

FORMAL COMPLAINT



ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

JEFF HATCH-MILLER
CHAIRMAN

2005 JUN 10 P 2:59

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COMMISSIONER

Arizona Corporation Commission
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MIKE GLEASON
COMMISSIONER

JUN 10 2005

KRISTIN K. MAYES
COMMISSIONER

DOCKETED BY *[Signature]*

LEVEL 3 COMMUNICATIONS, LLC)

Complainant,)

vs.)

QWEST CORPORATION)

Respondent.)

T-01051B-05-0415
Docket No. T-03654A-05-0415

LEVEL 3 COMMUNICATIONS, LLC's VERIFIED COMPLAINT TO ENFORCE ITS INTERCONNECTION AGREEMENT WITH QWEST CORPORATION

Level 3 Communications, LLC ("Level 3" or "Complainant"), through its undersigned counsel, and pursuant to A.R.S. §§ 40-202, 40-203, 40-246, 40-249, 40-322, 40-328, 40-329, 40-334, and ACC R14-3-106, petitions the Arizona Corporation Commission to enforce the rates, terms and conditions of Level 3's Interconnection Agreement with Qwest Corporation ("Qwest" or "Respondent") (collectively, the "Parties"), as amended ("Agreement"). This Complaint

stems from a dispute between Level 3 and Qwest over the application in Arizona of a recent decision by the Federal Communications Commission (“FCC”), the *Core Forbearance Order*.¹ The *Core Forbearance Order* substantially modified the intercarrier compensation regime for ISP-bound traffic established in the FCC’s *ISP Remand Order*.²

Level 3 has tried to resolve this dispute, and to amend the Agreement in accordance with the change in law provisions, through discussions with Qwest. However, Qwest has taken the position in Arizona that it will not pay amounts owed to Level 3 for intercarrier compensation for the transport and termination of calls to Internet Service Providers (“ISPs”) (“ISP-bound traffic”) as required by the parties’ interconnection agreement, the prior decisions of this Commission, the *ISP Remand Order* and the *Core Forbearance Order*.

Level 3 requests that the Commission enforce the FCC’s *Core Forbearance Order* with respect to the interconnection arrangement between Level 3 and Qwest, and order Qwest to pay the intercarrier compensation owed to Level 3 for ISP-bound traffic originated by Qwest customers and terminated by Level 3.

In support of its Complaint, Level 3 states:

I. PARTIES

1. Launched in 1997, Level 3 is an international communications and information services company headquartered in Broomfield, Colorado. Level 3 is a Delaware limited liability company and its address is 1025 Eldorado Boulevard, Broomfield, Colorado 80021. The company operates one of the largest, most advanced communications and Internet

¹ *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, Order, FCC 04-241, WC Docket No. 03-171 (rel. Oct. 18, 2004) (“*Core Forbearance Order*”).

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001), *remanded*, *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert. den.* 538 U.S. 1012 (2003) (“*ISP Remand Order*”).

backbones in the world. Level 3 is one of the largest providers of wholesale dial-up services to ISPs in North America and is the primary provider of Internet connectivity for millions of broadband subscribers through its cable and DSL partners. Level 3's customer base includes the:

- world's 10 largest telephone companies,
- 10 largest carriers in Europe
- four Regional Bell Operating Companies in the United States
- 10 largest Internet Service Providers which combined serve more than 60 million online users
- six largest cable companies in the United States
- international wireless companies which combined have more than 260 million subscribers, and
- satellite companies that deliver TV programming to almost 20 million subscribers in the United States.

2. Level 3 provides competitive local exchange telecommunications services in Arizona pursuant to this Commission's authorization in Decision No. 61737. Level 3 maintains IP-based switching and routing equipment at its Arizona gateway which is located at 811 South 16th Street in Phoenix.

3. Correspondence regarding this Petition should be sent to Level 3 at the following address:

Rick Thayer, Director Interconnection Law & Policy
Victoria Mandell, Regulatory Counsel
Gregg Strumberger, Regulatory Counsel
Level 3 Communications, L.L.C.
1025 Eldorado Boulevard
Broomfield, CO 80021

- and -

Thomas H Campbell
Michael Hallam
Lewis and Roca LLP
40 North Central Avenue
Phoenix, Arizona 85004
(602) 262-5723 (voice)
(602) 734-3841 (facsimile)

4. Qwest is a Delaware corporation with its principal place of business located in Denver, Colorado. Qwest is and, at all times relevant to this Complaint, has been an incumbent local exchange carrier certified to provide local exchange service and intrastate interexchange service in Arizona.

5. Correspondence regarding this Complaint should be sent to Qwest at:

Qwest Corporation
Director--Interconnect
1801 California Street, #2410
Denver, CO 80202

With copy to:

Qwest Legal Department
Attn: Corporate Counsel, Interconnection
1801 California Street, 38th Floor
Denver, CO 80202

II. JURISDICTION

6. The Commission has jurisdiction under A.R.S. §§ 40-202, 40-203, 40-246, 40-249, 40-322, 40-328, 40-329, 40-334, and AAC R14-2-106, to investigate the matters raised in this Complaint. In addition, the Commission has jurisdiction to interpret and to enforce the terms of the Agreement pursuant to Section 252(e) of the Communications Act of 1934, as amended.³ The United States Court of Appeals for the Eighth Circuit has affirmed that the Act

³ 47 U.S.C. § 252(e).

