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Carla M. Butler
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August 16, 2005

Frances Nichols Anglin
Oregon Public Utility Commission
550 Capitol St., NE
Suite 215
Salem, OR 97301

Re: ARB 665

Dear Ms. Nichols Anglin:

Enclosed for filing please find an original and (5) copies of Qwest Corporation's Response to Level 3's Motion to Compel, along with a certificate of service.

If you have any question, please do not hesitate to give me a call.

Sincerely,

Carla M. Butler

CMB:
Enclosures
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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

ARB 665

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	**QWEST CORPORATION'S RESPONSE TO LEVEL 3'S MOTION TO COMPEL**

Qwest Corporation ("Qwest") hereby responds to the motion to compel that petitioner Level 3 Communications, LLC ("Level 3") filed on August 1, 2005. For the reasons that follow, Qwest respectfully submits that the Commission should deny Level 3's motion in its entirety.[1]

BACKGROUND

On June 15, 2005, Level 3 served Qwest with 107 discovery requests (not counting subparts) in this proceeding. The Oregon discovery requests were merely one part of a larger deluge of discovery from Level 3. On June 15, Level 3 served more than 100 requests in the Colorado and Iowa arbitrations. And on June 17, 2005, Level 3 served more than 100 requests in the Arizona arbitration. Altogether, Level 3 served more than 420 requests in a three-day time frame in Arizona, Colorado, Iowa and Oregon. Nearly contemporaneously, Level 3 also served Qwest with 170 requests in Idaho and Wyoming, bringing the total number of requests in the first round to nearly 600, not counting subparts.

Further still, in mid-July, Level 3 served a second round of discovery in the states of Colorado (7/15/05), Arizona (7/20/05), Idaho (7/20/05), Oregon (7/25/05) and Iowa (7/25/05). Including these requests, and not counting subparts, Level 3 has now served Qwest with more than 800 discovery requests in the six states in which arbitrations are pending between the parties.

[1] Level 3's motion to compel asked for expedited consideration, and requested that Qwest respond to the motion by August 8, 2005. However, during the prehearing conference with Administrative Law Judge Sam Petrillo on August 5, 2005, Judge Petrillo agreed that Qwest would have until August 16, 2005 in which to respond.

Qwest has objected to much of Level 3's discovery for various reasons. First and foremost, Qwest has objected because Level 3's requests are grossly overbroad and unduly burdensome discovery requests. Level 3 has not tailored its requests to obtain information that is calculated to produce evidence that would be admissible at hearing. Rather, it has engaged in a gigantic fishing expedition with the hope that just one of the six public utility commissions hearing these arbitrations will require answers to its requests. In order to minimize the number of disputes, Qwest has attempted in good faith to respond to as much of the discovery that Level 3 served as possible. However, there are simply too many requests that are unreasonable. It is against this backdrop that the Commission should evaluate Level 3's motion to compel.

ARGUMENT

In its motion to compel, Level 3 requests that this Commission require Qwest to answer data requests (interrogatories and requests for admission) that are extremely burdensome to answer. Many of these data requests seek information about the operations of Qwest and its affiliates throughout the United States. Most of the interrogatories seek information with little or no relevance to the matters at issue in this proceeding. Level 3 also requests an order compelling responses to several requests for admissions. Qwest has either admitted or denied many of these requests for admission. The remaining requests for admission are either vague or call for legal conclusions and are, therefore, inappropriate requests. For the reasons that follow, the Commission should deny Level 3's motion to compel in its entirety.

I. STANDARD OF REVIEW

In its motion, Level 3 cites numerous cases relating to discovery standards, including Level 3's contention that the standard is whether the information sought is reasonably calculated to lead the discovery of admissible evidence relevant to the subject matter of the pending matter. Qwest does not challenge Level 3's general statements of discovery standards. However, Level

3 cites several cases (Motion, pp. 4-5) for the proposition that the party resisting discovery bears the burden of showing that discovery is unduly burdensome. For these propositions, Level 3 cites one Ninth Circuit case and three district court cases (from Wisconsin and Kansas).

The Ninth Circuit case must be viewed in its context. Level 3 cites *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975), for the proposition that a party "opposing discovery carr[ies] a heavy burden in showing why discovery should be denied." (Motion, p. 4.) The *Blankenship* case, however, dealt with a complete denial of the right to take the deposition of a person alleged to have access to information that other witnesses did not. That is not the issue here. In this case, Qwest has responded to most of the questions that Level 3 propounded and has not sought to completely deny it the opportunity to engage in discovery. Instead, Qwest has, for the most part, challenged the breadth and burdensomeness of Level 3's requests.

