BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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	Docket No. UT-063006 QWEST CORPORATION'S REPLY TO LEVEL 3'S RESPONSE TO QWEST'S PETITION FOR REVIEW

1 Qwest Corporation ("Qwest") hereby files its reply to Level 3's Response to Qwest's Petition for Review ("Level 3 Response"). This reply is necessary in order to correct four critical misstatements made by Level 3 in its Response to Qwest's Petition for Review.

2 First, in footnote 19, page 8 of the Response, Level 3 falsely claims that Qwest has reached a voluntary agreement with Verizon whereby it has agreed to "to compensate Verizon *for all ISP-bound* and VOIP calls, including those that are 'non-local.'" The Verizon settlement does no such thing. In fact, in the settlement, Verizon and Qwest agreed that VNXX ISP traffic

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

would not be compensated, but would instead be exchanged on a bill and keep basis. In the recent hearings in the Washington VNXX docket (Docket No. UT-063038), witnesses for Qwest, Verizon, and Staff all testified under oath that VNXX ISP traffic is not subject to terminating compensation under the settlement agreement.

3 Second, Level 3 erroneously asserts on page 2 of its Response that the Commission had determined prior to the *ISP Remand Order* that ISP-bound traffic should be subject to a uniform compensation regime regardless of whether it is "local, toll, long distance, or via VNXX." In fact, prior to the *ISP Remand Order*, the only determination the Commission had made was that ISP traffic delivered to an ISP in the caller's local calling area was subject to compensation. Indeed, CLECs did not even argue that calls to ISPs located outside of the local calling area were subject to reciprocal compensation. The history of the positions taken by CLECs and by Commission Staff are reported in *WorldCom, Inc. f/k/a MFS Intelenet of Washington, Inc. v. GTE Northwest Incorporated*, Docket No. UT-980338, Third Supplemental Order, 1999 Wash. UTC LEXIS 295 (May 12, 1999)(the "*Worldcom Decision*"). Page 8 of that opinion reflects that Worldcom argued that "notwithstanding any jurisdictional determination that calls to ISPs might be interstate, for regulatory purposes those calls have been treated as local (if made within the local calling area)." Commission Staff took the same position and represented to the Commission that all of the calls at issue were terminated within the caller's local calling area.

4 Third, on page 6 of its Response, Level 3 incorrectly claims that four Ninth Circuit cases are in accord with the view that the "*ISP Remand Order* applies to all ISP-bound traffic." In fact, all of the Ninth Circuit Court cases cited address only traffic delivered to an ISP in the same local calling area as the caller, and none rule that the *ISP Remand Order* prescribes intercarrier compensation for all ISP traffic. The first case, *US WEST v. MFS Intelenet*, 193 F.3d 1112, 1122-23, fn. 11 (9th Cir. 1999) references the *Worldcom Decision* (cited above) and does not

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

even purport to say that all ISP traffic is subject to reciprocal compensation. *Pacific Bell v. Pac-West Telecomm, Inc*., 325 F.3d 1114, 1121 (9th Cir. 2003)("*Pacific Bell*") clearly identified the traffic at issue as traffic where the customer and the ISP modem that receives the call are both located within the same local calling area. The remaining 9th Circuit cases cited by Level 3 on page 6 of its brief rely on *Pacific Bell* and do not state that all ISP traffic is subject to reciprocal compensation under the Commission determinations being reviewed. At most, they stand for the proposition that prior to the *ISP Remand Order*, it was permissible to include some ISP-bound traffic within reciprocal compensation provisions.

5 Fourth, on page 8 of its Response, Level 3 erroneously asserts that by 2000 "33 states had ruled that ISP-bound traffic was indeed local." In fact, what 33 states had ruled was that calls delivered to an ISP in the caller's local calling area were local. The California PUC comments upon which Level 3 relies make it clear that the calls at issue were delivered to an ISP modem located within the caller's local calling area. Accordingly, the California PUC concluded that "the service is local because the distance from the end user originating the call to the ISP modem occurs within the same local calling area." (Level 3 Response, fn. 21: *In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket 99-68, Comments of California Public Service Commission, pp. 1, 3-4).

6 The purpose of this reply is not to list every misstatement Level 3 has made in its Response to Qwest's Petition for Review. Rather, Qwest has corrected the misstatements identified above because Level 3 has attempted to give the false impression that the Commission has already ruled on the propriety of VNXX and intercarrier compensation for non-local ISP calls. In fact, those very issues are now before the Commission in Docket No. UT-063038. Virtually all parties that have an interest in whether VNXX is allowed and how it is treated for intercarrier compensation purposes are parties to that proceeding. The hearing in that proceeding has already taken place and the parties are now in the process of briefing those issues. Thus, if the

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Commission is considering imposing requirements that go beyond what the *ISP Remand Order* requires, it should not do so until after it decides UT-063038 so that all affected parties will have been given a fair opportunity to be heard.

DATED this 25th day of May, 2007.

QWEST

____

Lisa A. Anderl, WSBA #13236
Adam L. Sherr, WSBA #25291
1600 7th Avenue, Room 3206
Seattle, WA 98191
Phone: (206) 398-2500