"vests in the state commissions the power to enforce the interconnection agreements they approve."⁴

III. STATEMENT OF LAW AND FACTS COMMON TO ALL COUNTS

7. Level 3 and Qwest began exchanging ISP-bound traffic in September 2000 pursuant to the Parties' original Interconnection Agreement.

8. On or about January 31, 2002, the Commission approved the Parties' current Interconnection Agreement after arbitration in Docket Nos. T-01051B-00-0882 and T-03654A-00-0882.

9. On or about February 13, 2003, the Commission approved, by operation of law, the Parties' Internet Service Provider ("ISP") Bound Traffic Amendment ("ISP Amendment").

10. The Agreement, as amended by the ISP Amendment, provides the below rate schedule that is reflected in the *ISP Remand Order*:

3.2.3. Rate Caps - Intercarrier compensation for ISP-bound traffic exchanged between Qwest and Level 3 will be billed as follows:

3.2.3.1 \$0.0015 per MOU for six (6) months from June 14, 2001 through December 13, 2001.

⁴ *Iowa Util. Bd. v. FCC*, 120 F.3d 753, 804 (8th Cir. 1997), *aff'd in part, rev'd in part on other grounds*, *AT&T Corp. v. Iowa Util. Bd.*, 525 U.S. 366. See also *Southwestern Bell Tel. Co. v. Pub. Util. Comm'n of Texas*, 208 F.3d 475, 479-80 (5th Cir. 2000) ("[T]he Act's grant to the state commissions of plenary authority to approve or disapprove these interconnection agreements necessarily carries with it the authority to interpret and enforce the provisions of agreements that state commissions have approved."); *MCI Tel. Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 338 (7th Cir. 2000) ("A state commission's authority to approve or reject interconnection agreements under the Act necessarily includes the authority to interpret and enforce, to the same extent, the terms of those agreements once they have been approved."); *Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 946 (8th Cir. 2000) ("The Act provides that an interconnection agreement, reached either by negotiation or arbitration, must be submitted to the state commissions for approval. This grant of power to the state commissions necessarily involves the power to enforce the interconnection agreement.").

3.2.3.2 \$0.001 per MOU for eighteen (18) months from December 14, 2001 through June 13, 2003.

3.2.3.3 \$0.0007 per MOU from June 14, 2003 until thirty six (36) months after the effective date of the FCC ISP Order or until further FCC action on intercarrier compensation, whichever is later. (ISP Amendment, ¶3.2.3)

The Agreement specifically provides that the rate of \$0.0007 per minute of use shall apply for the period from “June 14, 2003 until thirty six (36) months after the effective date of the FCC ISP Order or until further FCC action on intercarrier compensation, whichever is later.”

11. The Agreement also includes a provision that it will be modified to reflect changes in law, including any change in law relating to the *ISP Remand Order*. The ISP Amendment provides:

The provisions in this Agreement and this Amendment are based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the Existing Rules). To the extent that the Existing Rules are changed, vacated, dismissed, stayed or modified, then the Agreement and all Amendments and all contracts adopting all or part of the Agreement shall be amended to reflect such modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the modification or change of the Existing Rules, it shall be resolved in accordance with the Dispute Resolution provision of the Agreement.

12. Three key elements of the FCC’s compensation mechanism are applicable to the present dispute:

(a) Rate – The terminating compensation rate began at \$0.0015 per minute, and declined over time to \$0.001 per minute, and then declined to its current level of \$0.0007 per minute. Note, however, that what is in dispute between Level 3 and Qwest in the instant dispute is not the per-minute *rate* to apply to ISP-bound traffic; it is the issue of whether Qwest may properly exclude some or all ISP-bound *minutes* from compensation at all.

(b) “Growth Caps” – Prior to the *Core Forbearance Order*, the amount of ISP-bound traffic that was compensable under the interim regime was subject to limits on growth. For the year 2001, a LEC

originating ISP-bound traffic owed the LEC terminating that traffic intercarrier compensation for a maximum of four times the number of minutes terminated by that LEC in the first quarter of 2001, plus a ten percent growth factor. For the year 2002, a LEC was entitled to compensation on the number of minutes permitted for 2001, plus a ten percent growth factor. For the year 2003, a LEC was entitled to compensation on the number of minutes permitted for 2002. Traffic that exceeded the growth caps was not eligible for intercarrier compensation. Therefore, traffic in excess of the calculated limits was subject to a terminating compensation rate of zero. The growth caps were eliminated by the *Core Forbearance Order*.

(c) “New Markets Rule–” – Prior to the *Core Forbearance Order*, to be eligible for compensation for the termination of ISP-bound traffic, the LEC seeking compensation had to have exchanged ISP-bound traffic under an interconnection agreement with the LEC from whom it was seeking compensation prior to the adoption of the *ISP Remand Order* on April 18, 2001. This restriction was considered a “new market rule” because it effectively established an intercarrier compensation rate of zero in markets where the LEC began service after April 18, 2001.⁵ The new markets rule was eliminated by the *Core Forbearance Order*.

