

ORIGINAL



0000057554

RECEIVED

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
MARC SPITZER
Commissioner
WILLIAM MUNDELL
Commissioner
MIKE GLEASON
Commissioner
KRISTIN MAYES
Commissioner

2006 JUL 31 P 3: 34
AZ CORP COMMISSION
DOCUMENT CONTROL

**IN THE MATTER OF LEVEL 3
COMMUNICATIONS, LLC'S PETITION FOR
ARBITRATION PURSUANT TO SECTION
252(b) OF THE COMMUNICATIONS ACT OF
1934, AS AMENDED BY THE
TELECOMMUNICATIONS ACT OF 1996,
AND THE APPLICABLE STATE LAWS FOR
RATES, TERMS, CONDITIONS OF
INTERCONNECTION WITH QWEST
CORPORATION**

DOCKET NO. T-03654A-05-0350
T-01051B-05-0350

**QWEST CORPORATION'S REPLY TO LEVEL 3'S
APPLICATION FOR REHEARING**

Qwest Corporation ("Qwest") hereby files it's Reply to Level 3's Application for Rehearing ("Rehearing Application") filed with the Arizona Corporation Commission ("Commission") on July 19, 2006. The Rehearing Application seeks rehearing and modifications of portions of the Order No. 68817 ("Commission Order").

For the reasons set forth hereafter, Level 3's specific requests for relief in its Rehearing Application should be rejected.

1 the Commission to change its order on these issues, these requests should be denied. Finally,
2 Level 3's argument regarding the mirroring rule is based on a false interpretation of the rule and
3 ignores Qwest's requests that Level 3 make its election under the mirroring rule.

4 5 ARGUMENT

6 **I. Level 3's Request (Section I of the Rehearing Application) that the Commission** 7 **Allow Level 3 to Place Switched Access Traffic on LIS Trunks Should be Rejected;** 8 **The Order Properly Allows Level 3 To Combine All Traffic Types on FGD** 9 **Interconnection Trunks and Does not Require Level 3 to Build Two Networks**

10 At issue during the arbitration was whether Level 3 should be allowed to deliver all
11 traffic types to Qwest over the same interconnection trunks. Qwest's language, which the
12 Commission Order adopts, very clearly allows Level 3 to combine all traffic types over FGD
13 trunks. FGD trunks have the capability to properly record switched access traffic so that Qwest
14 and carriers who depend on records from Qwest can bill Level 3 switched access for Level 3's
15 long distance traffic. This FGD capability is absolutely necessary because, as Level 3 concedes
16 in its Rehearing Application, Level 3 intends to send a large volume of interexchange traffic to
17 Qwest and other carriers. Level 3 recently acquired WilTel, a major interexchange carrier
18 ("IXC").

19 Level 3 seeks to send long distance traffic to Qwest over Local Interconnection Service
20 ("LIS") trunks that do not have the capability to generate records to be used in billing switched
21 access for long distance traffic. If Level 3 is allowed to do this, competitive local exchange
22 carriers ("CLECs") and Independent Telephone Companies that depend upon Qwest for billing
23 records will not receive the records they need to bill Level 3 switched access on long distance
24 traffic. (Exhibit Q3, at 31, line 9 to 32, line 4). Furthermore, Qwest demonstrated at hearing that
25 Qwest would need to expend significant resources to change its billing systems to accommodate
26 Level 3. (*Id.* at 31, lines 4-7). Carriers who depend upon Qwest for records would also have to
spend substantial amounts to upgrade their billing systems, solely for Level 3's benefit. (*Id.* at

1 32, lines 6-13).

2 Today, all other carriers either deliver their interexchange traffic over separate FGD
3 trunks or send all of their traffic (local and interexchange) combined on FGD trunks. (*Id.* at 33,
4 lines 5-10). No carrier is permitted to combine interexchange traffic with local traffic on LIS
5 trunks in Qwest's fourteen state region. Thus, Level 3 is seeking special treatment.

