

May 4, 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’s Motion to Compel

Dear Sir or Madam:

Enclosed for filing in the above-referenced docket is Level 3’s Motion to Compel. Please contact me with any questions.

Very truly yours,



Jessica A. Gorham

Enclosures

cc: ARB 665 Service List

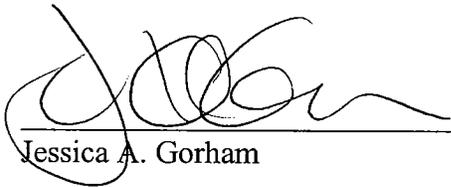
**CERTIFICATE OF SERVICE
ARB 665**

I hereby certify that a true and correct copy of **LEVEL 3 COMMUNICATIONS'**
MOTION TO COMPEL was served via U.S. Mail on the following parties on May 04, 2006:

Thomas Dethlefs
Qwest Corporation
Suite 900
1801 California Street
Denver CO 80202

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

ATER WYNNE, LLP



Jessica A. Gorham

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 **ARB 665**

4 In the Matter of

5 LEVEL 3 COMMUNICATIONS, INC.'s

6 Petition for Arbitration Pursuant to Section
7 252(b) of the Communications Act of 1934,
8 as amended by the Telecommunications Act
9 of 1996, and the Applicable State Laws for
Rates, Terms, and Conditions of
Interconnection with Qwest Corporation

**LEVEL 3 COMMUNICATIONS, LLC'S
MOTION TO COMPEL**

10 **CERTIFICATION PURSUANT TO OAR 860-014-0070(2)**

11 Pursuant to OAR 860-014-0070(2), counsel certifies that they have conferred with Qwest
12 Corporation's counsel and have been unable to resolve the matters addressed in this motion.
13

14 **MOTION AND MEMORANDUM**

15 Level 3 Communications, LLC ("Level 3"), by and through its attorneys and pursuant to
16 OAR 860-014-0070(2), respectfully moves the Public Utility Commission of Oregon
17 ("Commission") for an order compelling Qwest Corporation ("Qwest") to provide proper
18 responses to Level 3's First Set of Data Requests to Qwest ("Level 3's Data Requests") served
19 on April 21, 2006, in the above-captioned proceeding (copy attached as Exhibit A). Specifically,
20 Level 3 moves the Commission for an order compelling Qwest to fully respond to Level 3's Data
21 Request Nos. 5-2 (b, d, e, f & g), 5-4 (a, d, e, f, g), 5-5(a, b, c), 5-6, 5-7, 5-8, 5-9, 5-10, 5-13 (a, b
22 & c), 5-14 (a, b, c, d, e, f, g, h, i, j, k, l, m, n, o, p, & q); 5-15 (e, f), and 5-19.

23 As a preliminary matter, Level 3 respectfully requests expedited consideration of this
24 motion. Although there is not enough time for the Commission to rule on this request and for
25 Qwest to provide supplemental responses before supplemental testimony is due on May 10,
26 2006, Level 3 requests expedited consideration in order to receive supplemental responses before

1 the Oregon Technical Workshops on the Record (for this Arbitration and the Complaint action)
2 on May 23-24, 2006. Accordingly, Level 3 asks the Commission to require Qwest to respond
3 within five business days from the date of service.¹ In addition, Level 3 requests permission to
4 file a reply in support of this motion by May 12, 2006,² and asks that the Administrative Law
5 Judge rule on this motion by May 16, 2006.³ If the Commission grants all or part of Level 3's
6 motion, Level 3 asks that the Commission require Qwest to submit supplemental responses to
7 Level 3's data requests by May 19, 2006.

8 III. PROCEDURAL BACKGROUND

9 After a year of negotiations with Qwest, Level 3 filed a Petition for Arbitration on
10 January 26, 2006,⁴ seeking resolution of, among other things, four basic interconnection rights:

11 **Issue 1:** Whether each Party bears its own costs of exchanging traffic at a Single
12 Point of Interconnection per LATA.

13 **Issue 2:** Whether Level 3 may exchange all traffic over the interconnection trunks
14 established under the Agreement.

15 **Issue 3:** Whether Qwest's election to be subject to the *ISP-Remand Order* for the
16 exchange of ISP-bound traffic requires Qwest to compensate Level 3 for
17 ISP-bound Traffic at the rate of \$0.0007 per minute of use.

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21 ¹ OAR 860-013-0080 permits the Administrative Law Judge to alter the time frames applicable to motions and replies.

22 ² Because Qwest's response to this motion will be the first time Qwest provides argument in support of its objections, Level 3 anticipates that Qwest will raise new legal and factual arguments that will need to be addressed and therefore seeks permission to file a reply memorandum.

23 ³ The Washington Utilities & Transportation Commission has Ordered Qwest to respond to all the same requests addressed in this Motion by May 9, 2006; a copy of that order is attached as Exhibit B.

24 ⁴ *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, and Conditions of Interconnection with Qwest Corporation*, Petition, WUTC Docket No. 063006 (filed January 26, 2006).

1 as a reason for its failure to admit or deny unless the party states that it has made reasonable
2 inquiry and that the information known or readily obtainable by the party is insufficient to enable
3 the party to admit or deny. *Id.*

4 When resolving discovery disputes, the discovery rules should be liberally construed.
5 *See Oregon Orchards, Inc. v. Insurance Co. of North America*, 239 Or. 192, 198 (1964).
6 Although Oregon courts have offered few interpretations of the scope of ORCP 36, the Oregon
7 Supreme Court has indicated that federal cases interpreting the scope of the federal counterpart
8 to ORCP 36 is instructive. *See Stevens v. Czerniak*, 336 Or. 392, 401-02 (2004). The United
9 States Supreme Court has long recognized “that the deposition-discovery rules are to be
10 accorded a broad and liberal treatment.” *Hickman v. Taylor*, 329 U.S. 495, 507 (1947); *see also*
11 WRIGHT, MILLER & MARCUS, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2001.

12 Under these liberal discovery principles, those opposing discovery carry a heavy burden
13 in showing why discovery should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429
14 (9th Cir. 1975). This requirement has been applied in numerous cases. In *Sherman Park Cmty.*
15 *Ass’n v. Wauwatosia Realty Co.*, the court held that objecting to interrogatories on the ground that
16 they are not likely to lead to the discovery of relevant or admissible evidence, without more, is
17 an insufficient basis for refusal to answer. 486 F. Supp. 838, 845 (D. Wis. 1980). In *IBP, Inc. v.*
18 *Mercantile Bank of Topeka*, the court held that a party who asserts an objection and resists
19 discovery has the burden to show specifically the applicability of any objection it asserts. 179
20 F.R.D. 316, 322 (D. Kan. 1998). In *Pulsecard, Inc. v. Discover Card Services, Inc.*, the court
21 held that an objecting party has the burden of showing that responding to discovery is unduly
22 burdensome. 168 F.R.D. 295, 304 (D. Kan. 1996).

23 Both the Commission’s rules and the Oregon Rules of Civil Procedure authorize
24 comprehensive pretrial discovery and are intended to facilitate and simplify the issues and avoid
25 surprises at trial. As demonstrated below, Level 3 seeks information that is either directly
26 relevant to the disputed issues in this docket or could reasonably lead to the discovery of

1 admissible evidence. Qwest's refusal to respond to Level 3's legitimate discovery requests is
2 contrary to this Commission's rules and Oregon law.⁵ Unless this Motion is granted, Qwest's
3 failure to provide sufficient responses will deprive the Commission of the ability to make an
4 informed decision based on all relevant facts in this proceeding.⁶

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6 ⁵ In Washington, Level 3 served the exact same set of discovery on Qwest in a case presenting the identical
7 issues. Following oral argument on Level 3's Motion to Compel on April 18, 2006 Administrative Law Judge Ann
8 E. Rendahl issued an order directing Qwest to respond by May 9, 2006. The Washington Commission has similarly
9 entered an order directing a workshop on the record, though Qwest has yet to agree to a date for that proceeding.

10 ⁶ Further to the issue of relevant facts, Level 3, with some hesitation, will note that in responding to the
11 Oregon discovery (which is the same as what was filed in Washington), Qwest changed from sponsoring many of
12 the responses listing Phil Linse to another person who has never appeared in this or any other proceeding. While
13 there may be a simple explanation, Level 3 notes that it has encountered difficulty with Mr. Linse's knowledge of
14 Qwest's network, and as this motion to compel demonstrates, Qwest has refused to provide information that was
15 requested at the time of the technical conference, including, specifically, the location of devices supporting VoIP.
16 Qwest claims such information is not relevant because it involves facilities that are out of state or because it involves
17 Qwest's subsidiary QCC, yet Qwest has insisted upon propounding two sets of discovery since the technical
18 conference – despite Level 3's willingness to explain to Qwest the inner workings of its network both within the
19 state and outside of it – seeking further additional information about Level 3's subsidiaries as well as information
20 about facilities that Qwest knows as a result of the technical workshop exist outside of Oregon.⁶ In other words,
21 these are national networks providing services on a national basis. Unless Qwest is directed to provide information
22 with specificity, Level 3 is concerned that Qwest will simply engage in further dilatory and delay tactics. This has
23 become apparent, for example, as recently as during the Colorado hearing, when the Judge Isely questioned whether
24 Qwest's witnesses were playing a "shell game" with information Level 3 sought. A transcript excerpt is provided
25 below (emphasis added):

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2 MS. MANDELL: If I may respond to the
3 objection?

4 A.L.J. ISLEY: Yeah. Go ahead.

5 BY MS. MANDELL:

6 Q Is the billing system part of the
7 network -- oh, sorry. I'll respond. I was going to
8 sort of do a voir dire, but I guess I am going to say
9 that I think, probably, Mr. Linse would be able to say
10 that the billing system is part of the network, and
11 that whether or not the billing system has the logic is
12 certainly within his area of expertise. And I believe
13 that Mr. Easton did refer that over to Mr. Linse.

14 A.L.J. ISLEY: Well, to me, it's a
15 somewhat fine distinction. So I'm not sure that I can
16 tell what was referred to and what was not referred to.

17 But I don't know what we can do about it
18 anyway. **Mr. Linse can only answer what he can answer,
19 and if there's a shell game going on here, between one
20 witness passing off on information that another witness
21 is supposed to have, all we can do is take that into
22 account when we evaluate the credibility of these**

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V. ARGUMENT

The issues in this arbitration go to the core of Level 3's ability to offer technologically-innovative and cost-effective services on competitive terms, and to make efficient use of its network without the imposition of legacy obligations and costs. Level 3's Data Requests are intended to gather information that will rebut Qwest's claims that requiring Level 3 to become a retail customer of Qwest for the purpose of exchanging VoIP and ISP-bound traffic is discriminatory. Qwest's objections to Level 3's requests are without merit, especially when considered in light of the fact that Qwest has put the issue of whether a carrier may compete by means of using a distributed network architecture – one that utilizes equipment deployed regionally and nationally according to what is most efficient for business, economic and technological reasons – or whether Level 3 should be forced to abandon Level 3's vast facilities-based network in Oregon and simply purchase retail PRI circuits from Qwest, as Qwest's subsidiary currently does. So unless and until Qwest is compelled to reveal the entire story, their failure to provide adequate responses risks undermining Level 3's ability to draft testimony and prepare for the technical workshop as well as questions this Commission's jurisdiction over such matters. Accordingly, Level 3 respectfully requests that the Commission grant this Motion and order Qwest to respond to these requests immediately.

23 witnesses.

24 MS. MANDELL: Okay.

25 A.L.J. ISLEY: So, I don't know where

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1 else we could go with it.

2 MR. DETHLEFS: That's the only reason for

3 my objection. I don't believe that Mr. Linse --

4 Mr. Easton referred things to Mr. Linse so that

5 Mr. Linse could just refer them back to him, just to

6 avoid cross.

This has happened in other hearings, but without burdening this pleading with repeated cites to transcripts, suffice it to say, Level 3 is concerned that without specific direction that witnesses be prepared to discuss their networks in detail, we may encounter difficulty with obtaining all information required.

1 **A. Data Request No. 2 – Qwest Internet Access Service**

2 Level 3’s Data Request No. 2 is based on the foundation laid by Data Request No. 1, to
3 which Qwest did respond. Data Request No. 1 asked whether Qwest offers “any
4 telecommunications services that QCC utilizes as an input to providing dial-up Internet access
5 services to ISPs that are customers of QCC.” In response, Qwest stated affirmatively that “QC
6 offers telephone exchange and transport services to QCC and QCC purchases tariffed or catalog
7 services (such as PRIs and private line transport) from Qwest (the ILEC).” Level 3’s Data
8 Request No. 2 then asks the following:

9 To the extent that Data Request No. 1 applies to QC, please provide

- 10 a. the terms, conditions, and rates under which QC offers such
11 telecommunications services to QCC;
- 12 b. starting from the date that QCC first started offering
13 wholesale ISP-dialup in the state of Oregon, please provide
14 copies of all invoices from QC to QCC for any such
15 telecommunications services that QC has sold to QCC for
16 the provision of wholesale ISP-dialup in the state of
17 Oregon;
- 18 c. the number of ISP customers QCC serves in the State of
19 Oregon;
- 20 d. the location by rate center of the billing addresses of these
21 customers;
- 22 e. the locations by rate center of each ISP’s modems and
23 servers;
- 24 f. the locations by rate center of each PM or other QC-
25 provided telecommunications service being used by QCC
26 to provide service to these ISP customers; and
- 27 g. the physical location of QCC’s Cisco AS 400s or
28 equivalent equipment that provides modem functionality
29 for dial-up access to the Internet (what Qwest terms
30 “information access”) to QCC’s ISP customers.

31 Qwest objects to parts 2(b), 2(d), 2(e), and 2(f) of Data Request No. 2, all of which relate
32 to how Qwest Corporation offers services to QCC and how QCC uses those services to offer
33 Internet access services to its customers. Qwest objects to these requests on the basis that “the

1 information sought is not relevant to any issues in this proceeding and is not reasonably
2 calculated to lead to the discovery of admissible evidence.” Additionally, Qwest objects to part
3 2(g), which relates to specific information regarding QCC’s network architecture, on the basis
4 that (1) QCC is not a party to the proceeding; (2) the information requested is confidential; and
5 (3) the request seeks information that is not relevant to the issues in this proceeding and is not
6 reasonably calculated to lead to the discovery of admissible evidence.

7 Qwest’s objections are unfounded. First, Qwest’s objection on the grounds that the
8 information sought is irrelevant and not reasonably calculated to lead to the discovery of
9 admissible evidence is, without more, insufficient as a matter of law. *See Sherman Park Cmty.*
10 *Ass’n*, 486 F. Supp. at 845 (objecting to interrogatories on the ground that they are not likely to
11 lead to the discovery of relevant or admissible evidence, without more, is an insufficient basis for
12 refusal to answer).

13 More importantly, this objection is substantively incorrect. The services Qwest and its
14 affiliates provide to their customers and the network architectures by which they provide them
15 are indeed relevant. In this case, Qwest is attempting to impose upon Level 3 a network
16 architecture for serving it’s ISP customers that is inefficient and outdated, while at the same time
17 it takes advantage of its own position as the ILEC to provide to its own customers, and the
18 customers of its affiliates, the very same services using a network architecture very similar to the
19 one it claims that Level 3 is not allowed to use. As such, the ways in which Qwest and its
20 affiliates provided services to their customers, and the network architectures they employ, are
21 highly relevant to whether Qwest is creatively leveraging state regulation to drive up its
22 competitor’s – Level 3’s – costs.

23 Similarly, geographic locations of the ISPs (and their equipment) served by Qwest and its
24 affiliates serve are highly relevant to the issues raised in the Petition. Level 3 contends that for
25 purposes of compensation, the jurisdiction of calls should be determined by the NPA-NXX, in
26 accordance with long-standing industry practice. Qwest, on the other hand, is attempting to rate

1 traffic based upon the physical location of the customers, not the NPA-NXX, but later in its
2 objections, states that the “information regarding Qwest’s physical presence in the state [...] is
3 not relevant to any issues in this proceeding.”⁷ And in a partial response to Request No. 3,
4 Qwest states that “QCC ESP does not track the location of its VoIP customer’s CPE” but that
5 somehow “Level 3 games the North American Numbering Plan by assigning telephone numbers
6 (NPA/NXXs) for local calling areas in which the ISP’s callers are located to modem banks of the
7 ISPs located in distant local calling areas.”⁸ Request No. 2, therefore, is intended to elicit
8 information that will assist Level 3 in rebutting Qwest’s claims that Level 3 is “gaming” the
9 North American Numbering Plan, as well as Level 3’s assertion that the real game here is
10 Qwest’s ability to discriminate against Level 3. Qwest also objects to these requests because
11 QCC is not a party to the case. Qwest, however, continues to put at issue services Level 3
12 provides to Level 3’s enhanced services subsidiary, claiming, among other things, that Level 3’s
13 network configurations violate the ESP Exemption, and in the Core complaint, requesting,
14 among other things, that this Commission terminate Level 3’s interconnection arrangements with
15 Qwest.⁹ Despite these contradictions, Qwest continues to refuse to disclose information it has
16 clearly put into issue, while continuing to pursue a campaign designed to increase Level 3’s costs
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20 ⁷ It should be noted that Level 3’s discovery requests are directed to “Qwest” whether that is the incumbent
Qwest Corporation or its ESP/CLEC/IXC co-subsiary “Qwest Communications Corporation”.

21 ⁸ In the Matter of Level 3 Communications, LLC’s Petition for Arbitration Pursuant to Section 252(b) of the
22 Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State laws
for Rates, Terms, and Conditions of Interconnection with Qwest Corporation, Arb. 665, *Qwest Corporation’s
Response To Petition For Arbitration* (June 28, 2005) (*Qwest Arbitration Petition Response*).

23 ⁹ Qwest claimed, among other things, that Level 3’s network configurations – Level 3’s Lucent TNT servers
24 providing ISP dialup services to millions of Oregon customers (supporting hundreds of thousands of customers per
day) and which same devices support exciting and attractive VoIP services for those same thousands of customers) –
25 “amount to a willful and intentional violation of its obligations” under Oregon law and existing interconnection
agreement. *Qwest Corporation Complaint for Enforcement of Interconnection Agreement*, IC 12, (June 5, 2005)
26 (*See* Counts 2 Violation of State Law; Count 4 Violation of Section 13.4 of the ICA – Assignment of NPA-NXX
codes outside the local calling area; Count 5 – Improper Routing of Traffic Over Interconnection Trunks).