13. The FCC’s *Core Forbearance Order* lifted the “Growth Caps” and “New Markets Rule” as of October 8, 2004.

14. With regard to both restrictions, the FCC determined that the public interest was no longer served by limiting compensation paid for terminating such traffic.⁶ For example, the FCC determined that the new market restrictions created different rates for similar or identical functions. This is because two carriers serving ISPs in the same market would be subject to different compensation rates based solely upon when they entered the market. The FCC further determined that public policy favoring a unified intercarrier compensation regime applicable to all traffic outweighed concerns about compensation paid to carriers serving ISPs.⁷ Finally,

⁵ See *ISP Remand Order* at ¶ 81 (new market restrictions apply as of the adoption date of the order, *i.e.*, after the date of public within the Federal Register.)

⁶ See *Core Forbearance Order*, ¶ 21

⁷ See *id.*, ¶ 24.

because the FCC's rationale for forbearing from enforcement of the growth caps and new market restrictions applied with equal force to other telecommunications carriers, the FCC specifically extended the grant of forbearance of the *ISP Remand Order's* new markets and growth cap restrictions beyond the petitioner in that case to all telecommunications carriers.⁸

15. Accordingly, as of the October 8, 2004 effective date of the *Core Forbearance Order*, Level 3 is entitled to receive compensation for terminating all Qwest originated ISP-bound traffic in Arizona at the current FCC mandated rate of \$0.0007 per minute of use.

16. Following that express modification of governing federal law, Level 3 began to invoice Qwest for intercarrier compensation for all ISP-bound traffic allowed under the *Core Forbearance Order* in Arizona. Qwest, however, has taken the position that it will only pay for a portion of the calls originated by Qwest's customers and terminated to Level 3's ISP customers - in effect refusing to comply with the *Core Forbearance Order*.

17. Following the *Core Forbearance Order*, Level 3 sought to update the Parties' Agreement to remove the growth caps and new market restrictions. (See December 13, 2004 letter from Rogier Ducloo, Director of Interconnection Services, to Qwest, *Exhibit A*.)

18. On January 27, 2005, Steve Hansen, Vice President-Carrier Relations for Qwest, confirmed in writing to Level 3 that the Parties' Agreement needed to be amended to reflect the *Core Forbearance Order*. (See January 27, 2005 letter from Steve Hansen to Level 3, *Exhibit B*.)

⁸ See *id.*, ¶ 27.

19. On March 31, 2005, Level 3 delivered to Qwest an amendment to the Parties' Agreement that would implement the *Core Forbearance Order*. (A copy of the March 31, 2005 letter from Andrea Gavalas, Vice President of Interconnection Services to Dan Hult of Qwest, is attached hereto as *Exhibit C*.)

20. Throughout the periods referenced, the Parties continued negotiations toward a new interconnection agreement, which negotiations included discussions related to updating existing and successor agreements to reflect recent changes in law, including the *Core Forbearance Order*.

21. Qwest has repeatedly refused to amend the current Agreement to reflect the *Core Forbearance Order* unless Level 3 concedes to Qwest's interpretation of the *Core Forbearance Order*. Specifically, Qwest will agree to a *Core Forbearance Amendment* only if Level 3 will waive its right to ISP-bound compensation in those circumstances where Level 3's ISP customers are not physically located within the local calling area of the originating callers.

22. Neither the FCC's *ISP Remand Order* nor the *Core Forbearance Order* distinguish "local" ISP-bound traffic from "non-local" ISP-bound traffic for purposes of determining the appropriate rate of compensation to be paid by Qwest to Level 3. The *ISP Remand Order* makes clear that the federal compensation regime of \$0.0007 applies to *all* ISP-bound traffic: "We conclude that this definition of 'information access'" — the statutory category into which the FCC placed ISP-bound calling — "was meant to include *all access*

traffic that was routed by a LEC ‘to or from’ providers of information services, of which ISPs are a subset.”⁹

23. Moreover, this Commission has already rejected Qwest’s “physical location” argument. In its 2001 Opinion and Order regarding the arbitration of the Parties’ Agreement, the Commission found that calls bound to ISPs are to be treated as local calls for purposes of compensation. Decision No. 63550, at 7-8

IV. SUMMARY OF DISPUTED ISSUES

24. Level 3 brings the present action against Qwest for breach of the terms and conditions of the Parties’ Agreement and for Qwest’s violation of Arizona law. The Complaint consists of two counts.

25. Level 3 brings **Count I** for Qwest’s willful and knowing breach of the Agreement in failing to recognize that the Agreement has been modified by the *Core Forbearance Order*, which allows Level 3 to receive compensation for all ISP-bound traffic originated by Qwest in Arizona. Level 3 has received insufficient payment from Qwest for Level 3’s transport and termination of Qwest-originated ISP-bound traffic from October 8, 2004 to the present (the “Disputed Period”).¹⁰

26. The unpaid charges for Level 3’s transport and termination of Qwest-originated ISP-bound traffic during the Disputed Period exceeds \$904,672.20, as of April 30 2005, exclusive of applicable late payment charges. A spreadsheet with invoice numbers and

⁹ *ISP Remand Order* at ¶ 44 (emphasis added).

¹⁰ Given the ongoing nature of this dispute, Level 3 continues to invoice Qwest for Level 3’s the transport and termination of Qwest-originated ISP-bound Traffic and therefore the “Disputed Period” is continuing.

amounts submitted by Level 3 to Qwest are attached hereto as *Exhibit D*. Accordingly, Level 3 seeks the Commission to compel Qwest to pay all monies due Level 3, including late payment charges.

