

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

IN THE MATTER OF:

LEVEL 3 COMMUNICATIONS, LLC'S
PETITION FOR ENFORCEMENT OF
INTERCONNECTION AGREEMENT WITH
QWEST CORPORATION

Docket No. UT-053039

**LEVEL 3 COMMUNICATIONS, LLC'S
RESPONSE TO QWEST
CORPORATION'S COUNTERCLAIMS**

1. Level 3 Communications, LLC ("Level 3") hereby submits this response to Qwest Corporation's Answer to Level 3 Communications, LLC's Petition for Enforcement of Interconnection Agreement and Counterclaims, filed June 28, 2005, in the above-captioned proceeding.

I. INTRODUCTION

2. Level 3 seeks simple, straightforward relief in its Petition: 1) enforcement of the change of law provisions of its Interconnection Agreement with Qwest Corporation ("Qwest") by requiring Qwest to execute an amendment reflecting the terms of the Federal Communication's ("FCC") *Core Forbearance Order*¹; and 2) payment of compensation for Qwest-originated ISP-bound traffic, as required by the terms of the *Core Forbearance Order*. Qwest answers Level 3's

¹ *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, FCC 04-241, WC Docket No. 03-171 (rel. Oct. 18, 2004) ("*Core Forbearance Order*").

Petition with over twenty pages of briefing and rhetoric, going beyond what is procedurally appropriate for an answer to a petition. Although Level 3 strongly disagrees with Qwest's interpretation of the facts and law regarding this matter, it is neither necessary nor appropriate at this time to respond in depth to Qwest's legal arguments and conclusions. Level 3 will respond to these arguments in depth in the briefing and testimony stages of this proceeding. In this answer, Level 3 will confine itself to responding to the allegations relevant to Qwest's counterclaims.

II. RESPONSE TO QWEST'S COUNTERCLAIMS

3. Unless specifically admitted, Level 3 denies each and every allegation in Qwest's Counterclaims. Level 3 denies, admits, and alleges as follows:

4. Paragraphs 1 through 16 of Qwest's Answer and Counterclaims contain arguments regarding the facts and the law. Such arguments are inappropriate in an Answer and Counterclaim. Accordingly, Level 3 believes no response is necessary. However, to preserve all rights, Level 3 denies the allegations in Paragraphs 1 through 16.

5. Level 3 denies Qwest's characterization of the Parties' dispute in paragraph 17.

6. Paragraph 18 states conclusions of law to which no response is required. To the extent that paragraph 18 contains factual allegations, Level 3 denies such allegations.

7. Paragraph 19 states conclusions of law to which no response is required. To the extent that paragraph 19 contains factual allegations, Level 3 denies such allegations.

8. Level 3 admits that Qwest has failed to pay intercarrier compensation for ISP-bound calls. Level 3 denies all remaining factual allegations in paragraph 20. To the extent paragraph 20 states conclusions of law, no response is required.

9. Paragraph 21 states conclusions of law to which no response is required. To the extent that paragraph 21 contains factual allegations, Level 3 denies such allegations.

10. Paragraph 22 states conclusions of law to which no response is required.

11. Paragraph 23 states conclusions of law to which no response is required.

12. Level 3 admits that it submitted a petition for forbearance to the FCC, but denies that Qwest's description of that petition is correct. Level 3 further admits that the FCC issued its Notice of Further Proposed Rulemaking in its Intercarrier Compensation docket while Level 3's petition was pending, and that Level 3 later withdrew the petition. The remaining portions of paragraph 24 state conclusions of law to which no response is required.

13. Level 3 admits that ISP-bound traffic should be compensated under the FCC's *ISP Remand Order* at \$.0007 per minute. Level 3 denies any other factual allegations in paragraph 25. To the extent that paragraph 25 states conclusions of law, no response is required.

14. Paragraph 26 states conclusions of law to which no response is required. To the extent that paragraph 26 contains factual allegations, Level 3 denies such allegations.

15. Paragraph 27 states conclusions of law to which no response is required.

16. Paragraph 28 states conclusions of law to which no response is required.

17. Paragraph 29 states conclusions of law to which no response is required.

18. Paragraph 30 states conclusions of law to which no response is required.

19. Level 3 denies that paragraph 31 is an accurate statement of the Commission's decision in the AT&T/Qwest Arbitration.

20. Level 3 admits that paragraph 32 accurately quotes WAC 480-120-021. However, Level 3 denies that paragraph 32 is an accurate statement as to the application of these definitions.

21. Paragraph 33 states conclusions of law to which no response is required.

22. Paragraph 34 states conclusions of law to which no response is required.

23. Paragraph 35 states conclusions of law to which no response is required.

24. Level 3 admits that it has argued in other jurisdictions that the Parties have agreed to exchange VNXX traffic over LIS trunks. Level 3 denies the remaining allegations in paragraph 36.

25. Level 3 admits the allegations in paragraph 37.

26. Level 3 admits that paragraph 38 accurately quotes Section 7.3.4.3 of the Interconnection Agreement. The remainder of paragraph 38 states conclusions of law to which no response is required.

