

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of:)	
)	DOCKET UT-063006
)	
LEVEL 3 COMMUNICATIONS, LLC,)	
)	
For Arbitration Pursuant to Section)	
252(b) of the Communications Act of)	LEVEL 3 REQUEST FOR
1934, As Amended by the)	RECONSIDERATION OF LIMITED
Telecommunications Act of 1996, and)	ISSUES IN ORDER 10
the Applicable State Laws for Rates,)	
Terms, and Conditions of Interconnection)	
with Qwest Corporation)	
)	
.....)	
)	

1 **Synopsis.** *Level 3 Communications, LLC (“Level 3”) Recommends that the Arbitrator’s Report & Decision be modified as follows:*

- *Clarifying that Level 3 should be allowed to combine all traffic delivered to Qwest on LIS trunks.*

2 *To the extent that resolution of the remaining issues, referred to by the parties as Tier 2 issues, are inconsistent with the requested clarification above, Level 3 asks that the Washington Utilites and Transportation Commission (the “Commission”) revise those as necessary to achieve a result that promotes facilities-based competition in fairness to all parties.*

I. INTRODUCTION AND SUMMARY

3 The Arbitrator’s Report and Decision (the “ARD”) issued by Judge Rendahl
(alternatively the “ALJ”) in this case is, overall a fair and reasonable decision; Level 3
believes that the policies and findings articulated in the ARD will promote the pro-
competitive and anti-discriminatory goals of the Telecommunications Act of 1996
(the “Act”).¹ In particular, Level 3 appreciates the ALJ’s adherence to this Commission’s
interpretation of the ISP Remand Order and refusal to concede to Qwest’s discriminatory
proposal for the treatment of VNXX-routed ISP-bound traffic.

4 Level 3 does however take issue with the ALJ’s acceptance of Qwest’s trunking proposal
and in particular with the ALJ’s adoption of Qwest language regarding Level 3 use of
LIS trunks for delivering combined traffic to Qwest. As Level 3 will demonstrate in
these exceptions, the ALJ’s decision on this issue will result in an unlawful, arbitrary and
discriminatory regime, forcing Level 3 to absorb unnecessary costs and inefficient
network arrangements.

5 Level 3 Recommends the Following changes to the Arbitrator’s Report and Decision:

**A. The Arbitrator’s Recommended Decision Imposes Restrictions
on Level 3’s Ability To Provide Competing Tandem Access
Service That Do Not Exist For Qwest.**

6 Throughout this case, Level 3 presented detailed technical, financial, market, and
operational evidence—none of which was seriously questioned—that demonstrated the
fairness of its proposals to use Level 3’s massive existing interconnection facilities for

¹ 47 U.S.C. § 251(c).

the termination of traditional IXC traffic. For reasons unclear, however, the ARD rejects Level 3's language, and adopts Qwest's without specifically finding that the interconnection language adopted by the ALJ permits Level 3 to terminate long distance traffic. As an initial matter, Level 3 requests a specific finding that it is permitted to use its interconnection network to terminate long distance traffic OR adopt Level 3's proposals as written. Any other result unfairly and without legal justification requires Level 3 to prove not only what it *did* prove but also disprove speculative objections that the law specifically requires Qwest to prove: namely that an interconnecting CLEC can use any technically feasible method of interconnection. Moreover, Level 3 demonstrated in the proceeding that all other LECS—AT&T (SBC and BellSouth) and Verizon—exchange all traffic including IXC traffic—over local interconnection networks with Level 3. Level 3's proposals, are therefore, presumptively technically feasible and therefore permitted in Washington.²

1. Federal Law Requires that Level 3 be Allowed to Employ its LIS Trunk Network to Deliver All Combined Traffic to Qwest.

7 Governing federal law (47 C.F.R. §51.305(e)) makes it clear that if a means of interconnection is actually used by one ILEC, any other ILEC seeking to avoid using that same means of interconnection bears the burden of proving that the means of interconnection is not technically feasible. However, Qwest made no such showing, and the ARD did not find that it had done so. The only legally correct conclusion, therefore, is that Level 3, not Qwest, should prevail on this issue.

² Level 3 incorporates herein its comments in this Docket contained within its Post Hearing Brief and Reply Brief.

a. The ARD Makes No Finding that Level 3's Proposals are not Technically Feasible

8 There is no question that Level 3 uses a single interconnection network with ILECs other than Qwest.³ Each of those carriers uses a factor-based method for rating traffic and that they validate these factors using actual billing records provided by Level 3.

