

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

IC 12

In the Matter of)
)
QWEST CORPORATION vs. LEVEL 3)
COMMUNICATIONS, INC.,)
)
Complaint for Enforcement of)
Interconnection Agreement.)

MEMORANDUM

DISPOSITION: PARTIES TO BRIEF ISSUE

At the June 30, 2005, telephone conference in this case, I mentioned that I would like the parties to brief two issues. Upon further reflection, I have decided that only the following issue needs to be briefed at this time.

A central issue in this case is whether the Interconnection Agreement (ICA) between Qwest and Level 3 requires compensation for the exchange of VNXX ISP-bound traffic. Section 7.3.4.3 provides:

The parties agree to exchange all EAS/Local (§251(b)(5)) and ISP-bound traffic (as that term is used in the FCC ISP Order) at the FCC ordered rate, pursuant to the FCC ISP Order. The FCC ordered rate for ISP-bound traffic will apply to EAS/Local and ISP-bound traffic in lieu of the End Office call termination and Tandem Switched Transport. See Section 7.3.6 of this Agreement for FCC-ordered rates.

Section 7.3.6 is entitled “ISP-bound traffic.” Section 7.3.6.1 specifies that “the parties shall exchange ISP-bound traffic pursuant to the compensation mechanism set forth in the FCC ISP Order.” As I understand it, the parties agree that, until October 18, 2004, at least, no compensation was due for ISP-bound traffic in accordance with Section 7.3.6.3 of the ICA.¹ That provision in the agreement basically mirrors the “New Markets Rule” adopted in the FCC ISP Order.²

¹ Affidavit of Andrea L. Gavalas, Vice President, Interconnection Services, Level 3 Communications, June 20, 2005, para. 2.

² In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-bound Traffic, Order on Remand and Report and Order, 16 FCC Rcd 9151, para. 81, CC Docket No. 01-92, FCC 01-131, rel. April 27, 2000, remanded sub nom, WorldCom Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002), reh’g en banc denied D.C. Cir. Sept. 24, 2002), cert. denied, 538 U.S. 1012 (May 5, 2003). (aka “FCC ISP Remand Order”)

On October 18, 2005, the FCC released its Order in *Core Communications* Order, granting forbearance from the New Markets Rule.³ The practical effect of the decision was to require intercarrier compensation for ISP-bound traffic after October 18, 2005, in accordance with Section 7.3.6.2.3.4 of the ICA. That contract provision specifies payment at \$.0007 per minute of use.

My understanding is that Qwest concedes that the *Core Communications* Order requires it to pay Level 3 for ISP-bound traffic originated by Qwest customers and terminated by Level 3 at the \$.0007/MOU compensation rate.⁴ Qwest's objection, and indeed the principal dispute in this proceeding, concerns whether compensation is due for VNXX ISP-bound traffic.

Based upon my review of the pleadings, the resolution of this dispute may hinge on the interpretation of that portion of Section 7.3.4.3 requiring the exchange of "ISP-bound traffic (as that term is used in the FCC ISP Order)." Put another way, the question is whether the FCC's use of the term "ISP-bound traffic" in the ISP Remand Order encompasses VNXX traffic. Qwest takes the position that the FCC's understanding of ISP-bound traffic contemplates a situation where both the customer initiating an Internet call and the ISP server to which that call is directed are located in the same local calling area. Level 3 maintains that no such limitation is envisioned by the FCC in its discussion of ISP-bound traffic.

Since I believe that the interpretation of Section 7.3.4.3 is crucial to the disposition of this complaint, I would like the parties to file simultaneous briefs addressing that issue in greater detail. The briefs should be filed with the Commission no later than July 18, 2005.

Once I have reviewed the briefs, there is a possibility that I may issue an ruling addressing whether VNXX ISP-bound traffic is encompassed by Section 7.3.4.3 of the ICA. If any party has questions regarding this procedure, we can discuss the matter at the telephone conference that will be held on July 8, 2005 to discuss the hearing schedule.

Samuel J. Petrillo
Administrative Law Judge

³ *Petition of Core Communications, Inc., for Forbearance Under 47 U.S.C. §160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171, FCC 04-241, at para. 5 (rel. October 18, 2004) (hereafter, *Core Communications Order*)

⁴ Qwest Complaint, para. 28.