



Qwest
421 Southwest Oak Street
Suite 810
Portland, Oregon 97204
Telephone: 503-242-5420
Facsimile: 503-242-8589
e-mail: carla.butler@qwest.com

Carla M. Butler
Sr. Paralegal

July 11, 2005

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

Re: IC-12

Dear Ms. Nichols-Anglin:

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

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

Sincerely,

A handwritten signature in blue ink that reads "Carla".

Carla M. Butler
Sr. Paralegal

CMB:

Enclosure

L:\Oregon\Executive\Duarte\IC 12 (Level 3 Communications)\PUC Transmittal Ltr.doc

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

IC 12

QWEST CORPORATION,
Complainant,
v.
Level 3 Communications, LLC,
Defendant.

**QWEST CORPORATION'S
RESPONSE TO LEVEL 3'S
COUNTERCLAIMS**

Complainant Qwest Corporation ("Qwest") hereby submits this response to the Answer to Qwest's Petition for Enforcement of Interconnection Agreement and Counterclaims that defendant Level 3 Communications, LLC ("Level 3") filed June 20, 2005, in this proceeding.

RESPONSE TO LEVEL 3'S COUNTERCLAIMS

1. Unless specifically admitted, Qwest denies each and every allegation in Level 3's Counterclaims. Qwest denies, admits, and alleges as follows:

2. With respect to Paragraph 66 of the Counterclaims, Qwest denies that Level 3 has attempted to resolve these disputes with Qwest in good faith, but admits that the parties have been unable to resolve their disputes.

3. With respect to the allegations in Paragraph 67 of the Counterclaims, Qwest admits that Exhibit B is a true and correct copy of a December 13, 2004 letter from Level 3 to Qwest, but otherwise denies all other allegations.

4. With respect to the allegations in Paragraphs 68 through 70 of the Counterclaims, Qwest admits that Level 3 wrote a letter to Steve Hansen of Qwest on January 17, 2005. Qwest denies, however, that the letter addressed the *Core Forbearance Order*, but rather, Qwest states that Level 3's letter addressed VNXX language in the parties' interconnection agreement

(“ICA”). Qwest further admits that Level 3 sent a proposed amendment on March 31, 2005 that related to the *Core Forbearance Order* (although it did not send it to the correct Qwest representative as the ICA requires). Qwest further states that it participated in those negotiations in good faith, and that it proposed language consistent with its interpretation of that order.

5. Qwest admits the allegations in Paragraph 71 of the Counterclaims.

6. With respect to the allegations in Paragraphs 72 and 73 of the Counterclaims, Qwest admits the ICA includes language as stated. Qwest, however, denies the allegations in Paragraph 73 that non-local traffic bound for an ISP is “ISP bound traffic” as that term is defined in the ICA.

7. With respect to the allegations in Paragraph 74 of the Counterclaims, Qwest admits the ICA includes language as stated.

8. Qwest states that the averments in Paragraphs 75 of the Counterclaims constitute conclusions of law, and as such do not contain allegations which Qwest must admit or deny. To the extent that these averments constitute statements of fact, Qwest denies Level 3’s characterization of the *Core Forbearance Order*.

9. Qwest states that the averments in Paragraphs 76 through 78 of the Counterclaims constitute conclusions of law, and as such do not contain allegations which Qwest must admit or deny. To the extent that these averments constitute statements of fact, Qwest denies Level 3’s characterization of the *Core Forbearance Order*. Qwest further avers that it has offered to enter into an ICA amendment consistent with the *ISP Remand Order* and the *Core Forbearance Order*.

10. Qwest states that the averments in Paragraph 79 of the Complaint constitute conclusions of law, and as such do not contain allegations which Qwest must admit or deny. To the extent that these averments constitute statements of fact, Qwest denies that, as of October 8, 2004,

Level 3 is entitled to intercarrier compensation for ISP-bound traffic. Moreover, the ICA specifically requires an amendment to the ICA to change its terms if there is a change of law. Furthermore the ICA sets forth a specific process for addressing changes in applicable law, including negotiations of an amendment to reflect changes in law, and if those negotiations are unsuccessful, the parties are to bring the dispute to this Commission for resolution of appropriate amendment language. Level 3 has ignored this process, and instead has billed Qwest without an amendment.

11. Qwest states that the averments in Paragraph 80 of the Counterclaims regarding “governing federal law” constitute conclusions of law, and as such do not contain allegations which Qwest must admit or deny. To the extent that the remaining averments constitute statements of fact, Qwest admits that Level 3 has invoiced Qwest for intercarrier compensation for what Level 3 deems “ISP-bound traffic,” and that Level 3 has done so under claims that such invoices are due under the *Core Forbearance Order*, and further admits that Qwest’s position is that only calls originated and terminated within the same local calling area are compensable calls. Qwest denies, however, that Qwest has in effect refused to comply with the *Core Forbearance Order*.

12. With respect to Paragraph 81 of the Counterclaims, Qwest denies that Level 3 has attempted to resolve these disputes or that it has attempted to negotiate an amendment to the ICA to reflect the FCC’s *Core Forbearance Order*, and further states that to the extent that Level 3 has attempted to do so, it has not done so in good faith.

13. With respect to the allegations in Paragraph 82 of the Counterclaims, Qwest denies Level 3’s characterization regarding Qwest’s actions and positions, and further, Qwest states that the parties have a different interpretation of the *Core Forbearance Order* and regarding the issue whether Level 3 is entitled to compensation for VNXX-based traffic

originating in one local calling area and terminating to an ISP physically located in a different local calling area.

