

# McDowell & Rackner PC



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December 9, 2008

## VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center  
Public Utility Commission of Oregon  
PO Box 2148  
Salem, OR 97308-2148

**Re: Level 3 Communications' Complaint for Enforcement of Interconnection Agreement**

Level 3 Communications LLC. ("Level 3") hereby submits the following for filing with the Oregon Public Utility Commission:

1. Level 3 Communications' Complaint for Enforcement of Interconnection Agreement;
2. Level 3 Communications' Executive Summary of Complaint for Enforcement of Interconnection Agreement and Relief Requested; and
3. The portion of the interconnection agreement that Level 3 contends is being violated.

A copy of this filing has been served on the defendant, Qwest Corporation via fax and U.S. Mail.

Very truly yours,

Lisa F. Rackner

cc: Alex Duarte

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 In the Matter of

4

5 LEVEL 3 COMMUNICATIONS, LLC,

6 Complainant

7 v.

8 QWEST CORPORATION,

9 Defendant

10 Complaint for Enforcement of  
11 Interconnection Agreement

Docket No. IC \_\_\_\_\_

**LEVEL 3 COMMUNICATIONS'  
COMPLAINT FOR ENFORCEMENT OF  
INTERCONNECTION AGREEMENT**

12

13

**I. PARTIES**

14 1. Level 3 Communications, LLC ("Level 3") is a Delaware limited liability  
15 company with its principal place of business at 1025 Eldorado Boulevard, Broomfield,  
16 Colorado, 80021. Level 3 is a facilities-based competitive local exchange carrier ("CLEC")  
17 authorized to provide all forms of switched and dedicated telecommunications service on a  
18 resale and facilities-based basis in Oregon pursuant to Oregon Public Utility Commission  
19 ("Commission") Order No. 02-371 entered June 5, 2002, in Docket CP1035.

20 2. Qwest Corporation ("Qwest") is an incumbent local exchange carrier ("ILEC")  
21 in the state of Oregon regulated by the Commission, with its principal place of business in  
22 Denver, Colorado.

23

**II. FACTUAL ALLEGATIONS**

24 **A. Good Faith Attempt to Resolve Pursuant to OAR 860-016-0050(3)(a)**

25 3. Pursuant to OAR 860-016-0050(3)(a), Level 3 and Qwest have attempted to  
26 resolve this dispute in good faith.



1           7.       On March 14, 2007, the Commission entered Order No. 07-098 resolving the  
2 disputed issues in the Arbitration by adopting, with modifications, the Arbitrator's Decision  
3 ("Arbitration Order").<sup>3</sup> The Commission determined, among other things, that Level 3 must  
4 assume the responsibility for paying all of the costs associated with transporting VNXX-  
5 routed ISP-bound traffic out of the local calling area where ISP calls originate to Level 3's  
6 media gateway where ISP functions are performed, and that such facilities should be  
7 compensated at Qwest's applicable tariffed access rates.<sup>4</sup>

8           8.       On April 20, 2007, the Parties executed the Agreement implementing the  
9 Commission's Arbitration Order. The Agreement was approved by the Commission in Order  
10 No. 07-275 entered on June 18, 2007.<sup>5</sup> The Agreement became effective on June 18, 2007.

11          9.       The Agreement provides terms and conditions governing the interconnection  
12 of the Parties' networks for the purpose of exchanging traffic (see Agreement Section 7.1.1),  
13 including ISP-Bound traffic (see Agreement Section 7.2.1.2) and, specifically, VNXX-routed  
14 ISP-Bound traffic in accordance with the Commission's Arbitration Order (see Agreement  
15 Section 7.3.4.2).

16          10.      Level 3 and Qwest are currently interconnected and exchanging traffic at  
17 multiple points of interconnection ("POIs") in Oregon. Level 3 has established a POI in each  
18 local calling area where it exchanges traffic with Qwest.<sup>6</sup> Level 3 established a POI in each  
19 local calling area by either: (i) building its own fiber optic facilities to collocation  
20 arrangements in Qwest tandem locations; (ii) leasing facilities from another carrier to Level

21 \_\_\_\_\_  
22 <sup>3</sup> *Level 3 / Qwest Arbitration*, Order No. 07-098 (March 14, 2007).

23 <sup>4</sup> *See id.* at pp. 3-6.

24 <sup>5</sup> *Level 3 / Qwest Arbitration*, Order No. 07-275 (June 18, 2007).