Two more recent Ninth Circuit cases are far more relevant to the issues raised in Level 3's motion. Both held that the party seeking discovery has the burden of demonstrating that the burdens of discovery would be minimal and that the benefits outweigh the potential burdens. In *Sorosky v. Burroughs Corp.*, 826 F.2d 794 (9th Cir. 1987), the plaintiff (a terminated employee) sought the production of documents relating to the defendant's policies for discharging employees, the reasons it closed certain facilities, and other information. The defendant produced documents related to the two facilities in which the plaintiff worked, but refused to provide "documents related to its other facilities worldwide" on the grounds that it would be irrelevant and unnecessarily burdensome. The district court denied a motion to compel, which the Ninth Circuit upheld, stating:

> Sorosky's lawsuit was focused on his employment, which occurred only at Santa Barbara and Pasadena. Without a more specific showing that the burdens of production would be minimal and that the requested documents would lead to relevant evidence, we cannot say the district court abused its discretion . . . ." 826 F.2d at 805.

The issue in *Sorosky* is similar to the issue here. The issues before the Commission in this docket relate to an interconnection agreement between Level 3 and Qwest *in Oregon*. Yet, in many of the requests, Level 3 seeks information related to Qwest's operations in other states. Indeed, in several interrogatories, seeks information related to the actions of Qwest affiliates nationwide (in some cases, the requests even seek specific information related to thousands of local calling areas across the United States).

The second Ninth Circuit case, *Nugget Hydroelectric v. Pacific Gas & Electric*, 981 F.2d 429 (9th Cir. 1992), reaffirmed the standard articulated in *Sorosky*. The plaintiff had sought broad discovery regarding the defendant's relationships with private power suppliers. The Ninth Circuit upheld the magistrate judge's refusal to order discovery, stating:

> The magistrate's conclusion the Nugget's request was unnecessarily burdensome and overly broad is based on *Nugget's failure* to make a 'specific showing that showing that the burdens of production would be minimal and that the requested documents would lead to relevant evidence.'" 981 F.2d at 439, quoting *Sorosky v. Burroughs Corp.*

These cases stand for the clear proposition that a party requesting broad discovery, as Level 3 is in this case, must show that the burdens of production are minimal, and that such minimal burdens will lead to the discovery of relevant evidence. As discussed hereafter, the breadth of Level 3's discovery requests are extreme and its justification fails to meet the foregoing standard—in fact, in most cases, Level 3's claims for the types of multi-state information related to Qwest and its affiliates are incomprehensible. Accordingly, as the moving party here, and having requested vague, overly broad, unduly burdensome and often irrelevant (or marginally relevant) discovery, it is *Level 3* that has a heavy burden of proof to prevail on its motion.

II. RESPONSE TO SPECIFIC DATA REQUESTS AT ISSUE

A. Interrogatory No. 3 – Qwest Internet Access Service

In Interrogatory No. 3, Level 3 seeks highly proprietary information related to the operations of Qwest's affiliates who offer Internet access. Interrogatory No. 3 does not seek any

information relevant or even potentially relevant to this proceeding. Level 3 claims, without any analysis, that Interrogatory No. 3 relates to "whether the jurisdiction of calls [to an ISP] should be determined by the NPA-NXX" assigned to the ISP. (Motion, p. 7.) In making this claim, however, Level 3 misstates Qwest's position, and even then, Level 3 draws no connection between the information it seeks and the issue to which it claims this information relates.

Qwest's position in this proceeding is that under the North American Numbering Plan and under Oregon and federal law, NPA-NXXs should be assigned to customers that are physically located in the same rate center to which the NPA-NXXs have been assigned. Thus, as a result of this numbering assignment rule, calls are rated as "local" or "toll" based on the rate centers in which the calling and called parties are located. In contrast, Level 3 argues that it is free to disregard the numbering rule and to assign numbers to end users (ISPs in particular) that are located in rate centers other than the rate center to which the NPA-NXXs have been assigned. This is the essence of Interrogatory No. 3 related to VNXX.