27. Level 3 brings **Count II** of the Complaint for Qwest's breach of the Agreement as it relates to Qwest's obligation to engage in good faith negotiations to amend the Agreement. Specifically, Level 3 contends that Qwest failed to negotiate in good faith an amendment reflecting the FCC's *Core Forbearance Order* to forbear from applying its "growth cap" and "new markets rule" related to compensation for ISP-bound traffic.

28. To date, more than six months after Level 3 served notice upon Qwest to implement the terms of the *Core Forbearance Order*, Level 3 has been unable to reach an amendment with Qwest reflecting the *Core Forbearance Order*, despite (a) Level 3's numerous attempts at good faith negotiations, and (b) the fact that the changes made necessary by the *Core Forbearance Order* are simple to understand.

29. As relief for **Counts I and II**, Level 3 asks the Commission: (i) to order Qwest to accept Level 3's proposed *Core Forbearance Order* amendment; and (ii) order the Parties to true-up all billing related to their exchange of ISP-bound traffic back to October 8, 2004, the effective date of the *Core Forbearance Order*, including late payment charges. Level 3's proposed *Core Forbearance Order* amendment is attached hereto as *Exhibit E*.

COUNT I

QWEST BREACHED ITS OBLIGATION TO COMPENSATE LEVEL 3 FOR LEVEL 3'S TRANSPORT AND TERMINATION OF QWEST-ORIGINATED ISP-BOUND TRAFFIC

30. Level 3 incorporates into this Count, by reference thereto, paragraphs 1 through 29 of this Complaint.

31. During the Disputed Period, Level 3 terminated millions of minutes of Qwest-originated ISP-bound Traffic, for which Level 3 received no payment from Qwest. As reflected in *Exhibit D*, the unpaid charges for transport and termination of Qwest-originated ISP-bound traffic during the Disputed Period exceeds \$904,672.20, as of April 30 2005, exclusive of applicable late payment charges.

32. Qwest's failure to pay Level 3 for all Level 3's transport and termination of Qwest-originated ISP-bound Traffic as required by the *Core Forbearance Order* is a material breach of the Interconnection Agreement.

33. Qwest's failure to pay Level 3 for Level 3's transport and termination of Qwest-originated ISP-bound Traffic is a violation of Arizona law and Commission and FCC rules and orders.

34. The Parties' ISP Amendment states, *without qualification*, that "[t]he Parties agree to exchange *all*...ISP-bound traffic (as that term is used in the FCC ISP Order) at the FCC ordered rate, pursuant to the FCC ISP Order." (Emphasis added).

35. The Parties' ISP Amendment further provides that "[t]he Parties shall exchange ISP-bound traffic pursuant to the compensation mechanism set forth in the FCC ISP Order."

36. Based on the foregoing terms of the Agreement, Qwest had a duty to pay Level 3 for transporting and terminating Qwest-originated ISP-bound traffic allowable under the *Core Forbearance Order*. Qwest's conduct is clearly in breach of the Agreement and has harmed Level 3. Level 3 is entitled to damages equal to the past due amounts for reciprocal compensation, plus late payment charges.

COUNT II

QWEST HAS FAILED TO NEGOTIATE AN AMENDMENT REFLECTING THE FCC'S CORE FORBEARANCE ORDER

37. Level 3 incorporates into this Count, by reference thereto, paragraphs 1 through 36 of this Complaint.

38. Pursuant to the Parties' ISP Amendment, Qwest is obliged to negotiate an amendment in good faith upon a Change of Law.

39. To date, Qwest has refused to enter into an amendment that reflects only the terms of the FCC's *Core Forbearance Order*, in which the FCC eliminated growth caps and new market restrictions from its unified national compensation framework for ISP-bound traffic.

40. As a result of Qwest's refusal to implement the FCC's Order, Level 3 has not been compensated by Qwest for intercarrier compensation relating to ISP-bound Traffic minutes of use above the growth cap.

41. Level 3's proposed contract terms are consistent with the FCC's Core Forbearance Order, which addressed Core's petition requesting the FCC refrain from enforcing the provisions of the ISP Remand Order.

42. Accordingly, Level 3 asks that the Commission approve Level 3's proposed amendment and order that it be incorporated into the Interconnection Agreement. *Exhibit E*. Additionally, Level 3 requests that the Commission order the Parties to true-up all billing for ISP-bound traffic back to October 8, 2004, the effective date of the *Core Forbearance Order*.

PRAYER FOR RELIEF

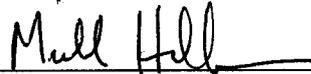
WHEREFORE, Level 3 respectfully requests that the Commission issue an Order:

- (1) Declaring that the Agreement, as interpreted by applicable law, requires Qwest to compensate Level 3 for all of Level 3's transport of Qwest-originated ISP-bound traffic to Level 3's network for termination;
- (2) Compelling Qwest to pay all past due reciprocal compensation charges for Level 3's transport and termination of Qwest-originated ISP-bound traffic;
- (3) Requiring Qwest to pay late payment charges on all past due amounts, in accordance with the Agreement, related to Level 3's transport and termination of Qwest-originated ISP-bound traffic;
- (4) Approving the language in Level 3's proposed *Core Forbearance Order* Amendment and compelling Qwest to execute the same;
- (5) Requiring the Parties to true-up all billing related to their exchange of ISP-bound traffic back to October 8, 2004, the effective date of the *Core Forbearance Order*;
and

- (6) Awarding such other relief, including, but not limited to, any appropriate fines or penalties, as the Commission deems just and reasonable.