25 <sup>6</sup> Level 3 has established POIs in each local calling area where it exchanges traffic with Qwest in order to bring  
26 Level 3's network into compliance with Commission requirements governing the exchange of VNXX-routed  
ISP-bound traffic. *See, e.g.* In re: Qwest Corporation vs. Level 3 Communications, LLC, *Order No. 06-037*,  
Docket IC 12 (January 30, 2006).

1 3-leased multiplexing equipment at additional Qwest tandem locations; or (iii) leasing direct  
2 end office trunks (or direct trunk transport) from a Qwest tandem location to a Qwest end  
3 office switch in any local calling area where Level 3 is doing business but had neither built  
4 nor purchased facilities as described in (i) and (ii) above.

5 11. As described below, the Agreement provides full compensation to Qwest for  
6 any facilities used to transport VNXX-routed ISP-bound traffic from Qwest's originating end  
7 offices to Level 3's media gateway as directed by the Commission's Arbitration Order.

8 12. Section 7.3.2 provides for the purchase of direct trunked transport ("DTT") as  
9 a means of exchanging traffic under the Agreement and establishes cost responsibility and  
10 rates for facilities used to transport VNXX-routed ISP-Bound traffic between points within the  
11 same local calling area. Section 7.3.2 provides, in pertinent part:

12 1. **7.3.2 Direct Trunked Transport**

13 7.3.2.1 Either Party may elect to purchase direct trunked transport  
14 from the other Party.

15 7.3.2.1.1 Direct trunked transport ("DTT") is available between the  
16 Serving Wire Center of the POI and the terminating Party's Tandem Switch or  
17 End Office Switches. The applicable rates are described in Exhibit A. DTT  
18 facilities are provided as dedicated DS3, DS1 or DS0 facilities.

17 \* \* \*

18 7.3.2.2 If the Parties elect to establish LIS two-way DTT trunks, for  
19 reciprocal exchange of Exchange Service ("EAS/Local") traffic the cost of the  
20 LIS two-way DTT facilities shall be shared among the Parties by reducing the  
21 LIS two-way DTT rate element charges as follows:

21 7.3.2.2.1 Direct Trunked Transport - The provider of the LIS two-way  
22 DTT facility will initially share the cost of the LIS two-way DTT facility by  
23 assuming an initial relative use factor of fifty percent (50%) for a minimum of  
24 one (1) quarter if the Parties have not exchanged LIS traffic previously. The  
25 nominal charge to the other Party for the use of the DTT facility, as described  
26 in Exhibit A, shall be reduced by this initial relative use factor. Payments by  
the other Party will be according to this initial relative use factor for a  
minimum of one (1) quarter. The initial relative use factor will continue for  
both bill reduction and payments until the Parties agree to a new factor,  
based upon actual minutes of use data for non-ISP-bound traffic to  
substantiate a change in that factor. ***If a CLEC's End User Customers are  
assigned a NPA-NXXs associated with a rate center other than the rate***

1           **center where the Customer is physically located, traffic that does not**  
2           **originate and terminate within the same Qwest local calling area (as**  
3           **approved by the Commission), regardless of the called and calling NPA-**  
4           **NXXs, involving those Customers is referred to as "VNXX traffic". For**  
5           **purposes of determining the RUF, the terminating carrier is responsible**  
6           **for ISP-bound traffic and for VNXX traffic.** If either Party demonstrates  
7           with non-ISP-bound traffic data that actual minutes of use during the first  
8           quarter justify a new relative use factor, that Party will send a notice to the  
9           other Party. Once the Parties finalize a new factor, the bill reductions and  
10          payments will apply going forward, from the date the original notice was sent.  
11          ISP-bound traffic is interstate in nature. Qwest has never agreed to  
12          exchange VNXX Traffic with CLEC. (Agreement Section 7.3.2.2, emphasis  
13          added)

14          Under Section 7.3.2.2.1, Level 3, as the terminating carrier, is responsible for the costs of  
15          DTT facilities to the extent they are used for the transport of VNXX-routed ISP-Bound traffic,  
16          and the rates applicable to such facilities are as set forth in the pricing exhibit to the  
17          Agreement. See Agreement Section 7.3.2.1.1.

