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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

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2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER
5

APR 1 2001

DOCKETED BY 

6 IN THE MATTER OF THE PETITION OF LEVEL
3 COMMUNICATIONS, LLC FOR
7 ARBITRATION PURSUANT TO SECTION 253(b)
OF THE COMMUNICATIONS ACT OF 1934, AS
8 AMENDED BY THE TELECOMMUNICATIONS
ACT OF 1996, WITH QWEST CORPORATION
9 REGARDING RATES, TERMS AND
CONDITIONS FOR INTERCONNECTION

DOCKET NO. T-03654A-00-0882
DOCKET NO. T-01051B-00-0882

DECISION NO. 63550

OPINION AND ORDER

10 DATE OF ARBITRATION: January 18 and 19, 2001
11 PLACE OF ARBITRATION: Phoenix, Arizona
12 PRESIDING ARBITRATORS: Ms. Jane Rodda
13 Mr. Stephen Gibelli
Ms. Alicia Grantham
14 APPEARANCES: Mr. Thomas H. Campbell, LEWIS AND ROCA; Mr.
15 Russell M. Blau and Tamar E. Finn, SWIDLER
16 BERLIN SHEREFF FRIEDMAN, LLP; and Mr.
17 Michael R. Romano, Level 3 Communications, LLC, on
18 behalf of Level 3 Communications, LLC
19 Mr. John M. Devaney, PERKINS COIE, LLP, and
20 Timothy Berg, FENNEMORE CRAIG, on behalf of
Qwest Corporation, and;
21 Ms. Maureen A. Scott, Staff Attorney, Legal Division,
on behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

22 On October 31, 2000, Level 3 Communications, LLC ("Level 3") filed with the Arizona
23 Corporation Commission ("Commission") a Petition for Arbitration of Interconnection Rates, Terms,
24 and Conditions ("Petition") pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996
25 ("Act").

26 Our November 15, 2000, Procedural Order set the above-captioned matter for arbitration, to
27 commence on January 18, 2001.

28 On November 27, 2000, Qwest Corporation ("Qwest") filed its Response to the Petition.

1 On January 12, 2001, the Commission Staff ("Staff") filed an appearance in this proceeding.

2 On January 12, 2001, a pre-arbitration conference was held. The parties notified the
3 Commission that they had resolved several of the issues regarding interconnection and that a hearing
4 was necessary regarding the remaining issues.

5 On January 18, 2001, the arbitration commenced as scheduled.

6 On February 1, 2001, Qwest and Level 3 filed a letter waiving the nine-month resolution
7 requirement of Section 252(b)(4)(C) of the Act and agreed to extend the deadline by 34 days to
8 March 30, 2001.

9 The parties submitted post-hearing briefs on February 9, 2001, and reply briefs on February
10 20, 2001. The parties indicated that 20 of the 24 issues to be decided by the Commission had been
11 resolved. After the parties filed briefs, they settlement one of the three remaining issues, and as a
12 result, this Decision will address the four remaining issues.

13 DISCUSSION

14 The Telecommunications Act of 1996 ("Act") established new responsibilities for the Federal
15 Communications Commission ("FCC") as well as for the various state commissions.¹ On July 22,
16 1996, the Commission, in Decision No. 59762, adopted A.A.C. R14-2-1501 through A.A.C. R14-2-
17 1507 ("Arbitration and Mediation Rules"), which authorized the Hearing Division to establish
18 procedures and conduct arbitrations. Also on July 22, 1996, the Commission, in Decision No. 59761,
19 adopted A.A.C. R14-2-1301 through 1311 ("Interconnection Rules"), to govern the interconnection
20 of local exchange services between incumbent local exchange carriers ("ILECs") and competing
21 local exchange carriers ("CLECs"). On August 8, 1996, the FCC released *Implementation of the*
22 *Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First
23 Report and Order, FCC 96-325 ("Order") and *Implementation of the Local Competition Provisions of*
24 *the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and
25 Memorandum Opinion and Order, FCC 96-333, in which the FCC adopted initial rules ("Rules")

26
27 ¹ As part of the Act, the FCC was ordered to issue regulations no later than August 8, 1996 interpreting
28 many of the broad and general terms of the Act.

