

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 665

In the Matter of )  
 )  
LEVEL 3 COMMUNICATIONS, LLC )  
 )  
Petition for Arbitration )  
Pursuant to Section 252(b) of )  
the Communication Act of 1934. )

TRANSCRIPT OF TELEPHONE CONFERENCE

BE IT REMEMBERED that the above-entitled matter came on regularly for a Telephone Conference before SAMUEL J. PETRILLO, Administrative Law Judge, Public Utility Commission, on August 25, 2005.

APPEARANCES

Alex Duarte, Attorney at Law,  
Tom Dethlefs, Attorney at Law,  
Appearing in behalf of Qwest

Sarah Wallace, Attorney at Law,  
Eric Cecil, Attorney at Law,  
Appearing in Behalf of Level 3

1 **TELEPHONE CONFERENCE**

2 August 25, 2005

3  
4 THE COURT: Good afternoon. It's Thursday, August  
5 25th, 2005. It's shortly after 2 o'clock. This is the time  
6 and place for the telephone conference in Docket ARB 665,  
7 which is a Petition of Level 3 for Arbitration pursuant to the  
8 Telecommunications Act of 1999 -- 1996, excuse me, with Qwest  
9 Corporation.

10 My name is Sam Petrillo. I'm the Administrative  
11 Law Judge assigned to preside over this matter, arbitrate this  
12 case. We have appearances today on behalf of Qwest by Alex  
13 Duarte and Tom Dethlefs, appearing by telephone. And  
14 appearing here in person in Salem on behalf of Level 3 we have  
15 Sarah Wallace and Eric Cecil.

16 The purpose of the conference today is to address  
17 Level 3's Motion to Compel Discovery. And I had originally  
18 contemplated that because of the number of items in dispute  
19 that we would go through them one by one, and perhaps would  
20 require clarification or argument from the parties regarding  
21 some or all of these items in dispute. But because the  
22 parties did such a commendable job with their filings, which  
23 I found to be quite comprehensive, it pretty much, in my mind  
24 at least, eliminates the need for that approach, and, as a  
25 result, I'm prepared to make my ruling now. I've read all the

1 materials and I think that's the approach that makes the most  
2 sense under the circumstances.

3           What we need to do here is really to save time,  
4 which is in short supply, since the hearing is scheduled to  
5 begin in less than four weeks, so my ruling will address each  
6 of the items in dispute. I'll try to go through them as  
7 quickly as possible and hopefully we'll be able to end the  
8 conference fairly expeditiously.

9           Before I begin, though, have any of the items in  
10 dispute been resolved since I received the last filing in this  
11 case?

12           MS. WALLACE: No, Your Honor. I've actually  
13 received some of the responses that Qwest did.

14           THE COURT: Great. Are there any other preliminary  
15 matters before I go to my ruling?

16           (No response.)

17           THE COURT: It appears there are none. So I'm  
18 basically going to read through this, and you'll have to  
19 forgive me for that, but I've prepared this. And, as I said,  
20 I think this is the most expeditious approach for us to take  
21 under the circumstances.

22           I'm going to begin with the data requests, and then  
23 I'll go to the request for admission.

24           Beginning with Data Request No. 3, I'm going to  
25 require Qwest to respond to that. I think it's relevant to

1 the issue of nondiscriminatory access. Qwest has argued that  
2 the Commission has already decided this issue. I've gone  
3 through the relevant materials that it cited, and I don't  
4 really agree with that. I think the matter may be pending.  
5 Certainly it has been raised in IC-12, but the issue has not  
6 been decided finally by the Commission yet.

7           There is an allegation by Qwest with respect to  
8 that interrogatory that it's burdensome because it seeks  
9 national information. I think there's a bit of confusion on  
10 that point. My understanding is that the request is limited  
11 to Oregon; is that correct?

12           MS. WALLACE: Yes.

13           THE COURT: Okay. With respect to Qwest's trade  
14 secret claim regarding the number of customers, I believe that  
15 Qwest is adequately protected by the protective order, so  
16 that's my ruling on No. 3.

17           On No. 6(b), I'm also going to require Qwest to  
18 respond. Like request No. 3, I think it's relevant to the  
19 issue of nondiscriminatory access, and I believe it may lead  
20 to the production of relevant evidence. Again, information  
21 relating to Qwest's customers is protected by the existing  
22 protective order.

23           Same decision in item 6(e). Qwest shall respond.  
24 I believe Qwest actually concedes that that information may be  
25 relevant. But I do find that to the extent that it seeks

1 information for services outside of the State of Oregon, that  
2 it's overbroad and burdensome, so I'm going to limit it to the  
3 State of Oregon.

4           With respect to No. 13, which involves the co-  
5 mingling of local and toll traffic on single trunk routes by  
6 Qwest on a nationwide basis, I find that that request is  
7 overbroad and unduly burdensome insofar as it seeks  
8 information regarding matters outside of Oregon. So I find  
9 that Qwest should respond with information limited to Oregon.

10           On Items 14 and 16, I find that those requests are  
11 overbroad and unduly burdensome, and that no response is  
12 required.

