

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

IN THE MATTER OF:

LEVEL 3 COMMUNICATIONS, LLC'S
PETITION FOR ARBITRATION OF A
PROPOSED INTERCONNECTION
AGREEMENT BETWEEN LEVEL 3
COMMUNICATIONS, LLC, AND QWEST
CORPORATION.

Docket No. UT-063006

**LEVEL 3 COMMUNICATIONS, LLC'S
MOTION TO COMPEL**

I. CERTIFICATION PURSUANT TO WAC 480-07-425

1. Pursuant to Washington Administrative Code (WAC) 480-07-425, counsel certify that they have conferred with Qwest Corporation's counsel in prior discussions and concurred at the time of the prehearing conference that a motion to compel would be required in order to resolve their differences.

II. MOTION AND MEMORANDUM

2. Level 3 Communications, LLC ("Level 3"), by and through its attorneys and pursuant to WAC 480-07-405(3) and 480-07-425(1), respectfully moves the Washington Utility and Transportation Commission ("Commission") for an order compelling Qwest Corporation ("Qwest") to respond to Level 3's First Set of Data Requests and First Set of Requests for Admission to Qwest served on March 15, 2006, in the above-captioned proceeding (copy attached as Exhibit A). Specifically, Level 3 moves for an order compelling Qwest to fully respond to Level 3's Data Request Nos. 2, 4-10, 13-15, and 19 and Requests for Admission Nos. 14-16.

III. PROCEDURAL BACKGROUND

3. After a year of negotiations with Qwest, Level 3 filed a Petition for Arbitration on January 26, 2006,¹ seeking resolution of, among other things, four basic interconnection rights:

- Issue 1:** Whether each Party bears its own costs of exchanging traffic at a Single Point of Interconnection per LATA.
- Issue 2:** Whether Level 3 may exchange all traffic over the interconnection trunks established under the Agreement.
- Issue 3:** Whether Qwest's election to be subject to the *ISP-Remand Order* for the exchange of ISP-bound traffic requires Qwest to compensate Level 3 for ISP-bound Traffic at the rate of \$0.0007 per minute of use.
- Issue 4:** Whether Qwest and Level 3 will compensate each other at the rate of \$0.0007 per minute of use for the exchange of IP enabled or Voice over Internet Protocol traffic.

4. On March 13, 2006, Administrative Law Judge Ann E. Rendahl issued a Prehearing Conference Order setting forth the procedural schedule in this docket. Pursuant to the Order, oral argument on this Motion to Compel is set for April 18, 2006. The evidentiary hearing in this proceeding is scheduled for August 21-25, 2006.

5. On March 15, 2006, Level 3 served its First Set of Data Requests and First Set of Requests for Admission on Qwest. On March 29, 2006, Qwest served on Level 3 its response to Level 3's First Set of Data Requests and Requests for Admissions. Qwest responded to Level 3's Data Requests Nos. 1, 3, 11-12, 16-18, and 20 and Requests for Admissions Nos. 1-13. Qwest objected to Level 3's Data Request Nos. 2, 4-10, 13-15, and 19 and Requests for Admission Nos. 14-16.²

¹ *In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Qwest Corporation*, Petition, WUTC Docket No. 063006 (filed January 26, 2006).

² A copy of Qwest's objections to Level 3's requests for admissions is attached as Exhibit B.

IV. STANDARD OF REVIEW

6. Discovery procedures in dockets before the Commission are governed by WAC 480-07-400 *et seq.* Generally speaking, parties may obtain discovery regarding any matter, not privileged, that appears reasonably calculated to lead to the discovery of admissible evidence relevant to the subject matter involved in the pending action. WAC 480-07-400; *see also* Washington Superior Court Civil Rule (CR) 26(b) (scope of discovery). WAC 480-07-400(4) provides that data requests may seek any “information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant.” Notably, “a party may not object to a data request on grounds that the information sought will be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to discovery of admissible evidence.”³ WAC 480-07-400(4). A discovery request is only deemed inappropriate when the party seeking discovery has had ample opportunity to obtain the information sought or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, the scope of the responding parties’ interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding. Accordingly, the scope of discovery is broad.

7. WAC 480-07-405 requires responses to discovery requests and requests for admissions, and sets forth procedures for remedying a party’s failure to respond. WAC 480-07-425 addresses discovery disputes, and provides that “a party may file a written motion * * * to compel production if a dispute cannot be informally resolved.”

8. When resolving discovery disputes, the discovery rules should be liberally construed. *Senear v. Daily Journal American*, 27 Wn. App. 454, 618 P.2d 536 (1980)

³ In this regard, the Commission’s rule is directly parallel to CR 33(b), which authorizes a party to seek unprivileged information that is relevant to the subject matter of the pending action or appears reasonably calculated to lead to the discovery of admissible evidence, regardless of whether the information would be admissible at trial. Washington Superior Court Civil Rules (CR) 33(b). Accordingly, Washington cases interpreting this rule are instructive in interpreting WAC 480-07-400(4).