Interrogatory No. 3 does not seek information in any way relating to the numbering assignment rule or the assignment of NPA-NXXs. The number of Internet access customers that a Qwest affiliate may have bears in no way on the VNXX issue. Nor does the location of end offices in which Qwest has collocated equipment or the local calling areas ("LCAs") in which Qwest maintains a physical presence bear on this issue. Level 3 is on a fishing expedition and may be seeking this information for purposes unrelated to this arbitration (such as Qwest's recent interconnection enforcement petition in docket IC 12). The burden on Qwest to answer this interrogatory would be enormous, given its extreme breadth (nationwide, by individual LCA).

Finally, Qwest notes that given the ALJ Ruling of August 16, 2005 in docket IC 12 (which is Qwest's interconnection enforcement petition against Level 3 regarding VNXX traffic), there should not even be any discovery about these VNXX issues. This is especially so

because this Commission (and a federal court in Oregon) have repeatedly ruled, in arbitrations (such as docket ARB 527), in its generic VNXX proceeding (docket UM 1058), and in interconnection enforcement petitions (dockets IC 12 and IC 8/IC 9) that VNXX traffic is not local traffic, and thus not subject to reciprocal compensation or the ISP traffic rate. As such, this is yet another reason that the Commission should deny Level 3's motion to compel.

In short, the Commission should deny Level 3's motion to compel in its entirety, especially regarding this interrogatory.

B. Interrogatory No. 4 – PRI or DID/DOD Service

In Interrogatory No. 4, Level 3 asks first whether Qwest offers PRI or DID/DOD services to ISPs within the state of Oregon. At Qwest's request, Level 3 just recently clarified ambiguities that existed in the two subparts of this request as to the location of the calling and called parties. Qwest has now prepared and served an answer to this interrogatory.

C. Interrogatory Nos. 6(b) and 6(e) – QCC's VoIP Service

In Interrogatory Nos. 6(b) and 6(e), Level 3 once again seeks highly confidential information that is not reasonably calculated to lead to the discovery of admissible evidence. In Interrogatory No. 6(b), Level 3 requests the number of retail and wholesale VoIP customers that Qwest (meaning Qwest's affiliate) has in Oregon. Level 3's sole basis for requesting this information is the nonsensical statement that "[t]he information requested in Request No. 6(b) is necessary to demonstrate the impact that Qwest's VoIP proposal will have on Level 3." (Motion, p. 10.) This statement is nonsensical for at least three reasons.

First, Qwest Corporation is the party with whom Level 3 is seeking interconnection, and Qwest Corporation *does not* offer VoIP, and thus the number of VoIP customers Qwest's affiliate has cannot be relevant. Second, it is the number of Level 3 VoIP customers that will determine the "impact" to Level 3 of Qwest's VoIP proposal. Level 3 obviously knows how

many customers it has. Third, the issue here is the proper application of intercarrier compensation rules, not the impact of those rules on one competitor. If access charges are applied to certain VoIP calls by Level 3 or to a VoIP provider that is a customer of Level 3, the quantification of that impact is not relevant, although Qwest would certainly agree that if access charges apply in situations in which Level 3 does not believe they should apply, the cost to Level 3 or its VoIP provider customer will be higher than under Level 3's proposal. The quantification of that difference is not an issue in this docket, nor should it be. In any event, Level 3 has not demonstrated how the number of VoIP retail and wholesale customers that Qwest's affiliate ("QCC") serves would lead to admissible evidence.

Interrogatory No. 6(e) is even less relevant than Interrogatory No. 6(b). Interrogatory No. 6(e) asks for information concerning QCC's wholesale providers and the services it purchases from them, not just in Oregon, but anywhere in the United States. To justify this request, Level 3 asserts that this request is relevant to whether Qwest is providing interconnection on a "nondiscriminatory basis." (Motion, p. 10.) However, in this docket, the only Qwest party is Qwest Corporation (QC), and the only state at issue is Oregon. Thus, the only "discrimination" issue that could possibly be relevant is whether Qwest Corporation (which does not provide VoIP) is discriminating against Level 3 in favor of QCC in Oregon. Thus, this request seeks information far beyond the issues in this case that would be extremely burdensome and time-consuming for Qwest to provide.

