

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of:)	
)	DOCKET UT-063006
LEVEL 3 COMMUNICATIONS,)	
LLC,)	ORDER 04
)	
For Arbitration Pursuant to Section)	ORDER GRANTING IN PART
252(b) of the Communications Act of)	AND DENYING IN PART
1934, As Amended by the)	MOTION TO COMPEL
Telecommunications Act of 1996, and)	
the Applicable State Laws for Rates,)	
Terms, and Conditions of)	
Interconnection with Qwest)	
Corporation)	
.....)	

1 *Synopsis.* This order resolves a discovery dispute between Level 3 and Qwest. The order grants in part Level 3’s motion to compel responses to data requests relating to ISP and VOIP service Qwest provides to its affiliates, Qwest’s physical presence and point of presence in Washington, as well as its affiliates’ use of interconnection trunks in Washington. This order denies Level 3’s motion to compel responses to data requests and requests for admission relating to services Qwest or its affiliates provide outside of Washington.

SUMMARY

2 **NATURE OF PROCEEDING.** Docket UT-063006 involves Level 3 Communications, LLC’s (Level 3), request to arbitrate an interconnection agreement with Qwest Corporation (Qwest) under Section 252(b) of the Telecommunications Act of 1996.

3 **APPEARANCES.** Erik Cecil, Regulatory Counsel, and Rick Thayer, Regulatory
Counsel, Broomfield, Colorado, and Arthur A. Butler, Ater Wynne, LLP, Seattle,
Washington, represent Level 3. Lisa A. Anderl, Associate General Counsel,
Seattle, Washington, and Thomas M. Dethlefs, Senior Attorney, Denver,
Colorado, represent Qwest.

4 **DECISION.** This order grants Level 3's motion to compel responses to Level 3
Data Request Nos. 2(d), (e) and (f), 4(d) and (f), 5(A) and (B), 6, 7, 9, 10, 14(G),
(H), (I), (J), (K), (M), (N), (O), and (P), grants in part Level 3 Data Request No.
2(b), 4(a), 14(Q), 15(F), and 19, and denies Level 3's motion to compel responses
to Level 3 Data Request Nos. 5(C), 13 (C), 14 (D), (E), (F) and (K), and Requests
for Admission Nos. 14-16.

5 Level 3's data requests and requests for admission seeking information outside of
Washington are overbroad and do not relate to arbitration of an agreement within
the state. Level 3's data requests seeking past invoices are only relevant for the
services provided in 2006. Level 3's requests relating to internet service providers
(ISP) and voice over internet protocol (VOIP) services, point of presence, physical
presence and use of interconnection trunks are all relevant to issues presented in
the arbitration and may result in admissible evidence.

MEMORANDUM

A. Procedural History

6 Level 3 filed a petition for arbitration of an interconnection agreement with Qwest
on January 26, 2006. The Commission entered an Order on Arbitration Procedure
on February 1, 2006. The Commission assigned Administrative Law Judge Ann
E. Rendahl as arbitrator in the proceeding.

7 The Commission held a prehearing conference on March 3, 2006, before Judge
Rendahl. The Commission adopted a procedural schedule in Order 02, the

prehearing conference order, including an opportunity for Level 3 to file a motion to compel responses from Qwest to certain data requests.

8 Level 3 filed a motion to compel responses to certain data requests and requests for admission on April 3, 2006. Qwest filed a response on April 11, 2006. Judge Rendahl heard oral argument from the parties on April 18, 2006.

B. Level 3's Motion to Compel

9 The contested data requests and requests for admission seek information that falls into five categories: (1) Qwest's service to its affiliates service relating to ISP and VOIP service, including invoices for past service from Qwest to its affiliates, (2) Qwest's physical presence or points of presence for providing ISP services, (3) Services Qwest or its affiliates provide outside of Washington, (4) Qwest's affiliates' use of interconnection trunks, and (5) Qwest's revenues in the state of Washington. The contested data requests and requests for admission are addressed by category, below.

1. Qwest ISP and VOIP services to affiliates

10 In Data Request Nos. 2, 4, 14, and 15, Level 3 seeks information from Qwest concerning services Qwest provides to its affiliate Qwest Communications Corporation (QCC) and others for dial-up internet access services to ISPs, VOIP services, and "wholesale voice termination services." Qwest objects to Data Request Nos. 2(b), (d), (e), and (f), 4(a), (d), and (f), 14(N), (O), (P), (Q), and 15(F).

11 Level 3 asserts that how and where the parties exchange traffic is at issue in the arbitration, as the services Qwest provides to its affiliates and the affiliates' network architectures are relevant to the issues in the arbitration. Level 3 further asserts that section 251(c) of the Telecommunications Act of 1996 requires incumbent local exchange carriers (ILECs) such as Qwest not to discriminate in providing interconnection with other carriers. Level 3 further asserts that Qwest

has access to information about its affiliates and that any confidential information would be covered under the protective order.