9 Qwest raised the false objection that the only way to use interconnection trunks as proposed by Level 3 was for Qwest to reconfigure its entire billing systems. But these claims were predicated on the false and unproven assumption that there was any technical necessity for so doing; there was none. Secondly, should any financial issues arise, as an initial matter, they are not permitted. But even if federal law is ignored, the financial exposure is limited by the fact that Level 3 would provide in industry standard format actual billing records. Any potential financial exposure is further limited by the fact that in the state of Washington, intrastate access traffic is rated at the local reciprocal compensation rate. *See* WAC 480-120-540 (terminating access charges are “must not exceed the lowest rate charged by the local exchange company for the comparable local interconnection service (in each exchange), such as end office switching or tandem switching.”) As a practical, legal and financial matter, therefore, no reasonable barrier exists to allowing Level 3 to use its interconnection network for the termination of all forms of traffic—“locally rated” local traffic as well as “locally rated” intrastate toll traffic. Functionally this means that Level 3 is seeking to use its interconnection trunks for two kinds of traffic: local and interstate.

³ ARD, ¶ 77.

b. Qwest's SGAT and Proposed Interconnection Agreement Language (as approved by the ARD) by its Terms Permits Termination of Toll Traffic Over Local Interconnection Trunks

10 Qwest's "statement of generally applicable terms" ("SGAT") for Washington—the very SGAT that Qwest's subsidiary company, QCC, could use to directly compete with Level 3—expressly permits carriers to use LIS trunks to deliver FGD traffic. *See* SGAT at Section 7.2.2.9.3.2.⁴ Moreover, as will be explained in more detail below, Qwest's own proposed language would allow Level 3 to deliver FGD traffic that originates with third party carriers to Qwest over LIS trunks.

11 These findings are also at odds with the actual contract language that Qwest has proposed, and that the ALJ has approved. Specifically, this language permits Level 3 to use LIS trunks to deliver switched access traffic to Qwest as long as the inbound long distance traffic comes from unaffiliated IXCs. *See* Exhibit 31T, pages 22-36; Exhibit 33, Exhibit 11T, pages 15-26; Exhibit 13, 16T pages 2-10.

12 When Level 3 switches inbound long distance traffic to the destination Qwest end office, Level 3 is providing terminating tandem switched access service, and that traffic meets the agreement's definition of "jointly provided switched access." Qwest's language expressly permits the use of LIS trunks to carry jointly provided switched access traffic in general; the *only* exclusion is where Level 3 is the originating IXC.

⁴ The SGAT is available at: <http://www.qwest.com/wholesale/clecs/sgatswireline.html>.

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First, consider the definition of “jointly provided switched access:”

“Meet-Point Billing” or “MPB” or “Jointly Provided Switched Access” refers to an arrangement whereby two (2) LECs (including a LEC and CLEC) jointly provide Switched Access Service to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

See Qwest’s Response to Arbitration Petition, Attachment (Qwest version of contract showing agreed-to and disputed language) at 24 (definition of meet point billing). This definition is neutrally phrased and does not require or suggest that only Qwest may provide tandem functionality. Indeed, any such limitation would have been blatantly discriminatory by excluding Level 3 from competing with Qwest for the business of IXCs purchasing terminating access services in Washington. So when Level 3 provides tandem functionality to IXCs, that fits within this definition.⁵ Moreover, because there are only two categories of traffic that Level 3 would terminate over LIS trunks already used to carry intrastate toll services—locally-rated “local” and intrastate toll traffic AND interstate traffic, Qwest’s financial exposure, even assuming the unproven issues of

