

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

QWEST CORPORATION

Complainant,

v.

LEVEL 3 COMMUNICATIONS, LLC; TCG-  
SEATTLE; ELECTRIC LIGHTWAVE, LLC;  
ADVANCED TELCOM GROUP, INC. D/B/A  
ESCHELON TELECOM, INCL.; .;  
BROADWING COMMUNICATIONS, LLC;  
GLOBAL CROSSING LOCAL SERVICES  
INC; AND, MCIMETRO ACCESS  
TRANSMISSION SERVICES LLC D/B/A  
VERIZON ACCESS TRANSMISSION  
SERVICES,

Respondents.

Docket No. UT-063038

LEVEL 3 COMMUNICATIONS, LLC'S  
MOTION FOR LEAVE TO FILE REPLY TO  
RESPONSE OF COMMISSION STAFF TO  
QWEST AND VERIZON'S PROPOSED  
PARTIAL SETTLEMENT

1. Level 3 Communications LCC ("Level 3") requests leave to file a reply to the Response of Commission Staff to Qwest and Verizon's Proposed Partial Settlement ("Staff Response"). The Staff Response is effectively an answer to Qwest's and Verizon's motion for approval of Qwest's proposed settlement agreement. Pursuant to WAC 480-07-370(1)(d) of the Commission rules, no party may file a reply to an answer without first requesting permission to do so. Level 3's proposed reply is included with this filing.

LEVEL 3 COMMUNICATIONS, LLC'S MOTION FOR LEAVE  
TO FILE REPLY TO RESPONSE OF COMMISSION  
STAFF TO QWEST AND VERIZON'S  
PROPOSED PARTIAL SETTLEMENT

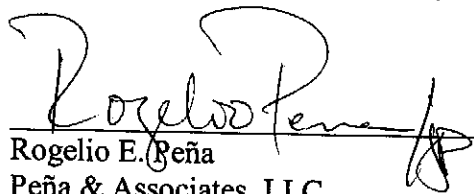
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2. In accordance with the rule, Level 3 states that a reply is necessary to address new issues raised by Staff in the Staff Response.

DATED this 29th day of March, 2007.

LEVEL 3 COMMUNICATIONS, LLC



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Counsel for Level 3 Communications, LLC

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LEVEL 3 COMMUNICATIONS, LLC'S  
REPLY TO RESPONSE OF COMMISSION  
STAFF TO QWEST AND VERIZON'S  
PROPOSED PARTIAL SETTLEMENT

1. Level 3 Communications LCC ("Level 3") replies to the "Response of Commission Staff to Qwest and Verizon's Proposed Partial Settlement" ("Staff Response"). As set forth in Level 3's Motion for Leave to File a Reply, which is filed contemporaneously, Level 3 files this Reply pursuant to WAC 480-07-370(1)(d) in order to correct factual

LEVEL 3 COMMUNICATIONS, LLC'S  
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misstatements and clarify issues raised in the Staff's Response regarding Qwest and Verizon's Proposed Partial Settlement ("Proposed Settlement").

2. In general, Level 3 supports the ability of parties to reach negotiated settlements. In fact, Level 3 has entered into seminal settlement agreements regarding intercarrier compensation. For example, the FCC's interim compensation regime established in the *ISP Remand Order* was modeled in part after the stepped-down rate structure of a settlement agreement reached by Level 3 to resolve various arbitrations<sup>1</sup> filed under Section 251(b) of the Communications Act of 1934, as amended. 47 U.S.C. §§ 151 *et seq.* That settlement was one of three that Level 3 reached with ILECs in that timeframe, and there have been others since. *Level 3 Ex Parte Communication, In re: Intercarrier Compensation for ISP-Bound Traffic*, Filed in Docket No. 99-68, Attachment, Attwood Letter at 1 (filed April 10, 2001) (discussing settlement with Bell South regarding intercarrier compensation for ISP-Bound Traffic).
3. Although in general Level 3 supports settlement agreements, Level 3 disagrees with the Commission Staff's and Qwest Corporation's ("Qwest") characterization of the issues raised by the Proposed Settlement.
4. Staff asserts that "[p]rior to the *ISP Remand Order*, CLECs put modem banks in each local calling area to enable dial-up data users to place local (toll free) calls to their ISPs." Staff Response, at ¶ 22. Further, Staff asserts that upon release of the *ISP Remand Order*,

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<sup>1</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, at ¶ 85, 16 F.C.C.R. 9151 (2001) ("the \$.0007/mou rate reflects the average rate applicable in 2002 under Level 3's agreement with SBC.") ("*ISP Remand Order*").

