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February 27, 2006

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VIA ELECTRONIC FILING, EMAIL, AND U.S. MAIL

Honorable Samuel J. Petrillo
Administrative Law Judge
Oregon Public Utility Commission
P.O. Box 2148
Salem, OR 97308-2148

Re: ARB 665—Qwest Response to Level 3 Letter Regarding Technical Conference

Dear Judge Petrillo:

On Friday, February 24, 2006, Level 3 filed a letter purporting to update you on the progress of the parties on establishing dates for a technical conference and an agreement on the “scope of and procedures for that conference.” The letter correctly states that the parties have agreed to March 7 and 8 for the conference.

Unfortunately, the letter was not shared with Qwest prior to being filed with you. As a consequence, the remainder of Level 3’s letter, in particular its attempt to characterize Qwest’s position on certain issues, is largely incorrect with regard to Qwest’s positions.

Level 3 states that it believes the parties should limit their discussions to “pure technical and physical descriptions of their respective networks, and avoid legal argument. Qwest believes that the parties should feel free to discuss both technical and legal issues.” (Level 3 letter, at p. 1.) There are two significant problems with Level’s 3 statement. First, as the filed testimony demonstrates, this case is filled with mixed questions of facts and law; any attempt to separate them from each other would be difficult, if not impossible. Therefore, in Qwest’s proposed rules, it stated that the subject matter experts (“SMEs”) “may address mixed questions of law and fact.” Qwest has never suggested that the technical conference address pure legal issues (e.g., the breadth of the *ISP Remand Order* or the meaning of the ESP exemption). Second, Level 3’s 14-page filing demonstrates that mixed questions of law and fact cannot be separated. For example (and there are several other examples), Level 3’s statement on page 2 of its filing that “there is very little ‘VNXX’, if any, as [Level 3] understands the term” is as much a legal

Oregon
Washington
California
Utah
Idaho



Honorable Samuel J. Petrillo
February 27, 2006
Page 2

conclusion as a fact statement—it certainly represents Level 3’s legal conclusion on what does or does not constitute VNXX under Oregon law. Thus, Level 3’s own filing violates the standard that it believes should apply to the conference. Qwest trusts that Mr. Booth will be able to focus the discussion as necessary.

Level 3 believes that the SMEs should be able to question each other, while Qwest believes Mr. Booth should fill that role. In its proposed rules, Qwest stated that Mr. Booth should ask questions and seek clarifications, and that “additional presentations” should be made if Mr. Booth deems them appropriate. Qwest’s primary concern is that the conference not turn into a free-for-all in which SMEs for one party in effect cross-examine the other party’s SMEs. Thus, we believe that Mr. Booth should be the focal point for asking questions.

Finally, Level 3 states that Qwest does not believe it would be appropriate for Your Honor to be available to resolve procedural questions that might arise. Qwest has no idea how Level 3 reached that conclusion. Qwest’s proposed rules did not address that issue, and that is not Qwest’s position. Qwest has no objection whatever to Your Honor being available to resolve any issues that might arise during the conference. At the same time, it is Qwest’s understanding that the conference is not a substitute for a substantive hearing. Thus, it is not Qwest’s intent to impose on Your Honor’s time, unless it is your desire to be available during the conference.

Very truly yours,

Ted D. Smith

cc: Service List
Alex M. Duarte
Thomas Dethlefs
Mary Ann Neill



Honorable Samuel J. Petrillo
February 27, 2006
Page 3

CERTIFICATE OF SERVICE

ARB 665

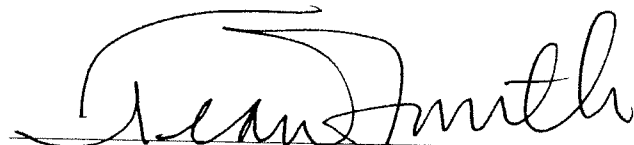
I hereby certify that on February 27, 2006, I served the foregoing Qwest Letter to the Honorable Samuel J. Petrillo in the above-reference docket on the following persons by mailing a copy to them by first class mail, with postage prepaid, and also by emailing the letter to them at the email addresses listed below:

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