1 designed to accomplish the goals of the Act.²

2 Pursuant to the Act, telecommunications carriers desiring to interconnect with the facilities
3 and equipment of an ILEC may negotiate the terms of such interconnection directly with the ILEC.
4 If the parties are unsuccessful in negotiating an Agreement, any party to the negotiation may request
5 the Commission to arbitrate any open issues regarding interconnection. The Act requires the
6 Commission to resolve any such issues within 180 days of a telecommunications carrier's initial
7 request to the ILEC for interconnection.

8 The arbitration in this matter took place, as scheduled, on January 18 and 19, 2001.

9 Pursuant to Section 252(b)(4)(C) of the Act, the Commission hereby resolves the issues
10 presented for arbitration.

11 **Should Qwest be required to pay reciprocal compensation to Level 3 for Internet traffic?**

12 Level 3 and Qwest have been unable to agree on whether Level 3 is entitled to reciprocal
13 compensation for traffic which it delivers to an internet service provider ("ISP") on Qwest's network.

14 Level 3's position

15 It is Level 3's position that it performs a service for Qwest when it terminates calls placed by
16 Qwest end-users to Level 3-served ISPs. These are calls that are placed by a Qwest customer who
17 chooses to dial into an ISP. Level 3 contends that they are routed over the same interconnected local
18 network just like any other local call, and they are calls that Qwest itself treats as local for retail
19 purposes. Thus, in the first instance, Level 3 submits these calls should be treated as local and
20 compensated as such. Level 3 contends that unless Qwest pays reciprocal compensation on ISP-
21 bound traffic, Level 3 would be left uncompensated for its legitimate costs of terminating such traffic.
22 Level 3 argues that while Qwest points to the FCC's Declaratory Ruling in CC Docket No. 96-98 in
23 support of its contention that these calls are not local in nature, the Court of Appeals vacated and
24 remanded the FCC's decision because, among other things, it found that the FCC had not adequately
25 explained why ISPs were any different than any other communications-intensive business end-user.
26 Bell Atlantic Telephone Cos. v. FCC, 206 F.3d 1 (D.C. Cir. March 24, 2000).

27 _____
28 ² Unless otherwise noted, any reference to "Para." in this Decision is to Paragraphs in the Order.

1 Level 3 argues that reciprocal compensation is the best mechanism to compensate Level 3 for
2 the costs of terminating calls which Qwest originates.

3 Level 3 is proposing that paragraph 4.29 be deleted and that the following language be added:

4 7.3.4.1.3 Traffic that is originated on the network of one party and
5 destined for an Internet Service Provider ("ISP") served by the other Party
6 which has been assigned a telephone number that is local to the originating
7 end user shall be treated and routed as EAS/Local Traffic and
8 compensated in the same manner as EAS/Local Traffic at the rates set
9 forth in Exhibit A.

8 7.3.6 The fact that the terminating Party's end user may be an Internet
9 Service Provider shall not excuse the originating Party from paying the
10 applicable switched access rate to the terminating Party where the call is
11 rated as IntraLATA Toll traffic.

10 As an alternative to applying reciprocal compensation rates to ISP traffic, Level 3 proposes a
11 step down of the intercarrier compensation rates which would provide an appropriate means of
12 structuring terminating compensation in Arizona ("Step Down Approach"). In the Step-Down
13 Approach, Level 3 proposes a phase down of rates for "out of balance" traffic over the thirty month
14 term of the contract. The rate for termination of all locally dialed traffic, ISP-bound or otherwise,
15 during the first year would begin at \$0.0035 for "out of balance" traffic (i.e., those minutes above a
16 3:1 terminating/originating ratio). This rate is less than the existing rate for end office switching of
17 \$0.004. The "out of balance" rate would then drop to \$0.003 in the second year, and fall to \$0.002
18 during the last six months of the contract. During the term of the contract the rates for "in balance"
19 traffic would remain at the existing reciprocal compensation rates.

20 This alternative has not been presented before this Commission in any earlier proceeding, and
21 it provides a new set of factors for consideration that were not present in the Sprint-Qwest arbitration
22 proceeding. Among other things, Level 3 believes that its Step-Down Approach addresses Qwest's
23 concerns by creating an incentive for CLECs to originate traffic in order to qualify for higher "in
24 balance" intercarrier compensation rates.

25 Qwest's position

26 Qwest contends that reciprocal compensation only applies to local calls and that ISP traffic is
27 interstate in nature.