(construing CR 33(b)). Federal cases interpreting the scope of the federal discovery rules are also instructive because Washington's rules of discovery and WAC 480-07-400 are parallel to the federal rules of discovery. See FRCP 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party.") The United States Supreme Court has long recognized "that the deposition-discovery rules are to be accorded a broad and liberal treatment." *Hickman v. Taylor*, 329 U.S. 495, 507 (1947); see also WRIGHT, MILLER & MARCUS, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2001.

9. Under these liberal discovery principles, those opposing discovery carry a heavy burden in showing why discovery should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). This requirement has been applied in numerous cases. In *Sherman Park Cmty. Ass'n v. Wauwatosa Realty Co.*, the court held that objecting to interrogatories on the ground that they are not likely to lead to the discovery of relevant or admissible evidence, without more, is an insufficient basis for refusal to answer. 486 F. Supp. 838, 845 (D. Wis. 1980). In *IBP, Inc. v. Mercantile Bank of Topeka*, the court held that a party who asserts an objection and resists discovery has the burden to show specifically the applicability of any objection it asserts. 179 F.R.D. 316, 322 (D. Kan. 1998). In *Pulsecard, Inc. v. Discover Card Services, Inc.*, the court held that an objecting party has the burden of showing that responding to discovery is unduly burdensome. 168 F.R.D. 295, 304 (D. Kan. 1996).

10. The Commission's rules authorize comprehensive pretrial discovery and are intended to facilitate and simplify the issues and avoid surprises at trial. As demonstrated below, Level 3 seeks information that is either directly relevant to the disputed issues in this docket or could reasonably lead to the discovery of admissible evidence. Qwest's refusal to respond to Level 3's legitimate discovery requests is contrary to this Commission's rules and Washington law, and will prejudice Level 3's ability to properly prepare for hearing. Unless this Motion is granted, Qwest's failure to provide sufficient responses will also deprive the Commission of the ability to make an informed decision based on all relevant facts in this proceeding.

V. ARGUMENT

11. The issues in this arbitration go to the core of Level 3's ability to offer technologically-innovative and cost-effective services on competitive terms, and to make efficient use of its network without the imposition of legacy obligations and costs. Level 3's Data Requests are intended to gather information that will support Level 3's argument that Qwest is attempting to force Level 3 into one-sided interconnection requirements designed to offset Qwest's loss of toll revenues due to wider adoption of broadband and other technologies, including Level 3's Internet protocol. Qwest's objections to these requests are without merit, and its failure to provide adequate responses will undermine Level 3's ability to draft testimony and prepare for trial. Accordingly, Level 3 respectfully requests that the Commission grant this Motion and order Qwest to respond to these requests immediately.

A. Data Request No. 2 – Qwest Internet Access Service

12. Level 3's Data Request No. 2 is based on the foundation laid by Data Request No. 1, to which Qwest did respond. Data Request No. 1 asked whether Qwest offers "any telecommunications services that QCC utilizes as an input to providing dial-up Internet access services to ISPs that are customers of QCC." In response, Qwest stated affirmatively that "QC offers telephone exchange and transport services to QCC and QCC purchases tariffed or catalog services (such as PRIs and private line transport) from Qwest." Level 3's Data Request No. 2 then asks the following:

To the extent that Data Request No. 1 applies to QC, please provide

- a. the terms, conditions, and rates under which QC offers such telecommunications services to QCC;
- b. starting from the date that QCC first started offering wholesale ISP-dialup in the state of Washington, please provide copies of all invoices from QC to QCC for any such telecommunications services that QC has sold to QCC for the provision of wholesale ISP-dialup in the state of Washington;

- c. the number of ISP customers QCC serves in the State of Washington;
- d. the location by rate center of the billing addresses of these customers;
- e. the locations by rate center of each ISP's modems and servers;
- f. the locations by rate center of each PM or other QC-provided telecommunications service being used by QCC to provide service to these ISP customers; and
- g. the physical location of QCC's Cisco AS 400s or equivalent equipment that provides modem functionality for dial-up access to the Internet (what Qwest terms "information access") to QCC's ISP customers.

13. Qwest objects to parts 2(b), 2(d), 2(e), and 2(f) of Data Request No. 2, all of which relate to how Qwest Corporation offers services to QCC and how QCC uses those services to offer Internet access services to its customers. Qwest objects on to these requests on the basis that "the information sought is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence." Additionally, Qwest objects to part 2(g), which relates to specific information regarding QCC's network architecture, on the basis that (1) QCC is not a party to the proceeding; (2) the information requested is confidential; and (3) the request seeks information that is not relevant to the issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

14. Qwest's objections are unfounded. First, Qwest's objection on the grounds that the information sought is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence is, without more, insufficient as a matter of law. *See Sherman Park Cmty. Ass'n*, 486 F. Supp. at 845 (objecting to interrogatories on the ground that they are not likely to lead to the discovery of relevant or admissible evidence, without more, is an insufficient basis for refusal to answer).

