**BEFORE THE WASHINGTON STATE**

**UTILITIES AND TRANSPORTATION COMMISSION**

)

PAC-WEST TELECOMM, INC., ) DOCKET UT-053036

)

Petitioner, )

)

v. )

)

QWEST CORPORATION, )

)

Respondent. )

)

)

LEVEL 3 COMMUNICATIONS, LLC, ) DOCKET UT-053039

)

Petitioner, )

)

v. )

)

QWEST CORPORATION, )

)

Respondent. )

**MOTION FOR SUMMARY DETERMINATION OF LEVEL 3 COMMUNICATIONS, LLC AND PAC-WEST TELECOMM, INC.**

*1.* Level 3 Communications, LLC (“Level 3”) and Pac-West Telecomm, Inc. (“Pac-West”) hereby move for summary determination, pursuant to the Prehearing Conference Notice in this proceeding and WAC 480-07-382(2), on the issues presented below as there are no genuine issues as to any material fact.

*2.* Level 3 and Pac-West respectfully request that the Commission grant any or all of the following relief:

A. Dismiss this proceeding in its entirety for lack of subject matter jurisdiction;

B. Rule that Qwest Corporation (“Qwest”) is not, under the terms of its own access tariffs, entitled to collect access charges from Level 3 and Pac-West on VNXX ISP-bound traffic;

C. Rule that Level 3 and Pac-West are not estopped from challenging the jurisdiction of the Commission in this matter;

D. Rule that any claim by Qwest for access charges would be subject to Washington’s two-year statute of limitations and would not relate back to Qwest’s original counterclaims in this proceeding; and

E. Grant to Level 3 and Pac-West such other, further and different relief as to the Commission appears just and proper in the premises.

Respectfully submitted,

//Lisa Rackner//

Lisa F. Rackner Arthur A. Butler

McDowell, Rackner & Gibson, PC Ater Wynne, LLP

419 SW Eleventh Avenue, Suite 400 601 Union Street, Suite 1501

Portland, OR 97205 Seattle, WA 98101

Tel: (503) 595-3925 Tel: (206) 623-4711

Fax: (503) 595-3928 Fax: (206) 467-8406

Email: [lisa@mcd-law.com](mailto:lisa@mcd-law.com) Email: [aab@aterwynne.com](mailto:aab@aterwynne.com)

*Counsel for Pac-West*

Christopher W. Savage *Telecomm, Inc.*

Davis Wright Tremaine

1919 Pennsylvania Avenue, N.W., Suite 800

Washington, D.C. 20006

Tel: (202) 973-4211

Fax: (202) 973-4411

Email: [chrissavage@dwt.com](mailto:chrissavage@dwt.com)

Michael J. Shortley, III

Level 3 Communications, LLC

225 Kenneth Drive

Rochester, New York 14623

Tel: (585) 255-1429

Fax: (585) 334-0201

Email: [michael.shortley@level3.com](mailto:michael.shortley@level3.com)

Richard E. Thayer

Level 3 Communications, LLC

1025 Eldorado Boulevard

Broomfield, Colorado 80021

Tel: (720) 888-2620

Fax: (720) 888-5134

Email: [rick.thayer@level3.com](mailto:rick.thayer@level3.com)

*Counsel for Level 3 Communications, LLC*

June 1, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 1st day of June, 2012, served the true and correct original, along with the correct number of copies, of the **Motion for Summary Determination of Level 3 Communications, LLC and Pac-West Telecomm, Inc.,** the **Memorandum of Law in Support of Level 3’s and Pac-West’s Motion for Summary Determination**, and **Level 3’s and Pac-West’s Documentary Appendix to Motion for Summary Determination** upon the WUTC, via the method(s) noted below, properly addressed as follows:

|  |  |
| --- | --- |
| David Danner  Executive Director and Secretary  Washington Utilities and Transportation Commission  1300 S Evergreen Park Drive SW  PO Box 47250  Olympia, WA 98504-7250 | \_\_\_ Hand Delivered  \_\_\_ U.S. Mail (first-class, postage prepaid)  \_X\_ Overnight Mail (UPS)  \_\_\_ Facsimile \_\_\_\_\_\_\_\_\_\_\_  \_X\_ Email (records@wutc.wa.gov) |