1 Qwest argues that the FCC has established that Section 251(b)(5) of the Act mandates the
2 payment of reciprocal compensation only for the transport and termination of local traffic. I/M/O
3 Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996 and
4 Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, FCC 99-38
5 Para. 7 (February 26, 1999), vacated on other grounds. (D.C. Cir., 2000). ("ISP Order"). Further,
6 Qwest states that the FCC concluded that Internet-bound traffic is predominantly interstate in nature
7 and as such is not subject to the reciprocal compensation provision of the Act or the FCC's rules. Id.
8 Para.'s 12, 13, 18, 25, 26 n. 87. Qwest believes that this finding is supported by the fact that most
9 Internet traffic that is originated in Arizona is terminated at web sites located in other states and other
10 countries. In addition, most Internet calls that originate in Arizona must be routed through remote
11 hubs that are located in other states. Therefore, Qwest concludes that because Internet traffic is
12 predominantly interstate, the reciprocal compensation obligations imposed by Section 251(b)(5) do
13 not apply.

14 Qwest believes that reciprocal compensation for Internet traffic would have several
15 undesirable economic and other policy consequences, including: (1) causing non-users of the Internet
16 to subsidize Internet users, ISPs, and CLECs; (2) creating distorted incentive for CLECs to specialize
17 in serving ISPs and handling Internet traffic to the exclusion of other services, including residential
18 service; and. (3) violation of the economic principle of cost causation, which requires that a party
19 who causes a cost must pay the cost.

20 Qwest also cites this Commission's recent decision on this issue in the Sprint arbitration to
21 support its position. In the Matter of the Petition of Sprint Communications Company, L.P., for
22 Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with U S West
23 Communications, Dkt. Nos. T-0234B-00-0026 and T-01051B-00-0026, Opinion and Order, Decision
24 No. 62650 (Ariz. C.C. June 13, 2000). (Sprint Arbitration).

25 Qwest argues that this Commission considered the reciprocal compensation issue in that
26 matter and ruled that compensation for Internet traffic should be governed by a bill and keep
27 compensation scheme.

28 Qwest has proposed additional language as follows:

1 7.3.4.1.3 As set forth herein, the Parties agree that reciprocal compensation only
2 applies to EAS/Local Traffic and further agree that the FCC has determined that traffic
3 originated by either Party (the "Originating Party") and delivered to the other Party,
4 (the "Delivering Party") is interstate in nature. Consequently, the Delivering Party
5 must identify which, if any, of this traffic is EAS/Local Traffic. The Originating Party
6 will only pay reciprocal compensation for the traffic the Delivering Party has
7 substantiated to be EAS/Local Traffic. In the absence of such substantiation, such
8 traffic shall be presumed to be interstate.

6 Staff's position

7 Staff's believes that it is appropriate for Level 3 to receive compensation for terminating ISP
8 bound traffic that originates on Qwest's network, but not at the existing State approved reciprocal
9 compensation rates. Staff does, however, support the Step-Down Approach proposed by Level 3.

10 Staff disagrees with Qwest's argument that reciprocal compensation is not appropriate
11 because this traffic has been classified by the FCC to be interstate in nature. Staff notes that in its ISP
12 Order, the FCC believed that some compensation was appropriate but left the issue to state
13 commissions pending the outcome of its examination at the Federal level. Staff notes that while the
14 Commission adopted a bill-and-keep approach in the Sprint Arbitration, the new Step-Down
15 Approach proposed by Level 3 in this matter was not proposed by Sprint.

16 Staff believes that the Step-Down Approach is the most reasonable approach and that this
17 pricing structure has been agreed to by many of the other Bell Operating Companies ("BOCs"). Staff
18 notes that Level 3 has presented evidence that this alternative pricing proposal is being used by
19 BellSouth, Verizon, and SBC. Staff indicates that the 3:1 threshold for out of balance traffic appears
20 to have widespread use and was recently adopted by the New York Public Service Commission.

21 Staff believes that the alternative proposal will result in lower rates being applied than what
22 Level 3 is currently receiving under its existing Interconnection Agreement with Qwest. Staff agrees
23 with Level 3 that the Step-Down Approach should be adopted on an interim basis, and that it should
24 be subject to further review when the Commission examines the issue in more detail in Phase II of
25 the Wholesale Pricing Docket.

26 Commission's resolution

1 In its ISP Order, the FCC has left it to state commissions, pursuant to Section 252 of the Act,
2 to determine an appropriate rate for ISP bound traffic until the FCC sets permanent rates for such
3 traffic.

