

Level 3

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December 27, 2011

**BY OVERNIGHT AND
ELECTRONIC MAIL**

Jeff Nodland, Esq.
Centurylink
1801 California Street
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Denver, CO 80202

**Re: *Level 3 v. Qwest*, Docket Nos. UT-053036, UT-053039, Washington Utilities Transportation
Commission**

Dear Jeff:

I am responding to Mike Hunsucker's demand letter to Andrea Pierantozzi of December 14, 2011 seeking a refund from Level 3 of \$10,289,058.46. The demand letter is considerably premature. The order of the Washington Utilities Transportation Commission entered in the referenced consolidated docket on November 14, 2011 by no means obliges Level 3 to pay any money to Qwest Corporation.

The Commission's relief in the order was partial. The order granted Qwest's motion for summary determination as to certain issues of law. The Commission denied Qwest's motion "as it relates to the amount and nature of the specific traffic in question, and defer[s] consideration of these issues to a separate evidentiary proceeding" (par. 45). The Commission said that the purpose of such hearing would be to determine the "appropriate level of retroactive compensation due to the parties pursuant to this order." This hearing is not limited, as Qwest suggests, merely to determining the amount of originating switched access that must be paid to Qwest for VNXX traffic. The Commission has yet to make any factual determinations as to the amount or nature of the traffic and, consequently, it has yet to be established whether and how much, if any, money Level 3 may owe Qwest (or vis-versa) with respect to the subject traffic.

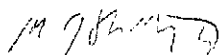
For example, according to the Commission, if it were to conclude that any or part of the subject traffic was not VNXX in nature but merely local ISP-bound traffic that originated and terminated in the same

local calling area, the reciprocal compensation mechanism established by the FCC in the *ISP Remand Order* would control. Of course, that determination would directly impact the amount of any refund due to Qwest, if any. Likewise, if the Commission concludes that any or part of the subject traffic is VNXX that originates in Washington but terminates outside the state, the Commission will have no jurisdiction over such traffic and would be unable to require compensation for it. Indeed, the Commission specifically acknowledged this issue when it decided that one of the purposes for holding an evidentiary hearing would be "in order to determine which traffic is subject to our jurisdiction and should be subject to toll rates", if any. (par. 96).

Finally, the order itself remains subject to a petition for reconsideration and therefore it is not final or appealable.

If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Yours very truly,



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