D. Interrogatory Nos. 13, 14, 16, 17, 19-21 and 44 –Efficient Use of Trunk Groups

Level 3 has inappropriately lumped Interrogatory Nos. 13, 14, 16, 17, 19-21 and 44 together and treated them in broad-brush fashion. Undoubtedly, Level 3 has done this to conceal the fact that each of these requests is extraordinarily burdensome and does not seek relevant information. These requests must be evaluated individually.

1. Interrogatory No. 13

Interrogatory No. 13 requests information for every state in which Qwest or one of its affiliates operates concerning five different circumstances, only two of which involve interconnection (subparts c. and d.). Level 3 has not agreed to limit this request to the state of Oregon, to the commingling of traffic on interconnection trunks, or to interconnection with QC. The breadth and burdensomeness of this request is breathtaking. The interrogatory requests information related to local (including intra-MTA wireless traffic), toll traffic (both inter- and intraLATA) or any combination that is carried on the same trunk group. Further, it requests information for each state in which QC or an affiliate operates in. To top it off, it requests all of this information in five different categories, only two of which (c. and d.) relate to interconnection trunks. Thus, Interrogatory No. 13 calls for information concerning every state in the country in which Qwest's CLEC affiliates have trunk groups (though, given the level of detail requested, in order to respond, Qwest would be required to obtain trunk group information down to the LCA level). There are literally thousands of LCAs in the United States.

This interrogatory also seeks information concerning trunk groups operated by Qwest's CLEC affiliates who are not even parties to this proceeding. Qwest's CLEC affiliates do not have interconnection obligations under Section 251(c). The burden imposed by Interrogatory No. 13 clearly outweighs any possible relevance of the information it seeks.

Level 3 correctly notes in its motion that Qwest Corporation has an obligation to provide "nondiscriminatory access to interconnection." (Motion, p. 12.) Since interconnection under the Act is handled on a state-by-state basis, Interrogatory No. 13 must be limited to the state of Oregon. Moreover, the nondiscrimination obligation applies only to interconnection trunks (subparts c. and d. of Interrogatory No. 13), and to interconnection involving Qwest Corporation, the ILEC. Qwest's affiliates do not have obligations under Section 251 of the Act and, thus,

Interrogatory No. 13 is grossly overbroad to the extent that it requests information concerning the trunking arrangements of Qwest's affiliates.

2. Interrogatory nos. 14 and 16

The Commission should deny Level 3's motion to compel a response to Interrogatory Nos. 14 and 16 for the same reasons that it should deny the motion to compel a response to Interrogatory No. 13. Interrogatory No. 14 seeks information for each LCA in the country in which Qwest does not operate as an ILEC (36 states), and thus would require Qwest to determine each instance in which Qwest affiliates combine local and toll traffic on one trunk group. Like Interrogatory No. 13, it calls for information involving thousands of LCAs and trunk groups operated by CLEC affiliates, and is not in any way limited to interconnection trunks. It is baffling to say the least how this information (all related to affiliates operating outside Qwest's 14-state region) could possibly produce admissible evidence in this case. As was the case with Interrogatory No. 13, the burden imposed by Interrogatory No. 14 clearly outweighs any possible relevance of the information sought.

Interrogatory No. 16 is in several respects even broader and more burdensome than Interrogatory Nos. 13 and 14. It asks Qwest to list each CLEC for which local and toll traffic has been combined on *any* trunk group in *any* in-region state. The interrogatory is not limited to the state of Oregon, to interconnection trunks, or to Qwest Corporation's ILEC operations. This request is extremely overreaching in its scope, and is clearly not reasonably calculated to lead to the discovery of admissible evidence.

3. Interrogatory No. 17

Interrogatory No. 17 duplicates Interrogatory No. 16, but is also in several respects even broader and more burdensome. The interrogatory asks Qwest to list each CLEC for which local and toll traffic has been combined on any trunk group in any in-region state. It is not limited to

the state of Oregon, to interconnection trunks or to Qwest Corporation's ILEC operations. Moreover, for no apparent reason, Level 3 also wants Qwest to do a historical study of traffic passing across trunk groups to determine when traffic was first combined. This request is extremely overreaching in its scope and is clearly not reasonably calculated to lead to the discovery of admissible evidence.