4 The FCC has made it clear that, in the absence of any FCC rule regarding compensation for
5 ISP-bound traffic, state commissions may examine interconnection agreements and consider all
6 relevant facts, including the negotiation of the agreements in the context of the FCC's longstanding
7 policy of treating this traffic as local, and the conduct of the parties pursuant to those agreements.
8 Other factors for state commissions to consider include whether incumbent LECs serving ESPs
9 (including ISPs) have done so out of intrastate or interstate tariffs; whether revenues associated with
10 those services were counted as intrastate or interstate revenues; whether there is evidence that
11 incumbent LECs or CLECs made any effort to meter this traffic or otherwise segregate it from local
12 traffic, particularly for the purpose of billing one another for reciprocal compensation; whether, in
13 jurisdictions where incumbent LECs bill their end-user by message units, incumbent LECs have
14 included calls to ISPs in local telephone charges; and whether, if ISP traffic is not treated as local and
15 subject to reciprocal compensation, incumbent LECs and CLECs would be compensated for this
16 traffic. ISP Order Para. 24.

17 Given the discrepancy in the treatment of ISP-bound traffic, it is important to examine the
18 process involved with ISP-bound traffic. An ISP call is made when a customer of an ISP, an end-
19 user making an Internet call, seeks to connect with the ISP that is providing the end-user with access
20 to the Internet. Assuming the use of a dial-up connection, the end-user connects to its ISP using the
21 public switched telephone network. The same switch is used to originate ISP calls as is used to
22 originate local and long distance calls.

23 As Level 3 has pointed out, the majority of state Commissions that have considered the
24 reciprocal compensation issue have concluded that ISP-bound traffic is local and subject to reciprocal
25 compensation. Of the thirty-nine (39) states that have addressed the reciprocal compensation issue,
26 thirty-three (33) have concluded that ISP-bound traffic is local in nature. Level 3 Opening Brief Page
27 13.

28 In the most recent arbitration before the Commission, the Sprint Arbitration, this Commission

1 adopted a bill and keep approach, such as the proposal that Qwest has proposed here. That approach
2 may be more appropriate when the amount of traffic is roughly balanced, however, in this case. Level
3 3 is a new entrant into the market and the traffic between Level 3 and Qwest is not balanced.
4 Adopting a bill and keep approach would stifle competition in Arizona. If Level 3 and other CLECs
5 are not compensated for services that they provide, then CLECs will not find it profitable to do
6 business in Arizona.

7 Qwest has alleged that the payment of reciprocal compensation would result in ratepayer
8 subsidies of the Internet. This argument is without merit. The explosion of Internet use has benefited
9 Qwest through significant growth in requests for additional phone lines. Qwest has simply not
10 demonstrated that the payment of reciprocal compensation will require the company to raise its local
11 rates.

12 Based on the evidence and arguments presented in this proceeding, we believe adoption of the
13 Step-Down Approach is the appropriate resolution of this issue. All other BOCs have agreed to
14 include the Step-Down Approach in interconnection agreements, and other jurisdictions are adopting
15 it, including most recently the New York Public Service Commission. Therefore, the parties shall
16 incorporate the Step-Down Approach into their interconnection agreement.

17 **Whether Level 3 should be required to pay the trunking and facilities costs that are**
18 **included on Qwest's side of the point of interconnection for traffic originated on Level 3's**
19 **network?**

20 This issue originally comprised four sub-issues: (1) the appropriate pricing of interconnection
21 facilities; (2) the method and timing for calculating the relative use of interconnection facilities; (3)
22 whether Internet traffic should be included in calculating the relative use of interconnection facilities;
23 and (4) the responsibility for paying the nonrecurring costs associated with establishing
24 interconnection trunk groups. The parties have resolved three of the sub-issues, leaving as the only
25 remaining issue whether Internet traffic should be included in the calculation of the relative use of
26 interconnection facilities.

27 Level 3 has agreed with Qwest's language that the division of responsibility for trunks and
28 facilities on one party's network should be allocated on the basis of originating traffic. Thus, if

1 Level 3 were to originate 50 percent of the traffic carried over these facilities and Qwest were to
2 originate the other 50 percent. each party would be responsible for 50 percent of the costs of the
3 facilities. The parties also agreed that after the first contract quarter, they will recalculate the
4 "relative use" factor based on an examination of the actual minutes of use each party is originating.

