

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE PETITION OF LEVEL
9 3 COMMUNICATIONS LLC FOR ARBITRATION
10 OF AN INTERCONNECTION AGREEMENT
11 WITH QWEST CORPORATION PURSUANT TO
12 SECTION 252(b) OF THE
13 TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-03654A-05-0350

DOCKET NO. T-01051B-05-0350

PROCEDURAL ORDER

14 **BY THE COMMISSION:**

15 Pursuant to the verbal request of the parties, on August 3, 2005, the Arbitrator in the above-
16 captioned matter heard oral argument on a Motion to Compel brought by Level 3 Communications,
17 LLC (“Level 3”) against Qwest Corporation (“Qwest”) in the above captioned arbitration. During the
18 course of the August 3, 2005 proceeding, the parties were able to narrow somewhat the issues in
19 dispute, but because of the extensive scope of the Motion to Compel, the Arbitrator requested that
20 Level 3 file a written Motion.

21 On August 8, 2005, Level 3 filed its written Motion to Compel. Level 3 identified at least 36
22 different Data Requests and Requests for Admission for which it believed Qwest’s objections were
23 baseless or its responses inadequate. Level 3 also requests an extension for the discovery cutoff
24 deadline.

25 On August 12, 2005, Qwest filed its Response.

26 **Data Request No. 4 – Qwest Internet Access Service**

27 Level 3’s Data Request No. 4 asks if Qwest offers Internet access service in the state and how
28 many end user and wholesale customers Qwest has. It requests that that Qwest identify each end
office in which Qwest has collated certain equipment and list each local calling area within the state
in which Qwest maintains a physical presence. Qwest objected to the request because it called for
proprietary information related to the operations of Qwest’s affiliates and sought information that was
not relevant to the proceeding.

1 Level 3 argues that its request is relevant to the third issue in this proceeding which Level 3
2 identifies as whether Qwest's election to be subject to the *ISP-Remand Order* for the exchange of
3 ISP-bound traffic requires Qwest to compensate Level 3 for ISP-bound Traffic at the rate of \$0.0007
4 per minute of use. Level 3 asserts it is relevant to the question of whether the geographic location of
5 the ISP is relevant to the compensation exchanged by the parties for the transport and termination of
6 ISP-bound traffic. According to Level 3, the information is also relevant to the question of whether
7 Qwest treats its affiliates the same as it treats Level 3. Qwest argues that Data Request No. 4 does
8 not seek information in any way relating to the numbering assignment rule for the assignment of
9 NPA-NXXs.

10 Resolution:

11 Whether Qwest's proposals discriminate against Level 3 in Arizona are relevant to this
12 proceeding. The information sought in this Data Request appears reasonably calculated to lead to the
13 discovery of admissible evidence. Any proprietary information should be protected by the existence
14 of the Protective Agreement between the parties. Consequently, Qwest should respond as soon as
15 possible to this Data Request.

16 **Data Request No. 5 – PRI or DID/DOD Service**

17 Level 3's Data Request No. 5 asks whether Qwest offers PRI or DID (Dedicated In
18 Dialing)/DOD (Dedicated Out Dialing) service to ISP customers in the state and if so, does Qwest
19 pay carriers originating access charges. According to Level 3, Qwest had not provided any response
20 to this request. Qwest has indicated that Level 3 has clarified ambiguities in the question and that
21 Qwest has served an answer. Qwest's response indicates that this dispute has been resolved.

22 **Data Request No. 7(b), 7 (c) and 7 (e) – Qwest's VoIP Service**

23 In Data Request 7(b), Level 3 requests that Qwest provide the number of retail and wholesale
24 VoIP customers in the state. Data Request 7(c) asks for a list of each local calling area in which
25 Qwest maintains a physical presence. Data Request 7(e) asks whether Qwest purchases any
26 wholesale VoIP services from another provider, and if so, the name of the provider, the services
27 purchased and the states in which such service is provided. Qwest objects to these Data Requests on
28 the basis of relevancy.

1 Level 3 contends that VoIP is not subject to access charges, but that Qwest seeks to impose
2 access charges on certain VoIP traffic, and that the information requested in 7(b) is necessary to
3 demonstrate the impact that Qwest's VoIP proposal will have on Level 3. With respect to Data
4 Request No. 7(e), Level 3 argues the information sought is relevant to determining whether Qwest's
5 proposals discriminate against Level 3.