RESPECTFULLY SUBMITTED this 10TH day of June, 2005

LEWIS AND ROCA LLP



Thomas H. Campbell
Michael T. Hallam
40 N. Central Avenue
Phoenix, Arizona 85004

Attorneys for Level 3 Communications

ORIGINAL and fourteen (14)
copies of the foregoing filed this
10th day of June, 2005, with:

The Arizona Corporation Commission
Utilities Division – Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 10th day of June, 2005 to:

Lyn Farmer, Chief Hearing Officer
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Christopher Kempley, Chief Legal Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007



EXHIBIT A

December 13, 2004

Qwest Corporation
Director – Interconnect
1801 California St., # 2410
Denver, CO 80202

Dear Director of Interconnection:

On October 18, 2004 the Federal Communications Commission (FCC) released its Order in the matter of the Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the *ISP Remand Order*, 2004, in Docket No. 03-171, such order being effective on October 8, 2004 (the "Order").

In its Order the FCC found, among other things, that application of the growth caps and new markets rules in respect to compensation for ISP Bound Traffic as outlined in the *ISP Remand Order* was no longer necessary, therefore that forbearance was warranted in this regard.

Pursuant to Section 2.2. of the Interconnection Agreement by and between Qwest Corporation and Level 3 Communications dated March 3, 2003, Level 3 is seeking an amendment to reflect the above referenced change in law (the "Amendment"). Accordingly, Level 3 would like to commence the negotiations to effect said Amendment. Please inform us as to who will be your representative for the negotiation of this Amendment.

Insofar as the Order was effective on October 8, 2004, Level 3 will immediately commence billing Qwest for that ISP Bound traffic in the state of Minnesota for which the growth caps and new market restrictions have been lifted by virtue of the Order. With the heightened concern in the telecommunications industry for proper accounting practices, we wanted to bring this to your attention as soon as possible. We currently estimate the increase in monies owed Level 3 to be approximately \$1.5 million on an annualized basis.

We look forward to completing the Amendment process as expeditiously as possible. Should you have any questions, please feel free to contact me.

Sincerely,

Rogier Ducloo
Director - Interconnection Services
Level 3 Communications, LLC
Phone: 720-888-1114
Email: roger.ducloo@level3.com

Cc: Qwest Law Department

EXHIBIT B



January 27, 2005

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FEB 8 2005

LEVEL 3 COMMUNICATIONS

General Counsel
Level 3 Communications
1025 Eldorado Blvd.
Broomfield, CO 80021
USA

To: General Counsel

Announcement Date:	January 27, 2005
Effective Date:	Immediately
Document Number:	PROD.01.25.05.A.001303.LIS_LOCAL
Notification Category:	Product Notification
Target Audience:	CLEC
Subject:	VNXX on LIS Trunks

Local Interconnection Service (LIS) trunks are to be used only for the mutual exchange of Exchange Service (Local), Exchange Access, and Jointly Provided Switched Access Services. Calls that originate in one local calling area and terminate to an end user located in another local calling area are not Exchange Service calls, regardless of the NPA-NXX used for those calls, and should properly be treated as long distance calls. Therefore, these types of calls should be rated using Qwest's Switched Access tariffs with appropriate provisioning of interexchange transport.

Qwest has become aware that Level 3 Communications is utilizing LIS trunking for the termination of inappropriate long distance traffic. This inappropriate use of LIS trunking is achieved by obtaining local NPA-NXXs and filing the NPA-NXXs in the Local Exchange Routing Guide (LERG), to give the appearance of a local dialing pattern for these intraLATA or interLATA toll calls. The industry now refers to this type of toll traffic as Virtual NXX (or "VNXX") traffic. **No interconnection agreement between Qwest and any party permits or requires the exchange of VNXX traffic, and LIS trunking should not be utilized for the exchange of VNXX traffic. This restriction includes Single Point of Presence (SPOP) LIS trunking arrangements.**

Please see the attached VNXX service example.

It is Level 3 Communications's responsibility to ensure that VNXX traffic is not exchanged via LIS trunking arrangements. To resolve any potential misuse of LIS trunking arrangements, Level 3 Communications can take the following step:

- You can modify your assignment of telephone numbers to your end-user customers to ensure that they are only receiving a phone number with an NXX assigned to the rate center where they are physically located. This would modify the dialing patterns (to 1+) for your current VNXX traffic and either migrate the traffic from LIS to tariffed Switched Access Feature Group D trunks for interLATA traffic or appropriately use the LIS trunking if the traffic is Exchange Access traffic.