⁵ Qwest has admitted that its contract language permits this. See Qwest Corporation’s Reply Brief, (January 22, 2007) at 7 (“The issue that *is not* before the Commission is whether Level 3 can deliver jointly provided switched access (“JPSA”) traffic to Qwest over LIS trunks. The undisputed language of the ICA permits this but only so long as Level 3 is functioning as a LEC for the traffic in question and all of the requirements applicable to the provision of JPSA are met.”). Also, Qwest’s witness Mr. Linse admitted this on the stand. See, Transcript of Proceedings at 610:20-611:16 (Qwest’s Mr. Easton) (emphasis added) (“Q: But, in fact, if a CLEC had a switch that had multiple capabilities, and wanted to compete with the ILEC in the provision of tandem functionality, nothing that you are aware of would prevent the CLEC from soliciting business from IXCs, saying, connect to me, and I will get your traffic out to the end offices cheaper and more efficiently than the ILEC can. That’s perfectly legal? A: ***Nothing I am aware of would prohibit that.*** Q: And if that were to occur, that would be a form of jointly provided switched access? A: Let’s go through the example again. So it would be an ILEC going through a CLEC’s tandem? Q: And it would be incoming, an IXC with a call coming in from Los Angeles, goes to the CLEC switch which is functioning as a tandem, recognizes that call as bound for a particular Qwest customer. The CLEC would then route that to the appropriate Qwest end office? A: ***That would be an example of jointly provided switched access.***”)

“trust” the ALJ mentions but for which no evidence is cited, substantially diminishes any concerns that Qwest will be harmed.

13 Qwest’s language also says that LIS trunks may be used to carry jointly provided switched access. Qwest’s Section 7.1.1 states that LIS trunks are “provided for the purpose of connecting ... End Office Switches to Access Tandem Switches for the exchange of *Jointly Provided Switched Access* traffic.” Disputed Points List at 8. (Qwest’s language, emphasis added). And its version of Section 7.2.2.9.3.1 states that:

Exchange Service (EAS/Local), ISP-Bound Traffic, Exchange Access (IntraLATA Toll carried solely by Local Exchange Carriers), VoIP traffic and *Jointly Provided Switched Access (InterLATA and IntraLATA Toll involving a third party IXC) may be combined in a single LIS trunk group or transmitted on separate LIS trunk groups.*

Id. at 43-44 (Qwest’s language, emphasis added). In other words, incoming long distance traffic may be transmitted by Level 3 over LIS trunks because the definition of “jointly provided switched access” includes Level 3 providing tandem switching functionality.

14 So, under the ARD, Level 3 may send an unlimited amount of Feature Group D traffic to Qwest over LIS trunks. As a result, all of the problems that Qwest argued and the ALJ found, would exist if Level 3’s language were adopted, exist under Qwest’s proposed language as well. For example, Qwest argued that because its end offices are not configured to record call details on incoming traffic on LIS trunks, those trunks should not be used for incoming long distance traffic. But its language *permits* an *unlimited amount* of such traffic on LIS trunks. So, under its own language Qwest must either configure those trunks to record call details or rely on Level 3 to provide call detail

recordings (“CDRs”) for this traffic.⁶ And make no mistake, Level 3’s switching platform actually records each and every call.⁷ Level 3 does this for Verizon and AT&T (*i.e.*, throughout both BellSouth, and SBC territories).⁸ There is no difference in the types of records Level 3 would provide and they would conform to industry standards, including, for example, EMI format. Moreover, if this were such an issue, why would the nation’s largest incumbent LECs who exchange far greater volumes of traffic with Level 3 than does Qwest, agree to it? For these reasons, concern about whether Qwest will be able to provide its wholesale customers (that is, “QPP” customers) with the CDRs they need to bill long distance carriers—a matter that apparently helped convince Judge Rendahl on this score—is, in fact, a complete red herring. Because Qwest’s language expressly permits Level 3 to use LIS trunks to send Qwest terminating long distance

⁶ This is standard industry practice—the provider of tandem switching is responsible for recording traffic so that the provider of end office switching can bill appropriately. For this reason, the ARD is wrong to suggest that the contract does not oblige Level 3 to provide CDRs when it delivers terminating long distance traffic to Qwest end offices. *See* ARD at 36. Section 7.2.2.4 and Section 7.5 of the agreement—provisions that are not in dispute—oblige the parties to use industry-standard MECOD/MECAB arrangements in the provision of jointly provided switched access. Those arrangements entail the tandem service provider supplying CDRs as needed to the carrier supplying end office functionality, so the contract—albeit by referring to those other documents—does oblige Level 3 to provide CDRs when needed.