13           On No. 17, I think -- I find that the request is  
14 overbroad and unduly burdensome insofar as it seeks  
15 information outside of Oregon, and Qwest shall respond with  
16 information limited to Oregon. In other words, it needs to  
17 list all the CLECs with whom it commingles traffic on a single  
18 trunk route, and the month and the year when Qwest started to  
19 combine that traffic. Again, limited to Oregon.

20           With respect to No. 19, the same ruling. I believe  
21 that it is overbroad and unduly burdensome insofar as it  
22 seeks information outside of Oregon. Qwest shall respond  
23 with information limited to its Oregon operations and inter-  
24 connection agreements it has with CLECs in Oregon.

25           No. 20, same decision.

1 I believe No. 21 has been resolved.

2 With respect to No. 44 -- I'm taking these out of  
3 order because that was the way they were listed in the  
4 filings, so you'll -- please forgive me for that.

5 I don't believe a response is required to No. 44  
6 because I believe that the question is ambiguous, and that's  
7 based upon the statement by Qwest that PLU and similar factors  
8 are applied to overall traffic volumes, and not used to  
9 determine the rating or jurisdiction of individual calls.

10 With respect to No. 22, again, I find no response  
11 is required. I believe the question is overbroad, and I also  
12 believe that Level 3 has equal access to the information  
13 sought. In addition, I believe that the term Transit Traffic  
14 is ambiguous because it's potentially susceptible to different  
15 interpretations.

16 With respect to Items 24, 25, 28(b) and 33,  
17 regarding FX and FX-like services, in that case a Qwest  
18 response was limited to stating that those services had been  
19 grandfathered in Oregon. I believe that's not responsive to  
20 the question, and that Qwest should supplement its response  
21 with more information regarding those services.

22 With respect to Item 28(b), in particular, Qwest  
23 states that the reference to local and toll is ambiguous. I  
24 really don't agree with that. Those are commonly understood  
25 terms. And if Qwest wants to insure that there's no

1 misunderstanding with respect to them, they can define those  
2 terms in its response. And I refer Qwest back to request  
3 No. 13 where Level 3, in fact, indicated that if there was any  
4 uncertainty regarding those two terms, Qwest should, in fact,  
5 do that.

6           With respect to issue number -- or request No. 43,  
7 that would be the number of physical POI's in Oregon between  
8 Qwest and CLECs, I believe Qwest should respond to this  
9 inquiry. I believe it's relevant to I think it's issue 1 and  
10 not unreasonable.

11           With respect to Item No. 45, I do not believe a  
12 response is required to that. I think that the request is  
13 unduly burdensome because, as Qwest indicates, the information  
14 is not available in a central repository.

15           Okay. That's -- as I understand it, that's all of  
16 the data requests in dispute. Now I'm going to move on to the  
17 request for admission.

18           In summary, I find that Qwest is not required to  
19 respond to the requests for admission in dispute, except in  
20 the two instances that I mentioned below. I am, however,  
21 going to go through them all so the parties understand what  
22 my rulings are. Again, my rulings are not in order because  
23 I'm following the approach that the parties used in their  
24 comments.

25           With respect to -- again, with respect to all of

1 these, I'm finding that Qwest has provided sufficient  
2 information in either its response or its supplemental  
3 response. I'm going to give you a little bit more detail now.

4 With respect to No. 20, Qwest indicates that the  
5 requested information is available on its website; however --  
6 and this is one of the instances where I'm going to require  
7 further response -- I believe that Qwest should provide a  
8 comparison between the base rates for one flex of VOIP and the  
9 base rate for choice home -- for its choice home-plus package.

10 With respect to Item No. 26, I believe that Qwest  
11 has provided sufficient response, and that, if necessary,  
12 Level 3 can explore that matter further at hearing.

13 With respect to No. 27, I agree that Qwest is  
14 unable to answer more fully for the reasons specified in its  
15 supplemental response. I agree with Qwest that the question  
16 presumes that Qwest will be able to use multiple entities --  
17 it uses multiple entities to provide service in its 14-state  
18 region, and also that the service is provided in authorized  
19 regions, which is not the case in all states.

20 With respect to No. 31, I agree with Qwest that  
21 the question involves too many variables for Qwest to try to  
22 predict all of the probable outcomes. And, also, that the  
23 question, the request, represents one possible outcome that  
24 might occur. So, in that case, as with the others, I find  
25 that Qwest's response is sufficient.



1           With respect to No. 36, I interpret Qwest's  
2 response to deny the request for the reasons that are  
3 specified in the response. The same is true for Item No. 41.  
4 Qwest has effectively denied the request for the reasons  
5 specified.

6           With respect to No. 51, I find that Qwest's  
7 response is sufficient because the FCC rules are readily  
8 available for anyone to look at, including Level 3.

9           With respect to No. 53, I believe that Qwest should  
10 respond. The objection that it made and I believe this is --  
11 this is the only thing I could find, anyway -- the objection  
12 is that there's no reference to, quote, unquote, "this service  
13 in the" -- that the request refers to, quote, unquote, "this  
14 service," in that that is vague and ambiguous. But, as I read  
15 the request, it makes no mention of this service. It refers  
16 to, I believe, dial-up Internet service. So, because of that,  
17 I find that Qwest should respond.