1 of doing business or terminate interconnection arrangements with Level 3 or both.¹⁰ Qwest
2 provides no support for the proposition that data requests must be limited to information about
3 parties to the docket only. *See IBP, Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 322 (D.
4 Kan. 1998) (party who asserts an objection and resists discovery has the burden to show
5 specifically the applicability of any objection it asserts). In fact this information is in Qwest's
6 possession, is highly relevant, and Qwest should be required to produce it.

7 More specifically, Qwest's entire case turns on Qwest's unique interpretation of the ISP
8 Remand Order. Qwest specifically states "Level 3's fundamental argument is that the FCC, in
9 the *ISP Remand Order*,¹¹ read in combination with the *Core Forbearance Order*,¹² has
10 preemptively required that intercarrier compensation must be paid on *all* ISP traffic, including
11 VNXX ISP traffic." Qwest further contends "these orders address compensation only for local
12 ISP traffic,¹³ where the ISP is *physically located* in the same LCA as the customer placing the
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14 ¹⁰ Following the issuance of the First Circuit Opinion in the Global NAPs case, which Qwest asserts validates
15 its desire to rate ISP-bound traffic as toll traffic, Verizon, without so much as attempting to determine which traffic
16 was VNXX under state law, handed Global NAPS a bill for \$65 million dollars (whereas it would have paid a mere
17 fraction of that to Global NAPs for terminating such traffic) and promptly shut down interconnection circuits with
18 Global NAPs' resulting in outages for hundreds of thousands of customers throughout Massachusetts. *See "Verizon
19 halts Internet service to Global NAPS - Verizon Communications Inc. is no longer providing Internet connection
20 service to Global NAPS Inc., cutting off Web access to some Massachusetts residents" Bizjournals, 4/28/2006
21 available at
22 http://www.bizjournals.com/ct/rc/30414/www.bizjournals.com/boston/stories/2006/04/24/daily81.html?from_rss=1;
23 and <http://www.cybertelecom.org/broadband/rcomp.htm>; see also "Dial-up provider loses Net access amid fee
24 dispute" (Boston Globe 4/28/06) available at
25 http://www.boston.com/business/technology/articles/2006/04/28/dial_up_provider_loses_net_access_amid_fee_dispute
26 and "Dialup Shutdown in Massachusetts - In the long run, it may mean the return of per-minute dialup pricing.
In the short term, non-Verizon dialup customers are cut off in parts of the United States" http://www.isp-planet.com/news/2006/dialup_shutdown.html.*

22 ¹¹ Order on Remand, *In the Matter of Implementation of the Local Competition Provisions in the Telecomm-
23 unications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCCR 9151 (2001) ("*ISP Remand
24 Order*").

24 ¹² Order, *Petition of Core Communications for Forbearance Under 47 USC § 160(c) from the Application of the ISP
25 Remand Order*, Order FCC 04-241 WC Docket No. 03-171 (rel. October 18, 2004) ("*Core Forbearance Order*").

25 ¹³ It is important to note that the FCC has repeatedly ruled that ISP-bound traffic is interstate in nature because the
26 ultimate end points of the calls are at websites across the country or in many cases in other parts of the world. *See In
the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-
carrier Compensation for ISP-Bound Traffic*, 14 FCCR 3689, ¶¶ 1, 10-20 (1999) ("*ISP Declaratory Order*"); *ISP*

1 call.”¹⁴ But even if Qwest is right this Commission cannot determine whether requiring that
2 Level 3 require its ISP Customers to be **physically located in every Oregon Local Calling**
3 **Area** is discriminatory measured against Qwest’s treatment of QCC, which Qwest readily admits
4 competes against Level 3. In other words, even if this Commission determines that the FCC’s
5 rules do not literally require that Qwest bear its own facilities costs for ISP-bound traffic
6 originates on Qwest’s network, that determination is not the same as showing that it makes sense
7 to allow Qwest to export those costs to Level 3. Moreover, where Level 3 has already
8 established interconnection in each local calling area by paying for transport to those areas, the
9 Commission can hardly countenance Qwest’s continued insistence **that Level 3 pay more** either
10 by physically locating ISP Customers (something no ISP does – see Qwest’s response to Level 3
11 discovery request No. 15(a) “QCC does not require its ISP customer equipment to be collocated
12 at QCC’s NAS location.”) or their equipment or by Level 3’s purchasing retail circuits from QC
13 (which begs the question of interconnection at cost-based rates). Thus, this discovery request
14 goes straight to the heart of Qwest’s interconnection contract language, where, for example, at
15 Issue 14, Qwest defines traffic based upon “local calling areas” while at Issue 7 Qwest defines
16 “Basic Local Exchange Telephone Service” in ways that require an ISP to physically locate
17 equipment or itself within a local calling area. Yet, Qwest, by its own admission states that
18 “QCC the ESP does not track the physical location of its VoIP customer’s CPE” (Response to
19 Data Request No. 4), but asserts that Level 3 is gaming the North American Numbering Plan
20 because Level 3’s calls are terminated to customers who are not in the local calling area and
21 proposes that VoIP be “subject to interconnection and compensation rules and treatment
22 accordingly under this Agreement based on treating the VoIP Provider Point of Presence
23 (“POP”) is an end user premise for purposes of determining the end point for a specific call.

25 *Remand Order*, ¶¶ 14, 58-62. Nonetheless, for intercarrier compensation purposes, the relevant end points are the
26 physical location of the calling party and the physical location of the ISP’s servers or modem banks.

¹⁴ *Qwest Arbitration Petition Response*, at p.10 (Issue 3).

1 Thus, CLEC is permitted to utilize LIS trunks to terminate VoIP traffic under this Agreement
2 only pursuant to the same rules that apply to traffic from all other end users, including the
3 requirement that the VoIP Provider POP must be in the same Local Calling Area as the called
4 party.”¹⁵ It turns out, however, that none of Level 3’s facilities qualify as a VoIP POP, and
5 accordingly Level 3’s traffic must be rated as toll and exchanged over network other than the
6 massive network over which today Level 3 handles tens if not hundreds of thousands of calls per
7 day.¹⁶ The same is as true for providing service to ISPs as it is for providing service to VoIP
8 customers.

9 Section 251(c) of the Telecommunications Act requires incumbent LECs, such as Qwest,
10 to provide interconnection that is “at least equal in quality to that provided by the local exchange
11 carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides
12 interconnection;” and “on rates, terms, and conditions that are **just**, reasonable, and
13 nondiscriminatory, in accordance with the terms and conditions of the agreement and the
14 requirements of this section and section 252”. 47 U.S.C. § 251(c)(2)(C, D). The FCC has
15 specifically stated that because “the *nondiscrimination* requirement in section 251(c)(2) *is not*
16 *qualified by* the “unjust or unreasonable” language of section 202(a)”, that “Congress did not
17 intend that the term "nondiscriminatory" in the 1996 Act be synonymous with "unjust and
18 unreasonable discrimination" used in the 1934 Act, but rather, *intended a more stringent*
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20 ¹⁵ See Issue 16 regarding Qwest’s definition of VoIP.

21 ¹⁶ Qwest claims in testimony that the “ESP Exemption” applies only when “the VoIP provider and the end
22 user are in the same LCA” (Brotherson Direct Testimony at 17) yet Level 3 and it believes every other major
23 competitor deploy VoIP equipment regionally if not nationally. Level 3 states, that there is no cost difference to
24 Qwest if Level 3 picks up the traffic in a local calling area and Level 3 transmits such traffic to equipment in Seattle,
25 Denver, Phoenix, Houston or to a box right in the same LCA. If on the other hand, what Qwest believes is that calls
26 should be rated based upon who owns the equipment, then even where the call would be physically “local” under
Qwest’s view of the world, Level 3 would owe Qwest access – either in the form of having to pay Qwest per minute
rates or having to purchase retail facilities from Qwest (instead of using the network Level 3 constructed in Oregon
to compete with Qwest). (“The effect of the exemption, then, is that unlimited calls may be terminated by the ESP
within such LCAs and it will be charged typical retail business rates instead of access charges to do so.” Brotherson
Direct Testimony at 17). In all cases, therefore, where and how Qwest or QCC deploy VoIP equipment go directly
to the issues that Qwest has put into play in this case.

1 **standard.**¹⁷ If for cases involving interconnection, discrimination is measured by a more
2 stringent standard, then information regarding claims of discrimination must be fully
3 investigated. The Commission has this authority. Section 252(b)(4)(B) states plainly:

4 The State commission may require the petitioning party and the responding party
5 to **provide such information as may be necessary for the State commission to**
6 **reach a decision on the unresolved issues.** If any party refuses or fails
7 unreasonably to respond on a timely basis to any reasonable request from the
8 State commission, **then the State commission may proceed on the basis of the**
9 **best information available to it from whatever source derived.** 47 U.S.C. §
10 252(b)(4)(B) (emphasis added).

11 The information Level 3 seeks is necessary to rebut Qwest's claims that Level 3 is not entitled to
12 provide competing services in Oregon except as a retail customer of Qwest as well as
13 determining whether indeed Qwest's interconnection requirements are discriminatory and
14 therefore violate Section 251(c). Even where Qwest is unable to or unwilling to provide this
15 information, the Act permits this Commission to proceed "on the basis of the best information
16 available to it from whatever source derived." *Id.* Accordingly, given that the Arbitration and
17 Core Complaint proceedings are nearly a year old, there can be no reason or cause for any further
18 delay.

19 Lastly, because this Commission must reject any interconnection agreement – whether
20 negotiated or arbitrated – that does not meet the requirements of Section 251, which includes
21 251(c)(2)(D)'s prohibition against discrimination – Level 3 must have the information it seeks in
22 this request to demonstrate the discriminatory intent behind Qwest's burdensome interconnection
23 requirements. *See* 47 U.S.C. § 252(e)(2)(B). Indeed, as the FCC has found and as Level 3
24 alleges in this case, "the LEC has the incentive to discriminate against its competitors by
25 providing them less favorable terms and conditions of interconnection than it provides itself."¹⁸
26 Accordingly, if Level 3 demonstrates that Qwest seeks to provide interconnection to Level 3 "in

¹⁷ In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of
1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First*
Report and Order, 11 FCC Rcd. 15,499, ¶ 217 (rel. August 8, 1996) (*Local Competition Order*) (emphasis added).

¹⁸ *Id.* at ¶ 218.

1 a manner less efficient than [Qwest] provides itself, [Qwest] violates the duty to be “just” and
2 “reasonable” under section 251(c)(2)(D).”¹⁹ Anything less than an unquestionably level playing
3 field, therefore, “is inconsistent with the procompetitive purpose of the Act”, which means that
4 any allegation of discrimination is absolutely critical to the determinations in this case.
5 Accordingly, the Commission must reject Qwest’s general objection to providing data about
6 affiliates Qwest uses to compete with Level 3 in for wholesale dialup and wholesale VoIP
7 services.

8 For these reasons, the Commission must compel Qwest to respond to Request No. 2 and
9 provide the information Level 3 seeks.

10 **B. Data Request Nos. 4– Qwest’s VoIP Service**

11 Level 3’s Data Request No. 4 is based on the foundation laid by Data Request No. 3,
12 Level 3’s Data Request No. 3, to which Qwest did respond. Data Request No. 3 asked “Does
13 QCC purchase from QC any retail or wholesale telecommunications services (such as PRI
14 circuits) that QCC incorporates or otherwise uses in the provisioning of any VoIP services (such
15 as wholesale dial) that it offers to customers of QCC?” Qwest responded to Request No. 3
16 affirmatively. Level 3’s Data Request No. 4 asks:

17 If the answer to Data Request 3 is "yes," please provide the following
18 information:

19 (a) starting from the date that QCC first started offering
20 wholesale VoIP in the state of Oregon, please provide copies of all
21 invoices from QC to QCC for any such telecommunications services that
22 QC has sold to QCC for the provision of wholesale VoIP in the state of
23 Oregon.

24 (b) the number of VoIP customers QCC serves in the state of
25 Oregon;

26 (d) the locations by rate center of the billing addresses of these
customers; .

¹⁹ *Id*

1 (e) the locations by rate center of each VoIP customer's
2 [equipment]

3 (f) the locations by rate center of each PRI or other QC
4 provided telecommunications service being used by QCC to provide
5 service to these VoIP customers.

6 (g) the physical location of QCC's Cisco AS 400s or equivalent
7 equipment converts IP to TDM (and vice versa) to provide functions
8 associated with the exchange of VoIP calls between QC and QCC;

9 Qwest objected to Level 3's parts 4(a), 4(d) and 4(f), all of which relate to how Qwest's
10 affiliate (QCC) uses Qwest services to offer VoIP services to its customers in the state of
11 Oregon. Qwest objected to these requests on the basis that "the information sought is not
12 relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery
13 of admissible evidence."

14 Qwest's objections are without merit. Again, Qwest's general objections that these
15 requests seek irrelevant information and are not reasonably calculated to lead to the discovery of
16 admissible evidence are, without more, insufficient as a matter of law. *See Sherman Park Cmty.*
17 *Ass'n*, 486 F. Supp. at 845. Moreover, Request Nos. 4(a), (d) and (f) are indeed relevant to
18 Disputed Issue 4 – whether Qwest and Level 3 will compensate each other at the rate of \$0.0007
19 per minute-of-use for the exchange of IP enabled or Voice over Internet Protocol ("VOIP")
20 traffic or whether Level 3 will incur the expense and delay of new facilities and such traffic be
21 rated as toll, even where it is handed off between the carriers on a local basis.

22 Moreover while Qwest admits to the location of certain devices (NAS server) providing
23 modem functionality (See Qwest Confidential Attachment B) they state that either the same or
24 another device ("QCC's Cisco AS400") does *not* provide VoIP functionality, but will not
25 provide the location of such equipment. Level 3 requested this information at the time of the
26 first technical conference. Qwest has yet to provide it and now objects. Either such devices are
located somewhere in the state of Oregon or they are not. Given Qwest's positions in this case,
determining the location of such equipment is highly relevant to whose interconnection contract

1 proposals more fairly treat VoIP traffic. And, as Level 3 has provided extensive information, not
2 only about its network within Oregon but about the network in other states, it will be impossible
3 to understand whether Qwest's claims that Level 3 violates existing interconnection agreements
4 as well as Oregon law because Level 3 is somehow not "physically present" – either in physical
5 or corporate or some other form – in every local calling area compares with Qwest's treatment of
6 its subsidiary QCC. Without such information a full picture of how these services are
7 provisioned on a national basis is not possible. So to the extent Qwest is not willing to provide
8 such information outside of Oregon, Level 3 asks that the Commission direct Qwest to provide
9 information about the location of such devices within the State of Oregon including but not
10 limited to the fact that Qwest locates no devices supporting VoIP functionality within Oregon at
11 all.

12 As is the case with Level 3's internet services, Qwest in this case is attempting to force
13 Level 3 to provision its VoIP services via an outdated and inefficient network architecture—one
14 that it does not impose on itself or its own affiliates. As such, just how Qwest and its affiliates
15 provision their own services, and the rates at which these services are exchanged, will be highly
16 relevant to the issues in this case. Accordingly, Qwest should be required to respond to Request
17 No. 4(a), 4(d) and 4(f).

18 **C. Request No.5(A), 5(B), 5(C) & 13(C)—Qwest ISP "Physical Presence" & PoP**

19 Level 3's Request No. 5(A) asks the following:

20 Qwest's website at
21 <http://www.qwest.com/wholesale/industrysolution/isp.html> describes
22 "Internet Service Provider (ISP) Industry Solutions" which returns a page
23 that describes the "Internet Service Provider (ISP) Industry Solutions"
24 reproduced in part below:

25 **Internet Service Provider (ISP) Industry Solutions**

26 As your backbone provider, Qwest's diverse products and services can
help you expand your service offerings, extend your services to new
markets and customers, and grow your profits.

1 To learn more about our products and services for ISPs, please visit our
2 Prospective Customer Inquiry Form
(<http://www.qwest.com/wholesale/pcfeedback.html>) so we can provide
3 you with the proper representative to help answer all your questions.

4 A. Where Qwest offers such services **within its incumbent serving area**
5 **in Oregon**, please detail where Qwest maintains a "physical presence" in
6 each local calling area in the state for provision of wholesale ISP dialup
7 services for the products listed in the subparts to this question below. For
8 the purposes of this request, describe and name the physical facility or
9 service that Qwest considers to constitute a "physical presence" in the
10 local exchange calling area.

11 1. "Digital Signal Level I DSO - V 1.0" available at
12 <http://www.qwest.com/wholesale/pcat/dsl.html>

13 2. "Voice Termination" available at
14 <http://www.qwest.com/wholesale/ocat/voicetermination.html>

15 3. "Outbound Voice Services" available at
16 <http://www.qwest.com/wholesale/pcat/ovs.html>

17 Level 3's Data Request Nos. 5B and 5C ask for exactly the same information, but with
18 regard to Qwest services "outside of its incumbent serving area in Oregon" (5B) and "outside of
19 its incumbent serving area in California, Texas, Illinois, Florida, and Massachusetts." (5C).
20 Level 3's Data Request No. 13(C) is similar to 5(C), in that it asks for information regarding
21 Qwest services "outside of its incumbent serving area in California, Texas, Illinois, Florida, and
22 Massachusetts." Data Request No. 13(C) asks whether Qwest maintains a "point-of-presence
23 (PoP)" in each local calling area in the state for provision of wholesale ISP dialup services."

24 Qwest objects to Level 3's Data Requests 5A and 5B on the basis that "information
25 regarding physical presence in the state * * * is not relevant to any issues in this proceeding and
26 not reasonably calculated to lead to the discovery of admissible evidence." Qwest further objects
to 5A and 5B on the basis that "listing the location of all of the equipment that it owns is unduly
burdensome." With regard to Data Requests 5C and 13C, Qwest responds that Qwest does not
offer services in the states listed, and to the extent this requirement seeks information regarding
QCC services in those states, Qwest objects on the basis that the request seeks information from
a nonparty and is not relevant.

