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BEFORE THE ARIZONA CORPORATION COMMISSION

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JEFF HATCH-MILLER
Chairman
WILLIAM MUNDELL
Commissioner
MIKE GLEASON
Commissioner
KRISTIN MAYES
Commissioner
BARRY WONG
Commissioner

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Arizona Corporation Commission

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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 MOTION TO ALLOW ADDITIONAL BRIEFING

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Qwest Corporation ("Qwest") respectfully moves that the Commission set a briefing schedule under which the Parties would address the impact of the September 7, 2006 decision of the United States Court of Appeals for the Ninth Circuit in *Verizon California v. Peevey*, 2006 WL 2563879 (9th Cir. September 7, 2006) ("*Peevey*") on Decision No. 68817 and the interconnection agreement to be submitted to the Commission pursuant to that order. In support of this motion, Qwest states:

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1. The interconnecton agreement at issue in this proceeding has not been finalized and an order of the Commission approving a final interconnection agreement has not been entered.
2. In Decision No. 68817, the Commission directed the parties to submit an interconnection agreement to be reviewed by the Commission for compliance with federal law. (Decision No. 68817, p. 82). Decision No. 68817 is dated June 29, 2006. Therefore, it was

1 rendered without the benefit of reviewing relevant and binding law that directly impacts several
2 issues in the Decision; the *Peevey* case is particularly relevant to the portions of the Decision
3 related to “FX-like traffic.”

4 3. During the course of this proceeding, Qwest has consistently taken the position
5 that it is unlawful to require Qwest to pay Level 3 terminating intercarrier compensation on
6 interexchange traffic (including specifically VNXX traffic), either on the basis of the Federal
7 Communication Commission’s *ISP Remand Order* or on any other ground. In contrast, Level 3
8 has argued that the *ISP Remand Order* requires the payment of intercarrier compensation by
9 Qwest to Level 3 on all ISP traffic, including specifically VNXX traffic. In Decision No. 68817,
10 the Commission requires Qwest to pay intercarrier compensation pursuant to the *ISP Remand*
11 *Order* on what it describes as “FX-like” ISP traffic. (Decision No. 68817, p. 82).

12 4. On September 7, 2006, the United States Court of Appeals for the Ninth Circuit
13 released its *Peevey* decision. *Peevey* supports Qwest’s position in this proceeding and requires
14 modification of the interconnection agreement to be submitted pursuant to Decision No. 68817
15 such that Qwest is no longer required to pay intercarrier compensation to Level 3 on
16 interexchange traffic, including interexchange traffic that the Commission has described as “FX-
17 like traffic.” Among other things, *Peevey* concluded:

18 (a) “Th[e] rate caps [in the *ISP Remand Order*] are intended to substitute for the
19 reciprocal compensation that would otherwise be due to CLECs for terminating
20 *local ISP-bound traffic*. They do not affect the collection of charges by ILECs for
21 originating *interexchange* ISP-bound traffic.” 2006 WL 2563879, at *13
22 (emphasis added). Thus, as a matter of federal law in the Ninth Circuit, the *ISP*
23 *Remand Order*’s compensation scheme was intended to prescribe intercarrier
24 compensation only “for terminating *local* ISP-bound traffic.”

25 (b) “[T]he CPUC determined that *VNXX traffic is interexchange traffic* that is *not*
26 subject to the FCC’s reciprocal compensation rules. *Arbitration Decision* at 4 n. 3;

1 *Rehearing Decision* at 7. This comports with the CPUC's prior determination that
2 § 703(b) must be read in conjunction with § 701, and that any call rated as a toll
3 call within a local access and transport area is exchange access traffic.” *Id.* at *12
4 (emphasis added). Thus, the Ninth Circuit agreed with the California Commission
5 that ISP VNXX traffic is interexchange traffic that is not subject to reciprocal
6 compensation or terminating compensation under the *ISP Remand Order*.

7 (c) “‘Pac-West knows where its network ends’ and *the call is picked up by the*
8 *customer*. Since that is the end of Pac-West's responsibility for the call, *it should*
9 *also be the relevant end point of the call for purposes of determining whether the*
10 *call is local or VNXX.*” *Id.* at *14 (emphasis added). Thus, ISP traffic is
11 categorized as either (a) local or (b) interexchange (and thus VNXX) based on the
12 relative locations of the calling party and the point where the ISP takes
13 responsibility for the call from the CLEC.

14 5. Each of these conclusions clarifies the law in the Ninth Circuit and has a direct
15 impact on conclusions made in Decision No. 68817. Under the Ninth Circuit’s test, traffic that
16 would be considered “FX-like traffic” under Decision No. 68817 is clearly interexchange traffic,
17 is not subject to reciprocal compensation, nor subject to the terminating compensation
18 established in the *ISP Remand Order* for local ISP traffic. In light of the clarification
19 represented by *Peevey*, Qwest respectfully believes the Commission should carefully consider
20 *Peevey* and amend the Decision to bring it into conformance with the current binding law in the
21 Ninth Circuit.

22 6. The State of Arizona is located within the Ninth Circuit Court of Appeals, and
23 decisions of that court are binding upon the Commission in its exercise of delegated authority
24 under the 1996 Federal Telecommunications Act (“Act”). Since *Peevey* is a Ninth Circuit case,
25 the Commission is required by law to make sure that its orders comply with *Peevey*’s holdings.
26 Thus, it is in the public interest, the interest of the Parties, and in the interest of administrative

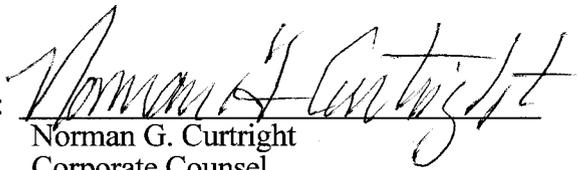
1 efficiency for the parties to brief the impact of *Peevey* on the interconnection agreement at issue
2 and make any amendments thereto that will bring the agreement into conformance with *Peevey*.

3 WHEREFORE, Qwest Corporation respectfully requests that the Commission set a
4 schedule under which the Parties brief the impact of *Verizon California v. Peevey* on Decision
5 No. 68817 and any interconnection agreement submitted pursuant to Decision No. 68817.

6 RESPECTFULLY SUBMITTED this 22nd day of September, 2006.

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