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December 27, 2005

Via Electronic Mail and US Mail

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket No. UT-05039 – Level 3 Communications v. Qwest Complaint;
Qwest Supplemental Authority

Dear Ms. Washburn:

I am writing regarding the correspondence from Qwest dated December 21, 2005, enclosing an arbitration order issued by the Iowa Utilities Board on December 16, 2005. This filing is procedurally inappropriate as Qwest's allowable time to file its response to Level 3's Petition for Interlocutory Review of Order No. 03 passed on September 16, 2005. *See* WAC 480-07-810(3). Accordingly, Level 3 objects to Qwest's attempt to circumvent the procedural order and moves to strike Qwest's submission. In the alternative, Level 3 responds to Qwest's motion as follows.

At the outset, Level 3 is assessing its procedural options with respect to the decision so it is not final in any respect. Further, the Iowa decision which disfavors the use of VNXX is contrary to Washington law, prior decisions of this Commission and the pending recommendations of two Washington Administrative Law Judges ("ALJs"). In this way, the Iowa Board's decision is out of step with the approach that has been taken by the Washington Commission.

For example, in the Level 3/CenturyTel arbitration, the Commission found that the FCC's *ISP Remand Order* nowhere suggests that its results are limited to "local" ISP-bound traffic as had been suggested by CenturyTel. *In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC, and CenturyTel of Washington, Inc., Pursuant to 47 U.S.C. Section 252*, Docket No. UT-023043, *Fifth Supplemental Order Arbitrator's Report and Decision*, ¶ 35, January 2, 2003. More recently, in

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the Pac-West petition against Qwest, the ALJ found that, under the ISP Remand Order, ISP-bound calls enabled by VNXX should be treated the same as other ISP-bound calls for purposes of determining reciprocal compensation. *Pac-West Telecomm, Inc. v. Qwest Corporation*, Docket No. UT-053036, *Recommended Decision to Grant Petition*, 37, August 23, 2005. Likewise, in this proceeding the ALJ found that Level 3 may exchange ISP-bound traffic, including VNXX traffic, on Qwest's LIS trunks. *Order No. 3 Order Denying, in Part, and Granting, in Part, Level 3's Motion for Summary Determination; Denying in Part, Qwest's Motion for Summary Determination*, ¶ 46, August 26, 2005.

Another way in which the Iowa Board and the Washington Commission have taken very divergent positions is with respect to the treatment of ISP-bound traffic in determining the parties' respective responsibility for costs associated with interconnection facilities. In a prior arbitration between Qwest and Level 3, this Commission ruled that ISP-bound traffic must be included in determining the Relative Use Factor used to apportion the financial responsibility for interconnection facilities. *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. Section 252*, Docket No. UT-023042, *Commission's Final Decision*, ¶ 37, February 5, 2003. ("Level 3 Arbitration Order"). The policy adopted by the Washington Commission of requiring a carrier to bear the costs associated with traffic originated by its customers is contrary to the Iowa Board's findings, and no evidence has been presented in this proceeding that suggest the Commission should revisit the issue in this proceeding.

In short, the Iowa Board's decision provides no useful guidance with respect to the determination of the issues that are pending before the Commission in this matter. That decision does not reflect Washington law nor the prior policy and legal decisions of the Commission. In addition, the submission of the Iowa Order by Qwest in this proceeding is a transparent attempt to delay the Commission's ruling on Level 3's Petition for Interlocutory Review. For these reasons, it should be rejected and struck from the record.

Sincerely,

Rogelio E. Peña

cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that the original and twelve (12) copies of the foregoing **Level 3 Communications, LLC's Response to the Qwest Corporation** December 21, 2005, filing was served via Overnight Mail for filing on this 27th day of December, 2005, addressed to the following:

Washington Utilities and Transportation Commission
Attention: Records Center
1300 S. Evergreen Park
Drive S.W.
Olympia, WA 98504-7250

I also hereby certify that I have this 27th day of December, 2005, served this document upon all parties in this proceeding, via U.S. Mail, postage prepaid, or Federal Express, addressed to the following:

Mark Reynolds Senior Director – Policy and Law Qwest Corporation 1600 7 th Avenue, Room 3206 Seattle, Washington 98191	Lisa A. Anderl, Senior Attorney Policy and Law Department Qwest Corporation 1600 7 th Avenue, Room 3206 Seattle, Washington 98191
Qwest Corporation Director—Interconnection Compliance 1801 California Street, #2410 Denver, CO 80202	Qwest Legal Department Attn: General Counsel, Interconnection 1801 California Street, 38 th Floor Denver, CO 80202

Patrice Klimo