1 First, as discussed above, Qwest’s objections that 5A and 5B are overly broad, unduly
2 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,
3 without more, are legally insufficient. Moreover, the information Level 3 is seeking in those
4 requests is directly relevant to Issue 3 in this Petition and to how Qwest distinguishes between
5 QCC’s services and Level 3’s services. Finally, with respect to Data Request Nos. 5C and 13C,
6 Qwest has provided no authority for the proposition that discovery is limited in scope to the state
7 of Oregon. As discussed above, Section 251(c) of the Telecommunications Act requires ILECs
8 to provide interconnection on a nondiscriminatory basis. The information sought by Level 3 is
9 critical to determining whether Qwest’s proposals in this arbitration discriminate against Level 3
10 relative to the manner in which Qwest interconnects with itself, its affiliates, and other carriers
11 throughout its service territory. Lastly, the fact that Qwest claims that “physical presence” is not
12 relevant is incorrect. Indeed, it is Qwest that has asserted that this Commission should rate ISP-
13 bound and VoIP traffic based upon the “physical location” in this case of the gear Level 3
14 utilizes to provide such services. Moreover, Qwest claimed in response to Level 3’s Washington
15 Motion to Compel, that “Other than the fact that both Level 3 and QCC serve ISPs, there is
16 virtually nothing similar about their methods of operation.” It truly seems as if Qwest really
17 doesn’t want this Commission to know or understand how these services are offered by carriers –
18 including Qwest’s affiliate QCC – on a nationwide basis or otherwise.²⁰ And again, it seems as
19 if this Commission should be able to make up its own mind about whether indeed there are any
20 similarities between Level 3’s and Qwest’s (and its affiliate’s) methods of operation and target
21 markets if competition in Oregon matters.

22
23
24
25 ²⁰ As further offer of relevance, Qwest in financial publications extols its nationwide network and gains in the long
26 distance business (which class of charges Qwest would apply to Level 3 while not applying to itself) in publications
to investors. See http://www.qwest.com/about/investor/events/files/QwestAugustRoadshow_080105.pdf.

1 **D. Requests Nos. 6, 7, 9 & 10 – Qwest Revenues**

2 Level 3’s Data Requests Nos. 6, 7, 9 and 10 all seek information regarding Qwest
3 revenues in the state of Oregon. Qwest claims in testimony in these proceedings that Level 3’s
4 interconnection requirements – the same requirements that have worked for years in Oregon and
5 elsewhere – are somehow draining Oregon of subsidies. Data Request No. 6 asks Qwest to
6 “state the total intrastate access revenues in the state of Oregon for the years 2004 and 2005.”
7 Data Request No. 7 asks for the “total amounts Qwest has collected for universal service” for the
8 same period. Data Request No. 9 asks Qwest to state the total interstate access revenues
9 collected by Qwest for traffic “originating” in Oregon for 2004 and 2005, while Data Request
10 No. 10 asks for the same data regarding traffic “terminating” in Oregon.

11 Qwest objects to all four of these requests on the basis that the information requested is
12 not relevant to any issues in this proceeding and is not reasonably calculated to lead to the
13 discovery of admissible evidence. Qwest’s objections fail. The information at issue in Data
14 Requests Nos. 6, 7, 9 & 10 is directly relevant to the issues in this proceeding because Qwest
15 claims that local rates will go up if our interconnection requirements are adopted. Level 3 seeks
16 the information regarding revenues in order to rebut Qwest’s position.

17 **E. Data Request No. 14 & 15 – Qwest’s Wholesale Voice Termination
18 and Dial Services**

19 Level 3’s Data Request No. 14 asks the following:

20 Qwest's website at
21 <http://www.qwest.com/wholesale/industrvsolution/isv.html> describes
22 "Internet Service Provider (ISP) Industry Solutions" which web page
23 contains a link to
24 <http://www.qwest.com/wholesale/pcat/natdial.html> which link returns a
25 page that describes a "Wholesale Voice Termination Services",
26 reproduced in relevant portion below:

27 Voice Termination
28 Product Description
29 Wholesale Voice Termination Services provide high quality long distance
30 service over our Macro Capacity® Fiber Network. A fundamental
31 component of any size business, long distance service is a key building
32 block in Qwest's virtual enterprise solution, providing a complete suite of

1 communication tools to meet our customers' needs. Voice Termination
2 Services are part of the Qwest Express brand and give the customer the
3 option of an RBOC/ITC or Blended rate. The RBOC/ITC option gives the
4 customer two rates per LATA depending on whether termination is
5 through the RBOC or an ITC. The Blended option gives the customer one
6 rate per LATA. For both types of service Qwest carries and bills for the
7 call from the time the carrier's originating switch signals the Qwest switch
8 to the terminating point of the call.

9 A. Please describe the components of Qwest's "Wholesale Voice
10 Termination Services" as offered over Qwest's incumbent network within
11 the state.

12 B. Please describe the components of Qwest's "Wholesale Voice
13 Termination Services" as offered in Sprint's incumbent territory within the
14 state.

15 C. Please describe the components of Qwest's "Wholesale Voice
16 Termination Services" as offered in Verizon's incumbent serving territory
17 within the state.

18 D. Please describe the components of Qwest's "Wholesale Voice
19 Termination Services" as offered in SBC's (n/k/a AT&T's) incumbent
20 serving territory outside of the state.

21 E. Please describe the components of Qwest's "Wholesale Voice
22 Termination Services" as offered in Verizon's incumbent serving territory
23 (n/k/a AT&T's) outside of the state.

24 F. Please describe the components of Qwest's "Wholesale Voice
25 Termination Services" as offered in BellSouth's incumbent serving
26 territory (n/k/a AT&T's) outside of the state.

G. Does Qwest offer the "Wholesale Voice Termination Services" as an
input to VoIP providers seeking to terminate VoIP Calls to Qwest's
incumbent network in the state? If so, please:

1. Please detail where Qwest maintains a "point-of-presence (PoP)" as the
term is used by Qwest in the quoted portions reflected in Level 3 Data
Request 14 above, in each local calling area in the state for provision of
such Wholesale Voice

Termination Services. For the purposes of this request, describe and name
the physical facility or service that Qwest considers to constitute a "point-
of-presence (PoP)" in the local exchange calling area.

H. Does Qwest offer the "Wholesale Voice Termination Services" as an
input to VoIP providers seeking to terminate VoIP Calls to Sprint's
incumbent network in the state? If so, please:

1 I. Please detail where Qwest maintains a "point-of-presence (PoP)" as the
2 term is used by Qwest in the quoted portions reflected in Level 3 Data
3 Request 14 above, in each local calling area in the state for provision of
4 such Wholesale Voice Termination Services. For the purposes of this
5 request, describe and name the physical facility or service that Qwest
6 considers to constitute a "point-of-presence (PoP)"in the local exchange
7 calling area.

8 J. Does Qwest offer the "Wholesale Voice Termination Services" as an
9 input to VoIP providers seeking to terminate VoIP Calls to Verizon's
10 incumbent network in the state? If so:

11 1. Please detail where Qwest maintains a "point-of-presence (PoP)" as the
12 term is used by Qwest in the quoted portions reflected in Level 3 Data
13 Request 14 above, in each local calling area in the state for provision of
14 such Wholesale Voice Termination Services. For the purposes of this
15 request, describe and name the physical facility or service that Qwest
16 considers to constitute a "point-of-presence (PoP)"in the local exchange
17 calling area.

18 K. Where Qwest offers such "Wholesale Voice Termination Services"
19 outside of its incumbent serving area in California, Texas, Illinois, Florida,
20 and Massachusetts does Qwest maintain a "point-of-presence (PoP)" as
21 the term is used by Qwest in the quoted portions reflected at the beginning
22 of Data Request No. 14 above, in each local calling area in the state for
23 provision of wholesale ISP dialup services? For the purposes of this
24 request, describe and name the physical facility or service that Qwest
25 considers to constitute a "point-of-presence (PoP)"in the local exchange
26 calling area.

L. For each response in A-H (including subparts) above, please specify the
precise physical location of NAS, which is described on the same webpage
as the "Qwest Wholesale Dial" service under the heading "How It Works"
which is reproduced for convenience below.

Your end users' PCs dial local access numbers provided by Qwest
to connect to local exchange carriers (LECs). Calls are
authenticated via a Qwest-provided remote authentication dial-in
service (RADIUS) proxy server communicating with your
RADIUS authentication server. After an end user is authenticated
and the end-user software negotiates the IP connection, the Qwest
Network Access Server (NAS) routes end-user packets to the
Internet, based on the destination IP address. (available at
<http://www.qwest.com/wholesale/pcat/natdial.html>)

M. To the extent that Qwest does not use a "Network Access Server
(NAS)" to provide supportive or constituent functionalities related to
"Wholesale Voice Termination Services" please provide the name,
manufacturer, model, and location of any device(s) that provide IP to
TDM conversion, and/or call control and/or call routing, and/or SS7, to the
extent that Qwest provides such functionalities in connection such service.

1 N. Please specify the rates Qwest offers for the "The Blended option gives
2 the customer one rate per LATA" for "Wholesale Voice Termination
3 Services" Qwest offers in the state of Oregon. Include the tariff, rate sheet,
or individual case basis filings under which such are offered within the
state.

4 O. Please specify the rates Qwest offers for the "The RBOC/ITC option
5 gives the customer two rates per LATA depending on whether termination
6 is through the RBOC or an ITC." for "Wholesale Voice Termination
7 Services" Qwest offers in the state of Oregon. Include the tariff, rate sheet,
or individual case basis filings under which such are offered within the
state.

8 P. For Questions A-K above, please provide the same information if for
9 any portion of any response to such questions Qwest contends that QCC or
10 any other Qwest Affiliate provides in whole or part such services (whether
regulated or not) or, in whole or part, owns, operates or controls directly or
indirectly any device, feature or functionality used in the provision, sale,
or offering of such Wholesale Voice Termination Services.

11 Q. If in response to Data Request No. 14(Q) above, Qwest contends that
12 QCC or any other Qwest Affiliate provides in whole or part such services
13 (whether regulated or not) or, in whole or part, owns, operates or controls
14 directly or indirectly any device, feature or functionality used in the
15 provision, sale, or offering of such service requested in Data Request No.
14 please provide copies of all invoices submitted by Qwest to QCC or
such other Qwest Affiliate related to such entity's provision or offering of
Wholesale Voice Termination Services.

16 Qwest did respond to parts A, B, and C of this request, all of which related to general
17 information regarding Qwest's services in the state of Oregon. Qwest's objections to the other
18 parts of Level 3's Data Request No. 14 can be broken down into two categories.

19 First, Qwest objects to parts G, H, I, and J on the basis that "information regarding
20 physical presence in the state * * * is not relevant to any issues in this proceeding and is not
21 reasonably calculated to lead to the discovery of admissible evidence." This position is directly
22 at odds with Qwest's position, as articulated in its response to Level 3's Petition, that a "physical
23 presence" in the local calling area is required for traffic to be compensated as "local." Qwest
24 further objects to parts G, H, I, and J on the grounds that listing the location of all of the
25 equipment that it owns is unduly burdensome. Qwest objects to request M, which asks that to
26 the extent a Qwest "NAS" does not provide VoIP service, to provide the location of the device

1 providing such service. Qwest refuses to provide such information because it is “overly broad”
2 and “not relevant” but again, it is Qwest who is asking this Commission to completely change
3 the rules of interconnection in a manner that essentially eliminates Level 3 as a competitor in the
4 state of Oregon – all because Level 3’s VoIP and ISP equipment (again, in more modern
5 networks these “modem” and “VoIP” functionalities are provided by the same device) is not
6 located in every calling area in Oregon and/or because Level 3 has not purchased retail services
7 from Qwest for the purpose of exchanging VoIP and/or ISP-bound traffic.

8 Again, as discussed above, information regarding the locations of devices Qwest claims
9 suffice or may suffice as Points-of-Presence is required in order for Level 3 to disprove Qwest’s
10 claims that its requirements do not discriminate against Level 3 and in favor of its subsidiary
11 QCC. Qwest has failed to meet its burden of showing that this instruction is overly broad or that
12 responding to these requests would be unduly burdensome. Oregon law is not designed to
13 protect parties from *any* burdensome request—only requests that are *unduly* burdensome given
14 the issues in the case. Given this information is central to Level 3’s case, and that the FCC has
15 specifically found that discrimination is measured by a stringent standard in interconnection
16 cases, Qwest has not even come close to demonstrating undue burden.

17 Second, Qwest’s objections to Data Request No. 14 parts D, E, F, K, N, and O and Data
18 Request No. 15(F)²¹ are all essentially that the information requested “pertains to a service

19 ²¹ Level 3’s Data Request No. 15 provides as follows:

20 Please state whether Qwest requires any "Internet Service Provider (ISP)" as Qwest uses that term on its
21 web pages (such as <http://www.qwest.com/wholesale/pcat/natdial.html>) that purchases a "Qwest Wholesale
Dial" product to:

22 A. Collocate any equipment at a Qwest "Network Access Server (NAS)" location;

23 B. Physically locate modems or equipment provides the modem functionality in the state?

24 C. Place, operate, own, maintain, locate or collocate modems, modem banks, or equipment providing
25 modem functionality in each Qwest local calling area in the state (regardless of whether such physical
26 location occurs within, near, inside or outside of a Qwest Central Office or Serving Wire Center and
regardless of whether such physical location is, is not, may be, could be, or might be regulated under local,
state or federal law)?

1 offered by QCC who is not a party to this proceeding.” These requests seek information about
2 how competitors provide these services out of region – including how Qwest’s subsidiary would
3 provide such services. This is highly relevant to the question of whether, assuming all other
4 things are equal, Qwest’s interconnection requirements are reasonable in terms as measured by
5 Qwest itself. Again, Section 251(c)(2)(C and D) are unequivocal: An ILEC must provide
6 interconnection “that is **at least equal** in quality to that provided by the local exchange carrier to
7 **itself** or to **any subsidiary, affiliate, or any other party** to which the carrier provides
8 interconnection; **and** on rates, terms, and conditions that **are just, reasonable, and**
9 **nondiscriminatory**, in accordance with the terms and conditions of the agreement and the
10 requirements of this section and section 252. 47 U.S.C. § 251(c)(2)(C, D). These requests are
11 also relevant for the same reasons discussed above in sections III.A and III.B. Qwest’s
12 arguments on these points fail. The information sought by Level 3 regarding QCC services is
13 critical to determining whether Qwest’s proposals in this arbitration discriminate against Level 3
14 relative to the manner in which Qwest interconnects with itself, its affiliates, and other carriers
15 throughout its service territory.

16
17
18 D. Place, operate, own, maintain, locate or collocate proxy RADIUS server(s), or such equipment
19 providing equivalent functionality in each Qwest local calling area in the state (regardless of whether such
20 physical location occurs within, near, inside or outside of a Qwest Central Office or Serving Wire Center
21 and regardless of whether such physical location is, is not, may be, could be, or might be regulated under
22 local, state or federal law)?

23 E. For Questions A-D above, please provide the same information if for any portion of any response to
24 such questions Qwest contends that QCC or any other Qwest Affiliate is responsible in whole or in part for
25 the provision of Qwest Wholesale Dial or for any requirements or restrictions requested in Data Request
26 No. 15:

27 F. If in response to Data Request No. 15(£) above, Qwest contends that QCC or any other Qwest Affiliate
28 is responsible in whole or in part for the provision of Qwest Wholesale Dial or for any requirements or
29 restrictions requested in Data Request No. 15 please provide copies of all invoices submitted by Qwest to
30 QCC or such other Qwest Affiliate for any such inputs to Qwest Wholesale Dial Services that QCC or such
31 other Qwest Affiliate purchases from Qwest for purposes of offering or providing such Wholesale Dial
32 Services.

1 **F. Data Request No. 19 - Efficient Use of Trunk Groups**

2 Level 3's Data Request No. 19 asks for the following:

3 For each state in which a Qwest CLEC affiliate combines local and toll
4 (IntraLA T A and InterLA T A) traffic on a single trunk group, please
5 state whether Qwest's CLEC affiliate uses a Percent Local Use (PLU) or
6 similar other method of establishing the apportionment of local vs. toll
7 traffic on the combined trunk group.

8 Qwest objects to this data request on the basis that it seeks information about a Qwest
9 CLEC affiliate which is not relevant to the issues raised in this arbitration proceeding in Oregon.

10 For the reasons given above, Qwest's objections that these requests seek information
11 that is not relevant, without more, is legally insufficient. To the contrary, this information is
12 material to the disputed issues in this case and should be discoverable. Issue No. 2 involves
13 whether Level 3 may exchange all traffic over the interconnection trunks established under the
14 Interconnection Agreement. Level 3 seeks to use its existing trunk groups to exchange all traffic
15 with Qwest, as it has done with vast volumes of jurisdictionally mixed traffic (ISP-bound traffic
16 was originally under state jurisdiction, then under federal jurisdiction) for many years. Qwest
17 seeks to limit Level 3's ability to use trunks efficiently and to force Level 3 to build an
18 inefficient network that mirrors Qwest's legacy network. Qwest seeks to do this by forcing
19 Level 3 to establish separate Feature Group D trunks to transmit traffic Qwest contends is "toll"
20 traffic and other traffic that Qwest admits cannot be accurately rated, but nevertheless contends
21 should be assessed access rates. Information related to Qwest's current practices, the practices of
22 its affiliates, and the obligations imposed on CLECs with whom Qwest exchanges traffic is
23 central to understanding and rebutting Qwest's position in these proceedings. This information
24 will assist Level 3 in drafting its testimony, preparing for hearings, and will be helpful to the
25 Commission in reaching a decision on this matter. Federal law clearly requires Qwest to permit
26 Level 3 to interconnect "at any technically feasible point within [Qwest]'s network."
47 U.S.C. § 251(c)(2)(B). If it denies interconnection at a particular point, Qwest must prove
that interconnection at that point is not technically feasible. See 47 C.F.R. § 51.305(e). These

1 provisions have been interpreted to permit a CLEC to have access at any point on the incumbent
2 network where connection is technically feasible.²² Moreover, the FCC has explicitly stated that
3 "economic, accounting, billing" and related concerns could not be taken into account when
4 determining whether or not a particular method of interconnection is technically feasible.
5 47 C.F.R. §§ 51.5, 51.305. In the *First Report and Order*, the FCC made clear that ILECs would
6 be required pursuant to Section 251 to configure their networks in such a manner to
7 accommodate interconnection with other carriers to ensure that ILEC's and their affiliate
8 networks are not given preferential interconnection treatment. The "obligations imposed by
9 sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent
10 necessary to accommodate interconnection or access to network elements."²³ The FCC's
11 statements are clear:

12 Thus, it is reasonable to interpret Congress's use of the term
13 "feasible" in sections 251(c)(2) and 251(c)(3) as encompassing
14 more than what is merely "practical" or similar to what is
15 ordinarily done. That is, use of the term "feasible" implies that
16 interconnecting or providing access to a LEC network element may
17 be feasible at a particular point even if such interconnection or
18 access requires a novel use of, or some modification to, incumbent
19 LEC equipment. This interpretation is consistent with the fact that
20 incumbent LEC networks were not designed to accommodate
21 third-party interconnection or use of network elements at all or
22 even most points within the network. If incumbent LECs were not
23 required, at least to some extent, to adapt their facilities to
24 interconnection or use by other carriers, ***the purposes of sections
25 251(c)(2) and 251(c)(3) would often be frustrated.*** For example,
26 Congress intended to obligate the incumbent to accommodate the
new entrant's network architecture by requiring the incumbent to
provide interconnection "for the facilities and equipment" of the
new entrant. Consistent with that intent, ***the incumbent must
accept the novel use of, and modification to, its network facilities
to accommodate the interconnector*** or to provide access to
unbundled elements.²⁴

24 ²² See, e.g., *U.S. West Communications v. AT & T Communications of the Pac. Northwest, Inc.*, 31 F.Supp.2d 839,
25 852 (D.Or.1998) (*AT & T-Pac*).