18          13.       Section 7.3.4.2 of the Agreement allocates cost responsibility and establishes  
19          rates for those facilities used to transport VNXX-routed ISP-bound traffic out of the local  
20          calling areas (*i.e.*, from the POI in a local calling area to Level 3's media gateway in Seattle,  
21          Washington). Specifically, Section 7.3.4.2 provides:

22                   7.3.4.2       Pursuant to Order No. 07-098, CLEC may make VNXX  
23                   number assignments only for the purpose of assigning numbers to  
24                   ISP Customers to facilitate the exchange of dial-up ISP-Bound traffic.  
25                   CLEC shall compensate Qwest for paying all of the costs associated  
26                   with transporting VNXX-routed ISP-Bound traffic from its primary and  
                 secondary POIs in Oregon to its media gateway. The compensation  
                 paid by CLEC to Qwest shall be based on the transport of the non  
                 TELRIC rates set forth in applicable Qwest tariffs.

                 Agreement Section 7.3.4.2 (emphasis added). Under Section 7.3.4.2, Level 3 must  
                 compensate Qwest for the facilities used to transport VNXX-routed ISP-Bound traffic from  
                 Level 3's POIs to its media gateway at Qwest's tariffed special access rates. *Id.* Section  
                 7.3.4.2 does not apply to any facilities used to transport VNXX-routed ISP-Bound traffic

1 between points within the same local calling area (*i.e.*, from a Qwest end office to a Level 3  
2 POI located in the same local calling area).

3       14.     Level 3 does not dispute that pursuant to terms of the Agreement as directed  
4 by the Commission in the Arbitration Order, Level 3 will compensate Qwest for any facilities  
5 used to transport VNXX-routed ISP-Bound traffic in Oregon. And Level 3 has compensated  
6 Qwest for all such facilities to-date. The instant dispute centers on the rates that Qwest is  
7 attempting to impose upon Level 3 for facilities used to transport VNXX-routed ISP-Bound  
8 traffic between points within the same local calling area (*i.e.*, from a Qwest end office to a  
9 Level 3 POI located in the same local calling area).

10       15.     Under combined Sections 7.3.2 and 7.3.4.2 of the Agreement, Qwest is fully  
11 compensated for any facilities used to transport VNXX-routed ISP-Bound traffic from its  
12 originating end office to Level 3's media gateway. Qwest is compensated for the facilities  
13 used to transport traffic from the originating end office to Level 3's POI located in the same  
14 local calling area in accordance with Section 7.3.2.2, and Qwest is compensated for the  
15 facilities used to transport the traffic from Level 3's POIs out of the local calling area to Level  
16 3's media gateway at tariffed special access rates in accordance with Section 7.3.4.2. In  
17 spite of the foregoing, Qwest seeks to extract windfall access revenue from Level 3 by  
18 forcing it to also pay special access rates for transporting traffic between points within the  
19 same local calling area where Level 3 has a POI.

20       16.     Qwest's attempts violate the terms of the Agreement and conflict with the  
21 intent and rationale behind the Commission's grant to Level 3 of an exception to the  
22 Commission's prohibition on the use of VNXX arrangements for voice traffic. Further,  
23 Qwest's attempts directly conflict with FCC rules, recently made clear by the FCC's *ISP*  
24 *Mandamus Order*, in which the FCC reaffirmed that Qwest is not, nor ever has been, entitled

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1 to seek **any** compensation for facilities used to transport Qwest-originated traffic on its side  
2 of the POI – much less compensation at special access rates.<sup>7</sup>

3 17. Section 7.3.4.2 is based upon the Commission’s ruling in the Arbitration  
4 Order establishing a limited exception to the Commission’s general prohibition on the use of  
5 VNXX arrangements for voice traffic in Oregon. The Arbitration Order states in pertinent  
6 part:

7 Based on the record in this case, the Arbitrator recommended that the  
8 Commission grant a limited exception to its ban on VNXX. Three  
9 factors were critical to the Arbitrator’s Decision: First, changes in  
10 technology used to provision dial-up Internet service now require  
11 interexchange calls between the Internet customer’s location and the  
12 location of the equipment used to process Internet service provider  
13 (“ISP”) functions. Second, imposing access charges on dial-up  
14 Internet traffic is unlikely to produce significant access revenues  
15 because users are unwilling to pay toll rates to access the Internet.  
16 **Third, the transport costs concerns typically associated with  
17 VNXX arrangements are mitigated by Level 3’s agreement to pay  
18 for transporting VNXX-routed ISP-bound traffic from the local  
19 calling area where the Internet call originated to Level 3’s media  
20 gateway where ISP functions are performed.**