15. More importantly, this objection is substantively incorrect. The services Qwest and its affiliates provide to their customers, and the network architectures by which they provide

them are indeed relevant. In this case, Qwest is attempting to impose upon Level 3 a network architecture for serving its ISP customers that is inefficient and outdated, while at the same time it takes advantage of its own position as the ILEC to provide to its own customers, and the customers of its affiliates, the very same services using a network architecture very similar to the one it claims that Level 3 is not allowed to use. As such, the ways in which Qwest and its affiliates provided services to their customers, and the network architectures they employ, are highly relevant to the issues raised in Level 3's petition.

16. Similarly, geographic locations of the ISPs (and their equipment) served by Qwest and its affiliates serve are highly relevant to the issues raised in the Petition. Level 3 contends that for purposes of compensation, the jurisdiction of calls should be determined by the NPA-NXX, in accordance with long-standing industry practice. Qwest, on the other hand, is attempting to rate traffic based upon the physical location of the customers, not the NPA-NXX. Request No. 2 is intended to elicit information that will assist Level 3 in rebutting Qwest's position.

17. Qwest also objects to these requests because QCC is not a party to the case. However, Qwest provides no support for the proposition that data requests must be limited to information about parties to the docket only. *See IBP, Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 322 (D. Kan. 1998) (party who asserts an objection and resists discovery has the burden to show specifically the applicability of any objection it asserts). In fact this information is in Qwest's possession, is highly relevant, and Qwest should be required to produce it.

Section 251(c) of the Telecommunications Act requires incumbent LECs, such as Qwest, to provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection;" and "on rates, terms, and conditions that are **just**, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252". 47 U.S.C. § 251(c)(2)(C, D). The FCC has

specifically stated that because “the *nondiscrimination* requirement in section 251(c)(2) *is not qualified by* the “unjust or unreasonable” language of section 202(a)”, that “Congress did not intend that the term “nondiscriminatory” in the 1996 Act be synonymous with “unjust and unreasonable discrimination” used in the 1934 Act, but rather, intended a more stringent standard.”⁴ Because the FCC requires a more stringent standard for cases involving discrimination, accordingly, any information related to claims of discrimination is that much more critical to core issues in this case as well as this Commission’s duty to determine whether proposed interconnection terms and conditions meets the requirements of Section 251 and 252.

18. The information sought by Level 3 is critical to assessing whether Qwest’s proposals in this arbitration discriminate against Level 3 relative to the manner in which Qwest provides interconnection to itself, its affiliates, and other carriers. Indeed, as the FCC has found and as Level 3 alleges in this case, “the LEC has the incentive to discriminate against its competitors by providing them less favorable terms and conditions of interconnection than it provides itself.”⁵ Accordingly, because this Commission is charged with determining whether the proposed interconnection terms serve the public interest and promote deployment of competitive telecommunications according to Section 252(e), it must examine the evidence presented according “to the terms and conditions an incumbent LEC imposes on third parties as well as on itself.” If indeed Level 3 demonstrates that Qwest seeks to provide interconnection to Level 3 “in a manner less efficient than [Qwest] provides itself, [Qwest] violates the duty to be “just” and “reasonable” under section 251(c)(2)(D).”⁶ Anything less than an unquestionably level playing field, therefore, “is inconsistent with the procompetitive purpose of the Act”, which means that any allegation of discrimination is absolutely critical to the determinations in this

4 In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, 11 FCC Rcd. 15,499, ¶ 217 (rel. August 8, 1996) (Local Competition Order).

5 Id. at ¶ 218.

6 Id.

case. Accordingly, the Commission should find that Qwest's general objection to providing data about its affiliates is without merit.

19. Finally, Qwest's confidentiality objection to Request 2(g) is moot because the Commission has entered a Protective Order in this docket specifically for the purpose of facilitating the exchange of confidential and competitively-sensitive business information.

20. For these reasons, the Commission should compel Qwest to respond to Request No. 2 and provide the specific information requested regarding QCC.

B. Data Request Nos. 4– Qwest's VoIP Service

21. Level 3's Data Request No. 4 is based on the foundation laid by Data Request No. 3, Level 3's Data Request No. 3, to which Qwest did respond. Data Request No. 3 asked "Does QCC purchase from QC any retail or wholesale telecommunications services (such as PRI circuits) that QCC incorporates or otherwise uses in the provisioning of any VoIP services (such as wholesale dial) that it offers to customers of QCC?" Qwest responded to Request No. 3 affirmatively. Level 3's Data Request No. 4 asks:

If the answer to Data Request 3 is "yes," please provide the following information:

(a) starting from the date that QCC first started offering wholesale VoIP in the state of Washington, please provide copies of all invoices from QC to QCC for any such telecommunications services that QC has sold to QCC for the provision of wholesale VoIP in the state of Washington.

(b) the number of VoIP customers QCC serves in the state of Washington;

(d) the locations by rate center of the billing addresses of these customers; .