26 ²³ *Id.*

²⁴ *First Report and Order* at ¶202. (emphasis added)

1 The instant case presents a twist on the typical situation. Qwest, as ILEC, is not only attempting
2 to deny Level 3, as CLEC, access to the network at a single point per LATA (geographical scope
3 interconnection if you will) but also to deny Level 3 the ability to exchange differently-rated
4 traffic over an existing network and use verifiable factors to determine compensation due for
5 such traffic. Each carrier's local network was designed to be the most efficient and cost-effective
6 for that carrier. Qwest states that its system consists of a number of local networks that have
7 developed over time and each local network is characterized by the use of multiple local
8 switches. Yet Level 3 employs distributed soft switch architecture as does Qwest's subsidiary
9 which competes for ISP and VoIP. However, because SBC (in all territories including former
10 PacBell, Nevada Bell, Southwestern Bell, Ameritech and Southern New England Telephone
11 territories) now AT&T), Bellsouth (now AT&T) and Verizon (in all territories including former
12 GTE territories as well as Bell Atlantic North, Bell Atlantic South and NYNEX territories),
13 exchange all forms of traffic over a single local interconnection network, specific information as
14 to Qwest's objections to technical feasibility are not only very important, Qwest bears the burden
15 of proving that Level 3's method is technically **infeasible**. On this point the FCC's Rules are
16 pellucid:

17 § 51.305 Interconnection.

18 (c) Previous successful interconnection at a particular point in a network,
19 using particular facilities, **constitutes substantial evidence that**
20 **interconnection is technically feasible** at that point, or at substantially
21 similar points, in networks employing substantially similar facilities.
Adherence to the same interface or protocol standards shall constitute
evidence of the substantial similarity of network facilities.

22 (d) Previous successful interconnection at a particular point in a network
23 at a particular level of quality **constitutes substantial evidence that**
24 **interconnection is technically feasible** at that point, or at substantially
25 similar points, at that level of quality.

26 (e) **An incumbent LEC that denies a request for interconnection at a**
particular point **must prove to the state commission that**
interconnection at that point is not technically feasible.

1 Accordingly, information about how Qwest treats its subsidiaries or affiliates in Oregon, or
2 anywhere in the United States for that matter, **are entirely relevant** to this proceeding.

3 Additionally, as discussed above, Qwest cites no authority to support the proposition that
4 information regarding its affiliates and information about its business activities outside of
5 Oregon are not within the realm of discovery. This information is material to these proceedings.
6 Section 251(c) of the Act requires incumbent LECs, such as Qwest, to provide nondiscriminatory
7 access to interconnection. The information sought by Level 3 is critical to assessing whether
8 Qwest's proposals in this arbitration discriminate against Level 3 relative to the manner in which
9 Qwest provides interconnection to itself, its affiliates, and other carriers throughout its service
10 territory. For example, to the extent that, in Oregon or elsewhere, Qwest has not required its
11 affiliates or other CLECs to separate traffic onto different trunks and has employed PIUs, PLUs,
12 or some other traffic allocation factor to rate traffic, or has itself asserted its right to commingle
13 traffic on trunk groups, such information is directly relevant to Level 3's ability to rebut Qwest's
14 imposition of separate trunking requirement on Level 3 and bears directly on whether Qwest's
15 proposal is discriminatory.

16 For the foregoing reasons, Level 3 respectfully requests that the Commission order Qwest
17 to respond to Request Nos. 19.

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1 **VI. CONCLUSION**

2 For the reasons stated above, Level 3 respectfully requests that the Commission compel
3 Qwest to respond fully to Data Requests 2, 4-10, 13-15, and 19.

4 RESPECTFULLY SUBMITTED this 4th day of May, 2006.

5 LEVEL 3 COMMUNICATIONS, INC

6
7
8 By: /s/ Erik Cecil
9 Regulatory Counsel

10 Richard Thayer, Esq.
11 Director Interconnection Law and Policy

12 **Level 3 Communications, LLC**

13 1025 Eldorado Boulevard
14 Broomfield, CO 80021
15 Tel: (720) 888-1319
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19 ATER WYNNE LLP

20 By Jessica Gorham for
21 Lisa F. Rackner

22 Attorneys for Level 3 Communications, LLC
23
24
25
26

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 665

In the Matter of

LEVEL 3 COMMUNICATIONS, INC.'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, and Conditions of Interconnection with Qwest Corporation

LEVEL 3's FIFTH SET OF DATA REQUESTS TO QWEST

Pursuant to OAR 860-14-0070, Level 3 Communications, Inc. ("Level 3") hereby requests that Qwest Corporation, Inc. ("Qwest") respond to the following Fifth Set of Data Requests on or before ten days from the date you receive these requests in electronic form. These requests are continuing in nature and thus require Qwest to submit supplemental answers or documents should additional responsive information become known or documents supplied in response prove to be incorrect or defective. Please provide a copy of your responses to:

Lisa F. Rackner	Rick Thayer	Erik Cecil
Ater Wynne LLP	Level 3 Communications LLC	Level 3 Communications LLC
222 SW Columbia, Suite 1800	1025 Eldorado Boulevard	1025 Eldorado Boulevard
Portland, OR 97201	Broomfield, CO 80021	Broomfield, CO 80021

DEFINITIONS AND INSTRUCTIONS

A. Each request pertains to documents, physical objects, and computer recorded information in your knowledge, possession, custody, or control, or in the knowledge, possession, custody, or control of your agents or representatives. Each request is also a continuing request for information and documents, which come into your control during the time in which this proceeding is pending.

B. With respect to any document responsive hereto which has been destroyed, lost, or is no longer in your possession or subject to your control, you shall submit a statement setting forth as to each, a description of the item, its disposition, the date of disposition, and the names of all those with knowledge thereof.

C. The words "document", "memoranda", "work papers", "notes", "correspondence", "item", and "record", include any physical object, written, printed, typed, recorded or graphic, however

1 produced or reproduced, whether sent, received or neither, including originals, copies and drafts,
2 and including but not limited to: correspondence, email, telecopier correspondence, messages,
3 reports and recordings of telephone or other conversations and of interviews and conferences,
4 memoranda, notes, opinions, records, balance sheets, income statements, monthly statements,
5 book entries, account letters, ledgers, journals, books or records of accounts, summaries of
6 accounts, purchase or sales orders, invoices, vouchers, bills, receipts, checks stubs, cancelled
7 checks, drafts, leases, contracts, offers, desk calendars, appointment books, diaries, expense
8 reports, summaries, transcripts, minutes, reports, affidavits, statements, questionnaires, answers
9 to questionnaires, plans, specifications, lab books and notations, data notations, workpapers,
10 confirmations, formula, studies, forecasts, projections, analyses, evaluations, statistical records,
11 tabulations, calculations, charts, graphs, surveys, renderings, diagrams, photographs, recordings,
12 films, video recordings, microfilms, papers, books, periodicals, pamphlets, newspaper articles or
13 clippings, publications, schedules, lists, indexes, all other records or information kept by
14 electronic, photographic, mechanical or other means, and any item similar to the foregoing,
15 however denominated, whether currently in existence or already destroyed.

9 D. As used herein, the words "Qwest," or "Company" or "QC" refer to Qwest Corporation,
10 d/b/a Qwest Oregon and any predecessor, or successor corporation, its present and former
11 directors, officers, agents, representatives, employees, attorneys, joint venture, strategic partner,
12 and all other present or former persons, corporations, companies, partnerships, organizations or
13 other entities acting or purporting to act on behalf of Qwest or in which Qwest has a superior
14 financial interest.

13 E. As used herein, the words "Qwest Communications Corporation," or "QCC" refer to
14 Qwest Communications Corporation and any predecessor, or successor corporations, its present
15 and former directors, officers, agents, representatives, employees, attorneys, joint venture,
16 strategic partner, and all other present or former persons, corporations, companies, partnerships,
17 organizations or other entities acting or purporting to act on behalf of Qwest Communications
18 Corporation or in which Qwest Communications Corporation has a superior financial interest.

16 F. As used herein, the words "Qwest Communications International," or "QCI" refer to
17 Qwest Communications International and any predecessor, or successor corporations, its present
18 and former directors, officers, agents, representatives, employees, attorneys, joint venture,
19 strategic partner, and all other present or former persons, corporations, companies, partnerships,
20 organizations or other entities acting or purporting to act on behalf of Qwest Communications
21 International or in which Qwest Communications International has a superior financial interest.

20 G. As used herein, the words "Qwest and its affiliates," or "Company and its affiliates" or
21 "QC and its affiliates" refer to Qwest Corporation, d/b/a Qwest Oregon and any predecessor, or
22 successor, or affiliated corporation(s), its present and former directors, officers, agents,
23 representatives, employees, attorneys, joint venture, strategic partner, and all other present or
24 former persons, corporations, companies, partnerships, organizations or other entities acting or
25 purporting to act on behalf of Qwest or in which Qwest has a superior financial interest.

23 H. The words "this state", or references to this "state", means Oregon.

24 I. These requests are directed to all documents and information in your possession, custody
25 or control. A document is deemed to be in your possession, custody or control if you have
26 possession of the document, have the right to secure such document or communication from
another person having possession thereof, or the document or communication is reasonably
available to you (including those documents or communications in the custody or control of your
company's present employees, attorneys, agents, or other persons acting on its behalf and its

1 affiliates. In response to requests for production of documents contained in these discovery
2 requests, you shall produce the documents, including all appendices, exhibits, schedules, and
3 attachments that are most relevant to the request.

4 J. If you are unable to produce a document or information based on a claim that the
5 document is not in your possession, custody or control, state the whereabouts of such document
6 or information when it was last in your possession, custody or control, and provide a detailed
7 description of the reason the document is no longer in your possession, custody or control, and
8 the manner in which it was removed from your possession, custody or control.

9 K. Qwest, QCC, QCI or any Affiliate responsible for providing responses to these Data
10 Requests shall produce all responsive documents for inspection and copying unaltered and/or
11 unredacted as they are kept in the usual course of business and organize and label them to
12 correspond to the categories in this request. If the requested documents are kept in an electronic
13 format, you shall produce the requested document in such format. If any part of a document is
14 responsive to any request, the whole document is to be produced. If there has been any
15 alteration, modification or addition to a document (whether in paper form or electronic),
16 including any marginal notes, handwritten notes, underlining, date stamps, received stamps,
17 attachments, distribution lists, drafts, revisions or redlines, each such alteration, modification or
18 addition is to be considered as a separate document and it must be produced.

19 L. With respect to any responsive document to which Qwest asserts a claim of privilege, you
20 shall submit a list identifying each document. Identification shall include the (1) date of the
21 document, (2) the names, addresses and capacity of those who have signed the document, (3) the
22 names, addresses and capacity of those who participated in its preparation, (4) the addressee or
23 addressees, (5) the person or persons by whom it was received, (6) the general subject matter
24 thereof, (7) the present or last known location and custodian of the original (or, if that is
25 unavailable, the most legible copy or duplicate thereof), (8) the names and addresses of those
26 who have received a copy of the document, and (9) the basis for your claim of privilege.

M. Please answer each question separately and in the order that it is asked. Label each
response to correspond to the interrogatory, request for production of documents and/ or request
for admission. The numbers of the answers should correspond to the numbers of the data
requests being answered. In addition, copy each question immediately before the answer.
Following each answer, identify the person or persons responsible for the answer and indicate
what person or witness provided responsive information or documents, and where applicable,
what witness will sponsor each answer in testimony.

N. In response to Interrogatories requesting you to identify documents or other items,
information or materials for disclosure, please identify the document(s) or other item(s),
information or material(s) in sufficient detail so that they can be produced in response to a
separate Request for Production. Such identification shall contain the number (and subpart, if
applicable) of the Interrogatory requesting the identification and the page count or description of
the document or item. Additionally, to the extent known, the listing shall include the author,
publisher, title, date, and any "Bates" or other sequential production numbering for the document
or item. When responding to the Request for Production, please produce copies of all
documents, other items, information or materials that were identified in response to a request or
directive to "identify for disclosure" in these Interrogatories. For each document or other item,
please identify by number (including subpart, if any) the interrogatory which caused the
"identification for disclosure."

O. These discovery requests impose a continuing obligation on the respondent to supplement

1 an initial response with additional responsive information if such information becomes available.
2 Should there be a change in circumstances which would modify or change an answer you have
3 supplied, you should change or modify such answer and submit such changes, modifications, or
4 additional information as a supplement to the original answer. Further, should a subsequent
5 version(s) of a document be created or exist after the date of this discovery request, such
6 version(s) must be produced. Where prior versions or drafts of documents exist, please produce
7 all such documents in your possession, custody or control. In this regard, should additional
8 responsive information become available, advise Level 3 in writing, and provide a supplemental
9 response as soon as the material becomes available.

6 P. For each response, please provide the name, title and work address of any person that
7 assisted in the preparation of the response and the witnesses who will be testifying on behalf of
8 Qwest who will be prepared to answer questions relating to such responses. If, at the time, that
9 responses to those requests are due, it has not been determined whether a witness will be
10 testifying on behalf of Qwest who can answer questions relating to a particular response, then for
11 each response provide the name of the Qwest representative most knowledgeable regarding the
12 subject matter of and information in the response. If, prior to the evidentiary hearing in this
13 matter, you identify the witness(es) who will testify on your behalf on a particular response to a
14 question set forth herein, please supplement your response to identify the appropriate witness.

11 Q. For each person that Qwest intends to call as a witness in this proceeding, provide that
12 witness' name, address and business affiliations and if the person has previously appeared as a
13 witness in any regulatory proceeding in the state, please provide copies of all testimony that the
14 person has submitted in each such proceeding.

13 R. "Affiliate" shall have the same meaning as in 47 U.S.C. § 153.

14 S. "Customer" means wholesale customer of an ESP, whether such customer purchases
15 services from a Local Exchange Carrier or an affiliate of such Local Exchange Carrier.

16 T. "Information Service" shall have the same meaning as in 47 U.S.C. § 153.

17 U. "IP in the Middle" traffic or "PSTN-IP-PSTN Traffic" is defined as traffic that (1) uses
18 ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates
19 from and terminates to landline customers that draw dial tone from a circuit switch; (3)
20 originating customer dials 1 plus the called party's number, just as in any other circuit-switched
21 long distance call; and (4) the call undergoes no net protocol conversion and provides no
22 enhanced functionality to such landline customers due to the intermediate provider's use of IP
23 technology.

21 V. "ISP" includes entities providing ISP dialup services and/or VoIP Services on a
22 wholesale or retail basis.

23 W. "Local Call" refers to a call placed by a wireline end user of a LEC where the end user
24 dials a 7 or 10 digit telephone number which call is routed to and over interconnection facilities.
25 A "local call" is distinguished from an "IXC" "Interexchange" "long distance" "FGD" or
26 "telephone toll" call in that the latter group require the end user to subscribe or presubscribed
(whether pre-paid, post-paid or paid by another (e.g. 8YY service)) for such service and the
service requires the end user to dial 1+ before dialing the remaining digits to complete the call.

26 X. "Persons" are defined as living, breathing bipedal hominids generally known as human
beings. Persons may or may not be end users or customers. Legal "persons" such as

1 corporations, will be specifically defined and referred to. Legal entities and/or Legal “persons”
2 are not “persons” for purposes of these discovery requests, unless of course a living breathing
3 human being is a lawyer, in which case it is assumed that such entity is a human being and not a
4 shell corporation or some such other legal fiction.

5 Y. “PRI” or “PRI circuit” means a Primary Rate Service (PRS-Integrated Services Digital
6 Network) and/or Direct Inward Dialing (DID) or Direct Outward Dialing (DOD) or equivalent
7 services provided by Qwest, QCC or any Affiliate to customers, whether such customers are
8 characterized for regulatory or legal purposes as Qwest retail customers, Qwest wholesale
9 customers, Qwest end users, QCC (or any Affiliate’s) retail or wholesale customers or end users
10 including ISPs, in the state or elsewhere according to the terms and conditions identified Qwest
11 (or QCC) Exchange and Network Services tariffs, price lists, Individual Case Basis (ICB)
12 contracts, or pursuant to private contract.

13 Z. “Technically Feasible” is as defined in 47 C.F.R. § 51.305 and FCC orders and federal
14 cases interpreting the same.

15 AA. “Telecommunications Service” shall have the same meaning as in 47 U.S.C. § 153.

16 BB. “Traffic” is defined here to include “Telecommunications” and “Information Services”
17 traffic as such are defined in the 1996 Act at 47 U.S.C. § 153, including, but not limited to, ISP-
18 bound Traffic, VoIP Calls, and/or IP-enabled Traffic.

19 CC. “VoIP Calls” are defined as calls between Persons connected to the Internet via devices
20 operating in IP protocol that enable real time voice communications with Persons connected to
21 Qwest’s TDM (circuit switched) wireline telephone services. Accordingly, for purposes of
22 determining call flows: “IP to TDM calls” are VoIP calls originating in IP protocol and
23 terminating to Persons connected to Qwest’s TDM (circuit switched) wireline telephone services.
24
25
26

II. DATA REQUESTS

5-1. Does QC offer any telecommunications services that QCC utilizes as an input to providing dial-up Internet access services to ISPs that are customers of QCC?