⁷ Transcript of Technical Conference, 145-147, specifically 146:23-147:7 (“The other method if one side required that they had every single call and they wanted to rate those calls themselves would be to exchange the call detail records or CDR’s, and the industry has a standard format for the exchange of that. Typically we will set up some type of computer link between companies, and one company would basically batch download the records into their systems so that they can, you know, initiate whatever billing that they wanted to bill.”); and 149:18-150:5 (MR. WILLIAMSON: But the billing system between the two companies will send those records, but instead of using them on a per call basis, you will set a factors, or that’s what you would like to do, set factors based on traffic studies that could be audited at different times? MR. GREENE: Exactly. MR. WILLIAMSON: But the information is transmitted? MR. GREENE: Yes. MR. WILLIAMSON: Between companies? MR. GREENE: That is correct. MR. WILLIAMSON: Thank you.”)

⁸ Transcript of Technical Conference, 148:18-20 (And for, you know, the tens of millions of calls that were transmitting to Verizon, BellSouth, and AT&T, that’s the method we use.”)

traffic from 3rd-party IXC's, if Qwest is going to supply CDRs to its QPP customers, it must either establish its own recording capabilities or rely on Level 3 for CDRs.

15 Nonetheless, despite mountains of the evidence showing the practical, operational, financial and technical feasibility and fairness of Level 3's proposals, the ALJ adopted without much explanation, Qwest's contract language. This finding is completely unsupported by the evidence and therefore erroneous.

2. Refusing Technically Feasible Forms of Interconnection to Competing Carriers is Discriminatory and Contrary to Federal Law and Policy Favoring Efficient Facilities-based Competition

16 In addition to being unsupported by the evidence, Qwest's trunking proposal, as adopted by the ALJ presents serious problems of discrimination. In this regard, the FCC long ago made clear that the requirement of nondiscrimination applicable to interconnection arrangements under the 1996 Act is much more stringent than the traditional, somewhat lax "nondiscrimination" requirement applicable to an ILEC's retail services.

Section 202(a) of the Act states that "[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, ... facilities, or services for or in connection with like communication service ... by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person." [FN460] By comparison, section 251(c)(2) creates a duty for incumbent LECs "to provide ... any requesting telecommunications carrier, interconnection with a LEC's network on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." [FN461] The *nondiscrimination requirement in section 251(c)(2) is not qualified* by the "unjust or unreasonable" language of section 202(a). We therefore conclude 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*.⁹

The latter requirement permits discrimination as long as it is “reasonable” in the circumstances; the 1996 Act, however, *prohibits any discrimination* in interconnection arrangements. Reasonable discrimination, therefore, is not an excuse.¹⁰

17 There is no dispute in this proceeding that Level 3 is a local exchange carrier and no dispute that Level 3 seeks to terminate third party IXC traffic over interconnection facilities. So there can be no justification for Judge Rendahl’s reliance on the supposed limitation of LIS trunks to traffic contemplated by Section 251(c)(2) of the Act. *See* ARD at 38. This is because the *Local Competition Order* indicates that, while pure IXCs may not use interconnection under Section 251(c)(2) “solely” to terminate their own long distance traffic, they may do so as long as the traffic they send *includes* Section 251(c)(2) traffic—specifically, access traffic where another IXC is involved. *Local Competition Order* at ¶¶ 184, 191. Section 251(c)(2) plainly contemplates that a carrier may compete with an ILEC to provide terminating access services to third-party IXCs, and also contemplates that a carrier may *combine* its own terminating long distance traffic with traffic from third parties.

18 Accordingly, the supposed Section 251(c)(2) limitation makes no sense when Level 3 is already permitted to send unlimited amounts of terminating Feature Group D traffic from

⁹ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Inter-carrier Compensation for ISP-Bound Traffic, *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, CC Docket Nos. 96-98, 99-69 ¶ 217 (February 26, 1999) (emphasis added).

¹⁰ *Id.*

third parties over the LIS trunks it obtains from Qwest. To the contrary, as the FCC explained, allowing both access traffic and an IXC's own long distance traffic on a Section 251(c)(2) interconnection enables carriers who might be engaged, in part, in the long distance business to compete against ILECs in the provision of access services. *Id.* at ¶ 184. This is just what Level 3 wants to do. And it is what Qwest can do within Verizon territory, using its own interconnection language or in its own territory under the SGAT. Refusal to permit Level 3 to do the same, therefore, is unreasonable discriminatory. But the discrimination runs even deeper when considered in light of the actual operation of the market.