By this letter, Qwest is initiating a dispute with Level 3 Communications pursuant to the dispute resolution provisions of Level 3 Communications's interconnection agreement with Qwest. Qwest requires that Level 3 Communications cease its use of VNXX architecture such that Qwest is forced to send VNXX traffic to Level 3 Communications. In addition, Qwest will be taking the following steps:

1. Cessation of payment of reciprocal compensation for VNXX traffic. Should Level 3 Communications dispute Qwest's findings with respect to the determination of VNXX traffic versus Exchange Service, Exchange Access or Jointly Provided Switched Access traffic, Qwest will, in good faith, work with Level 3 Communications to resolve that dispute;
2. Continuation of the Dispute Resolution process in Level 3 Communications's interconnection agreement with Qwest, including but not limited to filing complaints regarding this dispute with the appropriate state regulatory agency; and
3. Any other appropriate actions that Qwest may deem necessary to cease the exchange of VNXX traffic with Level 3 Communications and appropriately compensate Qwest for use of its facilities. Qwest does not waive and specifically reserves any claims, rights and actions it may have against Level 3 Communications regarding the exchange of VNXX traffic, including but not limited to seeking compensation for Level 3 Communications's use of Qwest facilities in exchanging this interexchange VNXX traffic.

Therefore, as discussed above, this letter serves to open the applicable dispute timeframes in Level 3 Communications's interconnection agreement with Qwest. Qwest must receive written confirmation no later than February 15, 2005, that Level 3 Communications has either ceased forcing Qwest to exchange VNXX traffic with Level 3 Communications or a specific date upon which Level 3 Communications will cease doing so. If Level 3 Communications fails to provide this written notice by February 15, 2005, to Dan Hult, Director, Carrier Relations, at dan.hult@qwest.com or at 1314 Douglas Street, Omaha, NE 68102, Qwest will continue to pursue all of the actions discussed above, including but not limited to filing of complaints with the appropriate regulatory agencies. It is necessary that Level 3 Communications and Qwest begin working immediately on a cooperative solution that follows the requirements of the interconnection agreement between Level 3 Communications and Qwest. Please work with Dan Hult as Qwest's initial contact for this dispute, who can be reached at dan.hult@qwest.com. Thank you in advance for your cooperation on this issue.

Best regards,

Steven Hansen
Vice President – Carrier Relations
Wholesale Markets
Qwest Services Corporation

cc: , Liz Stamp
Renee Virlee

Note: In cases of conflict between the changes implemented through this notification and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement.

The Qwest Wholesale Web Site provides a comprehensive catalog of detailed information on Qwest products and services including specific descriptions on doing business with Qwest. All information provided on the site describes current activities and process.

Prior to any modifications to existing activities or processes described on the web site, wholesale customers will receive written notification announcing the upcoming change.

If you would like to unsubscribe to mailouts please go to the "Subscribe/Unsubscribe" web site and follow the unsubscribe instructions. The site is located at:

<http://www.qwest.com/wholesale/notices/cnla/maillist.html>

VNXX SERVICE EXAMPLE

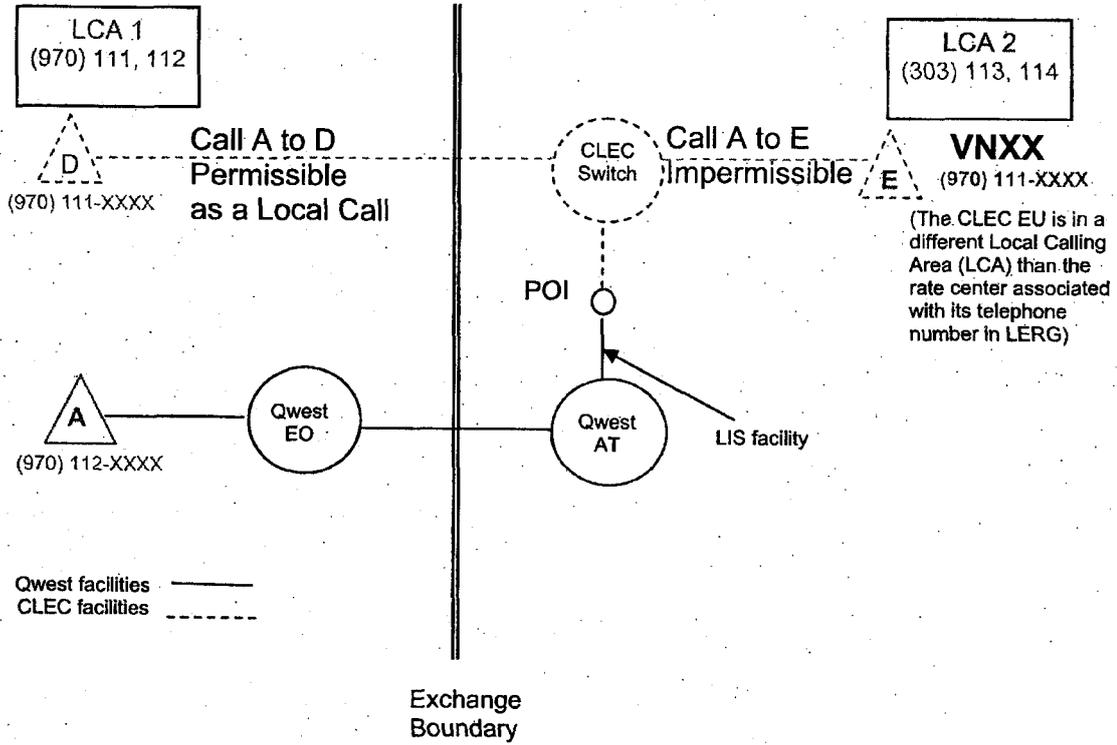


EXHIBIT C



March 31, 2005

VIA FACSIMILE & OVERNIGHT DELIVERY

Mr. Dan Hult
Director, Carrier Relations
Qwest Wholesale Markets
1314 Douglas on the Mall
Room 1330
Omaha, NE 68102