5-2. To the extent that Data Request No. 1 applies to QC, please provide:

- (a) the terms, conditions and rates under which QC offers such telecommunications services to QCC;
- (b) starting from the date that QCC first started offering wholesale ISP-dialup in the state of Oregon, please provide copies of all invoices from QC to QCC for any such telecommunications services that QC has sold to QCC for the provision of wholesale ISP-dialup in the state of Oregon;
- (c) the number of ISP customers QCC serves in the state of Oregon;
- (d) the locations by rate center of the billing addresses of these customers;
- (e) the locations by rate center of each ISP's modems and servers
- (f) the locations by rate center of each PRI or other QC-provided telecommunications service being used by QCC to provide service to these ISP customers; and
- (g) the physical location of QCC's Cisco AS 400s or equivalent equipment that provides modem functionality for dial-up access to the Internet (what Qwest terms "information access") to QCC's ISP customers.

5-3. Does QCC purchase from QC any retail or wholesale telecommunications services (such as PRI circuits) that QCC incorporates or otherwise uses in the provisioning of any VoIP services (such as wholesale dial) that it offers to customers of QCC?

5-4. If the answer to Data Request 3 is "yes," please provide the following information:

- (a) starting from the date that QCC first started offering wholesale VoIP in the state of Oregon, please provide copies of all invoices from QC to QCC for any such telecommunications services that QC has sold to QCC for the provision of wholesale VoIP in the state of Oregon.
- (b) the number of VoIP customers QCC serves in the state of Oregon;
- (d) the locations by rate center of the billing addresses of these customers;
- (e) the locations by rate center of each VoIP customer's [equipment]
- (f) the locations by rate center of each PRI or other QC provided telecommunications service being used by QCC to provide service to these VoIP customers.

1 (g) the physical location of QCC's Cisco AS 400s or equivalent equipment converts
2 IP to TDM (and vice versa) to provide functions associated with the exchange of
VoIP calls between QC and QCC.

3 5-5. Qwest's website at <http://www.qwest.com/wholesale/industrysolution/isp.html> describes
4 "Internet Service Provider (ISP) Industry Solutions" which returns a page that describes
5 the "Internet Service Provider (ISP) Industry Solutions" reproduced in part below:

6 **Internet Service Provider (ISP) Industry Solutions**

7 As your backbone provider, Qwest's diverse products and services can
8 help you expand your service offerings, extend your services to new
markets and customers, and grow your profits.

9 To learn more about our products and services for ISPs, please visit our
10 Prospective Customer Inquiry Form ([http://www.qwest.com/wholesale/
pcfeedback.html](http://www.qwest.com/wholesale/pcfeedback.html)) so we can provide you with the proper representative to
11 help answer all your questions.

12 A. Where Qwest offers such services within its incumbent serving area in Oregon,
13 please detail where Qwest maintains a "physical presence" in each local calling
14 area in the state for provision of wholesale ISP dialup services for the products
listed in the subparts to this question below. For the purposes of this request,
15 describe and name the physical facility or service that Qwest considers to
16 constitute a "physical presence" in the local exchange calling area.

- 17 1. "Digital Signal Level 1 (DS1) - V1.0" available at
<http://www.qwest.com/wholesale/pcat/ds1.html>
- 18 2. "Voice Termination" available at
<http://www.qwest.com/wholesale/pcat/voicetermination.html>
- 19 3. "Outbound Voice Services" available at
<http://www.qwest.com/wholesale/pcat/ovs.html>.

20 B. Where Qwest offers such services outside of its incumbent serving area in Oregon,
21 please detail where Qwest maintains a "physical presence" in each local calling
22 area in the state for provision of wholesale ISP dialup services for the products
listed in the subparts to this question below. For the purposes of this request,
23 describe and name the physical facility or service that Qwest considers to
24 constitute a "physical presence" in the local exchange calling area.

- 25 1. "Digital Signal Level 1 (DS1) - V1.0" available at
<http://www.qwest.com/wholesale/pcat/ds1.html>
- 26 2. "Voice Termination" available at
<http://www.qwest.com/wholesale/pcat/voicetermination.html>

1 3. “Outbound Voice Services” *available at*
2 <http://www.qwest.com/wholesale/pcat/ovs.html>.

3 C. Where Qwest offers such services outside of its incumbent serving area in
4 California, Texas, Illinois, Florida, and Massachusetts does Qwest maintain a
5 “physical presence” in each local calling area in the state for provision of
6 wholesale ISP dialup services for the products listed in the subparts to this
7 question below? If so, for the purposes of this request, describe and name the
8 physical facility or service that Qwest considers to constitute a “physical
9 presence” in each of the local exchange calling areas in the state it locates such
10 equipment.

11 1. “Digital Signal Level 1 (DS1) - V1.0” *available at*
12 <http://www.qwest.com/wholesale/pcat/ds1.html>

13 2. “Voice Termination” *available at*
14 <http://www.qwest.com/wholesale/pcat/voicetermination.html>

15 3. “Outbound Voice Services” *available at*
16 <http://www.qwest.com/wholesale/pcat/ovs.html>.

17 5-6. Please state the total intrastate access revenues collected by Qwest in the state of Oregon
18 for the years 2004 and 2005.

19 5-7. Please state the total amounts Qwest has collected for universal service in the state of
20 Oregon for the years 2004 and 2005.

21 5-8. Please state whether Qwest has been found by any state commission to have failed to
22 invest in network infrastructure in any state in its 14 state incumbent territory, such as a
23 failure to invest funds in exchange for approval of mergers, acquisitions or in return for
24 alternative regulation of its services. For any such instances please provide the name of
25 the state, date of such finding, agency or court making such finding, docket number and
26 most recent disposition.

 5-9. Please state the total interstate access revenues collected by Qwest in the state of Oregon
 for traffic originating in the state of Oregon for the years 2004 and 2005.

 5-10. Please state the total interstate access revenues collected by Qwest in the state of Oregon
 for traffic terminating in the state of Oregon for the years 2004 and 2005.

1 5-11. Please explain the physical and technical characteristics, including the components of a
2 Qwest PRI circuit beginning with the line side of a Qwest End Office Switch and through
3 the point where such circuit terminates to an ISP.

4 5-12. Please explain the physical and technical characteristics, including the components of a
5 Qwest PRI circuit beginning with the line side of a Qwest End Office Switch and through
6 the point where such circuit terminates to an ESP provider of VoIP services.

7 5-13. Qwest's website at <http://www.qwest.com/wholesale/industrysolution/isp.html> describes
8 "Internet Service Provider (ISP) Industry Solutions" which web page contains a link to
9 <http://www.qwest.com/wholesale/pcat/natdial.html> which link returns a page that
10 describes the "Qwest Wholesale Dial" reproduced in part below:

11 "Dial-up network infrastructure (network-based modems support, V.90
12 V.92 and V.44 with dial coverage from over 2,500 points-of-presence
13 (PoPs), and covering over 84% of the U.S. population with a local call."

14 A. Where Qwest offers such services within its incumbent serving area in the state,
15 please detail where Qwest maintains a "point-of-presence (PoP)" as the term is
16 used by Qwest above, in each local calling area in the state for provision of
17 wholesale ISP dialup services. For the purposes of this request, describe and
18 name the physical facility or service that Qwest considers to constitute a "point-
19 of-presence (PoP)" in the local exchange calling area.

20 B. Where Qwest offers such services outside of its incumbent serving area in the
21 state, please detail where Qwest maintains a "point-of-presence (PoP)" as the term
22 is used by Qwest above, in each local calling area in the state for provision of
23 wholesale ISP dialup services. For the purposes of this request, describe and
24 name the physical facility or service that Qwest considers to constitute a "point-
25 of-presence (PoP)" in the local exchange calling area.
26

1 C. Where Qwest offers such services outside of its incumbent serving area in
2 California, Texas, Illinois, Florida, and Massachusetts does Qwest maintain a
3 “point-of-presence (PoP)” as the term is used by Qwest above, in each local
4 calling area in the state for provision of wholesale ISP dialup services? For the
5 purposes of this request, describe and name the physical facility or service that
6 Qwest considers to constitute a “point-of-presence (PoP)” in the local exchange
7 calling area.

8 D. For each response in A-C above, please specify the precise physical location of
9 Qwest’s Network Access Server (“NAS”), which is described on the same
10 webpage as the “Qwest Wholesale Dial” service under the heading “How It
11 Works” which is reproduced for convenience below.

Your end users’ PCs dial local access numbers provided by Qwest
to connect to local exchange carriers (LECs). Calls are
authenticated via a Qwest-provided remote authentication dial-in
service (RADIUS) proxy server communicating with your
RADIUS authentication server. After an end user is authenticated
and the end-user software negotiates the IP connection, the Qwest
Network Access Server (NAS) routes end-user packets to the
Internet, based on the destination IP address. (*available at*
<http://www.qwest.com/wholesale/pcat/natdial.html>)

17 5-14. Qwest’s website at <http://www.qwest.com/wholesale/industrysolution/isp.html> describes
18 “Internet Service Provider (ISP) Industry Solutions” which web page contains a link to
19 <http://www.qwest.com/wholesale/pcat/natdial.html> which link returns a page that
20 describes a “Wholesale Voice Termination Services”, reproduced in relevant portion
21 below:

Voice Termination

Product Description

Wholesale Voice Termination Services provide high quality long distance
service over our Macro Capacity® Fiber Network. A fundamental
component of any size business, long distance service is a key building
block in Qwest's virtual enterprise solution, providing a complete suite of
communication tools to meet our customers' needs. Voice Termination
Services are part of the Qwest Express brand and give the customer the

1 option of an RBOC/ITC or Blended rate. The RBOC/ITC option gives the
2 customer two rates per LATA depending on whether termination is
3 through the RBOC or an ITC. The Blended option gives the customer one
4 rate per LATA. For both types of service Qwest carries and bills for the
5 call from the time the carrier's originating switch signals the Qwest switch
6 to the terminating point of the call.

7
8 A. Please describe the components of Qwest's "Wholesale Voice Termination
9 Services" as offered over Qwest's incumbent network within the state.

10 B. Please describe the components of Qwest's "Wholesale Voice Termination
11 Services" as offered in Sprint's incumbent territory within the state.

12 C. Please describe the components of Qwest's "Wholesale Voice Termination
13 Services" as offered in Verizon's incumbent serving territory within the state.

14 D. Please describe the components of Qwest's "Wholesale Voice Termination
15 Services" as offered in SBC's (n/k/a AT&T's) incumbent serving territory outside
16 of the state.

17 E. Please describe the components of Qwest's "Wholesale Voice Termination
18 Services" as offered in Verizon's incumbent serving territory (n/k/a AT&T's)
19 outside of the state.

20 F. Please describe the components of Qwest's "Wholesale Voice Termination
21 Services" as offered in BellSouth's incumbent serving territory (n/k/a AT&T's)
22 outside of the state.

23 G. Does Qwest offer the "Wholesale Voice Termination Services" as an input to
24 VoIP providers seeking to terminate VoIP Calls to Qwest's incumbent network in
25 the state? If so, please:
26

1 1. Please detail where Qwest maintains a “point-of-presence (PoP)” as the
2 term is used by Qwest in the quoted portions reflected in Level 3 Data
3 Request 14 above, in each local calling area in the state for provision of
4 such Wholesale Voice Termination Services. For the purposes of this
5 request, describe and name the physical facility or service that Qwest
6 considers to constitute a “point-of-presence (PoP)”in the local exchange
7 calling area.

8 H. Does Qwest offer the “Wholesale Voice Termination Services” as an input to
9 VoIP providers seeking to terminate VoIP Calls to Sprint’s incumbent network in
10 the state? If so, please:

11 I. Please detail where Qwest maintains a “point-of-presence (PoP)” as the term is
12 used by Qwest in the quoted portions reflected in Level 3 Data Request 14 above,
13 in each local calling area in the state for provision of such Wholesale Voice
14 Termination Services. For the purposes of this request, describe and name the
15 physical facility or service that Qwest considers to constitute a “point-of-presence
16 (PoP)”in the local exchange calling area.

17 J. Does Qwest offer the “Wholesale Voice Termination Services” as an input to
18 VoIP providers seeking to terminate VoIP Calls to Verizon’s incumbent network
19 in the state? If so:

20 1. Please detail where Qwest maintains a “point-of-presence (PoP)” as the
21 term is used by Qwest in the quoted portions reflected in Level 3 Data
22 Request 14 above, in each local calling area in the state for provision of
23 such Wholesale Voice Termination Services. For the purposes of this
24 request, describe and name the physical facility or service that Qwest
25 considers to constitute a “point-of-presence (PoP)”in the local exchange
26 calling area.

1 K. Where Qwest offers such "Wholesale Voice Termination Services" outside of its
2 incumbent serving area in California, Texas, Illinois, Florida, and Massachusetts
3 does Qwest maintain a "point-of-presence (PoP)" as the term is used by Qwest in
4 the quoted portions reflected at the beginning of Data Request No. 14 above, in
5 each local calling area in the state for provision of wholesale ISP dialup services?
6 For the purposes of this request, describe and name the physical facility or service
7 that Qwest considers to constitute a "point-of-presence (PoP)" in the local
8 exchange calling area.

9 L. For each response in A-H (including subparts) above, please specify the precise
10 physical location of NAS, which is described on the same webpage as the "Qwest
11 Wholesale Dial" service under the heading "How It Works" which is reproduced
12 for convenience below.

13 Your end users' PCs dial local access numbers provided by Qwest
14 to connect to local exchange carriers (LECs). Calls are
15 authenticated via a Qwest-provided remote authentication dial-in
16 service (RADIUS) proxy server communicating with your
17 RADIUS authentication server. After an end user is authenticated
18 and the end-user software negotiates the IP connection, the Qwest
19 Network Access Server (NAS) routes end-user packets to the
20 Internet, based on the destination IP address. (*available at*
<http://www.qwest.com/wholesale/pcat/natdial.html>)

21 M. To the extent that Qwest does not use a "Network Access Server (NAS)" to
22 provide supportive or constituent functionalities related to "Wholesale Voice
23 Termination Services" please provide the name, manufacturer, model, and
24 location of any device(s) that provide IP to TDM conversion, and/or call control
25 and/or call routing, and/or SS7, to the extent that Qwest provides such
26 functionalities in connection such service.

N. Please specify the rates Qwest offers for the "The Blended option gives the
customer one rate per LATA" for "Wholesale Voice Termination Services"

1 Qwest offers in the state of Oregon. Include the tariff, rate sheet, or individual
2 case basis filings under which such are offered within the state.

3 O. Please specify the rates Qwest offers for the “The RBOC/ITC option gives the
4 customer two rates per LATA depending on whether termination is through the
5 RBOC or an ITC.” for “Wholesale Voice Termination Services” Qwest offers in
6 the state of Oregon. Include the tariff, rate sheet, or individual case basis filings
7 under which such are offered within the state.

8 P. For Questions A-K above, please provide the same information if for any portion
9 of any response to such questions Qwest contends that QCC or any other Qwest
10 Affiliate provides in whole or part such services (whether regulated or not) or, in
11 whole or part, owns, operates or controls directly or indirectly any device, feature
12 or functionality used in the provision, sale, or offering of such Wholesale Voice
13 Termination Services.

14 Q. If in response to Data Request No. 14(Q) above, Qwest contends that QCC or any
15 other Qwest Affiliate provides in whole or part such services (whether regulated
16 or not) or, in whole or part, owns, operates or controls directly or indirectly any
17 device, feature or functionality used in the provision, sale, or offering of such
18 service requested in Data Request No. 14 please provide copies of all invoices
19 submitted by Qwest to QCC or such other Qwest Affiliate related to such entity’s
20 provision or offering of Wholesale Voice Termination Services.

21 5-15. Please state whether Qwest requires any “Internet Service Provider (ISP)” as Qwest uses
22 that term on its web pages (such as <http://www.qwest.com/wholesale/pcat/natdial.html>)
23 that purchases a “Qwest Wholesale Dial” product to:

- 24 A. Collocate any equipment at a Qwest “Network Access Server (NAS)” location;
25 B. Physically locate modems or equipment provides the modem functionality in the
26 state?

1 C. Place, operate, own, maintain, locate or collocate modems, modem banks, or
2 equipment providing modem functionality in each Qwest local calling area in the
3 state (regardless of whether such physical location occurs within, near, inside or
4 outside of a Qwest Central Office or Serving Wire Center and regardless of
5 whether such physical location is, is not, may be, could be, or might be regulated
6 under local, state or federal law)?

7 D. Place, operate, own, maintain, locate or collocate proxy RADIUS server(s), or
8 such equipment providing equivalent functionality in each Qwest local calling
9 area in the state (regardless of whether such physical location occurs within, near,
10 inside or outside of a Qwest Central Office or Serving Wire Center and regardless
11 of whether such physical location is, is not, may be, could be, or might be
12 regulated under local, state or federal law)?

13 E. For Questions A-D above, please provide the same information if for any portion
14 of any response to such questions Qwest contends that QCC or any other Qwest
15 Affiliate is responsible in whole or in part for the provision of Qwest Wholesale
16 Dial or for any requirements or restrictions requested in Data Request No. 15:

17 F. If in response to Data Request No. 15(E) above, Qwest contends that QCC or any
18 other Qwest Affiliate is responsible in whole or in part for the provision of Qwest
19 Wholesale Dial or for any requirements or restrictions requested in Data Request
20 No. 15 please provide copies of all invoices submitted by Qwest to QCC or such
21 other Qwest Affiliate for any such inputs to Qwest Wholesale Dial Services that
22 QCC or such other Qwest Affiliate purchases from Qwest for purposes of offering
23 or providing such Wholesale Dial Services.

24 5-16. Please list each local calling area within the state in which QCC maintains a physical
25 presence as defined by QC in Section 4-Definitions VNXX Traffic (Issue No. 3B) of the
26 Qwest's proposed changes to the Parties' interconnection agreement.

1 5-17. Of those states in which Qwest operates as an ILEC (as defined in Section 251(h) of the
2 Act), list the states where Qwest combines CLEC local and toll (IntraLATA and
3 InterLATA) traffic on a single trunk?

4 5-18. For each state in which Qwest operates as an ILEC (as defined in Section 251(h) of the
5 Act), please identify each CLEC with which Qwest (a) exchanges local and toll
6 (IntraLATA and InterLATA) traffic on a single trunk group and (b) uses a Percent Local
7 Use (PLU) or similar method of establishing the apportionment of local vs. toll traffic on
8 the combined trunk group.