4. Interrogatory No. 19

Interrogatory No. 19 requests information concerning specific CLECs in each of the fourteen Qwest in-region states. This interrogatory calls for information that is contained in the interconnection agreements for each CLEC in each state. These interconnection agreements are publicly available to Level 3 and thus Level 3 can review them more easily than Qwest can since Level 3 knows specifically what it is looking for. There are more than 1000 interconnection agreements on file with the state public utility commissions. Accordingly, it is unreasonable for Level 3 to insist that Qwest assemble the information on Level 3's behalf. The Commission should deny Level 3's motion to compel a response to this interrogatory.

5. Interrogatory No. 20

Interrogatory No. 20 is extremely burdensome. The interrogatory calls for information concerning Qwest's CLEC affiliate in every state in which it operates. It is not limited to interconnection trunks, but even if it were, it would call for Qwest's review of every interconnection agreement that Qwest's CLEC affiliate has entered into anywhere in the United States. Interrogatory No. 20 is clearly an unreasonable request, especially since Qwest's CLEC affiliates are not parties to this proceeding and thus do not have obligations to interconnect under Section 251 of the Act.

6. Interrogatory No. 21

Qwest objected to Interrogatory No. 21 on the grounds that it is overbroad. The interrogatory is not limited to the state of Oregon. However, if Interrogatory No. 21 is limited to the state of Oregon, Qwest will withdraw its objection and provide an answer.

7. Interrogatory No. 44

Qwest objected to Interrogatory No. 44 on the grounds that it is ambiguous. It is not clear in this interrogatory what Level 3 means by "assign traffic to different jurisdictional/rating categories." When PIU/PLU factors are used, they are applied to an overall volume of traffic, and are not used to determine the rating or jurisdiction of individual calls. Further, this request is objectionable because it would be unreasonably burdensome and would require a special study.

E. Interrogatory No. 22 – Efficient Use of Trunk Groups

Interrogatory No. 22 asks Qwest to provide information about state commissions that have required separate trunk groups for transit traffic. In Qwest's first set of interrogatories to Level 3, Qwest asked similar questions related to state commission decisions (but limited them to Level 3 arbitration cases) on several issues in this docket. Among the objections that Level 3 made was the claim that those questions would require "Level 3 to compile a list that does not currently exist or conduct a special study, and that the information is publicly available information that may as readily be compiled by Qwest as Level 3." Interrogatory No. 22 is far broader in scope that Qwest's interrogatories described above (e.g., it does not purport to be limited to only cases involving Qwest). As such, it is an attempt to require Qwest to do legal research for Level 3, and thus should be denied.

F. Interrogatory Nos. 24-31 and 33 – Qwest's FX and FX-Like Services

Interrogatory Nos. 24, 25 and 33 ask questions related to Qwest's "FX service" in Oregon. Qwest has answered these requests by stating that the Commission grandfathered FX service in

Oregon in 1983. Interrogatory Nos. 26 through 32 seek information relating to what Level 3 refers to as "FX-like" services. Qwest has already responded to Interrogatory No. 32, which asks about whether independent companies in Oregon provide FX or FX-like services. Qwest has already answered that question, and its answer will not change with the clarification of the meaning of the term "FX-like."

Subsequent to the date that Level 3 filed its motion to compel with respect to Interrogatory Nos. 26 through 31, Qwest agreed in a conference in Arizona to respond to Interrogatory Nos. 26-27, 28(a) and 29-31 based on the definition of "FX-like service" used in interrogatories in a Level 3 complaint docket in Washington.[2] Qwest is in the process of responding to them. Qwest will serve the supplemental response as soon as possible.

G. Interrogatory No. 43 and 45 – POIs and other facility connections in Oregon

Interrogatory No. 43 requests Qwest to provide the number of POIs it has with CLECs in Oregon, and Interrogatory No. 45 requests the number of CLECs interconnecting with Qwest through (a) Qwest-supplied entrance facilities, (b) CLEC-supplied facilities and (c) other means. Neither Interrogatory No. 43 nor Interrogatory No. 45 seeks information that bears on the issues in this proceeding. They are very burdensome requests. To answer these requests would require Qwest to review the interconnection arrangements in place for each CLEC that has an interconnection agreement in Oregon, and to conduct a special study of the facilities that are actually in place for each CLEC. There is no central repository of this information. Since these interrogatories are burdensome and do not seek information that could lead to admissible evidence, the Commission should deny Level 3's motion to compel regarding these requests.