6 In its Rehearing Application, Level 3 makes the erroneous and misleading assertion that
7 "all other ILECs are able to receive 'local' and FGD traffic on local interconnection trunks, and
8 to sort out the proper billing of the different types of traffic by the means of traffic factors."
9 (Rehearing Application at 3). However, the undisputed evidence in the record was that Level 3's
10 factors proposal would not allow Qwest to prepare records required by CLECs and Independents
11 without substantial and costly upgrades to the billing systems used by Qwest and the CLECs and
12 Independents. Level 3's assertion is also misleading because in the agreements Level 3 has with
13 the other ILECs, Level 3 agreed to substantial reductions in either the rate or the amount to be
14 paid to Level 3 for terminating ISP-bound traffic. Level 3 made these concessions in order to
15 obtain the ability to send all traffic over its existing interconnection trunks with the ILECs.¹

16 Level 3's reliance on section 7.2.2.9.3.2 of Qwest's SGAT is also misplaced. The
17 interconnection trunks contemplated by section 7.2.2.9.3.2 of the SGAT are FGD trunks, not LIS
18 trunk groups. Section 7.2.2.9.3.1 of the SGAT makes it clear that long distance traffic (referred
19 to as "Switched Access traffic") is not one of the types of traffic that may be combined on LIS
20 trunks.²

21 ¹ For example, under Level 3's agreement with Verizon, Level 3 receives \$.0004 instead
22 of \$.0007 for terminating ISP-bound traffic. This rate is 43% lower than the rate Level 3 charges
23 Qwest in Arizona and would amount to over \$2 million per year. The Verizon/Level 3
24 agreement and its agreements with other RBOCs are publicly available documents of which the
Commission can take administrative notice.

25 ² The only type of switched access traffic that may be combined on LIS trunks is "Jointly
26 Provided Switched Access" where Qwest and the CLEC are both providing switched access.
Level 3's long distance traffic does not fall within this category.

1 Level 3 claimed in its testimony that it was not an IXC and that it was only going to send
2 a small amount of long distance traffic over the interconnection trunks created under the
3 Agreement. In its Rehearing Application, Level 3 has done a complete about face and is now
4 suggesting that it is an IXC with a large volume of long distance traffic to send to Qwest.
5 However, the law does not require Qwest to permit all traffic types to be sent over
6 interconnection trunks created pursuant to section 251(c) of the Act. The FCC addressed this
7 issue in its *Local Competition Order*, where it stated:

8 [A]ll carriers (including those traditionally classified as IXCs) may obtain
9 interconnection pursuant to section 251(c)(2) for the purpose of terminating calls
10 originating from their customers residing in the same telephone exchange (i.e.,
11 non-interexchange calls).

12 We conclude, however, that an IXC that requests interconnection solely for the
13 purpose of originating or terminating its interexchange traffic, not for the
14 provision of telephone exchange service and exchange access to others, on an
15 incumbent LECs network is not entitled to receive interconnection pursuant to
16 section 251(c)(2).³

17 There is nothing in the Order that requires Level 3 to build, engineer, test, or manage a
18 second interconnection network. Level 3 can send all of its traffic over the same interconnection
19 network by using FGD trunks. Level 3 knew when it ordered its existing LIS trunks that it could
20 not send long distance traffic over these trunks. If it has decided to become an IXC and to send
21 long distance traffic to Qwest, it has the option of ordering separate FGD trunks for
22 interexchange traffic or converting the LIS trunks to FGD trunks so that they can properly handle
23 all traffic types. Any changes are the result of Level 3's own prior decisions, not discrimination.

24 It must be emphasized that QCC does not, as a CLEC or otherwise, receive what Level 3
25 is seeking here. QCC delivers its long distance traffic to Qwest over FGD trunks just as the
26 Commission Order requires Level 3 to do. As a result, there is no discrimination against Level 3
in Arizona or elsewhere. All carriers who seek to compete in Arizona follow the same rules.

³ *Local Competition Order*, ¶¶ 190-91.

1 Level 3 is seeking to change those rules solely for its benefit. Indeed, the only outcome that
2 would be discriminatory in this case is adoption of Level 3's proposed contract language. Then
3 there would be discrimination in Level 3's favor and the level playing field Level 3 supposedly
4 seeks would cease to exist.

5 All of Level 3's rhetoric about competition and fairness is just a smokescreen for an
6 access charge avoidance scheme. Level 3 wants to deprive Qwest of the capability to record
7 switched access traffic so that Qwest will not have a way to determine how much of Level 3's
8 traffic is subject to access charges. Level 3 completely ignores the needs of CLECs and
9 Independents who rely on records and whether interstate or intrastate access rates apply on a call
10 by call versus a factor basis. And Level 3 has demonstrated time and again in this arbitration
11 that it will take extreme positions to avoid access charges. For example, Level 3 completely
12 ignored the FCC's rule that Enhanced Service Providers are treated as end users for purposes of
13 applying access charges and argued erroneously that all VoIP traffic is exempt from access
14 charges. Given Level 3's predisposition to avoid access charges, it would not be good public
15 policy to leave Level 3 in control of the information needed to determine when access charges
16 apply. Allowing Level 3 to route its long distance traffic over LIS trunks would do just that.

