

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of the Petition of Level 3)
Communications, LLC for Arbitration) DOCKET NO. _____
Pursuant to Section 252(b) of the)
Telecommunications Act of 1996, with) PETITION OF LEVEL 3
Qwest Corporation Regarding Rates,) COMMUNICATIONS, LLC
Terms, and Conditions for Interconnection)

**PETITION OF LEVEL 3 COMMUNICATIONS, LLC
FOR ARBITRATION**

Level 3 Communications, LLC (“Level 3”) through its undersigned counsel, petitions the Washington Utilities and Transportation Commission (“Commission”) to arbitrate, pursuant to its Interpretive and Policy Statement issued in Docket No. UT-960269¹ and Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“Act”)², certain terms and conditions of a proposed interconnection agreement between Level 3 and Qwest Corporation (“Qwest”) for the State of Washington.

PARTIES

1. Petitioner’s full name and its official business address are as follows:

Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

¹ *In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996*, Docket No. UT-960269, Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996, June 1996.

² 47 U.S.C. § 151 *et seq.*

Level 3 is a Delaware limited liability company, and it is authorized by the Commission to provide local exchange service in Washington.³ Level 3 is, and at all relevant times has been, a “local exchange carrier” (“LEC”) under the Act.

The names, addresses, and contact numbers of Level 3’s representatives in this proceeding are as follows:

Rogelio E. Peña
Peña & Associates, LLC
1919 14th Street, Suite 330
Boulder, CO 80302
(303) 415-0409 (Tel)
(303) 415-0433 (Fax)

and

Gregory L. Rogers
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
(720) 888-2512 (Tel)
(720) 888-5134 (Fax)

Qwest is a corporation organized and formed under the laws of the State of Colorado, having an office at 1801 California Street, Denver, Colorado, 80202. Qwest provides local exchange and other services within its franchised areas in Washington. Qwest (in current name or as U S WEST Communications, Inc.) is, and at all relevant times has been, a “Bell Operating Company” and an “incumbent local exchange carrier” (“ILEC”) under the terms of the Act. The names, addresses, and contact numbers for Qwest’s representatives during the negotiations with Level 3 are as follows:

³ *In the Matter of the Petition of Level 3 Communications, L.L.C., for Classification as a Competitive Telecommunications Company*, Docket UT-980578, *Final Order*, October 14, 1998.

Nancy Donahue
Qwest Corporation
1801 California Street
Suite 2410
Denver, Colorado 80202
(303) 965-3887 (Tel)
(303) 965-3527 (Fax)

and

John M. Devaney
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RULES AND STATUTES BROUGHT INTO ISSUE BY THIS PETITION

2. The Commission has jurisdiction over Level 3's Petition pursuant to the provisions of the Act and its Interpretive and Policy Statement issued in Docket UT-960269. The issues raised by this Petition may be resolved pursuant to the Communications Act 1934, as Amended by the Telecommunications Act of 1996, and relevant Washington law.

STATEMENT OF FACTS

3. The Parties have stipulated that Qwest received Level 3's original request for negotiation on February 27, 2002. The 135th day after the request occurred on July 12, 2002, the 160th day will occur on August 6, 2002, and nine months will have passed on November 27, 2002. The letter establishing these dates is attached hereto as Exhibit A.

4. The Parties have worked in good faith from language supplied by both Level 3 and Qwest to resolve the vast majority of issues raised during the negotiations. Notwithstanding these negotiations, Level 3 and Qwest have been unable to come to

agreement on all terms, particularly certain terms that relate to the parties' financial obligations when interconnecting their networks to exchange traffic. The one remaining issue that Level 3 understands to be unresolved between the parties is addressed below in the Statement of the Unresolved Issue.

5. A draft of the interconnection agreement reflecting the parties' negotiations to date is attached hereto as Exhibit B. Unless otherwise expressly marked in the contract as the proposal of one Party or another, agreed upon language is shown in normal type, disputed language by both Parties is boxed-in and shown in bolded text. Level 3 will continue to negotiate in good faith with Qwest to resolve disputed language and will advise the Commission if arbitration is no longer necessary.

6. Level 3 requests that the Commission approve the Interconnection Agreement between Level 3 and Qwest reflecting: (i) the agreed upon language in Exhibit B and (ii) the resolution in this arbitration proceeding of the unresolved issues in accordance with the recommendations made by Level 3 below and in Exhibit B.

