ISP-bound traffic; it would provide no answer to the question of how the recurring costs of interconnection facilities should be apportioned, if at all.
- 39 The Remand Order addressed what a terminating carrier might charge an originating carrier for transport and termination. It did not address the originating carrier's obligation to take traffic over its own network to a POI. *See*

Remand Order, n. 149. Thus, the Remand Order does not affect Qwest's obligation under Rule 703(b) to transport this traffic to the POI.

40 Contrary to Qwest's argument, the Remand Order does not conclusively hold that ISP-bound traffic is not properly included in the relative use calculation. In fact, the order does not mention Rule 709(b). As indicated by the FCC's statements in the Qwest 9-State 271 Order, at paragraph 325, the FCC considers this issue a new interpretive dispute that it has not yet addressed. The Commission finds the legal and policy arguments of Level 3 persuasive. The Commission approves Level 3's contract language.

### III. FINDINGS OF FACT

41 Having discussed in detail the evidence concerning all material matters and having stated our findings of fact and conclusions of law in the text of the Order, including those parts incorporated by reference, the Commission now makes the following summary of those comprehensive determinations. Those portions of the preceding detailed findings and conclusions pertaining to the Commission's ultimate findings and conclusions in this matter are incorporated by this reference.

42 (1) The Washington Utilities and Transportation Commission (Commission) is an agency of the State of Washington, vested by statute with authority to regulate in the public interest the rates, services, facilities, and practices of telecommunications companies in the state.

43 (2) Qwest Corporation (Qwest) is engaged in the business of furnishing telecommunications services including, but not limited to, basic local exchange service within the state of Washington, and is an incumbent local exchange carrier (ILEC) as defined in the Act.

44 (3) Level 3 Communications, LLC (Level 3) is a competitive local exchange carrier (CLEC) that wishes to establish local interconnection to provide direct inward dialing capability to its Internet Service Provider (ISP) customers in Washington.

- 45 (4) On February 27, 2002, Level 3 commenced negotiations with Qwest with the intention to achieve an Interconnection Agreement between Level 3 and Qwest in the state of Washington.
- 46 (5) On August 6, 2002, Level 3 filed with the Commission a petition for arbitration pursuant to 47 U.S.C. § 252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.* (Act). Attached to the petition was a July 31, 2002, draft interconnection agreement between Level 3 and Qwest. The parties' disputed the language of Section 7.3.1 of the agreement. Pages 49 through 53 of the draft agreement set out the "Qwest proposed" and "Level 3 proposed" language; the Commission was asked to arbitrate which version of the language should be included in the agreement. Pages 49 through 53 are attached as Appendix A to this Order, and incorporated by this reference.
- 47 (6) On November 27, 2002, an Arbitrator's Report and Decision was entered resolving the dispute between the parties. The "Qwest proposed" language in subsections 7.3.1.1.3, 7.3.1.1.3.1, and 7.3.2.2.1 of Appendix A was approved.
- 48 (7) On December 23, 2002, Level 3 filed with the Commission a Petition for Commission Review.
- 49 (8) On January 8, 2003, Qwest filed with the Commission its answer to Level 3's petition for Commission review. Also on January 8, 2003, Qwest filed with the Commission a January 3, 2003, fully executed version of its interconnection agreement with Level 3. This agreement includes the "Qwest version" of the language in subsections 7.3.1.1.3, 7.3.1.1.3.1, and 7.3.2.2.1 of Appendix A to this Order.
- 50 (9) The Commission finds that the interconnection agreement filed by Qwest on January 8, 2003, should be modified by deleting the "Qwest version" and including the "Level 3" version of the language included in subsections 7.3.1.1.3, 7.3.1.1.3.1, and 7.3.2.2.1 of Appendix A to this Order.

#### IV. CONCLUSIONS OF LAW

- 51 (1) The Commission has jurisdiction over the subject matter and parties to this proceeding.
- 52 (2) The Commission is authorized by the Telecommunications Act of 1996 (Act) to arbitrate and approve interconnection agreements between telecommunications carriers, pursuant to Section 252 of the Act. The Commission is specifically authorized by state law to engage in that activity. *RCW 80.36.610*.
- 53 (3) This arbitration and approval process was conducted pursuant to and in compliance with 47 U.S.C. § 252 and RCW 80.36.610.
- 54 (4) The negotiated terms of the Agreement, as modified by this order, are consistent with the public interest, convenience, and necessity.
- 55 (5) The negotiated terms of the Agreement do not discriminate against any other telecommunications carrier.
- 56 (6) The arbitrated provisions of the Agreement meet the requirements of Section 251 of the Act, including the regulations prescribed by the FCC pursuant to Section 251, and the pricing standards set forth in Section 252(d) of the Act.
- 57 (7) The laws and regulations of the State of Washington, and Commission orders shall govern the construction and interpretation of the Agreement. The Agreement also shall be subject to the jurisdiction of the Commission and Washington courts.

**V. ORDER**

THE COMMISSION ORDERS:

- 58 (1) Level 3 and Qwest must submit an interconnection agreement reflecting: (i) the agreed on language in the interconnection agreement filed with the Commission, and (ii) the resolution in this arbitration proceeding of the unresolved issue in accordance with the recommendations made by Level 3 in Appendix A to this Order.

- 59 (2) The Commission retains jurisdiction of this arbitration until the parties have submitted an agreement for approval by the Commission in accordance with Section 252(e) of the Act.
- 60 (3) The Commission, further, retains jurisdiction of this arbitration and the parties until Qwest has complied with all implementation time frames specified in the arbitrated agreement and has fully implemented the agreement.
- 61 (4) The parties must implement the Commission's decision regarding subsections 7.3.1.1.3, 7.3.1.1.3.1, and 7.3.2.2.1 of Appendix A to this Order within 30 days of the entry of this order.
- 62 (5) If the parties further revise, modify, or amend the agreement approved herein, the revised, modified, or amended agreement shall be deemed a new negotiated agreement under the Act, and the parties must submit it to the Commission for approval, pursuant to 47 U.S.C. § 252(e)(1) and relevant provisions of state law, before the agreement may take effect.
- 63 (6) The Commission retains jurisdiction to enforce the provisions of this Order.

DATED at Olympia, Washington, and effective this 5th day of February, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).