14. Qwest states that the averments in Paragraph 83 of the Counterclaims constitute conclusions of law, and as such do not contain allegations which Qwest must admit or deny. To the extent that the remaining averments constitute statements of fact, Qwest denies them. Further, Qwest states that to interpret paragraph 44 of the *ISP Remand Order* as Level 3 does would logically result in an interpretation that the FCC intended to reverse the long history of determining the appropriate treatment of traffic bound for enhanced service providers. Such an interpretation would then result in the FCC violating the Administrative Procedures Act in promulgating the *ISP Remand Order*. Qwest does not interpret the FCC to be promulgating rules in contravention of the Administrative Procedures Act, nor did the court in the *WorldCom* decision when it examined the FCC's decision. Qwest further states that the FCC also makes it very clear that its *ISP Remand Order* did not alter any of this history in the footnote to the very sentence in paragraph 44 that Level 3 seeks to use as support for its position. See *ISP Remand Order*, fn. 81. As the discussion in Qwest's Complaint explains, Level 3's analysis of the FCC's decision is simply wrong. ISP-bound traffic, as the FCC applies it, is limited to local traffic.

15. Qwest states that the averments in Paragraphs 84 through 86 of the Counterclaims constitute conclusions of law, and as such do not contain allegations which Qwest must admit or deny. To the extent that the remaining averments constitute statements of fact, Qwest denies such allegations, and specifically denies that Qwest has engaged in disparate treatment in violation of the *ISP Remand Order* or that Level 3 has received insufficient payment from Qwest for ISP-bound traffic.

16. With respect to the allegations in Paragraphs 87 and 88 of the Counterclaims, Qwest does not dispute that Level 3 makes such claims, or that it seeks the amounts claimed, but Qwest denies the allegations contained therein, and specifically denies the amounts of allegedly unpaid charges or that Level 3 has made numerous attempts at good faith negotiations.

RESPONSE TO LEVEL 3'S COUNTS

17. Qwest denies the allegations in Counterclaim I (Paragraphs 89 through 94) of the Counterclaims, except that it admits it sent traffic to Level 3, that Level 3 has improperly attempted to bill Qwest, and that Qwest has refused to pay such bills, thus invoking the ICA dispute resolution procedures.

18. Qwest denies the allegations in Counterclaim II (Paragraphs 95 through 101) of the Counterclaims, although it admits it has an obligation to negotiate amendments to ICAs, and avers that it has fully complied with that obligation.

RELIEF REQUESTED

WHEREFORE, Qwest respectfully requests the Commission provide the following relief:

- a. Deny Level 3's Counterclaims in their entirety;
- b. Issue an order (1) prohibiting Level 3 from assigning NPA-NXXs in local calling areas other than the local calling area where the ISP Server is located, (2) requiring that Level 3 cease its misuse of such telephone numbering resources, and (3) requiring that Level 3 properly assign telephone numbers based on the location of the ISP Server, as requested in Qwest's Complaint;
- c. Issue an order that the parties' ICA does not require any compensation for Level 3's VNXX traffic, as requested in Qwest's Complaint;

d. Direct Level 3 to follow the change of law procedures contained in its interconnection agreement with Qwest to implement the *Core Forbearance Order*, as requested in Qwest's Complaint;

e. Invalidate all Level 3 bills to Qwest seeking or charging reciprocal compensation or the *ISP Remand Order* rate of \$.0007 per minute for any of the VNXX traffic described above, as requested in Qwest's Complaint;

f. Issue an order prohibiting Qwest from routing VNXX traffic to Level 3 utilizing LIS facilities as requested in Qwest's Complaint; and

g. Any and all other equitable relief that the Commission deems appropriate.

DATED: July 11, 2005.

Respectfully submitted,



Alex M. Duarte, OSB No. 02045
Qwest
421 SW Oak Street, Suite 810
Portland, Oregon 97204
(503) 242-5623
(503) 242-8589 (facsimile)
Alex.Duarte@qwest.com

Jeffrey T. Nodland
Qwest
1801 California Street, 10th Floor
Denver, Colorado 80202
(303) 383-6657
(303) 295-6973 (facsimile)
Jeff.Nodland@qwest.com]

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

IC 12

I hereby certify that on the 11th day of July 2005, I served the foregoing **QWEST CORPORATION'S RESPONSE TO LEVEL 3'S COUNTERCLAIMS** in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

Erik Cecil
Rick Thayer
Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021

Jeffrey T. Nodland
Qwest Corporation
1801 California St., 10th Flr.
Denver, CO 80202

Victoria Mandell
Level 3 Communications LLC
1025 Eldorado Blvd
Broomfield, CO 80021

Lisa F. Rackner
Ater Wynne LLP
222 SW Columbia St. Ste 1800
Portland, OR 97201-6618

Gregg Strumberger
Level 3 Communications LLC
1025 Eldorado Blvd.
Broomfield, CO 80021

Sarah Wallace
Ater Wynne LLP
222 SW Columbia. Ste. 1800
Portland, OR 97201-6618

DATED this 11th day of July, 2005.

QWEST CORPORATION



By: _____
ALEX M. DUARTE, OSB No. 02045
421 SW Oak Street, Suite 810
Portland, OR 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
e-mail: alex.duarte@qwest.com
Attorney for Qwest Corporation