17 The evidence and record in this case demonstrated abundantly that FGD trunks are
18 necessary. The only other Commission to address this issue has been the Iowa Utilities Board,
19 which reached the same conclusion that this Commission reached. If long distance traffic is to
20 be combined on the same trunks, it should be done only on FGD trunks that have the capability
21 to properly record this traffic.

22 **II. Level 3's Request for Modification of the Commission Order (Section II of the**
23 **Rehearing Application) Related to Transport Should be Rejected.**

24 Level 3's request for relief in section II of its Rehearing Application is virtually
25 incomprehensible, is based on misstatements of the record, is inconsistent with other provisions
26 of the Commission Order, raises issues that were not part of this arbitration, and, if taken

1 literally, would dramatically increase Qwest's obligation to transport traffic to Level 3 in LCAs
2 with more than one end office.

3 This section of Level 3's Rehearing Application begins with an incomprehensible and
4 completely false representation of Level 3's exceptions. The first paragraph of section II of
5 Level 3's Rehearing Application states:

6 Level 3 proposed *in its Exceptions to the ROO*, and again during hearing to retain
7 existing points of interconnection located in Phoenix, Mesa, Flagstaff, Yuma,
8 Tucson, and Casa Grande. These POIs are local to 97% of the traffic exchanged
9 between Qwest and Level 3 in Arizona. Level 3 further proposed to pay cost-
based rates for the transport from Arizona's least populated local calling areas
into Level 3's network. This allows the remaining 3% of traffic to be exchanged
on a local basis. (Level 3 Rehearing Application at 7; emphasis added).⁴

10 In fact, there is not a single mention of Level 3 retaining existing POIs or of Level 3's
11 plan to serve the "least populated local calling areas" in Level 3's exceptions. Why this
12 matters is certainly not clear because, at least with regard to the first sentence, Qwest has
13 never suggested that Level 3 has any obligation to change the location of its existing
14 POIs in Arizona.

15 Level 3 then mischaracterizes the "Mayes Amendment" as saying "that where Level 3's
16 POIs are local to the calling or called Qwest customers or where Level 3 pays cost-based
17 transport⁵ to Qwest local calling areas that do not presently contain a Level 3 POI, such traffic is
18 local." (*Id.*) In fact, the Mayes Amendment makes no mention whatsoever of a POI as a
19 relevant measuring point for "FX-like traffic." The amendment states that the parties will adopt
20 a replacement for VNXX which shall be referred to as "FX-like traffic," that such traffic will be

21 ⁴ Level 3 provided no citation to any part of the record or its Exceptions for these factual
22 propositions.

23 ⁵ To the extent Level 3 assumed that "cost-based transport" in the context of "FX-like
24 traffic" means TELRIC rated service, Qwest disagrees. FX service uses private line transport;
25 thus, any transport that purports to be "FX-like" for purposes of the Mayes amendment must
26 likewise be based on private line rates (i.e., based on TSLRIC and not TELRIC). See
Commission Order at 29. In its Exceptions, Level 3 acknowledged that such transport might be
priced on the basis of the TSLRIC methodology. See Level 3 Exceptions, at 12, n. 19.

1 routed over direct end office trunks "between Level 3's network and the Qwest end office
2 serving the local calling area of the originating Qwest end user," that such trunks will be paid
3 for by Level 3, and that terminating compensation for "FX-like traffic" during the interim period
4 shall be at \$.0007. (Commission Order at 82). Those are the substantive portions of the
5 amendment, and nothing in them leads to the conclusions that Level 3 attempts to invest them
6 with.⁶ Given the fact that the Commission adopted Qwest's definition of VNXX and then
7 banned VNXX, any interpretation of the amendment that merely re-creates VNXX by another
8 name would be illogical and internally contradictory with the agreement adopted by the
9 Commission. Level 3 treats the Mayes amendment as though it eliminated any restriction on
10 VNXX, as defined in the order. The amendment does not do so, and the parties are currently
11 attempting to negotiate an agreement as to how to implement the amendment in the context of
12 the whole order. Level 3's effort to inject meanings into the amendment that are not supported
13 by its terms (when read with other portions of the Commission Order) should be rejected,
14 particularly given that the parties are trying to find a means to agree on how to implement it. If
15 the parties fail in their effort to do so, that will be the time for the parties to take positions before
16 the Commission on their interpretations of the amendment.