9 5-19. For each state in which a Qwest CLEC affiliate combines local and toll (IntraLATA and
10 InterLATA) traffic on a single trunk group, please state whether Qwest's CLEC affiliate
11 uses a Percent Local Use (PLU) or similar other method of establishing the
12 apportionment of local vs. toll traffic on the combined trunk group.

13 **5-20.** Please explain why the following contract sections contained in Qwest's Oregon SGAT
14 prohibit Level 3 from exchanging VoIP Calls, ISP-bound traffic and terminating
15 traditional 1+ dialed Interexchange traffic (also known as terminating "IP in the middle"
16 traffic) over Level 3's existing co-carrier network using billing factors in the state. The
17 full SGAT is available at: <http://www.qwest.com/wholesale/clecs/sgatswireline.html>,
18 scroll down to "Oregon" and Choose "SGAT 6/25/02", which will return a word
19 document containing these (and other provisions).

20 7.2.2.9.3 Separate trunk groups may be established based on Billing,
21 signaling, and network requirements. The following is the current list of
22 traffic types that require separate trunk groups, unless specifically
23 otherwise stated in this Agreement.

24 a) Directory assistance trunks (where the Switch type requires
25 separation from operator services trunks);

26 b) 911/E911 trunks;

c) Operator services trunks (where the Switch type requires
separation from Directory Assistance trunks)

d) Mass calling trunks, if applicable.

1 7.2.2.9.3.1 Exchange Service (EAS/local), Exchange Access
2 (IntraLATA toll carried solely by Local Exchange Carriers) and Jointly
3 Provided Switched Access (InterLATA and IntraLATA toll involving a
4 third-party IXC) may be combined in a single LIS trunk group or
5 transmitted on separate LIS trunk groups. If traffic is combined, Section
6 7.3.9 of this Agreement applies.

7 7.2.2.9.3.2 Exchange Service (EAS/Local) traffic and Switched Access
8 traffic including Jointly Provided Switched Access traffic, may be
9 combined on the same trunk group. If combined, the originating Carrier
10 shall provide to the terminating Carrier, each quarter, Percent Local Use
11 (PLU) factor(s) that can be verified with individual call record detail. Call
12 detail or direct jurisdictionalization using Calling Party Number
13 information may be exchanged in lieu of PLU if it is available.

14 And

15 7.3.9 To the extent a Party combines Exchange Service (EAS/Local),
16 Exchange Access (IntraLATA Toll carried solely by Local Exchange
17 Carriers), and Jointly Provided Switched Access (InterLATA and
18 IntraLATA calls exchanged with a third-party IXC) traffic on a single LIS
19 trunk group, the originating Party, at the terminating party's request will
20 declare quarterly PLU(s). Such PLU's will be verifiable with either call
21 summary records utilizing Calling Party Number information for
22 jurisdictionalization or call detail samples. The terminating Party should
23 apportion per minute of use (MOU) charges appropriately.

24 DATED this 21st day of April, 2006.

25 ATER WYNNE, LLP

26 By: /s/ Lisa F. Rackner

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Attorneys for Level 3 Communications, LLC

[Service Date April 25, 2006]

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of:)	
)	DOCKET UT-063006
LEVEL 3 COMMUNICATIONS,)	
LLC,)	ORDER 04
)	
For Arbitration Pursuant to Section)	ORDER GRANTING IN PART
252(b) of the Communications Act of)	AND DENYING IN PART
1934, As Amended by the)	MOTION TO COMPEL
Telecommunications Act of 1996, and)	
the Applicable State Laws for Rates,)	
Terms, and Conditions of)	
Interconnection with Qwest)	
Corporation)	
.....)	

1 ***Synopsis.** This order resolves a discovery dispute between Level 3 and Qwest. The order grants in part Level 3’s motion to compel responses to data requests relating to ISP and VOIP service Qwest provides to its affiliates, Qwest’s physical presence and point of presence in Washington, as well as its affiliates’ use of interconnection trunks in Washington. This order denies Level 3’s motion to compel responses to data requests and requests for admission relating to services Qwest or its affiliates provide outside of Washington.*

SUMMARY

2 **NATURE OF PROCEEDING.** Docket UT-063006 involves Level 3 Communications, LLC’s (Level 3), request to arbitrate an interconnection agreement with Qwest Corporation (Qwest) under Section 252(b) of the Telecommunications Act of 1996.

3 **APPEARANCES.** Erik Cecil, Regulatory Counsel, and Rick Thayer, Regulatory
Counsel, Broomfield, Colorado, and Arthur A. Butler, Ater Wynne, LLP, Seattle,
Washington, represent Level 3. Lisa A. Anderl, Associate General Counsel,
Seattle, Washington, and Thomas M. Dethlefs, Senior Attorney, Denver,
Colorado, represent Qwest.

4 **DECISION.** This order grants Level 3's motion to compel responses to Level 3
Data Request Nos. 2(d), (e) and (f), 4(d) and (f), 5(A) and (B), 6, 7, 9, 10, 14(G),
(H), (I), (J), (K), (M), (N), (O), and (P), grants in part Level 3 Data Request No.
2(b), 4(a), 14(Q), 15(F), and 19, and denies Level 3's motion to compel responses
to Level 3 Data Request Nos. 5(C), 13 (C), 14 (D), (E), (F) and (K), and Requests
for Admission Nos. 14-16.

5 Level 3's data requests and requests for admission seeking information outside of
Washington are overbroad and do not relate to arbitration of an agreement within
the state. Level 3's data requests seeking past invoices are only relevant for the
services provided in 2006. Level 3's requests relating to internet service providers
(ISP) and voice over internet protocol (VOIP) services, point of presence, physical
presence and use of interconnection trunks are all relevant to issues presented in
the arbitration and may result in admissible evidence.

MEMORANDUM

A. Procedural History

6 Level 3 filed a petition for arbitration of an interconnection agreement with Qwest
on January 26, 2006. The Commission entered an Order on Arbitration Procedure
on February 1, 2006. The Commission assigned Administrative Law Judge Ann
E. Rendahl as arbitrator in the proceeding.

7 The Commission held a prehearing conference on March 3, 2006, before Judge
Rendahl. The Commission adopted a procedural schedule in Order 02, the

prehearing conference order, including an opportunity for Level 3 to file a motion to compel responses from Qwest to certain data requests.

- 8 Level 3 filed a motion to compel responses to certain data requests and requests for admission on April 3, 2006. Qwest filed a response on April 11, 2006. Judge Rendahl heard oral argument from the parties on April 18, 2006.

B. Level 3's Motion to Compel

- 9 The contested data requests and requests for admission seek information that falls into five categories: (1) Qwest's service to its affiliates service relating to ISP and VOIP service, including invoices for past service from Qwest to its affiliates, (2) Qwest's physical presence or points of presence for providing ISP services, (3) Services Qwest or its affiliates provide outside of Washington, (4) Qwest's affiliates' use of interconnection trunks, and (5) Qwest's revenues in the state of Washington. The contested data requests and requests for admission are addressed by category, below.

1. Qwest ISP and VOIP services to affiliates

- 10 In Data Request Nos. 2, 4, 14, and 15, Level 3 seeks information from Qwest concerning services Qwest provides to its affiliate Qwest Communications Corporation (QCC) and others for dial-up internet access services to ISPs, VOIP services, and "wholesale voice termination services." Qwest objects to Data Request Nos. 2(b), (d), (e), and (f), 4(a), (d), and (f), 14(N), (O), (P), (Q), and 15(F).
- 11 Level 3 asserts that how and where the parties exchange traffic is at issue in the arbitration, as the services Qwest provides to its affiliates and the affiliates' network architectures are relevant to the issues in the arbitration. Level 3 further asserts that section 251(c) of the Telecommunications Act of 1996 requires incumbent local exchange carriers (ILECs) such as Qwest not to discriminate in providing interconnection with other carriers. Level 3 further asserts that Qwest

has access to information about its affiliates and that any confidential information would be covered under the protective order.

- 12 Qwest asserts that Level 3's "factual assumptions and legal propositions ... are either wrong or irrelevant." *Qwest Response*, ¶ 5. Qwest asserts the issues in the arbitration proceeding relate only to Qwest and Level 3, not to any other company or Qwest affiliate who are not parties to the arbitration. Because Qwest provides the services at issue to QCC through tariffs or price lists, not under its interconnection agreement, Qwest asserts the nondiscrimination requirement of section 251(c)(3) does not apply. Qwest further asserts the billing addresses of ISP or VOIP customers and physical locations of Qwest's services are not relevant to the case and that disclosure of customer-specific information is highly confidential.
- 13 Qwest also objects to Level 3's requests for invoices between Qwest and QCC, asserting that there is no basis for asserting that Qwest is not billing QCC for services provided to QCC. Qwest also asserts that certain information is available to Level 3 on the website Qwest maintains for compliance with section 272 of the Act, relating to affiliate transactions.
- 14 ***Discussion and decision.*** The Commission's rules require that data requests must "seek only information that is relevant to the issues in the adjudicative proceeding or may lead to the production of information that is relevant." *WAC 480-07-400(4)*. Parties may not object to a data request on the grounds that information may be inadmissible, as the Commission will allow discovery if the information "appears reasonably calculated to lead to discovery of admissible evidence." *Id.* The Commission's discovery rule, *WAC 480-07-400(5)*, further provides:

Parties must not seek discovery that is unreasonable cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. A discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information sought or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources,

scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding.

- 15 Having considered the contested data requests, the parties' pleadings and arguments in light of the standards for resolving discovery disputes, Level 3's motion to compel responses to Data Request Nos. 2(d), (e) and (f), 4(d) and (f), 14(N), (O) and (P) is granted. While Qwest disputes the relevance of Level 3's data requests based on its view of the issues in the proceeding, the focus of a discovery dispute is not to determine the ultimate issues in the proceeding. The test is not whether the information would ultimately be admissible, but rather whether it is relevant. Level 3's requests for information about how and where the parties should exchange traffic are appropriate. The data requests appear relevant to the issues in the proceeding and may lead to admissible evidence.
- 16 Data Request Nos. 2(b), 4(a), 14(Q) and 15(f) seek all invoices between Qwest and QCC or other affiliates. While the four data requests seek information that is relevant to the issues in the proceeding, the data requests are overbroad. Seeking all invoices, without a specific time frame, appears to require information that would be cumulative, duplicative or overly burdensome. Past transactions between Qwest and QCC or other affiliates may be relevant, but the burden of producing numerous invoices from years past outweighs the possible relevance of the data. It is most relevant to the issues in this proceeding how Qwest has most recently treated its affiliates. Further, it is not clear whether Level 3 could obtain this exact information in Qwest's section 272 website. Thus, Level 3's motion to compel responses to Data Request Nos. 2(b), 4(a), 14(Q), and 15(f) is granted in part, and limited to providing invoices from January 2006 to the present.

2. Qwest's physical presence or point of presence for ISP services

- 17 In Data Request Nos. 5, 13, and 14, Level 3 also seeks information from Qwest concerning its point of presence or physical presence in local calling areas for providing wholesale ISP dial-up services. Qwest objects to Data Request Nos. 5(A), (B) and (C), 13(C), and 14 (G), (H), (I), (J), (K) and (M). Qwest's objections to 5(C), 13(C), and 14(K) are addressed below in Section B.3.

- 18 Similar to the information discussed above, Level 3 asserts this information is relevant to the manner in which Qwest interconnects with or provides service to its affiliates, and whether these practices are discriminatory to Level 3. Level 3 also asserts the issue of physical presence is central to the issue of how the two carriers should interconnect to provide ISP-bound and VOIP services and what rate should apply to these services.
- 19 Qwest objects to the data requests relating to point of presence or physical presence as irrelevant in determining how to provide interconnection or what rate to charge for VOIP or ISP services. Qwest asserts such services are ESP services to be purchased from Qwest's retail tariffs rather than services provided under an interconnection agreement. Qwest asserts the point of presence of an ESP provider is not relevant in this proceeding.
- 20 ***Discussion and decision.*** Level 3's motion to compel responses to Data Request Nos. 5(A) and (B), and 14 (G), (H), (I), (J), and (M) is granted. Similar to the discussion above, the focus of a discovery dispute is not to determine the ultimate issues in the proceeding or to determine whether the information would ultimately be admissible, but rather whether it is relevant to the issues in the proceeding and whether it is reasonably calculated to lead to admissible evidence. Level 3's requests concerning Qwest's physical presence or point of presence in Washington State are relevant to the issues in the proceeding. While the information may not be relevant to Qwest's view of the proceeding, it is relevant to Level 3's view. The burden is on the parties in hearing to demonstrate whether or not the information is ultimately admissible and to argue in brief the ultimate issues in the proceeding.

3. Qwest's or its affiliates' physical presence and commingling outside of Washington State

- 21 In Data Request Nos. 5C, 13C, and 14(D), (E), (F) and (K) Level 3 seeks information about Qwest's point of presence or physical presence for providing wholesale ISP dial-up service in states other than Washington. In Request for Admission Nos. 14-16, Level 3 seeks information concerning Qwest commingling of traffic in transit services in Iowa. Qwest objects to these data requests and requests for admission.
- 22 Level 3 asserts that the information about Qwest's point of presence or physical presence in local calling areas is highly relevant to the issues in this proceeding, specifically the terms of interconnection for VNXX and VOIP service and whether Qwest's proposals and similar arrangements with its affiliates discriminate against Level 3. Level 3 offers similar arguments for its requests for admission.
- 23 In addition to the arguments above in Section B.2., Qwest objects to providing information about its presence in states other than Washington. Qwest asserts it is irrelevant to arbitrating an agreement in Washington what Qwest may do or not do in other states. Qwest asserts that other states have denied motions to compel responses to similar data requests. As to the requests for admission, Qwest objects to requests relating to services provided in other states. Qwest also argues that it is appropriate to use interconnection trunks for commingled traffic that can record interexchange traffic.
- 24 ***Discussion and decision.*** Information about Qwest's points of presence or physical presence in areas outside of its service territory in Washington is not relevant to the issues in the proceeding. This proceeding addresses an interconnection agreement between Level 3 and Qwest as an ILEC in Washington, not in other states, or in states outside of Qwest's service territory. Level 3's questions relating to Qwest's presence out of the state of Washington are overbroad. Thus, Level 3's motion to compel responses to Data Request Nos. 5C, 13C, and 14(D), (E), (F) and (K), and Request for Admission Nos. 14-16 is denied.

4. Qwest affiliates' use of interconnection trunks

25 In Data Request No. 19, Level 3 seeks the following information:

For each state in which a Qwest CLEC affiliate combines local and toll (IntraLATA and InterLATA) traffic on a single trunk group, please state whether Qwest's CLEC affiliate uses a Percent Local Use (PLU) or similar method of establishing the apportionment of local vs. toll traffic on the combined trunk group.

26 Level 3 asserts the information is relevant and material to disputed issues in the arbitration, particularly Issue No. 2, whether Level 3 may exchange all traffic on interconnection agreements under the agreement. Level 3 asserts the issue is whether Level 3's requested method of interconnection is technically feasible under the Act. It asserts information about use of interconnection trunks in other states is relevant to show technical feasibility.

27 Qwest asserts that Level 3's request is overbroad and does not meet the standard that the evidence is "reasonably" calculated to lead to admissible evidence. Qwest asserts Level 3's request is based on false assumptions and legal interpretations. Qwest further asserts that QCC is not a party to the proceeding and that the nondiscrimination obligations of Section 251 do not apply when QCC interconnects with carriers other than Qwest.

28 ***Discussion and decision.*** For the reasons discussed above in Section B.3., to the extent Data Request No. 19 seeks information about Qwest or QCC operations outside of Washington State, Level 3's motion is denied. Level 3's Data Request No. 19, if addressed solely to Qwest CLEC affiliate operations in Washington State, is relevant to the issues in dispute and is appropriate. Level 3's motion to compel a response to Data Request No. 19 is granted, but is limited to Qwest CLEC affiliate operations in Washington State.

5. Qwest's revenues in Washington

29 In Data Request Nos. 6, 7, 9 and 10, Level 3 seeks information concerning Qwest's access revenues and universal service payments in Washington. Level 3 asserts the information is relevant to the issues as "Qwest claims that local rates will go up if our interconnection requirements are adopted." *Level 3 Motion*, ¶ 30. Qwest denies it has made such a statement and objects to providing the information. Qwest asserts there is no connection between the access revenues and universal service payments requested in the data requests and Level 3's obligation to compensate Qwest for costs incurred to provide interconnection with Level 3.

30 ***Discussion and decision.*** As discussed above in Section B.1., the test for allowing data requests is not whether the information would ultimately be admissible, but whether it is relevant to the issues in dispute and is reasonably calculated to lead to discovery of admissible evidence. Level 3's requests for information about Qwest's access revenues and universal service payments in Washington are appropriate. The information may not be relevant to how Qwest views the case, but appears relevant to Level 3's allegations. Level 3's motion to compel responses to Data Request Nos. 6, 7, 9, and 10 is granted.

ORDER

THE COMMISSION ORDERS:

- 31 (1) Level 3 Communications, LLC's, motion to compel responses to Data Request Nos. 2(d), (e) and (f), 4(d) and (f), 5(A) and (B), 6, 7, 9, 10, 14(G), (H), (I), (J), (K), (M), (N), (O) and (P) is granted.
- 32 (2) Level 3 Communications, LLC's, motion to compel responses to Data Request Nos. 2(b), 4(a), 14(Q) and 15(F) is granted in part, but limited to invoices from January 2006 to the present.
- 33 (3) Level 3 Communications, LLC's, motion to compel responses to Data Request No. 19 is granted in part, but limited to Qwest CLEC affiliates operating in Washington.

- 34 (4) Level 3 Communications, LLC's, motion to compel responses to Data Request Nos. 5C, 13C, and 14(D), (E), (F) and (K) is denied.

Dated at Olympia, Washington, and effective April 25, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge and Arbitrator

QWEST CORPORATION

DOCKET: ARB 665

INTERVENOR: Level 3 Communications, Inc.

REQUEST NO: L3CI 05-001

REQUEST:

Does QC offer any telecommunications services that QCC utilizes as an input to providing dial-up Internet access services to ISPs that are customers of QCC?