27. Level 3 admits that paragraph 39 accurately quotes Section 4.24 of the Interconnection Agreement. The remainder of paragraph 39 states conclusions of law to which no response is required.

28. Level 3 admits that paragraph 40 accurately quotes Section 4.22 of the Interconnection Agreement. The remainder of paragraph 40 states conclusions of law to which no response is required.

29. Paragraph 41 states conclusions of law to which no response is required. To the extent that paragraph 41 contains factual allegations, Level 3 denies such allegations.

30. Paragraph 42 states conclusions of law to which no response is required.

31. Paragraph 43 states conclusions of law to which no response is required. To the extent that paragraph 43 contains factual allegations, Level 3 denies such allegations.

32. Paragraph 44 states conclusions of law to which no response is required.

33. Paragraphs 45 through 63 set forth Qwest's responses Level 3's Petition to which no responses are necessary.

34. Paragraph 64 states conclusions of law to which no response is required. To the extent that paragraph 64 contains factual allegations, Level 3 denies such allegations.

35. Regarding paragraph 65, Level 3 denies that Qwest has accurately set forth the applicable federal law regarding calls made to the Internet.

36. Paragraph 66 states conclusions of law to which no response is required. To the extent that paragraph 66 contains factual allegations, Level 3 denies such allegations.

37. Regarding paragraph 67, Level 3 denies that Qwest has accurately set forth the applicable state law regarding calls made to the Internet and calls using VNXX traffic.

38. Paragraph 68 states conclusions of law to which no response is required. To the extent that paragraph 68 contains factual allegations, Level 3 denies such allegations.

39. Level 3 admits that it has sent or will bill Qwest based on the FCC's *Core Forbearance Order*. Level 3 denies the dates, amount in dispute, and all other allegations in paragraph 69.

40. Regarding paragraph 70, Level 3 admits that the Parties have not reached agreement on an amendment to the Interconnection Agreement, but denies that Qwest has proposed an amendment that complies with the *Core Forbearance Order*.

41. Level 3 admits that paragraph 71 accurately quotes Section 2.2 of the Interconnection Agreement, but denies the remaining allegations in paragraph 71.

42. Paragraph 72 states conclusions of law to which no response is required. To the extent that paragraph 72 contains factual allegations, Level 3 denies such allegations.

43. Level 3 admits that it provides its ISP customers with telephone numbers associated with the local calling areas they wish to serve. Level 3 denies the remainder of the allegations in paragraph 73.

44. Level 3 admits that paragraph 74 accurately quotes Section 13.4 of the Interconnection Agreement, but denies the remaining allegations in paragraph 74.

45. Level 3 admits that paragraph 75 accurately reflects Section 7.2.1.2.

46. Level 3 admits the allegations in paragraph 76.

47. Level 3 admits that paragraph 77 accurately quotes Section 7.3.4.3 of the Interconnection Agreement, but denies the remaining allegations in paragraph 77.

48. Paragraph 78 states conclusions of law to which no response is required. To the extent paragraph 78 contains factual allegations, Level 3 denies such allegations.

49. Paragraph 79 sets forth Qwest's requested relief to which no response is required.

III. PRAYER FOR RELIEF

50. **WHEREFORE**, Level 3 respectfully requests that the Commission issue an Order:

- a. Granting the relief requested in Level 3's Complaint;
- b. Dismissing Qwest's Counterclaims; and
- c. Awarding such other relief, including, but not limited to, any appropriate fines or penalties, as the Commission deems just and reasonable.

RESPECTFULLY SUBMITTED this 6th day of July, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of July, 2005, served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC, via the method(s) noted below, properly addressed as follows:

Carole Washburn	<input checked="" type="checkbox"/> Hand Delivered
Executive Secretary	<input type="checkbox"/> U.S. Mail (first-class, postage prepaid)
Washington Utilities and Transportation	<input type="checkbox"/> Overnight Mail (UPS)
Commission	<input type="checkbox"/> Facsimile (360) 586-1150
1300 S Evergreen Park Drive SW	<input checked="" type="checkbox"/> Email (records@wutc.wa.gov)
Olympia, WA 98504-7250	

I hereby certify that I have this 6th day of July, 2005, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

On Behalf Of Qwest:

Lisa A. Anderl	<input type="checkbox"/> Hand Delivered
Qwest Corporation	<input checked="" type="checkbox"/> U.S. Mail (first-class, postage prepaid)
1600 7th Avenue, Room 3206	<input type="checkbox"/> Overnight Mail (UPS)
Seattle, WA 98191	<input type="checkbox"/> Facsimile (206) 343-4040
	<input checked="" type="checkbox"/> Email (lisa.anderl@qwest.com)

On Behalf Of Commission:

Ann E. Rendahl, ALJ	<input type="checkbox"/> Hand Delivered
Washington Utilities and Transportation	<input type="checkbox"/> U.S. Mail (first-class, postage prepaid)
Commission	<input type="checkbox"/> Overnight Mail (UPS)
1300 S Evergreen Park Drive SW	<input type="checkbox"/> Facsimile (360) 586-8203
PO Box 47250	<input checked="" type="checkbox"/> Email (arendahl@wutc.wa.gov)
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 6th day of July, 2005, at Seattle, Washington.