5 Level 3's Position

6 Level 3 argues that ISP bound traffic should be included in the calculation of relative use.
7 Level 3 claims that under FCC rules each LEC bears the burden of delivering local traffic originated
8 by its customers to the Point of Interconnection ("POI") and recovers such costs in the rates charged
9 to its end users. Level 3 argues that Qwest's proposal to disregard Internet bound traffic in the
10 determination of relative use violates FCC rules because it attempts to foist on Level 3 costs for
11 facilities in Quest's network used to originate calls placed by Qwest customers to ISPs.

12 Level 3 distinguishes this issue from the issue of reciprocal compensation because it is not
13 about Qwest refusing to compensate Level 3 for costs that Level 3 incurs on the Level 3 network to
14 terminate ISP-bound calls from Qwest customers, but rather is about Qwest forcing Level 3 to pay for
15 facilities on the Qwest network, from Qwest's end office to the POI, that are used to carry traffic
16 originated by Qwest's customers. Level 3 also takes issue with Qwest's claim that the trunk facilities
17 are dedicated to Level 3's sole use. Level 3 states that the trunk facilities are co-carrier trunks that
18 allow both parties to originate and terminate calls, thus allowing traffic to be exchanged between the
19 parties. Level 3 notes that Qwest routes Internet-bound traffic over the same co-carrier trunks as
20 other locally-dialed calls.

21 Qwest's Position

22 Qwest argues that if ISP traffic is included in the determination of relative use, then all the
23 traffic that would be originated on the trunk would be Qwest's traffic, since Qwest claims Level 3
24 does not originate any traffic. Thus, Qwest claims that it would have to pay all of Level 3's trunking
25 costs, and this would violate Section 252(d)(1) of the Act's requirement that rates for interconnection
26 and network element charges be "just and reasonable" and based on "the cost (determined without
27 reference to rate-of-return or other rate-based proceeding) of providing the interconnection or
28

1 network element.” Qwest also argues that to require it to provide these facilities to Level 3, but not to
2 receive any compensation would lead to an unconstitutional taking of Qwest’s property.

3 Further, Qwest claims, the FCC’s rules relating to reciprocal compensation and relative use
4 require the exclusion of Internet traffic. Qwest states that the FCC rules that implement the
5 reciprocal compensation obligations limit reciprocal compensation to “local telecommunications
6 traffic.” 47 C.F.R. § 51.701(a). Thus, Qwest claims, in defining transport services that are subject to
7 reciprocal compensation, the FCC speaks only of local traffic. Qwest has always argued that Internet
8 traffic is not local, should not be included in the determination of reciprocal compensation, and
9 further, should not be included in calculating relative use.

10 Staff’s Position

11 Staff believed that use of the same out-of-balance ratio as Level 3 proposed for switching
12 costs may also be reasonable for the determination of trunking costs. That is, when the out-of-balance
13 traffic achieves a ratio of 3:1 in one party’s favor, then out-of-balance traffic is no longer considered
14 for purposes of determining relative use.

15 Commission’s Resolution

16 We concur with Level 3 that Qwest’s arguments ignore the fact that the facilities Qwest
17 installs on its side of the POI serve Qwest’s own customers. Qwest does not provide these facilities
18 to Level 3 without compensation, but rather receives compensation for these facilities from its own
19 customers. The issue of relative use of facilities on Qwest’s side of the POI is distinct from the issue
20 of whether Internet traffic is local and subject to reciprocal compensation. Qwest’s reliance on FCC
21 rules and orders concerning reciprocal compensation for local traffic is misplaced. Because this is a
22 distinct issue from reciprocal compensation, we do not believe that employing the same compromise
23 for switching costs and reciprocal compensation is appropriate. We, therefore, find that ISP traffic
24 should be included in the calculation of relative use of interconnection facilities on Qwest’s side of
25 the POI.

26 **What is the appropriate interval within which Qwest should provide trunks to Level 3?**

27 Level 3’s Position

28 Under Level 3’s proposal, Qwest would be required to establish initial trunking arrangements

1 within 22 days, subsequent trunking arrangements within 15 days, and trunking to relieve blocking
2 within 5 days.