17 Next, Level 3 mischaracterizes Qwest's statements at the open meeting. All that Qwest
18 said regarding Phoenix in the open meeting is that, in light of Level 3's representation that it
19 maintains a Media Gateway in Phoenix, ISP calls that originate in the Phoenix LCA are not
20 VNXX traffic and would therefore be subject to terminating compensation at \$.0007. Qwest
21 never suggested at the open meeting or at any other time that Level 3 has no obligation to pay for

22 ⁶ Level 3 implies that the Mayes amendment mandates that the "FX-like traffic" solution
23 eliminates any requirement that a VoIP-provider POP be the appropriate point to determine the
24 end point of a VoIP call for intercarrier compensation purposes. (Rehearing Application at 8).
25 But it cannot have that meaning because the order adopted Qwest's language on VoIP and
26 explicitly found that "the VoIP provider's POP is the appropriate point to determine end point of
the call." (Commission Order at 37). Nothing in the Mayes amendment purports to overturn that
conclusion.

1 LIS transport in the Phoenix area. That issue was not even discussed in the open meeting;
2 moreover, Level 3's conclusion are completely inconsistent with the provisions of the agreement
3 adopted by the Commission that make Level 3 responsible for LIS transport of *all* ISP traffic.
4 (Commission Order at 57-58, 64). In other words, Level 3 suggests that comments Qwest made
5 in the open meeting about *terminating compensation* in the Phoenix LCA were related to
6 financial obligations related to *LIS transport*. There was no discussion at the open meeting of
7 the need to build trunks to all switches in a LCA. Level 3's suggestion that Qwest made any
8 statements on that subject in the open meeting is a misrepresentation.⁷

9 In the end, Level 3's proposed change to the language of the Mayes amendment is not a
10 simple housekeeping matter, but is an effort on the part of Level 3 to impose huge costs on
11 Qwest to transport traffic within a multi-end office LCA to Level 3, while Level 3 would have
12 the obligation of only connecting to one end office. For example, Level 3's proposal would
13 allow it to place its Media Gateway in Phoenix, order a LIS circuit to one end office in the entire
14 Phoenix LCA, and then require Qwest to gather and transport all of the traffic in that LCA
15 (which includes many end offices and hundreds of thousands of customers) to Level 3. All
16 Level 3 would be financially responsible for (at TELRIC rates, in its proposal) would be the
17 connection to the single end office switch. If that is Level 3's proposal, it goes far beyond any
18 issue addressed in this docket,⁸ is not consistent with other provisions of the agreement, and
19 would mandate the development by Qwest of a new kind of end office with local tandem
20 functionality in order to allow a single switch (which is not a local tandem) to serve multiple

21 _____
22 ⁷ Level 3 also claims that "some local calling areas have no switch at all."
23 (Rehearing Application at 7). Level 3 cites nothing to support this claim, nor is Qwest
24 aware of any LCAs that do not have a switch (although in some limited instances the
25 switch is a remote switch).

26 ⁸ Level 3's attempt to inject this new issue into the docket at this point is a clear violation
of Section 252(b)(4)(A), which limits state commission consideration in an arbitration
proceeding only to issues raised in the Petition or Response. This issue was raised in neither and
therefore is not an issue the Commission may decide.

1 switches in a LCA. Level 3's effort to engraft an issue into this case that was not addressed in
2 the Petition, testimony, or the Commission Order, and which would impose huge financial
3 obligations on Qwest, all for the benefit of Level 3, should be rejected by the Commission.

4 **C. Level 3's Catch-All Effort to Raise a Variety of Issues on Rehearing (Section III of**
5 **the Rehearing Application) Should be Rejected. Level 3 Simply Lists Issues**
6 **Without Providing Any Substantive Argument with Regard to Them.**

7 Section III of the Rehearing Application is merely a laundry list of nine issues that Level
8 3 lost and Level 3's request that the Commission rehear them. Other than one footnote on the
9 mirroring rule (footnote 14), Level 3 presents absolutely no arguments as to why the
10 Commission order should be reversed on any of these issues. Given the dearth of any argument
11 to support its request, the Commission should reject Level 3's faint-hearted attempt to preserve
12 these issues.

13 On the mirroring rule issue set forth in footnote 14, Level 3 continues to make the
14 erroneous claim that the election under the mirroring rule is Qwest's to make. Yet the *ISP*
15 *Remand Order* articulated the mirroring rule as follows:

16 Finally, the rate caps for ISP-bound traffic (or such lower rates as have been
17 imposed by states commissions for the exchange of ISP-bound traffic) apply only
18 if an *incumbent LEC offers* to exchange all traffic subject to section 251(b)(5) at
19 the same rate. An incumbent LEC that does not offer to exchange section
20 251(b)(5) traffic at these rates must exchange ISP-bound traffic at the state-
21 approved or state-negotiated reciprocal compensation rates reflected in their
22 contracts. (*ISP Remand Order* ¶¶ 8, 89).

