

December 8, 2006

VIA ELECTRONIC MAIL AND US MAIL

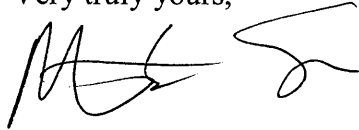
Filing Center  
Oregon Public Utility Commission  
550 Capitol Street NE #215  
PO Box 2148  
Salem, OR 97308-2148

Re: ARB 665 Level 3 Communications

Dear Sir or Madam:

On November 10, 2006, we filed as additional authority the recommended decision of the Administrative Law Judge in the Level 3/Qwest Arizona Arbitration, Dockets T-03654A-05-0350 and T-01051B-05-0350. The recommended decision was adopted by the Arizona Corporation Commission in the enclosed Order No. 69176.

Very truly yours,



FOR LISA RACKNER

Lisa F. Rackner

Enclosures

cc: ARB 665 Service List

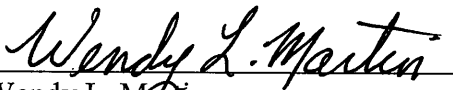
**CERTIFICATE OF SERVICE  
ARB 665**

I hereby certify that a true and correct copy of **ORDER NO. 69176 IN THE LEVEL3/QWEST ARIZONA ARBITRATION** was served via U.S. Mail on the following parties on December 08, 2006:

Thomas M. Dethlefs  
Qwest Corporation  
1801 California Street, 10th Floor  
Denver CO 80202

Alex M. Duarte  
Qwest Corporation  
Suite 810  
421 SW Oak Street  
Portland OR 97204

ATER WYNNE LLP

  
Wendy L. Martin



0000064299

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

DEC - 5 2006

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

DOCKETED BY  
*JH* *NR*

IN THE MATTER OF THE PETITION OF LEVEL 3 COMMUNICATIONS LLC FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION PURSUANT TO SECTION 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-03654A-05-0350

DOCKET NO. T-01051B-05-0350

DECISION NO. 69176

ORDER

Open Meeting  
November 21 and 22, 2006  
Phoenix, Arizona

BY THE COMMISSION:

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On May 13, 2005, Level 3 Communications, LLC ("Level 3") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration of certain terms, conditions and prices for interconnection and related arrangements with Qwest Corporation ("Qwest") ("Petition") pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 ("Act" or "1996 Act").
2. The arbitration hearing convened as scheduled on September 8, 2005, September 9, 2005 and September 16, 2005.
3. The Commission issued a final Order on the Arbitration Petition in Decision No. 68817 (June 29, 2006), which resolved all of the issues raised in the arbitration petition and response.
4. Decision No. 68817 ordered Qwest and Level 3 to: (1) work together to implement

1 within thirty (30) days of the effective date of the Decision, an interim replacement for VNXX<sup>1</sup> which  
2 the Commission referred to as "FX-like traffic"; (2) that such ISP-bound and VoIP FX-like traffic  
3 shall be routed over a direct end office trunk between Level 3's network and the Qwest end office  
4 serving the local calling area of the originating Qwest end user, and that the direct end office trunk  
5 shall be established and paid for by Level 3; (3) that within sixty (60) days of the effective date of the  
6 Decision, Level 3 shall cease using VNXX; (4) that the interim use of FX-like traffic shall be allowed  
7 to continue until such time as the Commission issues a Decision resolving the issues concerning the  
8 use of VNXX; and (5) that Level 3 and Qwest shall prepare and sign an interconnection agreement  
9 incorporating the terms of the Commission's resolutions, and shall submit such signed interconnection  
10 agreement to the Commission for its review within thirty days of the date of the Decision.

11 5. Upon the request of the parties, and good cause appearing, by Procedural Order dated  
12 August 2, 2006, the date for filing a conforming interconnection agreement was extended from July  
13 31, 2006, until August 18, 2006.

14 6. On August 18, 2006, Level 3 filed a Notice of Filing Conformed Agreement in  
15 Compliance with Decision No. 68817 and Motion to Adopt Language in Agreement Regarding FX-  
16 like in Compliance with Decision No. 68817. Level 3 attached a copy of its proposed Interconnection  
17 Agreement, which it stated conformed with Decision No. 68817.