I hereby certify that I have this 1st day of June, 2012, served the true and correct original, along with the correct number of copies, of the **Motion for Summary Determination of Level 3 Communications, LLC and Pac-West Telecomm, Inc.,** the **Memorandum of Law in Support of Level 3’s and Pac-West’s Motion for Summary Determination**, and **Level 3’s and Pac-West’s Documentary Appendix to Motion for Summary Determination** upon the WUTC, via the method(s) noted below, properly addressed as follows:

|  |  |
| --- | --- |
| **On Behalf of CenturyLink** |  |
| Lisa A. Anderl, Associate General Counsel  CenturyLink  1600 7th Avenue, Room 1506  Seattle, WA 98191 | \_\_\_ Hand Delivered  \_X\_ U.S. Mail (first-class, postage prepaid)  \_\_\_ Overnight Mail (UPS)  \_\_\_ Facsimile \_\_\_\_\_\_\_\_\_\_\_  \_X\_ Email (lisa.anderl@centurylink.com) |
| Thomas Dethlefs  CenturyLink  1801 California St. – 10th Fl.  Denver, CO 80202 | \_\_\_ Hand Delivered  \_X\_ U.S. Mail (first-class, postage prepaid)  \_\_\_ Overnight Mail (UPS)  \_\_\_ Facsimile \_\_\_\_\_\_\_\_\_\_\_  \_X\_ Email (Thomas.dethlefs@centurylink.com) |
| Adam Sherr  CenturyLink  1600 7th Avenue, Room 3206  Seattle, WA 98191 | \_\_\_ Hand Delivered  \_\_\_ U.S. Mail (first-class, postage prepaid)  \_\_\_ Overnight Mail (UPS)  \_\_\_ Facsimile \_\_\_\_\_\_\_\_\_\_\_  \_X\_ Email (adam.sherr@centurylink.com) |
| Ted D. Smith  Stoel Rives LLP  Suite 1100  201 South Main Street  Salt Lake City UT 84111-4904 | \_\_\_\_ Hand Delivered  \_\_\_ U.S. Mail (first-class, postage prepaid)  \_\_\_ Overnight Mail (UPS)  \_\_\_ Facsimile \_\_\_\_\_\_\_\_\_\_\_  X\_ Email (tsmith@stoel.com) |
| Mark Reynolds  Qwest Corporation  1600 7th Avenue, Room 3206  Seattle, WA 98191 | \_\_\_ Hand Delivered  \_ \_ U.S. Mail (first-class, postage prepaid)  \_\_\_ Overnight Mail (UPS)  \_\_\_ Facsimile \_\_\_\_\_\_\_\_\_\_\_  \_X\_ Email (mark.reynolds3@qwest.com) |
| **On Behalf of Pac-West** |  |
| Arthur A. Butler  Ater Wynne LLP  601 Union Street, Suite 1501  Seattle, WA 98101-3980 | \_\_\_ Hand Delivered  \_X\_ U.S. Mail (first-class, postage prepaid)  \_\_\_ Overnight Mail (UPS)  \_\_\_ Facsimile \_\_\_\_\_\_\_\_\_\_\_  \_X\_ Email (aab@aterwynne.com) |
| Sam Shiffman  Pac-West Telecomm, Inc.  6500 River Place Blvd.,  Building 2, Suite 200  Austin, TX 78730 | \_ \_ Hand Delivered  \_X\_ U.S. Mail (first-class, postage prepaid)  \_\_\_ Overnight Mail (UPS)  \_\_\_ Facsimile \_\_\_\_\_\_\_\_\_\_\_  \_X\_ Email (regulatory@pacwest.com) |

|  |  |  |
| --- | --- | --- |
| **On Behalf Of Public Counsel:**  Simon J. ffitch  Attorney General of Washington  Public Counsel Section Suite 2000 800 Fifth Avenue Seattle WA 98104-3188 |  | Hand Delivered |
| X | U.S. Mail (first-class, postage prepaid) |
|  | Overnight Mail (UPS) |
|  | Facsimile (206) 389-2079 |
| X | Email (simonf@atg.wa.gov) |
|  |  |

|  |  |  |
| --- | --- | --- |
| ***On Behalf Of Staff:***  Sally Brown  Attorney General of Washington  PO Box 40128 1300 Evergreen Park Drive S. Olympia WA 98504 |  | Hand Delivered |
| X | U.S. Mail (first-class, postage prepaid) |
|  | Overnight Mail (UPS) |
|  | Facsimile |
| X | Email (sallyb@atg.wa.gov) |
|  |  |

|  |  |
| --- | --- |
| ***Courtesy Copy***: |  |
| Ann Rendahl  Washington Utilities and Transportation Commission  1300 S Evergreen Park Drive SW  PO Box 47250  Olympia, WA 98504-7250 | \_\_\_ Hand Delivered  \_\_\_ U.S. Mail (first-class, postage prepaid)  \_\_\_ Overnight Mail (UPS)  \_\_\_ Facsimile \_\_\_\_\_\_\_\_\_\_\_  \_X\_ Email (arendahl@wutc.wa.gov) |
| Marty Lovinger  Washington Utilities and Transportation Commission  1300 S Evergreen Park Drive SW  PO Box 47250  Olympia, WA 98504-7250 | \_\_\_ Hand Delivered  \_\_\_ U.S. Mail (first-class, postage prepaid)  \_\_\_ Overnight Mail (UPS)  \_\_\_ Facsimile \_\_\_\_\_\_\_\_\_\_\_  \_X\_ Email (Mlovinge@wutc.wa.gov) |

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 1st day of June, 2012, at Portland, Oregon.

\_//Lisa Rackner//\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lisa Rackner