6 With respect to Data Request 7(b), Qwest argues that it is the number of Level 3 VoIP
7 customers that will determine the "impact" on Level 3. Qwest states the relevant issue in this
8 proceeding is the proper application of inter-carrier compensation rules, not the impact of those rules
9 on one competitor.

10 Qwest states it is preparing a response to Date Request 7(c).

11 With respect to Data Request 7(e), Qwest argues that information concerning its affiliate,
12 QCC's, wholesale providers and the service it purchases from them on a nationwide basis is overly
13 broad and not relevant to this proceeding in Arizona. Qwest argues the only discrimination issue that
14 could be relevant is whether Qwest is discriminating against Level 3 in favor of QCC in Arizona, and
15 thus, this request goes far beyond the issues in the case and would be extremely burdensome and
16 time-consuming for Qwest to provide. Qwest offered to provide the information sought in Data
17 Request No. 7(e) for Arizona.

18 Resolution:

19 Similar to our finding with respect to Data Request No. 4, the issue of discrimination is
20 relevant. Qwest should respond to Data Request 7(a). We agree, however, with Qwest that this
21 proceeding involves an interconnection agreement in Arizona and that we are concerned with
22 Qwest's practices in Arizona. Level 3's Data Request 7(e) is overly broad to the extent it seeks
23 information concerning purchases outside of Arizona. Consequently, Qwest should be required to
24 respond to Data Request 7(e) only as it would relate to Arizona.

25 **Data Request No. 8 – traffic exchange arrangements**

26 Data Request No. 8 asks Qwest to describe any traffic exchange arrangements applicable to
27 enhanced or Internet Enabled services that Qwest has in Arizona with other ILECs, CLECs, or any
28 other party.

1 Level 3 argues the arrangements that Qwest or a Qwest affiliate has with other LECs is
2 directly relevant to the issue of whether Qwest, directly or indirectly, is acting in a discriminatory
3 manner vis-a-vis Level 3. Level 3 asserts that in the past Qwest has taken the position that certain
4 types of agreements need not be filed with the Commission, and that Qwest is in the best position to
5 provide the requested information.

6 Qwest asserts that interconnection agreements between Qwest Corporation and CLECs or
7 Qwest Corporation and QCC are on file with the Commission, and given the breadth and ambiguity
8 of the inquiry, Level 3 is capable of reviewing the filed interconnection agreements in Arizona as
9 easily as Qwest.

10 Resolution:

11 Despite Level 3's intimations that Qwest has not filed interconnection agreements, there is no
12 evidence that subsequent to the resolution of the inquiry into Qwest's compliance with Section 252(e)
13 of the Telecommunications Act in Decision No. 66949 (April 30, 2004), Qwest has not filed
14 interconnection agreements, or that any interconnection agreements remain unfiled. We find that
15 Level 3 can obtain the information it seeks in this Data Request from public sources and that Qwest
16 should not be required to respond further.

17 **Data Requests Nos. 14, 15, 19, 20-21 and 44 – Efficient Use of Trunk Groups**

18 Level 3 groups these requests together and states that they seek information on the use of
19 combined trunk groups by Qwest and Qwest affiliates; the imposition of separate trunking obligations
20 upon other CLECs by Qwest; the use of traffic apportionment factors, such as percent interstate usage
21 (PIU) and percent local usage (PLU), by Qwest or any other LEC that delivers traffic to Qwest; and
22 Qwest's knowledge regarding any state commissions that have required separate trunk groups. Level
23 3 states that one of the issues in this proceeding is whether Level 3 may exchange all traffic over the
24 interconnection trunks established under the Interconnection Agreement. Level 3 seeks to use its
25 existing trunk groups to exchange all traffic, but according to Level 3, Qwest seeks to limit Level 3's
26 ability to use trunks efficiently by requiring Level 3 to establish separate Feature Group D trunks to
27 transmit traffic Qwest claims is "toll" or otherwise subject to access rates. Level 3 argues that
28 information related to Qwest's current practices, the practices of its affiliates, and the obligations

1 imposed on CLECs with whom Qwest exchanges traffic is central to understanding and rebutting
2 Qwest's position in this proceeding. Level 3 argues that Qwest has provided no authority to support
3 its argument that information regarding its affiliates and information about its business activities
4 outside of Arizona are not within the realm of discovery. Level 3 argues that to the extent that Qwest
5 has not required its affiliates or other CLECs to separate traffic onto different trunks and has
6 employed PIUs, PLUs or some other traffic allocation factor to rate traffic, or has itself asserted its
7 right to commingle traffic on trunk groups, such information is directly relevant to the reasonableness
8 of a separate trunking requirement and possible discriminatory treatment.