18 7. On August 18, 2006, Qwest filed a Notice of Filing and Request for Procedural  
19 Conference. Qwest attached its proposed Interconnection Agreement, which it stated conformed with  
20 Decision No. 68817.

21 8. The parties did not file a signed Interconnection Agreement that conformed to Decision  
22 No. 68817 because they were unable to reach agreement on how to memorialize and implement the  
23 order to eliminate the use of VNXX and institute an "FX-like" interim solution. In addition, the  
24 parties could not agree on whether to memorialize the interim FX-like arrangement in an amendment  
25 to the Interconnection Agreement, as advanced by Qwest, or in the body of the Interconnection  
26 Agreement, as proposed by Level 3.

27 <sup>1</sup> VNXX or virtual NXX is an arrangement under which a carrier assigns a phone number to a customer that is not  
28 physically located in the rate center or exchange with which that phone number is associated. The effect is that calls that  
would otherwise be rated and routed as long distance toll calls, are rated and routed as local calls.

1           9.       Qwest and Level 3 disagree on what the Commission intended when it ordered that the  
2 parties, on an interim basis, should implement an "FX-like" service.

3           10.       Qwest argues that Decision No. 68817 requires Level 3 to order FX-like facilities from  
4 the local calling area of its end users, and to establish FX-like direct trunking facilities from the local  
5 calling area of its end user customers to each end office that it wishes to exchange traffic with Qwest  
6 outside of the Phoenix local calling area. Qwest asserts that if Level 3's position it adopted, Level 3  
7 would make virtually no changes to its network and would be continuing to utilize a VNXX  
8 architecture under another name.

9           11.       Level 3 argues that the Commission did not intend that in the interim period, Level 3  
10 would have to alter its network architecture. Level 3 believes the Commission intended the basic  
11 network architecture to remain, but for Level 3 to compensate Qwest for the transport of traffic out of  
12 the local calling area of Qwest's originating caller.

13           12.       By Procedural Order dated August 24, 2006, a Procedural Conference convened on  
14 September 6, 2006, with the purpose of establishing a procedure for resolving the dispute. Qwest,  
15 Level 3 and the Commission's Utility Division Staff ("Staff") participated. At that time, the parties  
16 agreed to participate in a mediation with Staff in an attempt to resolve, or at least narrow the issues for  
17 hearing.

18           13.       On September 22, 2006, Qwest filed a Motion to Allow Additional Briefing. Qwest  
19 asserts that the recent Ninth Circuit Court of Appeal's decision in *Verizon California v. Peevey*, 2006  
20 WL 2563879, which was issued on September 7, 2006, impacts Decision No. 68817 and the  
21 interconnection agreement to be submitted pursuant to Decision No. 68817. Qwest believes that the  
22 *Peevey* case supports Qwest's position that it is unlawful to require Qwest to pay Level 3 terminating  
23 intercarrier compensation on interexchange traffic (including specifically VNXX traffic).

24           14.       A Procedural Conference to determine the status of the negotiations convened on  
25 September 25, 2006. At the September 25, 2006 Procedural Conference, the parties reported that they  
26 continued to engage in discussions, but that final language that would resolve the dispute could not be  
27 agreed upon that day. The parties proposed that the Commission convene another Procedural  
28 Conference in approximately one week, at which time they believed they would know if the matter

1 could be settled, or would need to be set for hearing. Staff concurred that the parties' proposal was  
2 reasonable and could result in a successful compromise.

3 15. By Procedural Order dated September 26, 2006, a Procedural Conference was set for  
4 October 3, 2006. Staff distributed "Staff's Proposed FX-Like Traffic Language for the  
5 Interconnection Agreement" dated October 3, 2006. A copy of Staff's proposed language is attached  
6 hereto as Exhibit A, and incorporated herein by reference. At the October 3, 2006, Procedural  
7 Conference, the parties reported that they were able to reach agreement on language for all sections of  
8 the interconnection agreement, except for one. Although Level 3 and Staff were in agreement on all  
9 issues, and Level 3 agreed to adopt all of Staff's proposed language in Exhibit A, Qwest did not agree  
10 to the proposed language for Section 7.2.2.1.7.6 of the Interconnection Agreement. *See Ex. A*, issue  
11 number 6.