23 In other words, the ILEC must make the offer under the mirroring rule, and the election is
24 the CLEC's to make. Qwest discussed the issue in its Opening and Reply Briefs, and in
25 its Reply Brief made the following explicit offer to Level 3:

26 "Level 3's argument is based on a basic factual misunderstanding of Qwest's
proposed language in this case. Qwest made it clear in its opening brief that,
subject to Level 3's election under the mirroring rule, Qwest will exchange all
appropriate traffic at the FCC rate (currently \$.0007 per MOU) that applies to
local ISP traffic.⁹ Qwest Brief at 8-9. Qwest's concern, as it stated in its opening

⁹ By "all appropriate traffic," Qwest meant local ISP traffic and all other voice traffic
subject to section 251(b)(5).

1 brief (*Id.* at 9), is that it is unclear whether Level 3 has actually made an election
2 under the mirroring rule. Thus, if Level 3 has not or does not make the election to
3 exchange all traffic at the FCC ISP rate, then the Arizona voice rate of \$.00097
4 should apply to voice traffic exchanged by Level 3 and Qwest (including VoIP
5 traffic) and the \$.0007 rate on ISP traffic would apply to local ISP traffic pursuant
6 to the *ISP Remand Order*. If Level 3 makes an election under the mirroring rule,
7 then the \$.0007 rate would apply to all appropriate traffic.” (Qwest Reply Brief at
8 28).

9 As noted, Qwest will exchange ISP traffic at \$.0007. It is up to Level 3 to elect how to handle
10 voice traffic.

11 I. CONCLUSION

12 On the basis for the foregoing argument, Qwest respectfully requests that the
13 Commission reject each of Level 3’s requests for rehearing.

14 RESPECTFULLY SUBMITTED this 31st day of July, 2006.

15 
16 Norman G. Curtright
17 Corporate Counsel, Qwest Corporation
18 20 East Thomas Road, 16th Floor
19 Phoenix, Arizona 85012
20 (602) 630-2187

21 Thomas M. Dethlefs
22 Corporate Counsel, Qwest Corporation
23 1801 California, 10th Floor
24 Denver, Colorado 80202

25 Ted D. Smith
26 Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111

Attorneys for Qwest Corporation

1 ORIGINAL and 13 copies hand-delivered
2 for filing this 31st day of July, 2006, to:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, AZ 85007

7 COPY of the foregoing hand delivered
8 this 31st day of July, 2006, to:

9 Lyn Farmer, Chief Administrative Law Judge
10 Jane Rodda, Administrative Law Judge
11 Hearing Division
12 ARIZONA CORPORATION COMMISSION
13 1200 W. Washington
14 Phoenix, AZ 85007
15 jrodda@cc.state.az.us

16 Maureen A. Scott, Esq.
17 Legal Division
18 ARIZONA CORPORATION COMMISSION
19 1200 W. Washington Street
20 Phoenix, AZ 85007

21 Christopher Kempley, Chief Counsel
22 Legal Division
23 Arizona Corporation Commission
24 1200 W. Washington Street
25 Phoenix, AZ 85007

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

Copy of the foregoing mailed
this 31st day of July, 2006, to:

Michael W. Patten
Roshka Heyman & De Wulf, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, AZ 85004
mpatten@rhd-law.com

1 Henry T. Kelley
Joseph E. Donovan
2 Scott A. Kassman
Kelley, Drye & Warren, LLP
3 333 W. Wacker Drive
Chicago, IL 60606
4 Email: HKelly@KelleyDrye.com
JDonovan@KelleyDrye.com
5 SKassman@KelleyDrye.com

6 Christopher W. Savage
Cole, Raywid & Braverman, LLP
7 1919 Pennsylvania Avenue, NW
Washington, D.C. 20006
8 Email: csavage@crblaw.com

9 Richard E. Thayer, Esq.
Director – Intercarrier Policy
10 Level 3 Communications, LLC
1025 Eldorado Boulevard
11 Broomfield, CO 80021
Email: rick.thayer@level3.com

12
13 Erik Cecil, Regulatory Counsel
Level 3 Communications, LLC
14 1025 Eldorado Boulevard
Broomfield, CO 80021
15 Email: erik.cecil@level3.com

16

17

18

Diane Krpan

19

20

21

22

23

24

25

26