9 Qwest asserts that to treat these Data Requests as a group conceals the fact that each request is
10 extraordinarily burdensome and does not seek relevant information.

11 Data Request No. 14 requests Qwest to identify every state in which Qwest combines local
12 (including intraMTA CMRS traffic) and toll traffic (including interLATA or IntraLATA toll traffic or
13 any combination thereof) on the same trunk grouping in any of the following situations: 1) local and
14 toll traffic are combined on a direct trunk group between two end offices; 2) local and toll traffic are
15 combined on a trunk group between a Qwest end office and a Qwest tandem; 3) local and toll traffic
16 combined on a trunk group between a Qwest end office and a third party carrier switch; 4) local and
17 toll traffic are combined on a trunk group between a Qwest tandem and a third party switch; and 5)
18 local and toll traffic are combined on a trunk group between two Qwest tandems. Qwest argues that
19 Data Request No. 14 is overbroad as it requests information for every state in which Qwest or one of
20 its affiliates operates and further, that only two of the circumstances listed involve interconnection.

21 Data Request No. 15 asks Qwest to identify the local calling areas ("LCAs") in states where
22 Qwest does not operate as an ILEC, where Qwest's CLEC affiliates combine their own local and toll
23 traffic on a single trunk. Qwest asserts that Data Request No. 15 calls for information involving
24 thousands of LCAs and trunk groups operated by CLEC affiliates and is not in any way limited to
25 interconnection trunks. Qwest claims this information could not possibly lead to the discovery of
26 admissible evidence in this case. Qwest argues the burden imposed by Data Request No. 15 clearly
27 outweighs any possible relevance of the information sought.

28 Data Request No. 17 asks that with respect to those states in which Qwest operates as an

1 ILEC, that it list each CLEC for which local and toll traffic has been combined on any trunk group.
2 Qwest argues the request is extremely overreaching in scope and clearly not reasonably calculated to
3 lead to the discovery of admissible evidence.

4 Data Request No. 19 requests information concerning specific CLECs that exchange local and
5 toll traffic on a single trunk group and which uses PLU or similar method of apportionment in each of
6 the 14 Qwest in-region states. Qwest argues this information is contained in the interconnection
7 agreements for each CLEC in each state and which are publicly available to Level 3 and can be
8 reviewed more easily by Level 3 as it knows what it is looking for. Qwest states there are over 1,000
9 interconnection agreements on file with the state public utility commissions and it is unreasonable for
10 Level 3 to insist that Qwest assemble the information on Level 3's behalf.

11 Data Request No. 20 requests Qwest to provide information concerning the use of PLU or
12 similar apportionment method where a Qwest CLEC affiliate combines local and toll traffic on a
13 single trunk. Qwest states this request is not limited to interconnection trunks, but even if it were, it
14 would call for a review by Qwest of every interconnection agreement Qwest's CLEC affiliate has
15 entered into anywhere in the United States. Qwest argues Data Request No. 20 is clearly
16 unreasonable especially since Qwest's CLEC affiliates are not parties to this proceeding and do not
17 have obligations to interconnect under Section 251 of the Act.

18 Data Request No. 21 asks Qwest to describe each system and/or method that Qwest uses to
19 track or estimate the amount of local and toll traffic exchanged with a CLEC. Qwest does not object
20 to this request if it is limited to the state of Arizona.

21 Data Request No. 44 asks for the number of CLECs in Arizona for which Qwest assigns
22 traffic to different jurisdictional/rating categories based on PIU/PLU or similar factors. Qwest objects
23 to Data Request No. 44 on the grounds it is ambiguous as to what Level 3 means by "assign traffic to
24 different jurisdictional/rating categories." Qwest also objects because it is unreasonably burdensome
25 and would require a special study.

26 Resolution:

27 As drafted Data Request No. 14 is overly broad and burdensome as it concerns agreements
28 outside Arizona. Consequently, Qwest should be required to respond to Data Request No. 14 and its

1 subparts as it relates solely to Qwest Corporation.

2 Data Request No. 15 is overbroad as it is directed at obtaining information about the practices
3 of Qwest's CLEC affiliate and is not relevant to the issues in this proceeding. Qwest should not be
4 required to respond.

5 Data Requests Nos. 17, 19, 20 and 21 are overly broad to the extent they seek information
6 regarding Qwest or Qwest's affiliate's operations outside of Arizona. Qwest should respond to each
7 of these Data Requests as they relate to Arizona.