12 16. Concerning Section 7.2.2.1.7.6, Staff's proposed language, as agreed to by Level 3,  
13 provides:

14 For purposes of implementing the interim arrangement, Level 3 shall  
15 establish a virtual POI in each Qwest Local Calling Area for the exchange  
16 of FX-Like traffic where Level 3 does not currently have physical  
17 collocation facilities. Level 3 agrees to compensate Qwest via monthly  
18 payments equivalent to the MRC charges for Private Line with EICT and  
19 Mux, ICDF frames and direct trunk transport (DTT) from the virtual POI  
20 to each end office in the Local Calling Area of the virtual POI as if  
21 facilities were provisioned to reach those Local Calling Areas where Level  
22 3 does not currently have physical collocation facilities. Level 3 also  
23 agrees to make a one time payment to Qwest to reimburse Qwest as if  
24 Qwest had constructed ICDF collocation in each Local Calling Area  
25 where Level 3 does not currently have physical collocation at this time.

26 17. Qwest argues that the Commission should schedule a hearing to determine the factual  
27 issues of what FX-like traffic means and factual issues related to implementation or provisioning of  
28 interconnection. Qwest argues that the proposed language is not specific regarding the  
implementation of interconnection.

18 18. Level 3 believes that Staff's proposed language comports with Decision No. 68817 and  
19 there are no factual disputes that would require a hearing.

20 19. Staff believes that the facts are not in dispute, but rather the issue is what the  
21 Commission intended in Decision No. 68817 with respect to creating an interim FX-like solution.

1 Staff does not believe an evidentiary hearing is required.

2       20. We concur with Staff. The threshold issue before us is what did the Commission intend  
3 in Decision No. 68817 when it ordered an interim "FX-like" solution. Specifically, in Decision No,  
4 68817, the Commission ordered:

5               that Qwest shall work with Level 3 to implement within thirty (30) days of  
6 the effective date of this Decision an interim replacement for VNXX  
7 which we shall refer to as FX-like traffic. Such ISP-bound and VoIP FX-  
8 like traffic shall be routed over a direct end office trunk between Level 3's  
9 network and the Qwest end office serving the local calling area of the  
10 originating Qwest end user. The direct end office trunk shall be  
11 established and paid for by Level 3 under the terms of this Agreement.  
12 *Decision No. 68817 at 82.*

13       21. The language of Decision No. 68817 does not require Level 3 to alter its network  
14 architecture during the interim period, but rather that it should utilize direct trunk transport and  
15 compensate Qwest for the transport of traffic. In the body of Decision No. 68817, the Commission  
16 stated:

17               Although we disapprove Level 3's use of VNXX, as it has been described  
18 in this proceeding, Level 3 should be able to serve its customers through  
19 FX or an FX-like service. In addition, there may be ways whereby Level  
20 3 could use "VNXX-like" arrangements and compensate Qwest for  
21 transport (perhaps by using a TSLRIC rate) that would alleviate our  
22 concerns about intercarrier compensation distorting the market by  
23 improper cost shifting. Evidence of how such a scheme might work, or if  
24 it could work, was not offered in this docket, but we would not want to  
25 eliminate such compensation scheme and encourage the parties to be  
26 creative in creating a "win-win" resolution and present a revised ICS for  
27 our approval. *Decision No. 68817 at p 29, lines 5-12.*

28       22. Ultimately, although disapproving of VNXX arrangements pending its generic  
investigation, in adopting the "FX-like" interim solution, the Commission determined that at least  
temporarily, until the Commission could systematically and thoroughly study the implications of the  
use of VNXX arrangements, Level 3 should be allowed to continue using VNXX type arrangements,  
but would be required to pay for transport of traffic outside the local calling area of the originating  
caller. In referring to the interim arrangements as "FX-like", the Commission did not intend that such  
arrangement would be comparable to the FX service being provided by Qwest.

1 23. The parties should revise their Interconnection Agreement to incorporate Staff's  
2 proposed language as set forth on Exhibit A and shall submit such Interconnection Agreement for  
3 Commission review, within ten business days of the date of this Decision.