(e) the locations by rate center of each VoIP customer's [equipment]

(f) the locations by rate center of each PRI or other QC provided telecommunications service being used by QCC to provide service to these VoIP customers.

(g) the physical location of QCC's Cisco AS 400s or equivalent equipment converts IP to TDM (and vice versa) to provide functions associated with the exchange of VoIP calls between QC and QCC;

22. Qwest objected to Level 3's parts 4(a), 4(d) and 4(f), all of which relate to how Qwest's affiliate (QCC) uses Qwest services to offer VoIP services to its customers in the state of Washington. Qwest objected to these requests on the basis that "the information sought is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence."

23. Qwest's objections are without merit. Again, Qwest's general objections that these requests seek irrelevant information and are not reasonably calculated to lead to the discovery of admissible evidence are, without more, insufficient as a matter of law. *See Sherman Park Cmty. Ass'n*, 486 F. Supp. at 845. Moreover, Request Nos. 4(a), (d) and (f) are indeed relevant to Disputed Issue 4 – whether Qwest and Level 3 will compensate each other at the rate of \$0.0007 per minute-of-use for the exchange of IP enabled or Voice over Internet Protocol ("VOIP") traffic.

24. As is the case with Level 3's internet services, Qwest in this case is attempting to force Level 3 to provision its VoIP services via an outdated and inefficient network architecture—one that it does not impose on itself or its own affiliates. As such, just how Qwest and its affiliates provision their own services, and the rates at which these services are exchanged, will be highly relevant to the issues in this case. Accordingly, Qwest should be required to respond to Request No. 4(a), 4(d) and 4(f).

C. Request No.5(A), 5(B), 5(C) & 13(C)—Qwest ISP "Physical Presence" & PoP

25. Level 3's Request No. 5(A) asks the following:

Qwest's website at <http://www.qwest.com/wholesale/industrysolution/isp.html> describes "Internet Service Provider (ISP) Industry Solutions" which returns a page that describes the "Internet Service Provider (ISP) Industry Solutions" reproduced in part below:

Internet Service Provider (ISP) Industry Solutions

As your backbone provider, Qwest's diverse products and services can help you expand your service offerings, extend your services to new markets and customers, and grow your profits.

To learn more about our products and services for ISPs, please visit our Prospective Customer Inquiry Form (<http://www.qwest.com/wholesale/pcfeedback.html>) so we can provide you with the proper representative to help answer all your questions.

A. Where Qwest offers such services **within its incumbent serving area in Washington**, please detail where Qwest maintains a "physical presence" in each local calling area in the state for provision of wholesale ISP dialup services for the products listed in the subparts to this question below. For the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "physical presence" in the local exchange calling area.

1. "Digital Signal Level I DSO - V 1.0" available at <http://www.qwest.com/wholesale/pcat/dsl.html>

2. "Voice Termination" available at <http://www.qwest.com/wholesale/ocat/voicetermination.html>

3. "Outbound Voice Services" available at <http://www.qwest.com/wholesale/pcat/ovs.html>

Level 3's Request 5(B) and 5(C) ask for the same information, but with regard to Qwest services "outside of its incumbent serving area in Washington" and "outside of its incumbent serving area in California, Texas, Illinois, Florida, and Massachusetts," respectively. (Emphasis added.)

26. Level 3's Data Request Nos. 5B and 5C ask for exactly the same information, but with regard to Qwest services "outside of its incumbent serving area in Washington" (5B) and "outside of its incumbent serving area in California, Texas, Illinois, Florida, and Massachusetts." (5C). Level 3's Data Request No. 13(C) is similar to 5(C), in that it asks for information regarding Qwest services "outside of its incumbent serving area in California, Texas, Illinois, Florida, and Massachusetts." Data Request No. 13(C) asks whether Qwest maintains a "point-of-presence (PoP)" in each local calling area in the state for provision of wholesale ISP dialup services."

27. Qwest objects to Level 3's Data Requests 5A and 5B on the basis that "information regarding physical presence in the state * * * is not relevant to any issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence." Qwest further objects to 5A and 5B on the basis that "listing the location of all of the equipment that it owns is unduly burdensome." With regard to Data Requests 5C and 13C, Qwest responds that Qwest does not offer services in the states listed, and to the extent this requirement seeks information regarding QCC services in those states, Qwest objects on the basis that the request seeks information from a nonparty and is not relevant.