21 The Arbitrator’s proposal to allow Level 3 to offer VNXX numbers  
22 includes the following conditions:

23 \*\*\*

24 **2. Level 3 must assume responsibility for paying all of the costs  
25 associated with transporting VNXX-routed ISP-bound traffic from  
26 its primary and secondary points of interconnection in Oregon to  
its media gateway.** The Arbitrator reasoned that, because this traffic  
is both interexchange and interstate in nature, the compensation paid  
by Level 3 to Qwest should be based on the transport rates set forth  
in applicable Qwest tariffs, rather than the TELRIC rates proposed by  
Level 3. (Arbitration Order at pp. 3-4, emphasis added)

27 The “transport costs concerns typically associated with VNXX arrangements” referred to  
28 above are those incurred to transport traffic out of a local calling area to a CLEC POI in a  
29 \_\_\_\_\_

30 <sup>7</sup> Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, *Order on Remand and  
31 Report and Order and Further Notice of Proposed Rulemaking* (rel. November 5, 2008) (“*ISP Mandamus  
32 Order*”).



1 different local calling area. As described in the Arbitration Order, typical VNXX routing  
2 arrangements are those “where a CLEC offers a LATA-wide 'virtual presence' for its ISP  
3 customers and leaves the ILEC with the financial and operational responsibility for delivering  
4 all traffic from within the LATA to the CLEC's [single point of interconnection]” maintained  
5 within the LATA. See Arbitration Order, Appendix A at p. 14. To address its concern, the  
6 Commission imposed the condition which is implemented in the Agreement by Section  
7 7.3.4.2, namely that Level 3 compensate Qwest for the costs of transporting VNXX-routed  
8 traffic out of the local calling area. See Agreement Section 7.3.4.2. Qwest, however, seeks  
9 to stretch this condition to encompass *all* transport, even transport between points within the  
10 same local calling area where Level 3 already maintains a POI.

11       18. The clear intent of the Commission was to impose tariffed special access  
12 rates only on facilities used to transport VNXX-routed ISP-bound traffic out of the local  
13 calling areas to Level 3's media gateway. Though Level 3 disagrees with the Commission's  
14 allocation to Level 3 of cost responsibility for transporting *any* Qwest-originated traffic to  
15 Level 3 at any more than one point per LATA,<sup>8</sup> the focus of the instant dispute only involves  
16 Qwest's attempts to stretch the bounds of the Commission's ruling and impose access  
17 charges on *all* transport facilities.

18       19. The illegality of Qwest's attempts is made even more clear by the FCC's  
19 recent issuance of its *ISP Mandamus Order*, in which the FCC squarely and unambiguously  
20 placed all ISP-bound traffic under the umbrella of “telecommunications” under section  
21 251(b)(5) of the Act and reaffirmed its prior ruling that there is no “local” versus “non-local”

22 \_\_\_\_\_

23 <sup>8</sup> Level 3 anticipates that a separate proceeding may be necessary to resolve issues arising from the FCC's *ISP*  
24 *Mandamus Order* as it relates to certain terms of the Agreement and the Commission's Arbitration Order.  
25 Level 3 believes that any requirement under the Agreement that Level 3 compensate Qwest for transporting *any*  
26 Qwest-originated traffic on Qwest's side of the POI is a violation of federal law. Level 3 is working with  
Qwest in an effort to resolve this issue. Level 3 reserves its right to begin disputing at any time any amounts  
invoiced by Qwest that Level 3 believes are in violation of the FCC's rules and seek whatever redress it is  
entitled to under law.

1 distinction under section 251(b)(5).<sup>9</sup> Under the FCC's rules governing transport and  
2 termination of section 251(b)(5) traffic, Qwest is prohibited from charging Level 3 for the  
3 costs of transporting Qwest-originated traffic to Level 3's POI.<sup>10</sup>

4       20.     Level 3 receives carrier access billing system ("CABS") invoices from Qwest  
5 for DTT facilities used to exchange traffic under the Agreement, and the charges contained  
6 in the CABS invoices are based on the rates set forth in the pricing exhibit to the Agreement.  
7 See Exhibit A. In the CABS invoices, Qwest bills Level 3 for DTT facilities used to transport  
8 VNXX-routed ISP-bound traffic between points within the same local calling area (i.e., from  
9 a Qwest end office to a Level 3 POI located in the same local calling area) in accordance  
10 with Section 7.3.2 of the Agreement. *Id.* Level 3 has paid the CABS invoices for these DTT  
11 facilities in compliance with its obligations under the Agreement. *Id.*