12 Qwest asserts that Level 3's "factual assumptions and legal propositions ... are either wrong or irrelevant." *Qwest Response*, ¶ 5. Qwest asserts the issues in the arbitration proceeding relate only to Qwest and Level 3, not to any other company or Qwest affiliate who are not parties to the arbitration. Because Qwest provides the services at issue to QCC through tariffs or price lists, not under its interconnection agreement, Qwest asserts the nondiscrimination requirement of section 251(c)(3) does not apply. Qwest further asserts the billing addresses of ISP or VOIP customers and physical locations of Qwest's services are not relevant to the case and that disclosure of customer-specific information is highly confidential.

13 Qwest also objects to Level 3's requests for invoices between Qwest and QCC, asserting that there is no basis for asserting that Qwest is not billing QCC for services provided to QCC. Qwest also asserts that certain information is available to Level 3 on the website Qwest maintains for compliance with section 272 of the Act, relating to affiliate transactions.

14 ***Discussion and decision.*** The Commission's rules require that data requests must "seek only information that is relevant to the issues in the adjudicative proceeding or may lead to the production of information that is relevant." *WAC 480-07-400(4)*. Parties may not object to a data request on the grounds that information may be inadmissible, as the Commission will allow discovery if the information "appears reasonably calculated to lead to discovery of admissible evidence." *Id.* The Commission's discovery rule, *WAC 480-07-400(5)*, further provides:

Parties must not seek discovery that is unreasonable cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. A discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information sought or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources,

scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding.

- 15 Having considered the contested data requests, the parties' pleadings and arguments in light of the standards for resolving discovery disputes, Level 3's motion to compel responses to Data Request Nos. 2(d), (e) and (f), 4(d) and (f), 14(N), (O) and (P) is granted. While Qwest disputes the relevance of Level 3's data requests based on its view of the issues in the proceeding, the focus of a discovery dispute is not to determine the ultimate issues in the proceeding. The test is not whether the information would ultimately be admissible, but rather whether it is relevant. Level 3's requests for information about how and where the parties should exchange traffic are appropriate. The data requests appear relevant to the issues in the proceeding and may lead to admissible evidence.
- 16 Data Request Nos. 2(b), 4(a), 14(Q) and 15(f) seek all invoices between Qwest and QCC or other affiliates. While the four data requests seek information that is relevant to the issues in the proceeding, the data requests are overbroad. Seeking all invoices, without a specific time frame, appears to require information that would be cumulative, duplicative or overly burdensome. Past transactions between Qwest and QCC or other affiliates may be relevant, but the burden of producing numerous invoices from years past outweighs the possible relevance of the data. It is most relevant to the issues in this proceeding how Qwest has most recently treated its affiliates. Further, it is not clear whether Level 3 could obtain this exact information in Qwest's section 272 website. Thus, Level 3's motion to compel responses to Data Request Nos. 2(b), 4(a), 14(Q), and 15(f) is granted in part, and limited to providing invoices from January 2006 to the present.

2. Qwest's physical presence or point of presence for ISP services

- 17 In Data Request Nos. 5, 13, and 14, Level 3 also seeks information from Qwest concerning its point of presence or physical presence in local calling areas for providing wholesale ISP dial-up services. Qwest objects to Data Request Nos. 5(A), (B) and (C), 13(C), and 14 (G), (H), (I), (J), (K) and (M). Qwest's objections to 5(C), 13(C), and 14(K) are addressed below in Section B.3.

- 18 Similar to the information discussed above, Level 3 asserts this information is relevant to the manner in which Qwest interconnects with or provides service to its affiliates, and whether these practices are discriminatory to Level 3. Level 3 also asserts the issue of physical presence is central to the issue of how the two carriers should interconnect to provide ISP-bound and VOIP services and what rate should apply to these services.
- 19 Qwest objects to the data requests relating to point of presence or physical presence as irrelevant in determining how to provide interconnection or what rate to charge for VOIP or ISP services. Qwest asserts such services are ESP services to be purchased from Qwest's retail tariffs rather than services provided under an interconnection agreement. Qwest asserts the point of presence of an ESP provider is not relevant in this proceeding.
- 20 ***Discussion and decision.*** Level 3's motion to compel responses to Data Request Nos. 5(A) and (B), and 14 (G), (H), (I), (J), and (M) is granted. Similar to the discussion above, the focus of a discovery dispute is not to determine the ultimate issues in the proceeding or to determine whether the information would ultimately be admissible, but rather whether it is relevant to the issues in the proceeding and whether it is reasonably calculated to lead to admissible evidence. Level 3's requests concerning Qwest's physical presence or point of presence in Washington State are relevant to the issues in the proceeding. While the information may not be relevant to Qwest's view of the proceeding, it is relevant to Level 3's view. The burden is on the parties in hearing to demonstrate whether or not the information is ultimately admissible and to argue in brief the ultimate issues in the proceeding.