28. First, as discussed above, Qwest's objections that 5A and 5B are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, without more, are legally insufficient. Moreover, the information Level 3 is seeking in those requests is directly relevant to Issue 3 in this Petition and to how Qwest distinguishes between QCC's services and Level 3's services. Finally, with respect to Data Request Nos. 5C and 13C, Qwest has provided no authority for the proposition that discovery is limited in scope to the state of Washington. As discussed above, Section 251(c) of the Telecommunications Act requires ILECs to provide interconnection on a nondiscriminatory basis. The information sought by Level 3 is critical to determining whether Qwest's proposals in this arbitration discriminate against Level 3 relative to the manner in which Qwest interconnects with itself, its affiliates, and other carriers throughout its service territory. Lastly, the fact that Qwest claims that "physical presence" is not relevant is incorrect. Indeed, it is Qwest that has asserted that this Commission should rate ISP-bound and VoIP traffic based upon the "physical location" in this case of the gear Level 3 utilizes to provide such services. It truly seems as if Qwest really doesn't want this Commission to know or understand how these services are offered by carriers – including Qwest's affiliate QCC – on a nationwide basis.⁷

⁷ As further offer of relevance, Qwest in financial publications extols its nationwide network and gains in the long distance business (which class of charges Qwest would apply to Level 3 while not applying to itself) in publications to investors. See http://www.qwest.com/about/investor/events/files/QwestAugustRoadshow_080105.pdf.

D. Requests Nos. 6, 7, 9 & 10

29. Level 3's Data Requests Nos. 6, 7, 9 and 10 all seek information regarding Qwest revenues in the state of Washington. Data Request No. 6 asks Qwest to "state the total intrastate access revenues in the state of Washington for the years 2004 and 2005." Data Request No. 7 asks for the "total amounts Qwest has collected for universal service" for the same period. Data Request No. 9 asks Qwest to state the total interstate access revenues collected by Qwest for traffic "originating" in Washington for 2004 and 2005, while Data Request No. 10 asks for the same data regarding traffic "terminating" in Washington.

30. Qwest objects to all four of these requests on the basis that the information requested is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Qwest's objections fail. The information at issue in Data Requests Nos. 6, 7, 9 & 10 is directly relevant to the issues in this proceeding because Qwest claims that local rates will go up if our interconnection requirements are adopted. Level 3 seeks the information regarding revenues in order to rebut Qwest's position.

E. Data Request No. 14 & 15 – Qwest's Wholesale Voice Termination and Dial Services

31. Level 3's Data Request No. 14 asks the following:

Qwest's website at <http://www.qwest.com/wholesale/industrysolution/isv.html> describes "Internet Service Provider (ISP) Industry Solutions" which web page contains a link to <http://www.qwest.com/wholesale/pcat/natdial.html> which link returns a page that describes a "Wholesale Voice Termination Services", reproduced in relevant portion below:

Voice Termination

Product Description

Wholesale Voice Termination Services provide high quality long distance service over our Macro Capacity® Fiber Network. A fundamental component of any size business, long distance service is a key building block in Qwest's virtual enterprise solution, providing a complete suite of communication tools to meet our customers' needs. Voice Termination Services are part of the Qwest Express brand and give the customer the option of an RBOC/ITC or Blended rate. The RBOC/ITC option gives the

customer two rates per LATA depending on whether termination is through the RBOC or an ITC. The Blended option gives the customer one rate per LATA. For both types of service Qwest carries and bills for the call from the time the carrier's originating switch signals the Qwest switch to the terminating point of the call.

A. Please describe the components of Qwest's "Wholesale Voice Termination Services" as offered over Qwest's incumbent network within the state.

B. Please describe the components of Qwest's "Wholesale Voice Termination Services" as offered in Sprint's incumbent territory within the state.

C. Please describe the components of Qwest's "Wholesale Voice Termination Services" as offered in Verizon's incumbent serving territory within the state.

D. Please describe the components of Qwest's "Wholesale Voice Termination Services" as offered in SBC's (n/k/a AT&T's) incumbent serving territory outside of the state.

E. Please describe the components of Qwest's "Wholesale Voice Termination Services" as offered in Verizon's incumbent serving territory (n/k/a AT&T's) outside of the state.

F. Please describe the components of Qwest's "Wholesale Voice Termination Services" as offered in BellSouth's incumbent serving territory (n/k/a AT&T's) outside of the state.

G. Does Qwest offer the "Wholesale Voice Termination Services" as an input to VoIP providers seeking to terminate VoIP Calls to Qwest's incumbent network in the state? If so, please:

1. Please detail where Qwest maintains a "point-of-presence (PoP)" as the term is used by Qwest in the quoted portions reflected in Level 3 Data Request 14 above, in each local calling area in the state for provision of such Wholesale Voice

Termination Services. For the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "point-of-presence (PoP)" in the local exchange calling area.

H. Does Qwest offer the "Wholesale Voice Termination Services" as an input to VoIP providers seeking to terminate VoIP Calls to Sprint's incumbent network in the state? If so, please:

I. Please detail where Qwest maintains a "point-of-presence (PoP)" as the term is used by Qwest in the quoted portions reflected in Level 3 Data Request 14 above, in each local calling area in the state for provision of such Wholesale Voice Termination Services. For the purposes of this

request, describe and name the physical facility or service that Qwest considers to constitute a "point-of-presence (PoP)" in the local exchange calling area.