8 Data Request No. 44 is vague and ambiguous. Furthermore, Qwest should not be required to
9 conduct a special study. Consequently, Qwest is not required to respond to this Data Request.

10 **Data Request No. 22 – Efficient Use of Trunk Groups**

11 Data Request No. 22 asks whether Qwest is aware of any state commission that has required
12 separate trunk groups for transit traffic. Qwest objected on the grounds that the request is overbroad,
13 unduly burdensome to the extent it is not limited to Qwest interconnection agreements and further it
14 is tantamount to asking Qwest to do legal research for Level 3.

15 Resolution:

16 Data Request No. 22 is overbroad and Level 3 has equal access to the information sought.
17 Qwest should not be required to respond further.

18 **Data Requests Nos. 24-27, 28(a), 29-33 – Qwest FX and FX-like Services**

19 Data Request No. 24 asks if Qwest provides any kind of foreign exchange ("FX") service in
20 Arizona. Data Request No. 25 Requests information on the number of FX customers. Data Request
21 No. 33 addresses whether FX service associated with broadband is treated differently than voice
22 service. Neither Data Request Nos. 24 or 25 were included in Level 3's Matrix of disputed issues
23 that was provided at the August 3, 2005 proceeding. During the August 3, 2005 proceeding, Level 3
24 stated that it had included Data Request No. 33 in error. Qwest states that it has responded to these
25 requests. Thus, no action is required concerning Data Requests Nos. 24, 25 and 33.

26 Data Requests Nos. 26, 27 and 28(a), and 29 through 32 seek information related to "FX-like"
27 services. At the August 3, 2005 proceeding, Qwest agreed to respond to Data Requests Nos. 26-27,
28 28(a) and 29-31 based on the definition of "FS-like service" used in interrogatories in a Level 3

1 complaint docket in Washington. Qwest states that it is in the process of responding to these
2 requests, and will provide responses to Level 3 as soon as possible.

3 Data Request No. 32 asks whether Qwest knows or has reason to believe that any independent
4 LEC with whom Qwest has EAS arrangements provide FX or FX-like services. Qwest states that it
5 responded to Data Request No. 32. Data Request No. 32 was not included in Level 3's August 3,
6 2005 Matrix.

7 Resolution:

8 Based on Qwest's previous responses to Data Request Nos. 24, 25, 32 and 33, and its
9 commitment to respond to Data Requests 26, 27, 28(a), 29 and 30, we take no further action with
10 respect to these items.

11 **Data Requests Nos. 43 and 45 – POIs and Other Facility Connections in Arizona**

12 Data Request No. 43 seeks the number of physical Points of Interconnection (POIs) in
13 Arizona between Qwest and CLECs. Data Request No. 45 seeks the number of CLECs in Arizona
14 that connect to Qwest's network by means of Qwest supplied entrance facilities, CLEC supplied
15 facilities, and other means.

16 Qwest objects to these requests as it claims they do not bear on the issues in this proceeding
17 and are burdensome. Qwest claims that to respond would require it to review the interconnection
18 agreements in place for each CLEC that has an interconnection agreement in Arizona and to conduct
19 a special study of the facilities that are actually in place for each CLEC.

20 Level 3 argues that these requests are relevant to the issue regarding the points of
21 interconnection per LATA that may be allowed under the Interconnection Agreement. In addition,
22 Level 3 states it is important for it to understand which points of interconnection Qwest considers to
23 be POIs under Qwest's interpretation of the law.

24 Resolution:

25 Neither of these items were included on the August 3, 2005, Matrix nor discussed at that
26 proceeding. However, we find Data Request No. 43 is relevant to the proceeding and Qwest should
27 be required to respond. Because the data sought in Data Request No. 45 is not contained in a central
28

1 repository, we find that it is unduly burdensome and Qwest should not be required to respond.

2 **Requests for Admission Nos. 55-59 – Qwest’s State and Federal tariffs**

3 In Requests for Admission Nos. 55-59, Level 3 seeks Qwest’s admission that certain
4 information is not set forth in Qwest’s state or federal tariffs. Qwest denied each of the requests, but
5 states that it did not conduct a review of the tariffs to ascertain the accuracy of its response. Level 3
6 argues that Qwest has failed to undertake the reasonable investigation of its tariffs necessary to
7 respond to these requests.

8 Resolution:

9 Qwest has responded to these requests. The tariffs speak for themselves and Level 3 is able to
10 review them to obtain the information it desires. We do not require Qwest to respond further.