[2] Interrogatories asking about "FX-like" service are ambiguous unless the criteria for determining whether something is "FX-like" are stated. Level 3 implicitly acknowledged this when it stated at page 15 of its motion to compel that "Level 3 has no idea which services Qwest considers FX-like." Qwest objected to Interrogatory Nos. 26 through 32 initially because it had no idea what Level 3 considered to be "FX-like."

H. Request for Admission Nos. 20, 26, 27, 31, 36, 41, 51, 53 - 58

In Request for Admission Nos. 20, 26, 27, 31, 36, 41, 51 and 53 through 57, Level 3 asks Qwest to admit or deny statements that are not sufficiently complete to admit or deny. Thus, Qwest has objected to these requests and stated its reason for not being able to admit or deny each request. Each of these requests must be considered individually.

1. Request No. 20

In Request for Admission No. 20, Level 3 asks Qwest to admit that the OneFlex VOIP offering is less expensive than the Choice Home Plus package. Qwest stated in its response that it is not clear which particular VOIP offering Level 3 is referring to in this request. Both the OneFlex VOIP offering and the Choice Home Plus package have a base rate, plus rates for other features and services, such as long distance. In this request, Level 3 did not describe with sufficient detail either the precise OneFlex VOIP package or the precise Choice Home Plus package that it wants Qwest to compare. This request cannot be admitted or denied without this information.

2. Request No. 26

In Request for Admission No. 26, Level 3 asks Qwest to admit that "interconnection contract language should be as consistent as possible with applicable federal laws and regulations." This is a request to admit without a context, and therefore Qwest can neither admit nor deny it as asked. For example, there are circumstances in which parties agree to something that is different from a standard arrangement prescribed by law. Depending on the context, this request could be either admitted or denied. Level 3 has not provided a context, and thus this request is therefore objectionable.

3. Request No. 27

Request for Admission No. 27 cannot be admitted or denied because the statement it asks be admitted or denied is far too broad and ambiguous. For example, it might be interpreted to

request Qwest to admit that wireline local exchange services are provided through multiple legal entities throughout Qwest's 14-state area. For the most part, wireline local exchange services are provided by Qwest Corporation. However, Level 3 does not specify what wireline local exchange services it is referring to. Thus, Qwest cannot determine whether the services are regulated or not for any particular state.

4. Request No. 31

Request for Admission No. 31 is a compound question that asks Qwest to admit that "deployment of VOIP will result in increased competition for Qwest's core wireline voice services" and that "it also presents growth opportunities for Qwest to develop new products for its customers." This request for admission asks Qwest to predict the future. Accordingly, Qwest appropriately objected to this request on the grounds that it is speculative, and stated that it could not answer the question because there are too many unknowns. Level 3 is not entitled to a response to this request for admission.

5. Request No. 36

Request for Admission Nos. 36 asks Qwest to admit that "Qwest's end offices and tandem switches do not store *any information* indicating the *address or location* of any end user's premises." (Emphasis added.) Qwest acknowledges that its switches do not contain specific street addresses for individual customers, but that was not the question. The request asks Qwest to admit that its switches do not store "any information" that indicates "address or location" of an end user's premises. Qwest's switches do store information indicating the general *location* of the end user. The NPA/NXXs stored in the switches provide information as to the general geographic *location* where end users with those NPA/NXXs are located. Given the ambiguity of the request, perhaps Qwest should simply have denied it, but Qwest felt it should explain why it did not believe it could not admit or deny it. Qwest, therefore, reiterates

its response that this request cannot be admitted or denied because Level 3 has failed to define the level of specificity that the phrase "any information" refers to. However, if Level 3 insists on an admission or denial, then Qwest would deny the request on the basis that its switches do store information that indicates the "location" of a customer (i.e., the central office area in which the customer is located).

6. Request No. 41

Request for Admission No. 41 asks Qwest to admit that its calling routing systems never sample "any data" regarding the address or location of any end user's premises for purposes of routing a call. As with Request for Admission No. 36, Qwest could simply deny this request for the reason that NPA-NXXs do constitute data regarding the general location of end user premises. However, it really depends on how specific Level 3 intended to be with regard to the use of the terms "address or location." Accordingly, Qwest explained why it could neither admit nor deny this request.

7. Request No. 51

Request for Admission No. 51 asks Qwest to review the entire Code of Federal Regulations and confirm for Level 3 that there is no definition of "interexchange carrier" in those regulations. This request for admission is not a permissible request because it is not a request for admission of a fact or application of law to a fact. This is merely a request to admit an issue of law. Accordingly, Qwest appropriately objected to this request for admission.