J. Does Qwest offer the "Wholesale Voice Termination Services" as an input to VoIP providers seeking to terminate VoIP Calls to Verizon's incumbent network in the state? If so:

1. Please detail where Qwest maintains a "point-of-presence (PoP)" as the term is used by Qwest in the quoted portions reflected in Level 3 Data Request 14 above, in each local calling area in the state for provision of such Wholesale Voice Termination Services. For the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "point-of-presence (PoP)" in the local exchange calling area.

K. Where Qwest offers such "Wholesale Voice Termination Services" outside of its incumbent serving area in California, Texas, Illinois, Florida, and Massachusetts does Qwest maintain a "point-of-presence (PoP)" as the term is used by Qwest in the quoted portions reflected at the beginning of Data Request No. 14 above, in each local calling area in the state for provision of wholesale ISP dialup services? For the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "point-of-presence (PoP)" in the local exchange calling area.

L. For each response in A-H (including subparts) above, please specify the precise physical location of NAS, which is described on the same webpage as the "Qwest Wholesale Dial" service under the heading "How It Works" which is reproduced for convenience below.

Your end users' PCs dial local access numbers provided by Qwest to connect to local exchange carriers (LECs). Calls are authenticated via a Qwest-provided remote authentication dial-in service (RADIUS) proxy server communicating with your RADIUS authentication server. After an end user is authenticated and the end-user software negotiates the IP connection, the Qwest Network Access Server (NAS) routes end-user packets to the Internet, based on the destination IP address. (available at <http://www.qwest.com/wholesale/pcat/natdial.html>)

M. To the extent that Qwest does not use a "Network Access Server (NAS)" to provide supportive or constituent functionalities related to "Wholesale Voice Termination Services" please provide the name, manufacturer, model, and location of any device(s) that provide IP to TDM conversion, and/or call control and/or call routing, and/or SS7, to the extent that Qwest provides such functionalities in connection such service.

N. Please specify the rates Qwest offers for the "The Blended option gives the customer one rate per LATA" for "Wholesale Voice Termination Services" Qwest offers in the state of Washington. Include the tariff, rate

sheet, or individual case basis filings under which such are offered within the state.

O. Please specify the rates Qwest offers for the "The RBOC/ITC option gives the customer two rates per LATA depending on whether termination is through the RBOC or an ITC." for "Wholesale Voice Termination Services" Qwest offers in the state of Washington. Include the tariff, rate sheet, or individual case basis filings under which such are offered within the state.

P. For Questions A-K above, please provide the same information if for any portion of any response to such questions Qwest contends that QCC or any other Qwest Affiliate provides in whole or part such services (whether regulated or not) or, in whole or part, owns, operates or controls directly or indirectly any device, feature or functionality used in the provision, sale, or offering of such Wholesale Voice Termination Services.

Q. If in response to Data Request No. 14(Q) above, Qwest contends that QCC or any other Qwest Affiliate provides in whole or part such services (whether regulated or not) or, in whole or part, owns, operates or controls directly or indirectly any device, feature or functionality used in the provision, sale, or offering of such service requested in Data Request No. 14 please provide copies of all invoices submitted by Qwest to QCC or such other Qwest Affiliate related to such entity's provision or offering of Wholesale Voice Termination Services.

32. Qwest did respond to parts A, B, and C of this request, all of which related to general information regarding Qwest's services in the state of Washington. Qwest's objections to the other parts of Level 3's Data Request No. 14 can be broken down into two categories.

33. First, Qwest objects to parts G, H, I, and J on the basis that "information regarding physical presence in the state * * * is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence." This position is directly at odds with Qwest's position, as articulated in its response to Level 3's Petition, that a "physical presence" in the local calling area is required for traffic to be compensated as "local." Qwest further objects to parts G, H, I, and J on the grounds that listing the location of all of the equipment that it owns is unduly burdensome. As discussed above, information regarding the locations of Qwest's Points-of-Presence is required in order for Level 3 to prove that Qwest proposals discriminate against Level 3 and in favor of Qwest and its affiliates. Qwest has failed to meet its burden of showing that this instruction is overly broad or that responding to these

requests would be unduly burdensome. WAC 480-07-400(4) is not designed to protect parties from *any* burdensome request—only requests that are *unduly* burdensome given the issues in the case. Given this information is central to Level 3’s case, and that the FCC has specifically found that discrimination is measured by a stringent standard in interconnection cases, Qwest has not even come close to demonstrating undue burden.

