

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF:

LEVEL 3 COMMUNICATIONS LLC INC.'S
PETITION FOR ENFORCEMENT OF
INTERCONNECTION AGREEMENT WITH
QWEST CORPORATION

DOCKET NO. UT-053039

QWEST'S MOTION FOR
SUMMARY DETERMINATION

- 1 Qwest Corporation (“Qwest”), pursuant to WAC 480-07-380(2), hereby files its motion for summary determination in this matter. Qwest asks the Administrative Law Judge (“ALJ”) to enter an order granting summary determination in favor of Qwest and denying the relief requested by Level 3 Communications LLC, Inc. (“Level 3”).
- 2 Based on the information contained in the supporting memorandum accompanying this motion, Qwest asserts that there are no disputed issues of material fact with regard to compensation for VNXX traffic and that Qwest is entitled to judgment as a matter of law in accordance with the standard set forth in WAC 480-07-380(2), and CR 56.
- 3 It is undisputed that Level 3 customers do not send any traffic to the Qwest network – 100% of the traffic flows from Qwest’s end-users to Level 3’s customers. It is also undisputed that Level 3 customers are ISPs, and that Level 3 claims that 100% of the minutes are ISP-bound. However, Internet access is an information service, not a telecommunications service. Thus, Level 3 is not offering telecommunications services and is not delivering any traffic to Qwest whatsoever.

4 Under 47 C.F.R. 51.100(b) a carrier that has interconnected or gained access under section 251
(as Level 3 has) may offer information services through the same arrangement, so long as it is
offering telecommunications services through the same arrangement as well. There is no
evidence of record that Level 3 is offering telecommunications services through the
interconnection it has obtained from Qwest. Thus, it is not entitled to use those
interconnection arrangements for information services.

5 It is also undisputed that Level 3 offers its ISP customers VNXX numbers, and that those
VNXX numbers allow calls to be placed between separate local calling areas. Further, Level
3's ISP servers are not in the same local calling area as the dial up customers who are calling
to connect to the Internet. Under Washington law and FCC orders, VNXX is not local traffic
and, if permitted at all, must be exchanged on a bill and keep basis.

6 Qwest respectfully requests the Commission to enter an order on summary determination
consistent with this motion and the relief requested in the accompanying memorandum.

DATED this 15th day of August, 2005.

QWEST

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