Re: Request to Amend Agreements Pursuant to Core Order

Dear Mr. Hult:

On or about December 13, 2004 Level 3 Communications, LLC ("Level 3") notified Qwest Corporation ("Qwest") that the parties should revise their interconnection agreements in Arizona, Idaho, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming to reflect the fact that effective October 8, 2004, the Federal Communications Commission ("FCC") lifted caps and new markets exclusions restrictions on intercarrier compensation for ISP-bound traffic.¹

Level 3 notes that on January 27, 2005 Qwest notified Level 3 that it was triggering dispute resolution on this and related matters, including that Qwest would longer pay reciprocal compensation on certain classes of ISP-bound traffic. Since that time Qwest has further notified Level 3 of Qwest's withholding compensation in all states where the companies exchange traffic.

¹ *Petition of Core Communications, Inc. For Forbearance Under 47 U.S.C. § 160(C) From Application of The ISP Remand Order, 19 FCC Rcd. 20,179, 20,189 (2004) ("IT IS FURTHER ORDERED, pursuant to section 10 of the Communications Act of 1934, 47 U.S.C. 160, and section 1.103(a), that the Commission's forbearance decision SHALL BE EFFECTIVE on October 8, 2004." (emphasis in original)).*

Pursuant to Section 11 of Part A of the interconnection agreements² between Level 3 and Qwest and Section 5 of the ISP-Bound Traffic Amendment³ in each of the states named above, Level 3 demands that Qwest update all contracts according to the relevant change in law provisions. Accordingly, and for avoidance of any doubt, Level 3 reasserts its prior notifications on change of law and further provides an amendment specific to the FCC's Core Communications Order. A copy of that proposed amendment is attached.

Level 3 reiterates that Qwest's unilateral refusal to pay compensation for ISP Bound traffic constitutes a material and substantial breach of the agreements between Qwest and Level 3, and a violation of federal law.

We look forward to completing the amendment process as expeditiously as possible. Should you have any questions, please feel free to contact me.

Sincerely,



Andrea L. Gavalas
Vice President, Interconnection Services
Level 3 Communications, LLC

cc: Larry Christensen, Director, Interconnection Agreements, Qwest Corporation
Erik Cecil, Regulatory Counsel, Level 3 Communications, LLC

² See, e.g., *In the matter of the Joint Application for Approval of an Adoption of Agreement for Local Wireline Interconnection between Level 3 Communications, LLC and Qwest Corporation*, Docket No. P57733,421/IC-01-321 (March 6, 2001) (the "Agreement") (Part A Section 11 provides in part that "The parties agree to seek expedited resolution by the Commission, and shall request that resolution occur in no event later than sixty days (60) from the date of the submission of such dispute. If the Commission appoints an expert(s) or other facilitator(s) to assist in decision making, each Party shall pay half of the fees and expenses so incurred.").

³ See, e.g., *In the matter of the Joint Application for Approval of the Agreement to Amend an Interconnection Agreement between Qwest Corporation and Level 3 Communications, LLC*, Docket No. P57733,421/IC-02-1972 (November 22, 2001) ("*ISP-Bound Traffic Amendment*") (Section 5 provides in part that "The provisions in the Agreement and this Amendment are based, in large part, on the existing state-of law and interpretations thereof, as of the date hereof (the Existing Rules). To the extent that the Existing Rules are changed, vacated, dismissed, stayed or modified, then the Agreement and all Amendments and all contracts adopting all or party of the Agreement shall be amended to reflect such modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the modification or change of the Existing Rules, it shall be resolved in accordance with the Dispute Resolution provision of the Agreement.").

**First Amendment to the Interconnection Agreement
Between Qwest Corporation and
Level 3 Communications, LLC. for the State of _____**

This amendment ("Amendment") amends the Interconnection Agreement for the State of Minnesota between Qwest Corporation ("Qwest") and Level 3 Communications, LLC ("Level 3"). Qwest and Level 3 may be referred to individually as "Party", or collectively as the "Parties".

Recitals

WHEREAS, Qwest and Level 3 entered into interconnection agreements pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended ("the Act") which was approved by the Minnesota Public Utilities Commission ("Commission") on or about April 20, 2001, as referenced in Docket No. P-5733,421/IC-01-321 (hereinafter the "Agreement"); and

WHEREAS, the Federal Communications Commission ("FCC") issued an Order, in WC Docket No. 03-171 effective October 18, 2004 (*Core Order*)¹; and

WHEREAS, the Parties wish to amend the Agreement to reflect the aforementioned order under the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, for and in consideration of the promises and covenants contained in this Amendment, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the language as follows in lieu of existing contract language:

1. Definitions

For purposes of this Amendment, the following definitions apply:

- 1.1. New Markets Rule – In the 2001 ISP Remand Order the FCC concluded that different interim intercarrier compensation rules should apply if two carriers were not exchanging traffic pursuant to an interconnection agreement prior to the adoption of the FCC's ISP Remand Order.² This rule applied, for example, when a new carrier entered a market or an existing carrier expanded into a market it

¹ *Petition of Core Communications, Inc. For Forbearance Under 47 U.S.C. § 160(C) From Application of The ISP Remand Order*, 19 FCC Rcd. 20,179, 20,189 (2004).