34. Second, Qwest’s objections to Data Request No. 14 parts D, E, F, K, N, and O and Data Request No. 15(F)⁸ are all essentially that the information requested “pertains to a service offered by QCC who is not a party to this proceeding.” For the same reasons discussed above in sections III.A and III.B, Qwest’s argument on this point fails. The information sought

⁸ Level 3’s Data Request No. 15 provides as follows:

Please state whether Qwest requires any "Internet Service Provider (ISP)" as Qwest uses that term on its web pages (such as <http://www.qwest.com/wholesale/pcat/natdial.html>) that purchases a "Qwest Wholesale Dial" product to:

- A. Collocate any equipment at a Qwest "Network Access Server (NAS)" location;
- B. Physically locate modems or equipment provides the modem functionality in the state?
- C. Place, operate, own, maintain, locate or collocate modems, modem banks, or equipment providing modem functionality in each Qwest local calling area in the state (regardless of whether such physical location occurs within, near, inside or outside of a Qwest Central Office or Serving Wire Center and regardless of whether such physical location is, is not, may be, could be, or might be regulated under local, state or federal law)?
- D. Place, operate, own, maintain, locate or collocate proxy RADIUS server(s), or such equipment providing equivalent functionality in each Qwest local calling area in the state (regardless of whether such physical location occurs within, near, inside or outside of a Qwest Central Office or Serving Wire Center and regardless of whether such physical location is, is not, may be, could be, or might be regulated under local, state or federal law)?
- E. For Questions A-D above, please provide the same information if for any portion of any response to such questions Qwest contends that QCC or any other Qwest Affiliate is responsible in whole or in part for the provision of Qwest Wholesale Dial or for any requirements or restrictions requested in Data Request No. 15:
- F. If in response to Data Request No. 15(F) above, Qwest contends that QCC or any other Qwest Affiliate is responsible in whole or in part for the provision of Qwest Wholesale Dial or for any requirements or restrictions requested in Data Request No. 15 please provide copies of all invoices submitted by Qwest to QCC or such other Qwest Affiliate for any such inputs to Qwest Wholesale Dial Services that QCC or such other Qwest Affiliate purchases from Qwest for purposes of offering or providing such Wholesale Dial Services.

by Level 3 regarding QCC services is critical to determining whether Qwest's proposals in this arbitration discriminate against Level 3 relative to the manner in which Qwest interconnects with itself, its affiliates, and other carriers throughout its service territory.

F. Data Request No. 19 - Efficient Use of Trunk Groups

35. Level 3's Data Request No. 19 asks for the following:

For each state in which a Qwest CLEC affiliate combines local and toll (IntraLA T A and InterLA T A) traffic on a single trunk group, please state whether Qwest's CLEC affiliate uses a Percent Local Use (PLU) or similar other method of establishing the apportionment of local vs. toll traffic on the combined trunk group.

36. Qwest objects to this data request on the basis that it seeks information about a Qwest CLEC affiliate which is not relevant to the issues raised in this arbitration proceeding in Washington.

37. For the reasons given above, Qwest's objections that these requests seek information that is not relevant, without more, is legally insufficient. To the contrary, this information is material to the disputed issues in this case and should be discoverable. Issue No. 2 involves whether Level 3 may exchange all traffic over the interconnection trunks established under the Interconnection Agreement. Level 3 seeks to use its existing trunk groups to exchange all traffic with Qwest, as it has done with vast volumes of jurisdictionally mixed traffic (ISP-bound traffic was originally under state jurisdiction, then under federal jurisdiction) for many years. Qwest seeks to limit Level 3's ability to use trunks efficiently and to force Level 3 to build an inefficient network that mirrors Qwest's legacy network. Qwest seeks to do this by forcing Level 3 to establish separate Feature Group D trunks to transmit traffic Qwest contends is "toll" traffic and other traffic that Qwest admits cannot be accurately rated, but nevertheless contends should be assessed access rates. Information related to Qwest's current practices, the practices of its affiliates, and the obligations imposed on CLECs with whom Qwest exchanges traffic is central to understanding and rebutting Qwest's position in these proceedings. This information will assist Level 3 in drafting its testimony, preparing for hearings, and will be

helpful to the Commission in reaching a decision on this matter. Federal law clearly requires Qwest to permit Level 3 to interconnect "at any technically feasible point within [Qwest]'s network." 47 U.S.C. § 251(c)(2)(B). If it denies interconnection at a particular point, Qwest must prove that interconnection at that point is not technically feasible. See 47 C.F.R. § 51.305(e). These provisions have been interpreted to permit a CLEC to have access at any point on the incumbent network where connection is technically feasible.⁹ Moreover, the FCC has explicitly stated that "economic, accounting, billing" and related concerns could not be taken into account when determining whether or not a particular method of interconnection is technically feasible. 47 C.F.R. §§ 51.5, 51.305. In the *First Report and Order*, the FCC made clear that ILECs would be required pursuant to Section 251 to configure their networks in such a manner to accommodate interconnection with other carriers to ensure that ILEC's and their affiliate networks are not given preferential interconnection treatment. The "obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements."¹⁰ The FCC's statements are clear:

Thus, it is reasonable to interpret Congress's use of the term "feasible" in sections 251(c)(2) and 251(c)(3) as encompassing more than what is merely "practical" or similar to what is ordinarily done. That is, use of the term "feasible" implies that interconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to, incumbent LEC equipment. This interpretation is consistent with the fact that **incumbent LEC networks were not designed to accommodate third-party interconnection or use of network elements at all or even most points within the network. If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of**

⁹ See, e.g., *U.S. West Communications v. AT & T Communications of the Pac. Northwest, Inc.*, 31 F.Supp.2d 839, 852 (D.Or.1998) (*AT & T-Pac*).