CLECs construed the *ISP Remand Order* so that it “eliminated the need to locate modems in each local calling area, thereby allowing CLECs to locate a single modem bank (or server) in the same location as their switch.” Staff Response, at ¶ 22. Staff then implies that CLECs or their customers seized upon the opportunity presented by the *ISP-Remand Order* and altered their business practices to begin deploying FX-like arrangements instead of locating servers or other facilities in each local calling area.

5. Contrary to Staff’s implication, deployment of CLEC FX-like arrangements did not arise as a result of the FCC’s *ISP Remand Order*. In fact, the use of so-called VNXX arrangements was widespread prior to the release of the FCC’s *ISP Remand Order* and both the FCC and the ILECs were well aware of this practice.
6. As Staff appears to recognize, due to technological innovations such as the introduction of soft-switch technology and IP-based networks, CLECs typically have no more than “one switch per LATA” and often fewer. Staff Response, at 13. CLEC network deployment and design has been driven by innovations in technology that enable CLECs to deploy fewer switches than legacy networks that use traditional circuit switches, while providing a wider range of voice, data, and video services at lower costs. CLEC network architectures are driven primarily by these technical developments and established engineering principles regarding blockage and traffic volumes -- not opportunities ostensibly afforded by any interpretation of law that arose with the release of *ISP Remand Order*. In fact, CLECs argued that CLEC FX-like arrangements were lawful long before the release of the *ISP Remand Order*.

7. Contrary to the Staff's implication, CLECs have long deployed these innovative network architectures and the FCC was aware of the use of these innovative architectures and CLEC FX-like arrangements when it issued the *ISP-Remand Order*. For example, Level 3 filed an ex parte in that docket stating that: "Most ISPs do not maintain a physical presence in every local calling area, but they do need numbers in every local calling area in order to provide end users the ability to dial into the Internet through a local call." *Level 3 Ex Parte Communication, In re: Intercarrier Compensation for ISP-Bound Traffic*, Filed in Docket No. 99-68, Attachment, Attwood Letter at 3 (filed April 10, 2001).
8. On December 13, 2000, Level 3 met with several FCC Commissioners, including the Chairman, and their staffs and filed an ex parte presentation that informed the FCC that "Use of Virtual NXX is widespread," and "[m]any ISPs do not maintain a physical presence in each local calling area." *Level 3 Ex Parte Communication, In re: Intercarrier Compensation for ISP-Bound Traffic*, Filed in Docket No. 99-68, Attachment, Presentation at 2 and 9 (filed December 13, 2000). Thus, the FCC was well aware that virtual NXX was in widespread use at the time of the *ISP Remand Order*. Therefore, Staff's comment that the "FCC opened a new way for CLECs to provide dial-up ISP access" with the release of the *ISP Remand Order* is factually incorrect. Staff Response, at ¶ 23.
9. Qwest was also aware of CLECs' use of innovative network architectures and FX-like arrangements. In the same FCC docket, Qwest argued that ISP-bound traffic should be subject to a bill-and-keep intercarrier compensation mechanism. In support of that

argument, Qwest submitted a study that purported to show that a CLEC's costs to terminate traffic to ISP customers was negligible, in part because the ISP customers collocated at CLEC's switches. Letter from M. Newman (Qwest) to M. Salas (FCC) dated December 2, 1999 in FCC Docket No. 99-68, *attaching*, "An Economic and Policy Analysis of Efficient Intercarrier Compensation Mechanisms For ISP-Bound Traffic," at ¶19. The FCC ultimately disagreed with Qwest's position and found that LECs are entitled to some form of compensation for terminating ISP-bound traffic. *ISP Remand Order*, at ¶¶ 92 and accompanying n.189.