² *In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996, Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, 2001 WL 455869 (F.C.C.), 16 FCC Rcd. 9151 (2001).

previously had not served. In the Core Order, effective October 8, 2004, the FCC has removed this restriction.

- 1.2. Growth Caps - In the ISP Remand Order, the FCC also imposed a cap on total ISP-bound minutes for which a LEC could receive compensation equal to the total ISP-bound minutes for which the LEC was previously entitled to compensation, plus a 10 percent growth factor.

2.0 ISP-Bound Traffic

- 2.1 The Parties shall exchange ISP-bound traffic pursuant to the compensation mechanism set forth in the FCC *Core Order*.
- 2.2 Compensation for ISP-bound traffic will be at the rate of \$0.0007 per minute of without limitation as to the number of MOU ("minutes of use") or whether the MOU are generated in "new markets" as that term has been defined by the FCC.
- 2.3 Notwithstanding any other term or provision of the Agreement, and for the removal of any doubt, it is the Parties intention to eliminate minute of use growth caps and new market restrictions, as applicable, for intercarrier compensation between the Parties for Information Access Traffic.

3.0 Effective Date

3. This Amendment shall be deemed effective upon approval by the Commission; however Qwest will adopt the rate-affecting provisions for ISP-bound traffic as of October 8, 2004, the effective date of the Order.

This Amendment constitutes the full and entire understanding and agreement between the Parties with regard to the subject of this Amendment and supersedes any prior understandings, agreements, amendments or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject of this Amendment. The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Level 3 Communications, LLC

Signature: _____
Date: _____
Title: _____

Qwest Corporation

Signature: _____

Date: _____

Title: _____

EXHIBIT D

Level 3 Communications, LLC
Exhibit D

Arizona	Invoice Number	Local	Local Payment
December	37008	389,541.25	-
January	37128	415,689.80	277,914.97
February	37248	323,718.37	243,527.67
March	37369	392,445.76	277,593.03
April	37529	439,176.77	256,864.08
Totals		1,960,571.95	1,055,899.75

EXHIBIT E

First Amendment to the Interconnection Agreement
Between Qwest Corporation and
Level 3 Communications, LLC. for the State of _____

This amendment ("Amendment") amends the Interconnection Agreement for the State of Minnesota between Qwest Corporation ("Qwest") and Level 3 Communications, LLC ("Level 3"). Qwest and Level 3 may be referred to individually as "Party", or collectively as the "Parties".

Recitals

WHEREAS, Qwest and Level 3 entered into interconnection agreements pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended ("the Act") which was approved by the Minnesota Public Utilities Commission ("Commission") on or about April 20, 2001, as referenced in Docket No. P-5733,421/IC-01-321 (hereinafter the "Agreement"); and

WHEREAS, the Federal Communications Commission ("FCC") issued an Order, in WC Docket No. 03-171 effective October 18, 2004 (*Core Order*)¹; and

WHEREAS, the Parties wish to amend the Agreement to reflect the aforementioned order under the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, for and in consideration of the promises and covenants contained in this Amendment, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the language as follows in lieu of existing contract language:

1. Definitions

For purposes of this Amendment, the following definitions apply:

- 1.1. New Markets Rule – In the 2001 ISP Remand Order the FCC concluded that different interim intercarrier compensation rules should apply if two carriers were not exchanging traffic pursuant to an interconnection agreement prior to the adoption of the FCC's ISP Remand Order.² This rule applied, for example, when a new carrier entered a market or an existing carrier expanded into a market it

¹ *Petition of Core Communications, Inc. For Forbearance Under 47 U.S.C. § 160(C) From Application of The ISP Remand Order*, 19 FCC Rcd. 20,179, 20,189 (2004).

² *In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 2001 WL 455869 (F.C.C.), 16 FCC Rcd. 9151 (2001).

previously had not served. In the Core Order, effective October 8, 2004, the FCC has removed this restriction.

- 1.2. Growth Caps - In the ISP Remand Order, the FCC also imposed a cap on total ISP-bound minutes for which a LEC could receive compensation equal to the total ISP-bound minutes for which the LEC was previously entitled to compensation, plus a 10 percent growth factor.

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- 2.2 Compensation for ISP-bound traffic will be at the rate of \$0.0007 per minute of without limitation as to the number of MOU ("minutes of use") or whether the MOU are generated in "new markets" as that term has been defined by the FCC.
- 2.3 Notwithstanding any other term or provision of the Agreement, and for the removal of any doubt, it is the Parties intention to eliminate minute of use growth caps and new market restrictions, as applicable, for intercarrier compensation between the Parties for Information Access Traffic.

3.0 Effective Date

3. This Amendment shall be deemed effective upon approval by the Commission; however Qwest will adopt the rate-affecting provisions for ISP-bound traffic as of October 8, 2004, the effective date of the Order.

This Amendment constitutes the full and entire understanding and agreement between the Parties with regard to the subject of this Amendment and supersedes any prior understandings, agreements, amendments or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject of this Amendment. The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Level 3 Communications, LLC

Signature: _____

Date: _____

Title: _____

Qwest Corporation

Signature: _____

Date: _____

Title: _____