11 **Requests for Admissions Nos. 66, 82, 96 and 99**

12 Qwest neither admits nor denies Requests for Admissions Nos. 66, 82, 96 and 99. Level 3
13 asserts that the Rules of Civil Procedure provide that to the extent a party cannot admit or deny a
14 request for admission, the answer shall specifically set forth in detail the reasons why. Level 3 argues
15 that Qwest has provided no reasonable bases for its failure to admit or deny.

16 Qwest claims it could neither admit nor deny the requests because they are not sufficiently
17 complete. In Request for Admission No. 66, Level 3 asks Qwest to admit that the OneFlex VoIP
18 offering is less expensive than the Choice Home Plus package. Qwest states that in its response, it
19 stated that it is not clear which particular OneFlex VoIP or the precise Choice Home Plus package
20 that it was meant to compare, this it could not be admitted or denied without further clarification.

21 Request for Admission No. 82 asks Qwest to admit that “Qwest’s end offices and tandem
22 switches do not store *any information* indicating the *address or location* of any end user’s premises.”
23 (emphasis added) Qwest acknowledges that the switches do not contain specific street addresses for
24 individual customers, but states that they do contain information indicating the general geographic
25 location. Qwest states it cannot admit or deny because Level 3 has failed to define the level of
26 specificity that the phrase “any information” refers to. Qwest would deny the request on the basis
27 that its switches do store information that indicates the location of a customer.

28 Request for Admission No. 96 asks Qwest to admit “that where Qwest proposes to rate ISP-

1 bound traffic as toll traffic, Level 3 would pay Qwest \$0.016270 per MOU instead of Qwest paying
2 Level 3 \$.0007 per MOU for terminating a call received at the Parties' POI." Qwest objected on the
3 ground that the request is ambiguous and compound.

4 Qwest states that Request for Admission No. 99 used the ambiguous term "this service"
5 without identifying the particular service. Qwest further states that Level 3 has clarified the term to
6 refer to the service in the preceding request. Qwest states that it will respond to this Request for
7 Admission shortly.

8 Resolution:

9 As drafted, Request for Admission No. 66 does not provide sufficiently specific information
10 to allow Qwest to admit or deny the request, and thus Qwest should not be required to admit or deny
11 this request.

12 Through its explanation in its Response to the Motion to Compel, Qwest denies Request for
13 Admission No. 82, thus no further action is required.

14 Request for Admission No. 96 is compound and ambiguous, Qwest should not be required to
15 admit or deny this request.

16 **Request for Admission No. 88 – Qwest's call Routing and Billing System**

17 Request for Admission No. 88 asks Qwest to admit that its billing systems never sample any
18 data regarding the address or location of any end user's premises for purposes of billing. Qwest
19 denied this request "for the same reasons as set forth in Qwest's responses to Request Nos. 82 and
20 86." Qwest states that the fact that it denied the request is fully responsive under applicable
21 discovery rules.

22 Resolution:

23 Qwest has denied Request for Admission No. 88, thus, satisfying its obligations.

24 **Request for Admission No. 100 – Impact of VoIP Services on Qwest Revenue.**

25 Request No. 100 asks Qwest to admit its revenues may be adversely affected should
26 "providers of VoIP services attract a sizeable base of customers who use VoIP to bypass traditional
27 local exchange carriers." Qwest objected on the ground that this request is ambiguous and calls for
28 speculation. Qwest further states that it could not admit or deny this request because there were too

1 many variables to predict the result.

2 As drafted Request for Admission No. 100 is ambiguous and Qwest should not be compelled
3 to admit or deny.

4 IT IS THEREFORE ORDERED that Qwest shall respond to the outstanding Data Requests
5 and Request for Admission as discussed herein by August 26, 2005.

6 IT IS FURTHER ORDERED that the deadline for filing discovery requests shall be extended
7 until August 31, 2005, and that all responses to discovery requests shall be made within five days of
8 receipt, and any objections made within three days of receipt.

9 IT IS FURTHER ORDERED that any rejoinder or surrebuttal testimony may be presented
10 orally at the arbitration.

11 IT IS FURTHER ORDERED that the Arbitrator(s) may rescind, alter, amend, or waive any
12 portion of this Procedural Order either by subsequent Procedural Order or by ruling at arbitration.

13 DATED this ____ day of August, 2005.

14
15 _____
16 JANE L. RODDA
17 ARBITRATOR

18 Copies of the foregoing mailed
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