

Exhibit C

ORDER

March 6, 2008

1 **NOT FOR PUBLICATION**

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Qwest Corporation,
10 Plaintiff,

11 vs.

12 Arizona Corporation Commission; Jeff
13 Hatch-Miller, Chairman, William A.
14 Mundell, Commissioner, Mike Gleason,
15 Commissioner, Kristin K. Mayes,
16 Commissioner, and Barry Wong,
Commissioner, in their official capacities
as Commissioners of the Arizona
Corporation Commission; and

17 Level 3 Communications, LLC; and

18 Pac-West Telecomm, Inc.,
19 Defendants.
20

No. CV-06-2130-PHX-SRB

ORDER

21 The Court has received and considered Qwest Corporation's FRCP 59(e) Motion to
22 Alter or Amend Judgment, or Motion for Reconsideration, in Part, of November 20, 2007
23 Order (Doc. 82), Level 3 Communications, LLC's Motion under Federal Rule of Civil
24 Procedure 59(e) to Alter or Amend Judgment, or Motion for Reconsideration of November
25 20, 2007 Order (Doc. 83), and Motion for Reconsideration of Pac-West Telecomm, Inc.
26 (Doc. 84).

27 A motion seeking reconsideration of the district court's resolution of an administrative
28 appeal is appropriately brought under Federal Rule of Civil Procedure 59(e). *Backlund v.*

1 *Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985). Reconsideration is only appropriate if: (1)
2 the court is presented with newly discovered, previously unavailable, evidence; (2) the court
3 committed a clear error of law and the initial decision was manifestly unjust; or (3) there has
4 been an intervening change in controlling law. *Sch. Dist. No. 1J, Multnomah County, Or.*
5 *v. AC and S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993); *U.S. ex rel Conveyor Rental & Sales Co.*
6 *v. Aetna Cas. and Sur. Co.*, 1991 WL 495733, at *1 (D. Ariz. 1991). Such a motion,
7 however, may not be used to re-litigate old matters or to raise arguments or present evidence
8 that could have been raised prior to entry of judgment. *See, e.g., Fed. Deposit Ins. Agency*
9 *v. World Univ.*, 978 F.2d 10, 16 (1st Cir. 1992); *accord Backlund*, 778 F.2d at 1388; 1
10 Wright, Miller, & Kane, Federal Practice and Procedure: Civil 2d § 2810.1 at 127-28.

11 The Parties do not allege that the controlling law has changed since this Court
12 rendered its initial decision. Rather, they argue that the Court erred in its interpretation of
13 both the law and the facts of this case.

14 The Parties' newly-offered arguments merely reiterate the legal arguments set forth
15 in their briefs, and they are not entitled to reconsideration of these arguments. *Backlund*, 778
16 F.2d at 1388. Motions for reconsideration cannot be used to ask the Court "to rethink what
17 the court has already thought through," merely because a party disagrees with the Court's
18 decision. *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va.
19 1983); *see Refrigeration Sales Co., Inc. v. Mitchell-Jackson*, 605 F. Supp. 6, 8 (N.D. Ill.
20 1983). Such disagreements should be dealt with in the normal appellate process, not on a
21 motion for reconsideration under Rule 59(e). *Database Am., Inc. v. Bellsouth Adver. &*
22 *Publ'g Corp.*, 825 F. Supp. 1216, 1220 (D.N.J. 1993); *Refrigeration Sales Co., Inc.* 605
23 F.Supp. at 7.

24 This case does not fall within one of those narrow instances where reconsideration is
25 appropriate. The moving party must show more than a disagreement with the court's
26 decision; the court should not grant a motion for reconsideration unless there is need to
27 correct a clear error of law or prevent manifest injustice. *Database Am., Inc.* 825 F. Supp.
28 at 1220; *Refrigeration Sales Co., Inc.*, 605 F. Supp. at 7. The Court finds that the Parties

1 have failed to set forth sufficient grounds to cause the Court to reconsider its November 20,
2 2007 Order.

3 Although the Parties have not demonstrated “manifest errors of law,” “newly
4 discovered . . . evidence,” “manifest injustice,” or “intervening change in controlling law”
5 —and are therefore not entitled to responsive briefing of their 59(e) Motions—the Court, on
6 its own motion, opts to amend the November 20, 2007 Order. *Turner v. Burlington N. Santa*
7 *Fe Ry. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003). Federal Rule 60(b)(6) provides that “[o]n
8 motion and just terms, the court may relieve a party or its legal representative from a final
9 judgment, order, or proceeding for the following reasons: . . . (6) any other reason that
10 justifies relief.” *See Fort Knox Music Inc. v. Baptiste*, 257 F.3d 108, 111 (2d Cir. 2001)
11 (“While normally such relief is sought by motion of a party, *see* Fed. R. Civ. P. 60(b),
12 nothing forbids the court to grant such relief *sua sponte*.”); *Kingvision Pay-Per-View Ltd. v.*
13 *Lake Alice Bar*, 168 F.3d 347, 351-52 (9th Cir. 1999) (holding that Rule 60(b)’s use of the
14 phrase “[o]n motion” permits *sua sponte* relief). The Court finds that removal of the final
15 ordering clause in the November 20, 2007 Order will provide clarity to the Arizona
16 Corporation Commission (“ACC”) and will be less likely to interfere with the ACC’s
17 exercise of discretion in resolving the pending issues on remand.

18 **IT IS ORDERED** denying all three pending Motions for Reconsideration. (Docs. 82,
19 83, 84).

20 **IT IS FURTHER ORDERED** withdrawing the Court’s Order of November 20, 2007
21 (Doc. 80). An amended Order replacing the November 20, 2007 Order shall be filed
22 concurrently with this Order.

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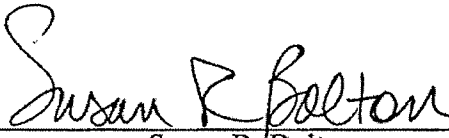
24 DATED this 6th day of March, 2008.

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Susan R. Bolton
United States District Judge