4 24. Qwest's Motion for additional briefing on the Ninth Circuit's decision in *Peevey* is  
5 denied. The issue of intercarrier compensation on ISP-bound traffic was resolved in Decision No.  
6 68817.

7 25. The Commission can consider the effects of the *Peevey* Decision in the generic  
8 proceeding on VNXX.

9 26. The Commission has analyzed the issues presented by the parties and has resolved the  
10 issues in accordance with the Act.

11 **CONCLUSIONS OF LAW**

12 1. Level 3 is a public service corporation within the meaning of Article XV of the  
13 Arizona Constitution.

14 2. Level 3 is a telecommunications carrier within the meaning of 47 U.S.C. § 252.

15 3. Qwest is a public service corporation within the meaning of Article XV of the Arizona  
16 Constitution.

17 4. Qwest is an ILEC within the meaning of 47 U.S.C. § 252.

18 5. The Commission has jurisdiction over Level 3 and Qwest and of the subject matter of  
19 the Petition.

20 6. The Commission's resolution of the issues pending herein is just and reasonable,  
21 meets the requirements of the Act and regulations prescribed by the FCC pursuant to the Act, is  
22 consistent with the best interests of the parties, and is in the public interest.

23 **ORDER**

24 IT IS THEREFORE ORDERED that Qwest Corporation and Level 3 Communications, LLC  
25 shall incorporate in the body of their Interconnection Agreement the proposed language set forth in  
26 Exhibit A.

27 ...

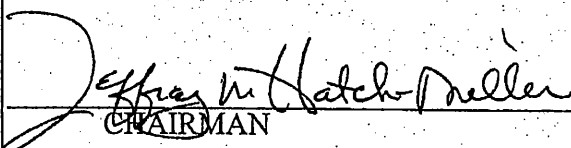
28 ...

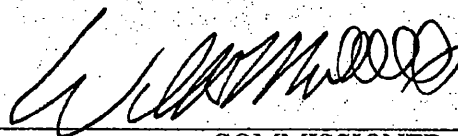


1 IT IS FURTHER ORDERED that the signed Interconnection Agreement shall be submitted to  
2 the Commission for its review within ten business days of the date of this Decision.


3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.


4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5  
6   
7 CHAIRMAN


  
8 COMMISSIONER

9  
10 COMMISSIONER

  
11 COMMISSIONER

  
12 COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
14 Director of the Arizona Corporation Commission, have  
15 hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this 5<sup>th</sup> day of Dec., 2006.

  
18 BRIAN C. McNEIL  
19 EXECUTIVE DIRECTOR

20 DISSENT \_\_\_\_\_

21 DISSENT \_\_\_\_\_

22 JR.mj

1 SERVICE LIST FOR:

LEVEL 3 COMMUNICATIONS LLC/ QWEST CORPORATION

2 DOCKET NO.:

T-03654A-05-0350  
T-01051B-05-0350

3 Michael W. Patten  
4 Roshka DeWulf & Patten, PLC  
5 One Arizona Center  
6 400 E. Van Buren Street  
7 Suite 800  
8 Phoenix, Arizona 85004

9 Richard E. Thayer  
10 Erik Cecil  
11 Level 3 Communications, LLC  
12 1015 Eldorado Boulevard  
13 Broomfield, CO 80021

14 Henry T. Kelly  
15 Joseph E. Donovan  
16 Scott A. Kassman  
17 Kelley, Drye & Warren LLP  
18 333 West Wacker Drive  
19 Chicago, IL 60606

20 Christopher W. Savage  
21 Cole, Raywid & Braverman, LLP  
22 1919 Pennsylvania Ave., NW  
23 Washington, DC 20006

24 Norman G. Curtright  
25 QWEST CORPORATION  
26 4041 N. Central Ave., 11<sup>th</sup> Floor  
27 Phoenix, AZ 85012

28 Thomas M. Dethlefs  
Senior Attorney  
Qwest Legal Dept/CD&S  
1801 California St., Suite 900  
Denver, Colorado 80202

Christopher Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Ernest Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

## EXHIBIT A

STAFF PROPOSED FX-LIKE TRAFFIC LANGUAGE  
FOR THE INTERCONNECTION AGREEMENT

October 3, 2006

## 1. Staff proposed language:

Section 7.2.2.1.7.1: Qwest and CLEC have been ordered by the Arizona Corporation Commission (Commission) to implement an interim replacement for Virtual NXX (VNXX) which shall be referred to as FX-Like Traffic.