10. Staff relies heavily upon a New Hampshire Staff Study to argue that the use of so-called VNXX arrangements should not be permitted for traffic other than dial-up ISP-Bound (e.g., VoIP traffic). Staff Response, at ¶¶ 27-29. The Staff's reliance on this study is misplaced. First, there is no evidence that any of the problems identified by the New Hampshire Staff exist in Washington. Indeed, the Staff has not conducted its own factual investigation. Instead, the Staff makes the facile assertion that: "There is no reason to believe that the situation in Washington is different than New Hampshire." Staff Response, at ¶ 29. The Staff has no support for this bald conclusion. Washington differs considerably from New Hampshire as to the competitors participating in the market, distribution of population among large cities, the concentration of customers and many other factors. Second, the New Hampshire study relied upon by the Staff has not been endorsed or otherwise acted upon by the New Hampshire Public Utilities Commission ("NH PUC").

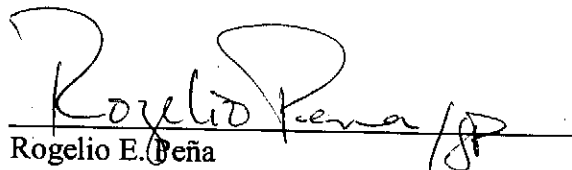
11. Finally, the NH PUC has not prohibited CLEC FX-like arrangements during the six year course of this docket. In fact, the New Hampshire PUC determined that it will permit the use of VNXX in certain circumstances. Specifically, the NH PUC concluded that the following applications are reasonable: 1) “a statewide service for information access called IANXX, to be used for dial-up calls to ISPs for access to the Internet; and” 2) the CLEC could offer CLEC Foreign Exchange (FX), “which is defined as ‘FX-like service for non-ISP bound traffic provided by a CLEC that is [also] providing local dial tone via its own facilities.’” *Investigation as to Whether Certain Calls are Local*, Docket Nos. DT 00-223, 00-054, Order No. 24,080, Final Order, at 54-56, 88 NH PUC 749 (2002). Parties to the docket developed Agreements which established, among other items, an implementation schedule for IANXX and the means of implementing CLEC FX. On December 30, 2004, the NH PUC approved these Agreements. Docket Nos. DT 00-223 & 00-054, Order No. 24,419, Order Approving Agreements in DT 00-223 and DT 00-054, at 2, 4, 8 (Dec. 30, 2004) (“*Order Approving Agreements*”). Verizon requested reconsideration of the *Order Approving Agreements*; and the Commission denied its request on May 13, 2005. Staff began the implementation process, however, issues arose regarding the treatment of VOIP service providers. As a result, implementation of the Agreements was suspended while NH Staff conducted additional investigations. Thus, after a period of six years, the investigation is ongoing and to date, the NH PUC has not placed any restrictions on the use of VNXX numbers for VoIP.
12. In sum, in general, Level 3 does not object to the ability of parties to settle intercarrier compensation disputes. However, Level 3 objects to Staff’s attempt to introduce



unsupported and unverified facts into the record through its comments on the Proposed Settlement.

DATED this 29th day of March, 2007.

LEVEL 3 COMMUNICATIONS, LLC

A handwritten signature in black ink that reads "Rogelio Peña" with a stylized flourish at the end.

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LEVEL 3 COMMUNICATIONS, LLC'S  
REPLY TO RESPONSE OF COMMISSION  
STAFF TO QWEST AND VERIZON'S  
PROPOSED PARTIAL SETTLEMENT  
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**CERTIFICATE OF SERVICE**  
**DOCKET NO. UT-063038**

I certify that the original and three (3) copies of the foregoing *Level 3 Communications, LLC's Motion for Leave to File Reply to Response of Commission Staff to Qwest and Verizon's Proposed Partial Settlement and Level 3 Communications, LLC's Reply to Response of Commission Staff to Qwest and Verizon's Proposed Partial Settlement in Docket No. UT-063038*, was sent on this 29th day of March, 2007, via Federal Express for filing, addressed to the following:

Ms. Carole J. Washburn  
Executive Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
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And that a true and correct copy of same was sent via U.S. Mail, postage pre-paid, and/or by e-mail, on this 29th day of March, 2007, addressed to the following:

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