RESPONSE:

If Level 3 defines "telecommunications services" as any tariffed telephone exchange or transport services the answer is yes. QC offers telephone exchange and transport services to QCC and QCC purchases tariffed or catalog services (such as PRIs and private line transport) from Qwest (the ILEC).

Respondent: Larry Brotherson

QWEST CORPORATION

DOCKET: ARB 665
INTERVENOR: Level 3 Communications, Inc.
REQUEST NO: L3CI 05-002

REQUEST:

To the extent that Data Request No. 1 applies to QC, please provide:

- (a) the terms, conditions and rates under which QC offers such telecommunications services to QCC;
- (b) starting from the date that QCC first started offering wholesale ISP-dialup in the state of Oregon, please provide copies of all invoices from QC to QCC for any such telecommunications services that QC has sold to QCC for the provision of wholesale ISP-dialup in the state of Oregon;
- (c) the number of ISP customers QCC serves in the state of Oregon;
- (d) the locations by rate center of the billing addresses of these customers;
- (e) the locations by rate center of each ISP's modems and servers
- (f) the locations by rate center of each PRI or other QC-provided telecommunications service being used by QCC to provide service to these ISP customers; and
- (g) the physical location of QCC's Cisco AS 400s or equivalent equipment that provides modem functionality for dial-up access to the Internet (what Qwest terms "information access") to QCC's ISP customers.

RESPONSE:

- (a) QC offers telecommunications services to QCC under the same terms conditions and rates as an end user pursuant to QC's tariff and price list.

Respondent: Ryan Gallagher

- (b) Qwest objects to this request on the basis that the information sought would be unduly burdensome to produce, is not relevant to any issues in this proceeding, and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal

- (c) Please see Confidential Attachment A.

Respondent: Ryan Gallagher

- (d) Qwest objects to this request on the basis that the information sought is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal

- (e) Qwest objects to this request on the basis that the information sought is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal

- (f) Qwest objects to this request on the basis that the information sought is

not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal

(g) Qwest Corporation ("QC") objects to this data request on the basis that it requests information from QCC, who is not a party to this proceeding. The information requested, to the extent known by QC, is confidential to QCC and may not be disclosed. Further, the request seeks information that is not relevant to the issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, please see Confidential Attachment B.

Respondent: Ryan Gallagher

QWEST CORPORATION

DOCKET: ARB 665
INTERVENOR: Level 3 Communications, Inc.
REQUEST NO: L3CI 05-003

REQUEST:

Does QCC purchase from QC any retail or wholesale telecommunications services (such as PRI circuits) that QCC incorporates or otherwise uses in the provisioning of any VoIP services (such as wholesale dial) that it offers to customers of QCC?

RESPONSE:

Yes. QCC purchases tariffed retail services, or exchange services, from Qwest (the ILEC), such as Primary Rate ISDN ("PRI") services purchased to terminate traffic to the PSTN in accordance with the ESP exemption.

Respondent: Larry Brotherson

QWEST CORPORATION

DOCKET: ARB 665
INTERVENOR: Level 3 Communications, Inc.
REQUEST NO: L3CI 05-004

REQUEST:

If the answer to Data Request 3 is "yes," please provide the following information:

(a) starting from the date that QCC first started offering wholesale VoIP in the state of Oregon, please provide copies of all invoices from QC to QCC for any such telecommunications services that QC has sold to QCC for the provision of wholesale VoIP in the state Oregon.

(b) the number of VoIP customers QCC serves in the state of Oregon;

(d) the locations by rate center of the billing addresses of these customers;

(e) the locations by rate center of each VoIP customer's [equipment]

(f) the locations by rate center of each PRI or other QC provided telecommunications service being used by QCC to provide service to these VoIP customers.

(g) the physical location of QCC's Cisco AS 400s or equipment converts IP to TDM (and vice versa) to provide functions associated with the exchange of VoIP calls between QC and QCC.

RESPONSE:

(a) Qwest objects to this request because the information sought is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal

(b) Please see Confidential Attachment A.

Respondent: Ryan Gallagher

(d) Qwest objects to this request on the basis that the information sought is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal

(e) VoIP service is a service provided by Qwest Communications Corporation (QCC) ESP to its customers using the internet. Thus, QCC ESP does not track the location of its VoIP customer's CPE.

Respondent: Ryan Gallagher

(f) Qwest objects to this request on the basis that the information sought is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal

(g) QCC's Cisco AS 400s do not provide VoIP functions for the exchange of VoIP calls between QC and QCC.

Respondent: Ryan Gallagher

QWEST CORPORATION

DOCKET: ARB 665
INTERVENOR: Level 3 Communications, Inc.
REQUEST NO: L3CI 05-005

REQUEST:

Qwest's website at <http://www.qwest.com/wholesale/industrysolution/isp.html> describes "Internet Service Provider (ISP) Industry Solutions" which returns a page that describes the "Internet Service Provider (ISP) Industry Solutions" reproduced in part below:

Internet Service Provider (ISP) Industry Solutions

As your backbone provider, Qwest's diverse products and services can help you expand your service offerings, extend your services to new markets and customers, and grow your profits.

To learn more about our products and services for ISPs, please visit our [Prospective Customer Inquiry Form \(http://www.qwest.com/wholesale/pcfeedback.html\)](http://www.qwest.com/wholesale/pcfeedback.html) so we can provide you with the proper representative to help answer all your questions.

A. Where Qwest offers such services within its incumbent serving area in Oregon, please detail where Qwest maintains a "physical presence" in each local calling area in the state for provision of wholesale ISP dialup services for the products listed in the subparts to this question below. For the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "physical presence" in the local exchange calling area.

1. "Digital Signal Level 1 (DS1) - V1.0" available at <http://www.qwest.com/wholesale/pcat/dsl.html>
2. "Voice Termination" available at <http://www.qwest.com/wholesale/pcat/voicetermination.html>
3. "Outbound Voice Services" available at <http://www.qwest.com/wholesale/pcat/ovs.html>.

B. Where Qwest offers such services outside of its incumbent serving area in Oregon, please detail where Qwest maintains a "physical presence" in each local calling area in the state for provision of wholesale ISP dialup services for the products listed in the subparts to this question below. For the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "physical presence" in the local exchange calling area.

1. "Digital Signal Level 1 (DS1) - V1.0" available at <http://www.qwest.com/wholesale/pcat/dsl.html>
2. "Voice Termination" available at <http://www.qwest.com/wholesale/pcat/voicetermination.html>
3. "Outbound Voice Services" available at <http://www.qwest.com/wholesale/pcat/ovs.html>.

C. Where Qwest offers such services outside of its incumbent serving area in California, Texas, Illinois, Florida, and Massachusetts does Qwest maintain a "physical presence" in each local calling area in the state for provision of wholesale ISP dialup services for the products listed in the subparts to this question below? If so, for the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "physical presence" in each of the local exchange calling areas in the state it locates

such equipment.

1. "Digital Signal Level 1 (DS1) - V1.0" available at <http://www.qwest.com/wholesale/pcat/ds1.html>

2. "Voice Termination" available at <http://www.qwest.com/wholesale/pcat/voicetermination.html>

3. "Outbound Voice Services" available at <http://www.qwest.com/wholesale/pcat/ovs.html>.

RESPONSE:

A. Qwest objects to the request for information regarding Qwest's physical presence in the state because this information is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Qwest further objects on the grounds that listing the location of all of the equipment that it owns is unduly burdensome.

Respondent: Qwest Legal

B. Qwest objects to the request for information regarding Qwest's physical presence in the state because this information is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Qwest further objects on the grounds that listing the location of all of the equipment that it owns is unduly burdensome.

Respondent: Qwest Legal

C. Qwest states that QC does not offer services in the states listed. To the extent that this data request seeks information about services that QCC might provide in these states, Qwest objects to this request in that it seeks information from a non-party, and is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Larry Brotherson
Qwest Legal

QWEST CORPORATION

DOCKET: ARB 665

INTERVENOR: Level 3 Communications, Inc.

REQUEST NO: L3CI 05-006

REQUEST:

Please state the total intrastate access revenues collected by Qwest in the state of Oregon for the years 2004 and 2005.

RESPONSE:

Qwest objects to the request for information regarding intrastate access revenues in the state of Oregon because it is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal

QWEST CORPORATION

DOCKET: ARB 665

INTERVENOR: Level 3 Communications, Inc.

REQUEST NO: L3CI 05-007

REQUEST:

Please state the total amounts Qwest has collected for universal service in the state of Oregon for the years 2004 and 2005.

RESPONSE:

Qwest objects to the request for information regarding universal service in the state of Oregon because it is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal

QWEST CORPORATION

DOCKET: ARB 665

INTERVENOR: Level 3 Communications, Inc.

REQUEST NO: L3CI 05-008

REQUEST:

Please state whether Qwest has been found by any state commission to have failed to invest in network infrastructure in any state in its 14 state incumbent territory, such as a failure to invest funds in exchange for approval of mergers, acquisitions or in return for alternative regulation of its services. For any such instances please provide the name of the state, date of such finding, agency or court making such finding, docket number and most recent disposition.

RESPONSE:

Qwest objects to this data request on the basis that it seeks information that is not relevant to the issues in this proceeding, seeks information not relating to Qwest's operations in Oregon, and is not reasonably calculated to lead to the discovery of admissible evidence. Qwest further objects to performing Level 3's legal research for it. Qwest is not required to research and produce state commission orders for Level 3 in discovery - to the extent such orders exist, they are a matter of public record in each state and are equally available to Level 3.

Respondent: Qwest Legal

QWEST CORPORATION

DOCKET: ARB 665

INTERVENOR: Level 3 Communications, Inc.

REQUEST NO: L3CI 05-009

REQUEST:

Please state the total interstate access revenues collected by Qwest in the state of Oregon for traffic originating in the state of Oregon for the years 2004 and 2005.

RESPONSE:

Qwest objects to the request for information regarding interstate access revenues in the state of Oregon because it is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal

QWEST CORPORATION

DOCKET: ARB 665

INTERVENOR: Level 3 Communications, Inc.

REQUEST NO: L3CI 05-010

REQUEST:

Please state the total interstate access revenues collected by Qwest in the state of Oregon for traffic terminating in the state of Oregon for the years 2004 and 2005.

RESPONSE:

Qwest objects to the request for information regarding interstate access revenues in the state of Oregon because it is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal

QWEST CORPORATION

DOCKET: ARB 665

INTERVENOR: Level 3 Communications, Inc.

REQUEST NO: L3CI 05-011

REQUEST:

Please explain the physical and technical characteristics, including the components of a Qwest PRI circuit beginning with the line side of a Qwest End Office Switch and through the point where such circuit terminates to an ISP.

RESPONSE:

Qwest assumes this question assumes that an ISP purchases a PRI directly from Qwest Corporation (QC) in the local calling area in which it is located. QC's PRI service consists of a physical port on a QC end office switch that is defined by the PRI software of the switch. This port is connected to a distribution frame with copper wires. At the distribution frame the copper wires may be cross connected to copper wires called a local exchange loop.

Respondent: Ryan Gallagher

QWEST CORPORATION

DOCKET: ARB 665

INTERVENOR: Level 3 Communications, Inc.

REQUEST NO: L3CI 05-012

REQUEST:

Please explain the physical and technical characteristics, including the components of a Qwest PRI circuit beginning with the line side of a Qwest End Office Switch and through the point where such circuit terminates to an ESP provider of VoIP services.

RESPONSE:

See Qwest's response to request no. 01-011. The only difference is that in the case of a VoIP provider, the PRI service allows origination and termination in the LCA in which it is purchased. Thus, the traffic can flow in the opposite direction from traffic flowing to an ISP. Otherwise, the connections are the same.

Respondent: Ryan Gallagher

QWEST CORPORATION

DOCKET: ARB 665
INTERVENOR: Level 3 Communications, Inc.
REQUEST NO: L3CI 05-013

REQUEST:

Qwest's website at <http://www.qwest.com/wholesale/industrysolution/isp.html> describes "Internet Service Provider (ISP) Industry Solutions" which web page contains a link to <http://www.qwest.com/wholesale/pcat/natdial.html> which link returns a page that describes the "Qwest Wholesale Dial" reproduced in part below:

"Dial-up network infrastructure (network-based modems support, V.90 V.92 and V.44 with dial coverage from over 2,500 points-of-presence (PoPs), and covering over 84% of the U.S. population with a local call."

A. Where Qwest offers such services within its incumbent serving area in the state, please detail where Qwest maintains a "point-of-presence (PoP)" as the term is used by Qwest above, in each local calling area in the state for provision of wholesale ISP dialup services. For the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "point-of-presence (PoP)" in the local exchange calling area.

B. Where Qwest offers such services outside of its incumbent serving area in the state, please detail where Qwest maintains a "point-of-presence (PoP)" as the term is used by Qwest above, in each local calling area in the state for provision of wholesale ISP dialup services. For the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "point-of-presence (PoP)" in the local exchange calling area.

C. Where Qwest offers such services outside of its incumbent serving area in California, Texas, Illinois, Florida, and Massachusetts does Qwest maintain a "point-of-presence (PoP)" as the term is used by Qwest above, in each local calling area in the state for provision of wholesale ISP dialup services? For the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "point-of-presence (PoP)" in the local exchange calling area.

D. For each response in A-C above, please specify the precise physical location of Qwest's Network Access Server ("NAS"), which is described on the same webpage as the "Qwest Wholesale Dial" service under the heading "How It Works" which is reproduced for convenience below.

Your end users' PCs dial local access numbers provided by Qwest to connect to local exchange carriers (LECs). Calls are authenticated via a Qwest-provided remote authentication dial-in service (RADIUS) proxy server communicating with your RADIUS authentication server. After an end user is authenticated and the end-user software negotiates the IP connection, the Qwest Network Access Server (NAS) routes end-user packets to the Internet, based on the destination IP address. (available at <http://www.qwest.com/wholesale/pcat/natdial.html>)

RESPONSE:

A. The following response relates to Qwest Communications Corporation (QCC) operations in Oregon: QCC offers Wholesale Dial in Oregon. QCC maintains a point of presence as the term is used by QCC in its description of Wholesale Dial where QCC has purchased local service (e.g. PRI) in each respective local calling area (LCA).

Respondent: Ryan Gallagher

B. The following response relates to Qwest Communications Corporation (QCC) ESP operations in Oregon: QCC offers Wholesale dial in Oregon. QCC maintains a point of presence as the term is used by QCC in its description of wholesale dial where QCC has purchased local service in each respective local calling area.

Respondent: Ryan Gallagher

C. Qwest states that QC does not offer services in the states listed. To the extent that this data request seeks information about services that QCC might provide in these states, Qwest objects to this request in that it seeks information from a non-party, and is not relevant to the issues in this case.

Respondent: Ryan Gallagher
Qwest Legal

D. Please see Confidential Attachment A.

Respondent: Ryan Gallagher

QWEST CORPORATION

DOCKET: ARB 665
INTERVENOR: Level 3 Communications, Inc.
REQUEST NO: L3CI 05-014

REQUEST:

Qwest's website at <http://www.qwest.com/wholesale/industrysolution/isp.html> describes "Internet Service Provider (ISP) Industry Solutions" which web page contains a link to <http://www.qwest.com/wholesale/pcat/natdial.html> which link returns a page that describes a "Wholesale Voice Termination Services", reproduced in relevant portion below:

Voice Termination

Product Description

Wholesale Voice Termination Services provide high quality long distance service over our Macro Capacity® Fiber Network. A fundamental component of any size business, long distance service is a key building block in Qwest's virtual enterprise solution, providing a complete suite of communication tools to meet our customers' needs. Voice Termination Services are part of the Qwest Express brand and give the customer the option of an RBOC/ITC or Blended rate. The RBOC/ITC option gives the customer two rates per LATA depending on whether termination is through the RBOC or an ITC. The Blended option gives the customer one rate per LATA. For both types of service Qwest carries and bills for the call from the time the carrier's originating switch signals the Qwest switch to the terminating point of the call.

- A. Please describe the components of Qwest's "Wholesale Voice Termination Services" as offered over Qwest's incumbent network within the state.
- B. Please describe the components of Qwest's "Wholesale Voice Termination Services" as offered in Sprint's incumbent territory within the state.
- C. Please describe the components of Qwest's "Wholesale Voice Termination Services" as offered in Verizon's incumbent serving territory within the state.
- D. Please describe the components of Qwest's "Wholesale Voice Termination Services" as offered in SBC's (n/k/a AT&T's) incumbent serving territory outside of the state.
- E. Please describe the components of Qwest's "Wholesale Voice Termination Services" as offered in Verizon's incumbent serving territory (n/k/a AT&T's) outside of the state.
- F. Please describe the components of Qwest's "Wholesale Voice Termination Services" as offered in BellSouth's incumbent serving territory (n/k/a AT&T's) outside of the state.
- G. Does Qwest offer the "Wholesale Voice Termination Services" as an input to VoIP providers seeking to terminate VoIP Calls to Qwest's incumbent network in the state? If so, please:

1. Please detail where Qwest maintains a "point-of-presence (PoP)" as the term is used by Qwest in the quoted portions reflected in Level 3 Data Request 14 above, in each local calling area in the state for provision of such Wholesale Voice Termination Services. For the purposes of this request,

describe and name the physical facility or service that Qwest considers to constitute a "point-of-presence (PoP)" in the local exchange calling area.

H. Does Qwest offer the "Wholesale Voice Termination Services" as an input to VoIP providers seeking to terminate VoIP Calls to Sprint's incumbent network in the state? If so, please:

I. Please detail where Qwest maintains a "point-of-presence (PoP)" as the term is used by Qwest in the quoted portions reflected in Level 3 Data Request 14 above, in each local calling area in the state for provision of such Wholesale Voice Termination Services. For the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "point-of-presence (PoP)" in the local exchange calling area.

J. Does Qwest offer the "Wholesale Voice Termination Services" as an input to VoIP providers seeking to terminate VoIP Calls to Verizon's incumbent network in the state? If so:

1. Please detail where Qwest maintains a "point-of-presence (PoP)" as the term is used by Qwest in the quoted portions reflected in Level 3 Data Request No. 14 above, in each local calling area in the state for provision of such Wholesale Voice Termination Services. For the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "point-of-presence (PoP)" in the local exchange calling area.