8. Request Nos. 53-55

Request for Admission Nos. 53, 54 and 55 all lack information necessary to make these requests intelligible. Request No. 53 does not identify the service being referred to. Request No. 54 does not indicate which "traditional local exchange carriers" are being referred to, which geographic areas are involved or whose customers were included in the "sizable base." Request

No. 55 does not provide any information on the cost of the methods used by VoIP service providers to bypass the traditional methods for originating and terminating local calls. If these methods of bypass are more costly than traditional methods, a denial might be called for. If they are less expensive, an admission might be called for.

9. Request No. 56

Request for Admission No. 56 asked Qwest to admit that it successfully petitioned the State of Oregon for deregulation of its intraLATA toll telecommunications services. Qwest responded to this request. In its motion, Level 3 does not claim that the response was inadequate.

10. Request Nos. 57-58

Request for Admission Nos. 57 and 58 relate to the FCC's *Core Forbearance Order*. Request No. 57 is objectionable because it calls for a pure legal conclusion. Accordingly, it is not an appropriate request for admission. Request No. 58 is ambiguous because it uses the phrase "reciprocal compensation." The *Core Forbearance Order* addressed intercarrier compensation other than reciprocal compensation. Request No. 58 also inappropriately calls for speculation. Qwest should not be required to admit or deny a prediction about the future which by its nature is unknown. Accordingly, it was appropriate for Qwest to state that it could not admit or deny Request for Admission No. 58.

I. Request for Admission No. 50 – Qwest's Rate Proposal

Level 3 asserts in its motion to compel that it phrased Request for Admission No. 50 in a way that "Qwest should readily understand." However, when counsel for Level 3 and counsel for Qwest conferred with respect to this request for admission, counsel for Level 3 agreed to rewrite the request because it was not clear. It is still not clear (hence, Qwest's objection that it is ambiguous) and it is still compound (hence, Qwest's objection that it is compound). The question as written posits that Qwest proposes *to charge* Level 3 one rate, *rather than pay* Level

3 the rate of $.0007 per MOU. Qwest disputes that it is obligated to pay Level 3 $.0007 for traffic that Qwest believes should be rated as toll traffic. Thus, Qwest could simply deny the request because it misstates Qwest's position. However, to avoid just this type of dispute, Qwest suggested that Level 3 rewrite the question, and Qwest believes that counsel for Level 3 agreed to do so. However, if Level 3 still insists on a response, Qwest can simply deny the request.

J. Request for Admission Nos. 10-13 – Provisions of Qwest's Tariffs

Request for Admission No. 10 asks Qwest to "admit that Qwest's federal tariffs contain no terms applicable to intercarrier compensation for VoIP." Request for Admission No. 11 asked the same question for Qwest's state tariffs. Request for Admission Nos. 12 and 13 are the same, except that the phrase "information services traffic" is substituted for "VoIP." Qwest responded to all four, denying each of them. Qwest noted in its denials that it had not reviewed all of its tariffs to reach the conclusion that the requests should be denied. Somewhat surprisingly, however, Level 3 responded to this statement by asserting that "a party responding to requests for admission may not give lack of information or knowledge as a reason for its failure to admit or deny unless the party states that it has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny." (Motion, pp. 19-20.) However, in this case, there is no "failure to admit or deny." Qwest denied these requests for admission. Qwest has responded to these requests, and thus the Commission should deny Level 3's motion in its entirety.

K. Request for Admission No. 42 – Qwest's Call Routing and Billing Systems

Level 3 complains that Qwest's response to Request for Admission No. 42 is not responsive. However, given the fact that Qwest denied the request, under applicable discovery rules, Qwest has fully satisfied any obligation it may have to respond to thus request.

CONCLUSION

For the reasons above, Qwest Corporation requests that the Commission deny Level 3's motion to compel discovery in its entirety.

DATED this 16th day of August, 2005

Respectfully submitted,

QWEST CORPORATION

By: _____

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CERTIFICATE OF SERVICE VIA E-MAIL

I do hereby certify that a true and correct copy of the foregoing QWEST CORPORATION'S RESPONSE TO LEVEL 3'S MOTION TO COMPEL was served on the 16th day of August, 2005 via e-mail electronic transmission upon the following individuals:

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