

Qwest

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February 2, 2006

Via E-mail and U.S. Mail

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

Re: Docket No. UT-053039 – Level 3 Communications
Supplemental Authority, Oregon Ruling

Dear Ms. Washburn:

Qwest Corporation (“Qwest”) hereby files the following document as supplemental authority: Recommendation on Motion for Summary Disposition entered on January 30, 2006 in *In The Matter of Qwest Corporation vs. Level 3 Communications, LLC, Complaint for Enforcement of Interconnection Agreement*, Docket No. IC 12, Order No. 06-037, Public Utility Commission of Oregon (the “Order”). The Order is attached hereto.

Qwest would like to call the following passages to the Commission’s attention, and urge the Commission to consider this authority in connection with its upcoming decision in this docket:

We hold that the ALJ correctly concluded that the FCC’s definition of ISPbound traffic in the *ISP Remand Order* does not encompass VNXX-routed traffic. The ALJ’s decision is consistent with the language of the *ISP Remand Order* and the appellate decisions interpreting that order. It is also in agreement with decisions in several other states. Order at page 3 (footnotes omitted, but see footnotes 5 and 6 in that order for citations to the referenced decisions).

[B]oth the *ISP Remand Order* and current FCC rules exclude ISP-bound traffic from the realm of 'telecommunications' subject to §251(b)(5). (fn. 9)

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If VNXX is included in the definition of ISP-bound traffic (as Level 3 alleges) and therefore preempted from State regulation, there is no rational reason why the FCC would have made a contemporaneous statement recognizing that States may reject VNXX arrangements as misuse of numbering resources. The logical conclusion is that the FCC did not contemplate that VNXX traffic would be encompassed by its *ISP Remand Order*. (fn. 11).

Sincerely,

Lisa A. Anderl

LAA/llw

cc: Rogelio E. Peña (*via e-mail and U.S. Mail*)