7. The parties have resolved the issues and negotiated contract language to govern the parties' relationship with respect to most of the provisions set forth in Exhibit B. These negotiated portions of the Agreement are shown in normal type. To the extent Qwest asserts that any provisions remain in dispute, Level 3 reserves the right to present evidence and argument as to why those provisions were considered closed and why they should be resolved in the manner shown in Exhibit B.

**STATEMENT OF THE UNRESOLVED ISSUE AND POSITIONS OF THE
PARTIES**

ISSUE 1 (Sections 7.3.1.1.3, 7.3.1.1.3.1, 7.3.2.2.1 and 7.3.3.1)

Issue: *Should Level 3 be required to pay for trunks and facilities on the Qwest network used by Qwest to handle calls placed by its end users?*

Level 3's Position: *Qwest cannot require Level 3 to pay for facilities on the Qwest network used to deliver Qwest originated traffic to the point where Qwest hands the call to Level 3. The FCC's rules of the road require that carriers be financially responsible for originating facilities on their side of the POI, while the long-standing ESP access charge exemption dictates that access charges cannot be imposed on ISP-bound traffic. There is no basis for excluding Internet Related traffic from "relative use" determinations.*

Qwest's Position: *Internet Related traffic should not be counted when determining "relative use" of originating facilities and thus, Level 3 should bear the costs of Qwest facilities used to originate Qwest end-user traffic destined for Internet Service Providers on the Level 3 network.*

8. Level 3 and Qwest have generally agreed that the division of financial responsibility for trunks and facilities used to exchange traffic should be allocated based on the extent to which each Party is originating traffic flowing over those trunks. Qwest, however, wishes to introduce an exception to this general rule – Qwest would not bear the costs associated with bringing its customers' calls over its own network to the point of interconnection ("POI") with Level 3 if its customers' calls are destined for an Internet Service Provider ("ISP"). Thus, this issue may be more specifically referred to as a dispute over the principle of "relative use." For the reasons explained below, Qwest's position

violates “rules of the road” established by the FCC⁴, is contrary to the interconnection principle that each party is responsible for its own network, and essentially amounts to a means of punishing those carriers who happen to carry calls placed by Qwest customers to ISPs.

9. While Qwest raises a dispute over the treatment of ISP-bound traffic as it relates to the principle of relative use, the Commission should note that this issue is not about intercarrier compensation for the exchange of traffic itself. This issue has nothing to do with whether Qwest will pay Level 3 for the costs of terminating ISP-bound traffic *across the Level 3 network*. This issue addresses whether Qwest can force Level 3 to pay for facilities *on the Qwest network* from Qwest’s end office to the point where Qwest hands the call to Level 3. These Qwest network facilities that Qwest does not want to pay for are being used to carry traffic originated by Qwest’s customers. In all cases but this one, Qwest recognizes it cannot ask Level 3 to pay for Qwest network facilities used to originate Qwest customer traffic. (Sections 7.3.1.1.3.1, 7.3.2.2 and 7.3.3.1) Qwest, however, wants to create an unsupported exception to this otherwise universal rule in these contract sections for when it originates ISP-bound traffic for its customers.

10. There is no question that these facilities will be used to originate ISP-bound traffic. Indeed, Qwest has already agreed in Section 7.2.2.9.3.1 that the Parties will route ESP traffic, including ISP traffic, over exchange service EAS/local trunk groups until the FCC determines that access charges apply to such traffic. Thus, the only question is whether Qwest can pretend this traffic does not exist for purposes of allocating financial

⁴ See *TSR Wireless, LLC et al. v. U S West Communications, Inc., et al.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order, FCC 00-194, ¶ 34 (rel. Jun. 21, 2000), *aff’d*, *Qwest Corporation, et al., v. Federal Communications Commission and United States of America*, 2001 U.S. App. LEXIS 13389 (D.C. Cir. June 15, 2001) (“TSR Wireless”).

responsibility for its facilities used to originate its end users' traffic. The practical effect of Qwest's proposal is that Level 3 is held financially responsible for Qwest's originating facilities - a result prohibited by FCC rules.⁵ Specifically, the "rules of the road" require that carriers be financially responsible for originating facilities on their side of the POI, while the long-standing ESP access charge exemption dictates that access charges cannot be imposed on ISP-bound traffic.