18           With respect to Item No. 54, I agree with Qwest  
19 that the references to traditional local exchange carriers  
20 and, quote, unquote, "sizable base" are ambiguous. And, if  
21 necessary, Level 3 can explore these further at hearing.

22           With respect to Item No. 55, I find that the  
23 question involves too many variables for Qwest to try to  
24 predict all the probable outcomes, and that the request in  
25 itself represents one possible outcome, as Qwest has

1 indicated.

2 With respect to No. 57, I agree with Qwest that the  
3 core forbearance order issued by the FCC speaks for itself.

4 With respect to Item No. 58, again, I agree with  
5 Qwest that the question involves too many variables for Qwest  
6 to try to predict all the outcomes, and that the request  
7 represents one of those possible outcomes.

8 With respect to No. 50, the question is compound.  
9 And, in addition, I believe Qwest has denied the request in  
10 its response.

11 With respect to Items No. 10 through 13, Qwest  
12 has denied the request in its response and, in addition, the  
13 federal tariffs speak for themselves.

14 With respect to Item No. 42, Qwest has denied that  
15 response, as well, for the reasons specified in its response.  
16 And I refer you back to Item No. 36.

17 Those, I believe, are all of the requests for  
18 admission. Have I missed anything?

19 (No audible response.)

20 THE COURT: Okay. That's my ruling. If anyone  
21 wants to review that further, I'll have tapes available that  
22 you can take with you and either transcribe on your own or  
23 perhaps we can have it transcribed. I'll have you talk to my  
24 legal secretary, Frances Nichols, about that and we'll decide  
25 what procedure to follow in the event you'd like a transcript.

1           Let's talk about a time for response.

2           MS. WALLACE: Your Honor, may I ask for one  
3 clarification?

4           THE COURT: Yes.

5           MS. WALLACE: In Request No. 21 --

6           THE COURT: Yes.

7           MS. WALLACE: -- and Qwest had offered to answer so  
8 long as it was limited to Oregon, and I'm assuming you're  
9 agreeing with them --

10          THE COURT: Yes.

11          MS. WALLACE: -- and requiring a response?

12          THE COURT: Yes. Thank you.

13          Time to respond. Do we have a proposal?

14          MS. WALLACE: We propose August 31st in our reply  
15 brief, in order to try to get this (indiscernible).

16          THE COURT: And the reply testimony is due on the  
17 6th?

18          MS. WALLACE: Yes.

19          THE COURT: Okay. Mr. Duarte, Mr. Dethlefs, are  
20 you there?

21          MR. DETHLEFS: This is Tom Dethlefs. I'm going to  
22 give it to the interrogatory coordinator right now. I've been  
23 taking notes.

24          THE COURT: Okay.

25          MR. DETHLEFS: And we'll try to turn these around

1 as quickly as possible. The 31st, that's a Tuesday? Is  
2 that --

3 MS. WALLACE: It's Wednesday, I believe.

4 MR. DETHELFS: That's Wednesday?

5 THE COURT: Hold on. I can tell you right away.  
6 It's Wednesday.

7 MR. DETHLEFS: It's Wednesday? I think we ought to  
8 be able to finish the responses by Wednesday.

9 THE COURT: Okay. Let's set the response date for  
10 Wednesday. And if there are any difficulties, you can contact  
11 my legal secretary, who can get a hold of me. I'm tentatively  
12 scheduled to be out of town next week because I'm transporting  
13 one of my children to graduate school, but I'm available by  
14 cell phone, so if we have any issues, you can contact me.

15 We had briefly discussed the possibility of  
16 scheduling revisions. Are we still on schedule?

17 MS. WALLACE: Yes. We think we are. It is  
18 somewhat dependent on them getting their response to us.

19 THE COURT: Okay. Well, I'll assume that we're  
20 just going to proceed with the existing schedule until I hear  
21 otherwise from the parties.

22 Are there any additional matters that we need to  
23 take up today?

24 MS. WALLACE: No, Your Honor.

25 THE COURT: It appears there are none.

1                   Thank you, very much for your time. The conference  
2 is adjourned.

3                   MR. DETHLEFS: Thank you, Your Honor.

4                   MS. WALLACE: Thank you.

5                   (Conclusion of telephone conference.)

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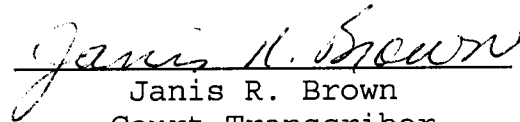
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CERTIFICATE OF TRANSCRIBER

I, Janis R. Brown, Court Transcriber, do hereby certify that I personally transcribed the proceedings occurring in the transcript appended hereto; that said proceedings were recorded by audio cassette tapes; that I thereafter reduced said cassette tapes to typewriting, and the foregoing and hereto attached pages of typewritten matter, numbered 1 through 13, constitute a full, true and accurate record of the requested portions of such proceedings, to the best of my skill and ability.

Dated this 21st day of November, 2005, at Aloha, Oregon.

  
Janis R. Brown  
Court Transcriber