19 Qwest, is for all intents and purposes, a national provider of local telephone service, data services (mostly unregulated), IXC (mostly unregulated), and wholesale provider of dialup ISP and VoIP Services. This has been true from the beginning when the Commission approved the original acquisition of US West by Qwest, but since Qwest's extremely successful entry into Long Distance Qwest can longer hide behind the fig leaf of "separations", as if these entities were ever really separate: QCC-the-CLEC is not, in any but the most formalistic legal sense, an entity that is "separate" from Qwest-the-ILEC. To the contrary, there is an extremely close—indeed, overlapping—relationship between Qwest-the-ILEC and QCC-the-CLEC. Qwest's website reports that Qwest Corporation—Qwest-the-ILEC—is performing fundamental business activities for QCC. These functions include “providing general accounting and business advice for [QCC] business transactions ... [including] functional support for finance systems, generating

reports, data analysis and cash management processes.” In addition, Qwest-the-ILEC provides QCC with

Federal & State Regulatory Reporting—analysis & preparation of Federal and State regulatory reports; Universal Service Fund Support—providing disbursements to customers of the Universal Service Fund (USF), supervision of disbursements and USF consultation, methods and assistance to QCC as well as interfacing with the Information Technologies personnel to develop requirements for the USF database programs; Asset Accounting and Operations—providing the recording of capital assets, providing the physical inventory, calculating depreciation and meeting all fixed asset tax requirements; Capital Recovery—providing depreciation parameters, depreciation budgets and advice regarding depreciation issues; Finance Billing Support-Provide Finance support functions for QCC related to affiliate transactions. This could involve activities such as the calculation of the pricing of services that QCC will bill, tracking and calculating monthly QCC billing amounts, generating invoices on behalf of QCC or other support needed by QCC; Revenue Operations—providing support to the migration of QCC billing systems into the Revenue Journal System. Work includes providing methods and procedures, review of user requirements, functional design meetings, creation of test requirements, validate test output. Ongoing work activities would include initiate and validate table changes and the monitoring of daily production files. Finance Systems—BART Billing Support—providing billing support on behalf of QCC for services rendered by QCC to non affiliate customers. Actual postage costs are also billed as incurred.

See <http://www.qwest.com/about/policy/docs/qcc/documents/WO-fs->

[Amd32_092906.pdf](#); *see also*

http://www.qwest.com/about/policy/docs/qcc/documents/WO-fs-Amd31_060705.pdf.

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In addition, Qwest-the-ILEC provides QCC-the-CLEC “with access to [Qwest-the-ILEC’s] internal employee communications network. This service includes Help Desk Plus problem resolution[, including] Operations Services (Computer Attendant): [Qwest-the-ILEC] provides [QCC-the-CLEC] ongoing support of the server, including tape

management, and maintenance.” It also includes “Use of Server Equipment. Qwest Corporation provides use of servers to host unregulated software used by [QCC.” Finally, it also includes “Use of software. [Qwest-the-ILEC] grants license to use QRules Engine Software.” See http://www.qwest.com/about/policy/docs/qcc/documents/WO-its-Amd19_092906.pdf. Indeed, the close identification between Qwest Corporation and QCC is not limited to internal, “behind the scenes” operations. To the contrary, in order to reinforce the close relationship in the minds of customers, Qwest-the-ILEC will provide central office tours for customers of QCC.¹¹

21 Furthermore, any residual separation between Qwest-the-ILEC and QCC-the-CLEC is likely to dissolve in the very near future, because the FCC just granted Qwest’s petition to forbear from requiring that Qwest maintain its interLATA long distance operations—presently housed in QCC—as a separate corporate entity. Instead, Qwest is now permitted to provide both intraLATA and interLATA services—including interstate interLATA services—out of the same corporation.¹²

¹¹ “Central Office Tours - provide QCC employees a QC central office tour as a service to facilitate positive customer relations. QC will provide a generic tour including review of a cable vault, distribution frame, switch, and transmission facilities. Information unique to QC infrastructure, customer information, and systems access will not be provided to QCC employees during the tour.” http://www.qwest.com/about/policy/docs/qcc/documents/WO-csw-Amd34_020707.pdf.

¹² See Public Notice, FCC 07-12A1 (released February 21, 2007).

II. CONCLUSION

22 For all of these reasons, the Commission should clarify the ALJ's Report and Decision as requested by Level 3.

Dated this 4th day of April, 2007.

Respectfully submitted,

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