## 2. Staff proposed language:

Section 7.2.2.1.7.2: Qwest and CLEC have been ordered by the Commission to establish a methodology for the exchange of "FX-Like Traffic" as an interim replacement for Virtual NXX (VNXX). The interim use of FX-Like Traffic, as described in this Section, shall be allowed to continue until such time as the Commission issues a decision resolving the issues concerning the use of VNXX.

## 3. Staff proposed language:

Section 7.2.2.1.7.3: For traffic exchanged between Level 3 and Qwest end-users, the FX-Like Traffic shall be exchanged at the Point of Interconnection (POI) located in the local calling area of such Qwest end-users. FX-Like traffic shall be routed over a direct end office trunk between CLEC's POI in the Local Calling Area and the Qwest end office serving the Local Calling Area of the Qwest end-user. The direct end office trunk shall be established and paid for by CLEC under the terms of this Agreement. CLEC shall be responsible for ordering direct-final end office trunking and transport from the Qwest end office in the Local Calling Area of the Qwest end-user to CLEC's POI located in the Local Calling Area of the Qwest end user.

## 4. Staff proposed language:

Section 7.2.2.1.7.4: Intercarrier compensation for FX-Like traffic exchanged between CLEC and Qwest during the interim period shall be \$0.0007 per MOU consistent with the rate for ISP-bound traffic established by the FCC.

## 5. Staff proposed language:

Section 7.2.2.1.7.5: FX-Like Traffic, for a Qwest end-user originated call, is not tandem-switched.

## 6. Staff proposed language:

Section 7.2.2.1.7.6: For purposes of implementing the interim arrangement, Level 3 shall establish a virtual POI in each Qwest Local Calling Area for the exchange of FX-Like traffic where Level 3 does not currently have physical collocation facilities. Level 3 agrees to compensate Qwest via monthly payments equivalent to the MRC charges for Private Line with EICT and Mux, ICDF frames and direct trunk transport (DTT) from the virtual POI to each end office in the Local Calling Area of the virtual POI as if facilities were provisioned to reach those Local Calling Areas where Level does not currently have physical collocation facilities. Level 3 also agrees to make a one time payment to Qwest to reimburse Qwest as if Qwest had constructed ICDF collocation in each Local Calling Area where Level 3 does not currently have physical collocation at this time.

## 7. Staff proposed language:

Section 7.2.2.1.7.7: If CLEC requires FX-Like Traffic arrangements with other LECs or wireless carriers, then CLEC is responsible for ordering FX-Like transit facilities from the POI in the applicable Local Calling Area and will have financial responsibility for direct trunking to the tandems for the exchange of transit traffic.

## 8. Staff proposed language:

Section 7.2.2.1.7.8: CLEC shall designate all Local Routing Numbers so that FX-Like Traffic associated with number portability routes directly from the Qwest end office to the CLEC.

## 9. Staff proposed language:

Section 7.2.2.1.7.9: CLEC will convert to the FX-Like service as a project and be responsible to provide network diagrams and order submission as necessary to provision all FX-Like trunking and transport.

## 10. Staff proposed language:

Section 7.2.2.1.7.10: Qwest has negotiated this arrangement under protest to comply with the Commission's Order which requires the Parties to implement an interim "FX-Like" arrangement pending the resolution of the Generic VNXX Docket. By implementing the foregoing arrangement related to "FX-like Traffic" neither Party waives its right to advocate in the Commission's Generic VNXX Proceeding or any other proceeding (including an appeal), positions inconsistent with the interim arrangements herein.

11. Staff proposed language:

Section 7.2.2.1.7.11: CLEC shall cease using VNXX as of the date FX-Like Traffic facilities are in place or August 28, 2006, which ever is later. Until the date the FX-Like Traffic facilities are in place, Qwest will exchange VNXX traffic on a bill and keep basis. The interim period begins when the FX-Like Traffic architecture has been provisioned and continues until the Commission issues a Decision resolving the issues concerning the use of Virtual NXX.