K. Where Qwest offers such "Wholesale Voice Termination Services" outside of its incumbent serving area in California, Texas, Illinois, Florida, and Massachusetts does Qwest maintain a "point-of-presence (PoP)" as the term is used by Qwest in the quoted portions reflected at the beginning of Data Request No. 14 above, in each local calling area in the state for provision of wholesale ISP dialup services? For the purposes of this request, describe and name the physical facility or service that Qwest considers to constitute a "point-of-presence (PoP)" in the local exchange calling area.

L. For each response in A-H (including subparts) above, please specify the precise physical location of NAS, which is described on the same webpage as the "Qwest Wholesale Dial" service under the heading "How It Works" which is reproduced for convenience below.

Your end users' PCs dial local access numbers provided by Qwest to connect to local exchange carriers (LECs). Calls are authenticated via a Qwest-provided remote authentication dial-in service (RADIUS) proxy server communicating with your RADIUS authentication server. After an end user is authenticated and the end-user software negotiates the IP connection, the Qwest Network Access Server (NAS) routes end-user packets to the Internet, based on the destination IP address.
(available at <http://www.qwest.com/wholesale/pcat/natdial.html>)

M. To the extent that Qwest does not use a "Network Access Server (NAS)" to provide supportive or constituent functionalities related to "Wholesale Voice Termination Services" please provide the name, manufacturer, model, and location of any device(s) that provide IP to TDM conversion, and/or call control and/or call routing, and/or SS7, to the extent that Qwest provides such functionalities in connection such service.

N. Please specify the rates Qwest offers for the "The Blended option gives the customer one rate per LATA" for "Wholesale Voice Termination Services" Qwest offers in the state of Oregon. Include the tariff, rate sheet, or individual case basis filings under which such are offered within the state.

O. Please specify the rates Qwest offers for the "The RBOC/ITC option gives the customer two rates per LATA depending on whether termination is through the RBOC or an ITC." for "Wholesale Voice Termination Services" Qwest offers

in the state of Oregon. Include the tariff, rate sheet, or individual case basis filings under which such are offered within the state.

P. For Questions A-K above, please provide the same information if for any portion of any response to such questions Qwest contends that QCC or any other Qwest Affiliate provides in whole or part such services (whether regulated or not) or, in whole or part, owns, operates or controls directly or indirectly any device, feature or functionality used in the provision, sale, or offering of such Wholesale Voice Termination Services.

Q. If in response to Data Request No. 14(Q) above, Qwest contends that QCC or any other Qwest Affiliate provides in whole or part such services (whether regulated or not) or, in whole or part, owns, operates or controls directly or indirectly any device, feature or functionality used in the provision, sale, or offering of such service requested in Data Request No. 14 please provide copies of all invoices submitted by Qwest to QCC or such other Qwest Affiliate related to such entity's provision or offering of Wholesale Voice Termination Services.

RESPONSE:

A. Qwest Communication Corporation's LD Wholesale Voice Termination Services is not offered over QC incumbent network within the state of Oregon except to the extent that QCC purchases access services pursuant to QC's access tariff (e.g., Feature Group D) for the termination of long distance voice traffic.

Respondent: Ryan Gallagher

B. Qwest Communication Corporation's LD Wholesale Voice Termination Services is offered in Sprint's incumbent territory within the state of Oregon where QCC purchases access services pursuant to Sprint's access tariff (e.g., Feature Group D) for the termination of long distance voice traffic.

Respondent: Ryan Gallagher

C. Qwest Communication Corporation's LD Wholesale Voice Termination Services is offered in Verizon's incumbent territory within the state of Oregon where QCC purchases access services pursuant to Verizon's access tariff (e.g., Feature Group D) for the termination of long distance voice traffic.

Respondent: Ryan Gallagher

D. Qwest states that QC does not offer service outside of its 14-state incumbent serving territory. To the extent that this data request seeks information about services that QCC might provide outside of the state of Oregon, Qwest objects to this request in that it seeks information from a non-party, and is not relevant to the issues in this case.

Respondent: Ryan Gallagher
Qwest Legal

E. Qwest states that QC does not offer service outside of its 14-state incumbent serving territory. To the extent that this data request seeks information about services that QCC might provide outside of the state of Oregon, Qwest objects to this request in that it seeks information from a non-party, and is not relevant to the issues in this case.

Respondent: Ryan Gallagher
Qwest Legal

F. Qwest states that QC does not offer service outside of its 14-state incumbent serving territory. To the extent that this data request seeks information about services that QCC might provide outside of the state of Oregon, Qwest objects to this request in that it seeks information from a

non-party, and is not relevant to the issues in this case.

Respondent: Ryan Gallagher
Qwest Legal

G. Qwest objects to the request for information regarding Qwest's physical presence in the state because this information is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Qwest further objects on the grounds that listing the location of all of the equipment that it owns is unduly burdensome.

Respondent: Ryan Gallagher
Qwest Legal

H. Qwest objects to the request for information regarding Qwest's physical presence in the state because this information is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Qwest further objects on the grounds that listing the location of all of the equipment that it owns is unduly burdensome.

Respondent: Ryan Gallagher

I. Qwest objects to the request for information regarding Qwest's physical presence in the state because this information is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Qwest further objects on the grounds that listing the location of all of the equipment that it owns is unduly burdensome.

Respondent: Qwest Legal

J. Qwest objects to the request for information regarding Qwest's physical presence in the state because this information is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Qwest further objects on the grounds that listing the location of all of the equipment that it owns is unduly burdensome.

Respondent: Qwest Legal

k - Qwest states that QC does not offer services in the states listed. To the extent that this data request seeks information about services that QCC might provide in these states, Qwest objects to this request in that it seeks information from a non-party, and is not relevant to the issues in this case.

Respondent: Ryan Gallagher
Qwest Legal

l - The following response relates to Qwest Communications Corporation (QCC) ESP operations in Oregon: See response to request no. 01-013(D).

Respondent: Ryan Gallagher

M. Qwest objects to this data request on the basis that it is overly broad and unduly burdensome and not relevant to the issues raised in this proceeding.

Respondent: Qwest Legal

N. Qwest objects to providing this information as it pertains to a service offered by QCC who is not a party to this proceeding and is not relevant to the issues raised in this proceeding.

Respondent: Qwest Legal

O. Qwest objects to providing this information as it pertains to a service

offered by QCC who is not a party to this proceeding and is not relevant to the issues raised in this proceeding.

Respondent: Qwest Legal

P. See Qwest's responses to subparts A - K above.

Respondent: Qwest Legal

Q. Qwest objects to this request on the ground that its reference to "Data Request No. 14(Q) above" is vague, ambiguous, and unintelligible. Qwest further objects to this request on the basis that the information sought is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal
Ryan Gallagher

QWEST CORPORATION

DOCKET: ARB 665
INTERVENOR: Level 3 Communications, Inc.
REQUEST NO: L3CI 05-015

REQUEST:

Please state whether Qwest requires any "Internet Service Provider (ISP)" as Qwest uses that term on its web pages (such as <http://www.qwest.com/wholesale/pcat/natdial.html>) that purchases a "Qwest Wholesale Dial" product to:

- A. Collocate any equipment at a Qwest "Network Access Server (NAS)" location;
- B. Physically locate modems or equipment provides the modem functionality in the state?
- C. Place, operate, own, maintain, locate or collocate modems, modem banks, or equipment providing modem functionality in each Qwest local calling area in the state (regardless of whether such physical location occurs within, near, inside or outside of a Qwest Central Office or Serving Wire Center and regardless of whether such physical location is, is not, may be, could be, or might be regulated under local, state or federal law)?
- D. Place, operate, own, maintain, locate or collocate proxy RADIUS server(s), or such equipment providing equivalent functionality in each Qwest local calling area in the state (regardless of whether such physical location occurs within, near, inside or outside of a Qwest Central Office or Serving Wire Center and regardless of whether such physical location is, is not, may be, could be, or might be regulated under local, state or federal law)?
- E. For Questions A-D above, please provide the same information if for any portion of any response to such questions Qwest contends that QCC or any other Qwest Affiliate is responsible in whole or in part for the provision of Qwest Wholesale Dial or for any requirements or restrictions requested in Data Request No. 15:
- F. If in response to Data Request No. 15(E) above, Qwest contends that QCC or any other Qwest Affiliate is responsible in whole or in part for the provision of Qwest Wholesale Dial or for any requirements or restrictions requested in Data Request No. 15 please provide copies of all invoices submitted by Qwest to QCC or such other Qwest Affiliate for any such inputs to Qwest Wholesale Dial Services that QCC or such other Qwest Affiliate purchases from Qwest for purposes of offering or providing such Wholesale Dial Services.

RESPONSE:

- A. The following response relates to Qwest Communications Corporation (QCC) ESP operations in Oregon:

Wholesale Dial is a Qwest Communications Corporation (QCC) ESP product that is provisioned to ISPs. QCC is an enhanced service provider, not a telecommunications carrier, when it offers this service. As an ESP providing Wholesale Dial service, QCC does not require its ISP customer equipment to be collocated at QCC's NAS location.

Respondent: Ryan Gallagher

- B. Qwest assumes question 15 for subpart B is asking if Qwest's Wholesale Dial product requires ISPs to physically locate modems or equipment that provides the modem functionality in the state.

Wholesale Dial is a Qwest Communications Corporation (QCC) ESP product that is provisioned to ISPs. QCC is an enhanced service provider, not a telecommunications carrier, when it offers this service. As an ESP providing Wholesale Dial service, QCC provides modem functionality to its ISP customers and therefore does not require its ISP customer to physically locate modems or equipment that provides the modem functionality in the state of Oregon.

Respondent: Ryan Gallagher

C. Wholesale Dial is a Qwest Communications Corporation (QCC) ESP product that is provisioned to ISPs. QCC is an enhanced service provider, not a telecommunications carrier, when it offers this service. As an ESP providing Wholesale Dial service, QCC provides modem functionality to its ISP customers and therefore does not require its ISP customer to place, operate, own, maintain, locate or collocate modems, modem banks, or equipment providing modem functionality in each QC local calling area in Oregon.

Respondent: Ryan Gallagher

D. The following response relates to Qwest Communications Corporation (QCC) ESP operations in Oregon:

Wholesale Dial is a Qwest Communications Corporation (QCC) ESP product that is provisioned to ISPs. QCC is an enhanced service provider, not a telecommunications carrier, when it offers this service. As an ESP providing Wholesale Dial service, QCC provides proxy RADIUS functionality to its ISP customers and therefore does not require its ISP customer to place, operate, own, maintain, locate or collocate proxy RADIUS server(s) in each QC local calling area in the state.

Respondent: Ryan Gallagher

E. See the above answers to 15 A through D.

Respondent: Ryan Gallagher

F. Qwest objects to this request on the basis that the information sought is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Qwest Legal

QWEST CORPORATION

DOCKET: ARB 665
INTERVENOR: Level 3 Communications, Inc.
REQUEST NO: L3CI 05-016

REQUEST:

Please list each local calling area within the state in which QCC maintains a physical presence as defined by QC in Section 4-Definitions VNXX Traffic (Issue No. 3B) of the Qwest's proposed changes to the Parties' interconnection agreement.

RESPONSE:

QCC, under the ESP exemption, typically buys local service (PRI or its equivalent) in the LCA where it obtains local phone numbers (the numbers are included with the local exchange service purchased by QCC). QC does not assign VNXX codes. QC adheres to the numbering guidelines and properly assigns telephone numbers within the local calling area. Local numbers are assigned to each dedicated local PRI circuit that is provisioned from each local calling area to the customer, QCC. QC knows that its PRI customer is located in the local calling area, or has a physical presence in that calling area by virtue of purchasing the tariffed local service and combining it with a tariffed or catalogued private line transport service. A QC customer must purchase local service to obtain a local number. If such customers have no local dial-up number, then a dial-up end user would have to dial a "1+" call or an 8XX number to connect to QCC.

QCC maintains a physical presence in the following local calling areas in Oregon:

Albany, Aloha, Amity, Astoria, Baldy Peak, Banks, Beaver, Beaverton, Bend, Burlington, Cascade Locks, Clatskanie, Clackamas, Corvallis, Eugene, Florence, Forest Grove, Gaston, Grants Pass, Gresham, Hood River, Hood Land, Hillsboro, Klamath Falls, La Grande, Lake Oswego, McMinnville, Mill City, Mapleton, Medford, Milwaukie, Newport, Oak Grove, Oregon City, Parkdale, Pendleton, Portland, Prineville, Rainier, Roseburg, Salem Seaside, Scholls, Sherwood, Sandy, Stafford, Sunnyside, Springfield, The Dalles, Tillamook, Tualatin, Tigard, Umatilla, Valley View, Veronia

Respondent: Larry Brotherson

QWEST CORPORATION

DOCKET: ARB 665

INTERVENOR: Level 3 Communications, Inc.

REQUEST NO: L3CI 05-017

REQUEST:

Of those states in which Qwest operates as an ILEC (as defined in Section 251(h) of the Act), list the states where Qwest combines CLEC local and toll (IntraLATA and InterLATA) traffic on a single trunk?

RESPONSE:

The following response relates to Qwest Corporation (QC) operations in Oregon: QC does not combine switched access and local traffic on a single trunk group for any CLEC. QC may combine jointly provided switched access and local traffic to a CLEC on a single trunk group. However, QC does allow IXCs to combine their toll (IntraLATA and InterLATA) and local traffic (to the extent the IXC also operates as a CLEC) on a single Feature Group D trunk. To the extent that this request seeks information regarding Qwest's operations in other states, Qwest objects that such information is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Ryan Gallagher

QWEST CORPORATION

DOCKET: ARB 665
INTERVENOR: Level 3 Communications, Inc.
REQUEST NO: L3CI 05-018

REQUEST:

For each state in which Qwest operates as an ILEC (as defined in Section 251(h) of the Act), please identify each CLEC with which Qwest (a) exchanges local and toll (IntraLATA and InterLATA) traffic on a single trunk group and (b) uses a Percent Local Use (PLU) or similar method of establishing the apportionment of local vs. toll traffic on the combined trunk group.

RESPONSE:

Qwest Corporation (QC) responds with the following regarding its operations in Oregon: QC does not combine switched access and local traffic on a single trunk group and does not use a Percent Local Use ("PLU") or similar method of establishing the apportionment of local versus toll traffic on a combined trunk group with any carrier. However, QC and a CLEC may apply a PLU factor to No-CPN traffic to address the absence of CPN. In addition, QC allows IXCs to combine their toll (IntraLATA and InterLATA) and local traffic (to the extent the IXC also operates as a CLEC) on a single Feature Group D trunk. To the extent that this request seeks information regarding Qwest's operations in other states, Qwest objects that such information is not relevant to any issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Respondent: Ryan Gallagher

QWEST CORPORATION

DOCKET: ARB 665

INTERVENOR: Level 3 Communications, Inc.

REQUEST NO: L3CI 05-019

REQUEST:

For each state in which a Qwest CLEC affiliate combines local and toll (IntraLATA and InterLATA) traffic on a single trunk group, please state whether Qwest's CLEC affiliate uses a Percent Local Use (PLU) or similar other method of establishing the apportionment of local vs. toll traffic on the combined trunk group.

RESPONSE:

Qwest objects to this data request on the basis that it seeks information about a Qwest CLEC affiliate which is not relevant to the issues raised in this arbitration proceeding in Oregon.

Respondent: Qwest Legal

QWEST CORPORATION

DOCKET: ARB 665
INTERVENOR: Level 3 Communications, Inc.
REQUEST NO.: L3CI 05-020

REQUEST:

Please explain why the following contract sections contained in Qwest's Oregon SGAT prohibit Level 3 from exchanging VoIP Calls, ISP-bound traffic and terminating traditional 1+ dialed Interexchange traffic (also known as terminating "IP in the middle" traffic) over Level 3's existing co-carrier network using billing factors in the state. The full SGAT is available at: <http://www.qwest.com/wholesale/clecs/sgatswireline.html>, scroll down to "Oregon" and Choose "SGAT 6/25/02", which will return a word document containing these (and other provisions).

7.2.2.9.3 Separate trunk groups may be established based on Billing, signaling, and network requirements. The following is the current list of traffic types that require separate trunk groups, unless specifically otherwise stated in this Agreement.

- a) Directory assistance trunks (where the Switch type requires separation from operator services trunks);
- b) 911/E911 trunks;
- c) Operator services trunks (where the Switch type requires separation from Directory Assistance trunks)
- d) Mass calling trunks, if applicable.

7.2.2.9.3.1 Exchange Service (EAS/local), Exchange Access (IntraLATA toll carried solely by Local Exchange Carriers) and Jointly Provided Switched Access (InterLATA and IntraLATA toll involving a third-party IXC) may be combined in a single LIS trunk group or transmitted on separate LIS trunk groups. If traffic is combined, Section 7.3.9 of this Agreement applies.

7.2.2.9.3.2 Exchange Service (EAS/Local) traffic and Switched Access traffic including Jointly Provided Switched Access traffic, may be combined on the same trunk group. If combined, the originating Carrier shall provide to the terminating Carrier, each quarter, Percent Local Use (PLU) factor(s) that can be verified with individual call record detail. Call detail or direct jurisdictionalization using Calling Party Number information may be exchanged in lieu of PLU if it is available.

7.3.9 To the extent a Party combines Exchange Service (EAS/Local), Exchange Access (IntraLATA Toll carried solely by Local Exchange Carriers), and Jointly Provided Switched Access (InterLATA and IntraLATA calls exchanged with a third-party IXC) traffic on a single LIS trunk group, the originating Party, at the terminating party's request will declare quarterly PLU(s). Such PLU's will be verifiable with either call summary records utilizing Calling Party Number information for jurisdictionalization or call detail samples. The terminating Party should apportion per minute of use (MOU) charges appropriately.

RESPONSE:

Section 7.2.2.9.3.1 of the current Oregon SGAT does allow the combining of "Exchange Service (EAS/local), Exchange Access (IntraLATA toll carried by Local Exchange Carriers) and Jointly Provided Switched Access" over a single LIS trunk group. However, it does not allow Level 3 to deliver "terminating traditional 1+ dialed Interexchange traffic" over LIS trunks. Section

7.2.2.9.3.2 of the SGAT does allow the combining of all traffic on a single trunk group however, due to the fact that LIS trunks do not have the capability to produce records for the billing of switched access, this traffic must be combined over FGD interconnection trunks.

Although the SGAT does allow for a limited use of billing factors (e.g. PLU when no CPN is available), current Qwest practice is to bill using measurements of actual traffic when possible. The current SGAT contains no language providing for billing based entirely on factors as Level 3 is now proposing.

Respondent: William Easton