3 Level 3 argues that it is critical for Level 3, or any CLEC, to know the time frames within
4 which Qwest will provide trunks for interconnection, and to know that the provider is committed to
5 meet that time frame. Level 3 argued that if Qwest can provide initial trunks on an individual case
6 basis, or change the subsequent trunk provisioning intervals as it sees fit in its carrier guides even
7 after it commits to those intervals, Level 3 cannot know whether it can meet critical dates for market
8 activation and customer service. To maintain certainty, Level 3 proposes that Qwest provide initial
9 trunks at a POI within 22 business days of receipt of a valid service request and within 15 business
10 days of receipt of a valid service request for subsequent trunk requests, including augments. Level 3
11 reports that these proposals are consistent with intervals examined by the FCC in its recent orders
12 granting Section 271 authority to SBC in Texas, Kansas and Oklahoma. To ensure that serious
13 customer-affecting trunk problems are resolved as quickly as possible, Qwest should be required to
14 provide interconnection trunks within 5 business days where blocking is occurring.

15 Level 3 does not believe that carriers should have to wait until the Commission sets standards
16 governing trunk provisioning in the context of the Section 271 proceedings, to ensure that Qwest is
17 complying with its obligations under Section 251. Level 3 argues that when standards are set in the
18 Section 271 proceeding, they would be incorporated into the agreement. Level 3 argued that until
19 such time as industry-wide standards are in place, Qwest should be required to commit to intervals in
20 the contract rather than referring to guidelines that Qwest can change at its whim and guidelines that
21 Qwest can violate without fear of consequence.

22 Qwest's Position

23 Qwest proposes that: 1) on a permanent going-forward basis, the parties will abide by the
24 results in the Commission's wholesale service quality docket and the Section 271 workshops with
25 respect to local interconnection service ("LIS") provisioning; 2) until the Commission concludes the
26 Section 271 workshops, Qwest will in good faith provision trunking arrangements for Level 3 within
27 average monthly intervals Qwest achieves in Arizona for establishing Feature Group D type trunking
28 arrangements; 3) Qwest will provide Level 3 with monthly reports of performance results relating to

1 the intervals for establishing trunking arrangements in Arizona: 4) specific service intervals and due
2 dates will be determined on an individual basis and will be in accordance with the guidelines for LIS
3 trunks contained in Qwest's Interconnect and Resale Source Guide ("IRRG"); 5) Qwest will work in
4 good faith to meet the provisioning intervals in the IRRG; and 6) Qwest will provide notice to Level
5 3 of any changes to the LIS trunk intervals consistent with the change management process
6 applicable to the IRRG.

7 Qwest argues that no other CLEC in Arizona has fixed intervals within which Qwest must
8 provision trunking arrangements. Establishing these intervals for Level 3 would have the effect of
9 moving Level 3's orders ahead of those of other CLECs and would lead to claims of discriminatory
10 treatment by other CLECs against Qwest. Qwest also argues that the Commission has consistently
11 required CLECs to abide by the uniform service standards that will be established in the consolidated
12 service quality docket. Allowing fixed intervals for Level 3 would disrupt the uniformity that the
13 service quality docket is designed to establish. Finally, Qwest argues there is no support or basis for
14 the Commission to determine if the intervals that Level 3 is seeking are realistic or reasonable.

15 Staff's Position

16 Staff does not believe that the Section 271 proceedings should prevent the parties from
17 including certain provisioning standards in their Interconnection Agreement. Where existing
18 facilities are available. Staff believes that Level 3's proposed intervals are reasonable and are similar
19 to many of the intervals contained in the Qwest IRRG. Staff also believes that it is reasonable for
20 Qwest to commit to a date certain for making existing facilities available to Level 3, however,
21 without a more in depth examination of the issue. Staff was hesitant to suggest variances from the
22 intervals currently contained in the IRRG.

23 Staff suggests that the Interconnection Agreement contain a provision that Qwest agrees to
24 use good faith efforts to meet the intervals specified in its IRRG, and that Qwest will provide a date
25 certain to Level 3, based upon the deadlines contained in its IRRG for existing facilities.

26 Commission's Resolution

27 The record before us does not contain sufficient information for us to adequately evaluate the
28 provisioning intervals Level 3 proposed. We agree, however, that Qwest should provide Level 3 with

1 a date certain when trunk facilities will be available according to the guidelines in its IRRG. Qwest's
2 proposed language for section 7.4.7 states that "Qwest will provide Level 3 with a specific due date
3 for each order that Level 3 submits for the establishment of trunking arrangements where there are
4 existing facilities." There may be some ambiguity on the meaning and force of the term "specific
5 due date." Level 3 believes that Qwest suffer no consequences when it misses its "due date."

