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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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AZ CORP COMMISSION
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LEVEL 3 COMMUNICATIONS, LLC

Complainant,

vs.

QWEST CORPORATION,

Respondent

) DOCKET NO. T-03654A-05-0415

) DOCKET NO. T-01051B-05-0415

) **RESPONSE TO QWEST'S NOTICE
OF FILING FIFTH
SUPPLEMENTAL AUTHORITY**

Level 3 Communication, LLC (Level 3) hereby responds to Qwest's Notice of Filing Fifth Supplemental Authority (filed April 12, 2006). In that filing, Qwest filed as additional authority the FCC's amicus brief in a proceeding before the First Circuit Court of Appeals.¹ The First Circuit Court of Appeals case addressed the same question this Commission is considering in this docket: whether ISP-bound traffic excludes VNXX ISP-bound traffic.

In the FCC's brief, the FCC itself, through its General Counsel's office, expressly states that the *ISP Remand Order* "can be read to support the interpretation set forth by either party in this dispute." FCC Amicus Brief at 13. In other words, this Commission is free to conclude that, in Arizona ISP-bound traffic does not exclude VNXX routed ISP-bound traffic.

¹ Brief for Amicus Curiae Federal Communications Commission, *Global NAPs, Inc. v. Verizon New England, Inc.*, No. 05-2657 (1st Cir. filed March 13, 2006) ("FCC Amicus Brief").

1 Indeed, the FCC observed:

- 2 • “In some respects, the *ISP Remand Order* appears to address all calls placed to
3 ISPs. The Commission’s ruling that calls to ISPs are interstate calls because they
4 may terminate at web sites beyond state boundaries necessarily applies to all ISP-
5 bound calls. The Commission’s theory that ISP-bound calls are ‘information
6 access’ calls within the meaning of § 251(g) that are thus exempted from the
7 requirements of § 251(b) likewise applies to all ISP-bound calls. The *ISP Remand*
8 *Order* is also replete with references to ‘ISP-bound calls’ that do not differentiate
9 between calls placed to ISPs in the same local calling area and those placed to ISPs
10 in non-local areas.” FCC Brief at 11.
- 11 • “[T]he *ISP Remand Order* deemed *all* ISP-bound calls to be interstate calls subject
12 to the jurisdiction of the FCC, and the language of the *ISP Remand Order* is
13 sufficiently broad to encompass all such calls within the payment regime
14 established by that Order.” FCC Brief at 10 (emphasis in original).

15 Accordingly, it is plainly permissible for a state to *include* VNXX routed ISP-bound calls
16 within the FCC’s compensation regime. Doing so would be a practical, pro-technology approach
17 that would create clarity for the carriers in this dispute about the intercarrier compensation
18 applicable to this traffic. Thus, as far as the FCC is concerned, this Commission is free to follow
19 the lead of the Washington regulators (and others) and harmonize the treatment of all such traffic
20 under a single, unified compensation regime. It is not obligated to create different treatment
21 regimes for different categories ISP-bound traffic as Qwest is proposing. Level 3 urges this
22 commission to determine that intercarrier compensation for ISP-bound traffic is not limited only to
23 that traffic where an ISP has located an ISP server in the same local calling area as its customers.

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1 RESPECTFULLY SUBMITTED this 17th day of April 2006.

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