3. Qwest's or its affiliates' physical presence and commingling outside of Washington State

- 21 In Data Request Nos. 5C, 13C, and 14(D), (E), (F) and (K) Level 3 seeks information about Qwest's point of presence or physical presence for providing wholesale ISP dial-up service in states other than Washington. In Request for Admission Nos. 14-16, Level 3 seeks information concerning Qwest commingling of traffic in transit services in Iowa. Qwest objects to these data requests and requests for admission.
- 22 Level 3 asserts that the information about Qwest's point of presence or physical presence in local calling areas is highly relevant to the issues in this proceeding, specifically the terms of interconnection for VNXX and VOIP service and whether Qwest's proposals and similar arrangements with its affiliates discriminate against Level 3. Level 3 offers similar arguments for its requests for admission.
- 23 In addition to the arguments above in Section B.2., Qwest objects to providing information about its presence in states other than Washington. Qwest asserts it is irrelevant to arbitrating an agreement in Washington what Qwest may do or not do in other states. Qwest asserts that other states have denied motions to compel responses to similar data requests. As to the requests for admission, Qwest objects to requests relating to services provided in other states. Qwest also argues that it is appropriate to use interconnection trunks for commingled traffic that can record interexchange traffic.
- 24 ***Discussion and decision.*** Information about Qwest's points of presence or physical presence in areas outside of its service territory in Washington is not relevant to the issues in the proceeding. This proceeding addresses an interconnection agreement between Level 3 and Qwest as an ILEC in Washington, not in other states, or in states outside of Qwest's service territory. Level 3's questions relating to Qwest's presence out of the state of Washington are overbroad. Thus, Level 3's motion to compel responses to Data Request Nos. 5C, 13C, and 14(D), (E), (F) and (K), and Request for Admission Nos. 14-16 is denied.

4. Qwest affiliates' use of interconnection trunks

25 In Data Request No. 19, Level 3 seeks the following information:

For each state in which a Qwest CLEC affiliate combines local and toll (IntraLATA and InterLATA) traffic on a single trunk group, please state whether Qwest's CLEC affiliate uses a Percent Local Use (PLU) or similar method of establishing the apportionment of local vs. toll traffic on the combined trunk group.

26 Level 3 asserts the information is relevant and material to disputed issues in the arbitration, particularly Issue No. 2, whether Level 3 may exchange all traffic on interconnection agreements under the agreement. Level 3 asserts the issue is whether Level 3's requested method of interconnection is technically feasible under the Act. It asserts information about use of interconnection trunks in other states is relevant to show technical feasibility.

27 Qwest asserts that Level 3's request is overbroad and does not meet the standard that the evidence is "reasonably" calculated to lead to admissible evidence. Qwest asserts Level 3's request is based on false assumptions and legal interpretations. Qwest further asserts that QCC is not a party to the proceeding and that the nondiscrimination obligations of Section 251 do not apply when QCC interconnects with carriers other than Qwest.

28 ***Discussion and decision.*** For the reasons discussed above in Section B.3., to the extent Data Request No. 19 seeks information about Qwest or QCC operations outside of Washington State, Level 3's motion is denied. Level's 3's Data Request No. 19, if addressed solely to Qwest CLEC affiliate operations in Washington State, is relevant to the issues in dispute and is appropriate. Level 3's motion to compel a response to Data Request No. 19 is granted, but is limited to Qwest CLEC affiliate operations in Washington State.

5. Qwest's revenues in Washington

29 In Data Request Nos. 6, 7, 9 and 10, Level 3 seeks information concerning Qwest's access revenues and universal service payments in Washington. Level 3 asserts the information is relevant to the issues as "Qwest claims that local rates will go up if our interconnection requirements are adopted." *Level 3 Motion*, ¶ 30. Qwest denies it has made such a statement and objects to providing the information. Qwest asserts there is no connection between the access revenues and universal service payments requested in the data requests and Level 3's obligation to compensate Qwest for costs incurred to provide interconnection with Level 3.

30 ***Discussion and decision.*** As discussed above in Section B.1., the test for allowing data requests is not whether the information would ultimately be admissible, but whether it is relevant to the issues in dispute and is reasonably calculated to lead to discovery of admissible evidence. Level 3's requests for information about Qwest's access revenues and universal service payments in Washington are appropriate. The information may not be relevant to how Qwest views the case, but appears relevant to Level 3's allegations. Level 3's motion to compel responses to Data Request Nos. 6, 7, 9, and 10 is granted.

ORDER

THE COMMISSION ORDERS:

- 31 (1) Level 3 Communications, LLC's, motion to compel responses to Data Request Nos. 2(d), (e) and (f), 4(d) and (f), 5(A) and (B), 6, 7, 9, 10, 14(G), (H), (I), (J), (K), (M), (N), (O) and (P) is granted.
- 32 (2) Level 3 Communications, LLC's, motion to compel responses to Data Request Nos. 2(b), 4(a), 14(Q) and 15(F) is granted in part, but limited to invoices from January 2006 to the present.
- 33 (3) Level 3 Communications, LLC's, motion to compel responses to Data Request No. 19 is granted in part, but limited to Qwest CLEC affiliates operating in Washington.

- 34 (4) Level 3 Communications, LLC's, motion to compel responses to Data Request Nos. 5C, 13C, and 14(D), (E), (F) and (K) is denied.

Dated at Olympia, Washington, and effective April 25, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge and Arbitrator