11. The Commission should carefully scrutinize the double-edged effect of Qwest's proposals here. In short, Qwest's proposed treatment of ISP-bound traffic turns the FCC's "rules of the road" on their head. In the case of all non-ISP traffic going over local trunks, the originating carrier will bear the cost of taking the call over the originating carrier's network to the POI for hand-off to the terminating carrier and then pay the terminating carrier for taking that call to the called party on the terminating carrier's network. Under Qwest's proposed treatment of ISP-bound traffic, however, the flow is reversed - the terminating carrier would be required to pay the originating carrier for taking the call over the originating carrier's network. Further, if Qwest were allowed to charge Level 3 a per-month rate for the facilities used to carry its originating traffic, *and* charge its customer a rate that includes the cost of originating a call, Qwest would likely be over-recovering the costs of its network facilities. If the POI is to have any meaning as a demarcation point between the parties' networks, Level 3 should not be required to pay for facilities and trunks on the Qwest side of the demarcation (the Qwest network) regardless of

⁵ See *TSR Wireless infra*, and also see *MTS and WATS Market Structure*, CC Docket No. 98-72, Memorandum Opinion and Order, 97 FCC2d 682, 711 (1983); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, Order, 3 FCC Rcd 2631, 2633 (1988); *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 16133 (1997). *In the Matter of Petition of WorldCom, Inc., et al. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket Nos. 00-218, 00-249, 00-251, Memorandum Opinion and Order, Rel., July 17, 2002.

whether the traffic is ISP-bound or not. If Level 3 is required to pay for facilities and trunks on the Qwest side of the demarcation, then the value of having a single POI per LATA becomes meaningless, because Level 3's responsibility does not end at the POI and it could be held responsible to some degree for facilities or trunks all the way to each Qwest end office. Level 3 therefore requests that the contract provisions that would require it to pay Qwest for facilities and trunks on the Qwest side of the POI by excluding Internet Related traffic from the relative use determination be stricken from the Agreement, and that the language proposed by Level 3 in the sections noted above be approved.

REQUEST FOR RELIEF

12. WHEREFORE, Level 3 respectfully requests that the Commission grant the following relief:

A. That the Commission arbitrate the unresolved issue between Level 3 and Qwest.

B. That the Commission issue an order directing the parties to submit an agreement reflecting: (i) the agreed upon language in Exhibit B and (ii) the resolution in this arbitration proceeding of the unresolved issue in accordance with the recommendations made by Level 3 herein and in Exhibit B.

C. That the Commission retain jurisdiction of this arbitration until the parties have submitted an agreement for approval by the Commission in accordance with section 252(e) of the Act.

D. That the Commission further retain jurisdiction of this arbitration and the

parties hereto until Qwest has complied with all implementation time frames specified in the arbitrated agreement and has fully implemented the agreement.

E. That the Commission's decision regarding unresolved issues be implemented by the Parties within 30 days of the Commission's final arbitration decision.

F. That the Commission take such other and further actions as it deems necessary and appropriate.

Dated this 5th day of August, 2002.

RESPECTFULLY SUBMITTED,

Rogelio E. Peña
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Attorneys for
Level 3 Communications, LLC

CERTIFICATE OF SERVICE

I hereby certify that the original and 19 copies of the foregoing Petition of Level 3 for Arbitration was sent for filing via Federal Express on this 5th day of August, 2002, addressed to the following:

Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

and I hereby certify that I have this day served this document upon all parties of record in this proceeding, by Federal Express, to the following designated representatives on the 5th day of August, 2002, addressed to the following:

Nancy Donahue Qwest Corporation 1801 California Street Suite 2410 Denver, CO 80202	Lisa A. Anderl Senior Attorney Qwest Corporation 1600 7 th Avenue, Suite 3206 Seattle, WA 98191
C T Corporation System Registered Agent for Qwest Corp. 520 Pike Street Seattle, WA 98101	John M. Devaney Martin Willard Perkins Coie, LLP 607 Fourteenth Street, N.W. Suite 800 Washington, DC 20005-2011
Gregory Trautman Assistant Attorney General 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia, WA 98504-0128	Simon ffitch Office of the Attorney General Public Counsel 900 4 th Ave. Suite 2000 Seattle, WA 98164

Jennifer Powers

**PETITION OF LEVEL 3 COMMUNICATIONS, LLC
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EXHIBIT A

Letter Regarding Interconnection Negotiations

**PETITION OF LEVEL 3 COMMUNICATIONS, LLC
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EXHIBIT B

Draft Interconnection Agreement