6 We believe that section 7.4.7 should be modified to provide that Qwest will provide Level 3
7 with a date certain for each order that Level 3 submits for the establishment of trunking arrangements
8 where there are existing facilities, and that these due dates should be determined in accordance with
9 the guidelines contained in the IRRG.

10 The parties should modify the Interconnection Agreement accordingly.

11 * * * * *

12 Having considered the entire record herein and being fully advised in the premises, the
13 Commission finds, concludes, and orders that:

14 **FINDINGS OF FACT**

15 1. Level 3 has been granted authority by the Commission to provide competitive
16 telecommunications services to the public in Arizona.

17 2. Qwest is certificated to provide local exchange and intraLATA telecommunications
18 services to the public in Arizona pursuant to Article XV of the Arizona Constitution.

19 3. On October 31, 2000, Level 3 filed with the Commission a Petition pursuant to the
20 Act.

21 4. According to the parties' Petition, the parties began their negotiations on May 24,
22 2000.

23 5. Pursuant to the November 15, 2000 Procedural Order, an arbitration was scheduled
24 and held on January 18 and 19, 2001 at the Commission's offices in Phoenix, Arizona.

25 6. The parties submitted post-hearing briefs on February 9, 2001 and reply briefs on
26 February 20, 2001.

27 7. On February 1, 2001, the parties filed a letter waiving the nine-month resolution
28 requirement of Section 252(b)(4)(C) of the Act, and agreed to extend the deadline by 34 days to

1 March 30, 2001.

2 8. The Commission has analyzed the issues presented by the parties and has resolved the
3 issues as stated in the Discussion above.

4 9. The Commission hereby adopts the Discussion and incorporates the parties' positions
5 and the Commission's resolution of the issues herein.

6 10. Pursuant to A.A.C. R14-2-1506(A), the parties will be ordered to prepare and sign an
7 interconnection agreement incorporating the issues as resolved by the Commission, for review by the
8 Commission pursuant to the Act, within thirty days from the date of this Decision.

9 **CONCLUSIONS OF LAW**

10 1. Level 3 is a public service corporation within the meaning of Article XV of the
11 Arizona Constitution.

12 2. Level 3 is a telecommunications carrier within the meaning of 47 U.S.C. § 252.

13 3. Qwest is a public service corporation within the meaning of Article XV of the Arizona
14 Constitution.

15 4. Qwest is an ILEC within the meaning of 47 U.S.C. § 252.

16 5. The Commission has jurisdiction over Level 3 and Qwest and of the subject matter of
17 the Petition.

18 6. The Commission's resolution of the issues pending herein is just and reasonable.
19 meets the requirements of the Act and regulations prescribed by the FCC pursuant to the Act, is
20 consistent with the best interests of the parties, and is in the public interest.

21 **ORDER**

22 IT IS THEREFORE ORDERED that the Commission hereby adopts and incorporates as its
23 Order the resolution of the issues contained in the above Discussion.

24 IT IS FURTHER ORDERED that Level 3 Communications Company, LLC and Qwest
25 Communications, Inc. shall prepare and sign an interconnection agreement incorporating the terms of
26 the Commission's resolutions.

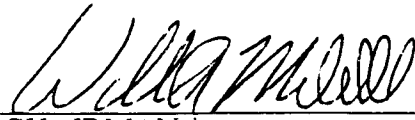
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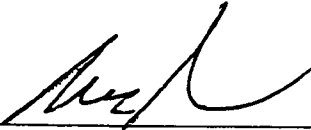
1 IT IS FURTHER ORDERED that the signed interconnection agreement shall be submitted to
2 the Commission for its review within thirty days of the date of this Decision.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5 

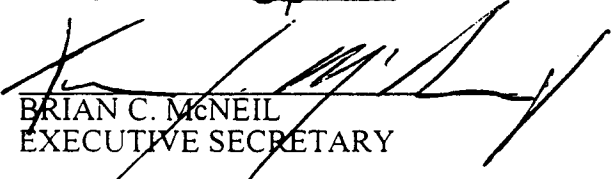
6 CHAIRMAN



7 COMMISSIONER

8 COMMISSIONER

9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
10 Secretary of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of Phoenix,
13 this 10th day of April, 2000.


14 BRIAN C. McNEIL
15 EXECUTIVE SECRETARY

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