¹⁰ Id.

sections 251(c)(2) and 251(c)(3) would often be frustrated. For example, Congress intended to obligate the incumbent to accommodate the new entrant's network architecture by requiring the incumbent to provide interconnection "for the facilities and equipment" of the new entrant. Consistent with that intent, the incumbent must accept the novel use of, and modification to, its network facilities to accommodate the interconnector or to provide access to unbundled elements.¹¹

The instant case presents a twist on the typical situation. Qwest, as ILEC, is not only attempting to deny Level 3, as CLEC, access to the network at a single point per LATA (geographical scope interconnection if you will) but also to deny Level 3 the ability to exchange differently-rated traffic over an existing network and use verifiable factors to determine compensation due for such traffic. This issue exists because Level 3 and Qwest have each built and utilize totally separate and different networks for the provision of local service in Washington. Each carrier's local network was designed to be the most efficient and cost-effective for that carrier. Qwest stated that its system consists of a number of local networks that have developed over time and each local network is characterized by the use of multiple local switches. Level 3 employs distributed soft switch architecture. However, because SBC (in all territories including former PacBell, Nevada Bell, Southwestern Bell, Ameritech and Southern New England Telephone territories) now AT&T), Bellsouth (now AT&T) and Verizon (in all territories including former GTE territories as well as Bell Atlantic North, Bell Atlantic South and NYNEX territories), exchange all forms of traffic over a single local interconnection network, specific information as to Qwest's objections to technical feasibility are not only very important, Qwest bears the burden of proving that Level 3's method is technically **infeasible**. Accordingly, information about how Qwest treats its subsidiaries or affiliates in Washington, or anywhere in the United States for that matter, are entirely relevant to this proceeding.

¹¹ *First Report and Order* at ¶202. (emphasis added)

38. Additionally, as discussed above, Qwest cites no authority to support the proposition that information regarding its affiliates and information about its business activities outside of Oregon are not within the realm of discovery. This information is material to these proceedings. Section 251(c) of the Act requires incumbent LECs, such as Qwest, to provide nondiscriminatory access to interconnection. The information sought by Level 3 is critical to assessing whether Qwest's proposals in this arbitration discriminate against Level 3 relative to the manner in which Qwest provides interconnection to itself, its affiliates, and other carriers throughout its service territory. For example, to the extent that, in Washington or elsewhere, Qwest has not required its affiliates or other CLECs to separate traffic onto different trunks and has employed PIUs, PLUs, or some other traffic allocation factor to rate traffic, or has itself asserted its right to commingle traffic on trunk groups, such information is directly relevant to Level 3's ability to rebut Qwest's imposition of separate trunking requirement on Level 3 and bears directly on whether Qwest's proposal is discriminatory.

39. For the foregoing reasons, Level 3 respectfully requests that the Commission order Qwest to respond to Request Nos. 19.

H. Request For Admissions Nos.14-16.

40. Level 3's Requests of Admissions Nos. 14-16 ask for the following:

Level 3 Request for Admission No. 14: Please admit that in the state of Iowa Qwest offers a transit service over which it "commingles", or mixes together wireline and wireless traffic including both interstate and intrastate telephone calls on common trunks before transmitting it to third party carriers including INS.

41. Level 3 Request for Admission No. 15: Please admit that in the state of Iowa Qwest offers a transit service over which it "commingles", or mixes together wireline and wireless traffic including both interstate and intrastate telephone calls on "local" trunks before transmitting it to third party carriers including INS.

42. Level 3 Request for Admission No. 16: Please admit that in the state of Iowa Qwest offers a transit service over which it "commingles", or mixes together wireline and

wireless traffic including both interstate and intrastate telephone calls but not over Feature Group D trunks (as Qwest uses that term) before transmitting it to third party carriers including INS.

43. Qwest objects to all three of these this requests for admission on the basis that what Qwest has been ordered to do in Iowa is not relevant to the disputed issues in this proceeding in Washington. This argument fails for the same reasons as discussed in paragraphs 35-38 above. Qwest's position in this proceeding is that it is not technically feasible to allow CLECs to commingle interstate and intrastate telephone calls on common and/or local trunks. Whether Qwest is in fact allowing its own affiliates to do just this is therefore directly relevant to this proceeding and central to Level 3's ability to rebut Qwest's position.

VI. CONCLUSION

For the reasons stated above, Level 3 respectfully requests that the Commission compel Qwest to respond fully to Data Requests 2, 4-10, 13-15, and 19 and Requests for Admission Nos. 14-16.

RESPECTFULLY SUBMITTED this 31st day of March, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of March, 2006, 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:

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I hereby certify that I have this 31st day of March, 2006, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

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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 31st day of March, 2006, at Seattle, Washington.