12       21.     On or about June 1, 2007, Qwest began sending monthly invoices to Level 3  
13 with one line item amount. See Exhibit A. Qwest provided no supporting detail for these  
14 amounts until April of 2008. *Id.* The total of these invoices as of November 2008 is  
15 \$2,615,367.75. *Id.* Level 3 has estimated, based upon its reasonable knowledge and belief  
16 without sufficient supporting detail from Qwest, that this amount includes approximately  
17 \$949,324.00, billed at Qwest's tariffed special access rates, for facilities used to transport  
18 VNXX-routed ISP-bound traffic out of the local calling areas where Level 3 maintains its  
19 POIs to its media gateway in Seattle. *Id.* Level 3 paid this amount pursuant to Section  
20 7.3.4.2 of the Agreement as directed by the Commission in the Arbitration Order. *Id.*

21       22.     Level 3 has estimated, based upon its reasonable knowledge and belief, that  
22 the remaining amount of \$1,666,043.75 reflects an approximation of additional charges, at  
23 Qwest's tariffed special access rates, for the DTT facilities used to transport VNXX-routed

24 \_\_\_\_\_

25 <sup>9</sup> *ISP Mandamus Order*, at ¶ 8.

26 <sup>10</sup> See 47 C.F.R. § 51.701, *et seq.*



1           26.    Level 3 requests any such other relief as may be deemed just and  
2 appropriate.

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4    DATED: Dec. 9, 2008

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**MCDOWELL & RACKNER PC**



Lisa F. Rackner

**LEVEL 3 COMMUNICATIONS, LLC**

Richard E. Thayer, Esq.  
Scott Porter, Esq.  
1025 Eldorado Boulevard  
Broomfield, CO 80021

Of Attorneys for Level 3 Communications

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

In the Matter of

LEVEL 3 COMMUNICATIONS, LLC,

Complainant

v.

QWEST CORPORATION,

Defendant

Complaint for Enforcement of  
Interconnection Agreement

Docket No. IC \_\_\_\_\_

**AFFIDAVIT OF RHONDA TOUNGET**

I, Rhonda Tounget, do hereby depose and state as follows:

1. I am employed by Level 3 Communications, LLC ("Level 3") as Director of Finance. I have personal knowledge of the facts set forth herein.
2. Level 3 and Qwest Corporation ("Qwest") exchange traffic in Oregon, including VNXX-routed ISP-bound traffic as I understand that term is employed in the state of Oregon ("VNXX traffic") under the terms of the Parties' interconnection agreement approved by the Commission on June 18, 2007 (the "Agreement"). Level 3 receives carrier access billing system (CABS) invoices from Qwest for direct trunked transport (DTT) facilities used to exchange traffic under the Agreement. The charges contained in the CABS invoices are based on the rates set forth in the pricing exhibit to the Agreement.
3. In the CABS invoices, Qwest bills Level 3 for DTT facilities used to transport traffic, including VNXX traffic, between points within the same local calling area (i.e., from a

Qwest end office to a Level 3 POI located in the same local calling area). Level 3 has paid, and continues to pay, the CABS invoices for these DTT facilities in compliance with its obligations under the Agreement.

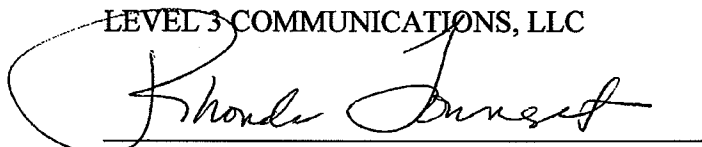
4. On or about June 1, 2007, Level 3 began receiving monthly invoices from Qwest with one line item amount and no supporting detail until April 2008. The total of such invoices as of November 2008 is \$2,615,367.75. Level 3 has estimated, based upon our reasonable knowledge and belief without sufficient supporting detail, that this amount includes approximately \$949,324.00, billed at Qwest's tariffed special access rates, for facilities used to transport VNXX traffic out of the local calling areas where Level 3 maintains its POIs to its media gateway in Seattle, Washington. Level 3 paid this amount pursuant to Section 7.3.4.2 of the Agreement.

5. Level 3 has estimated, based upon our reasonable knowledge and belief, that the remaining amount of \$1,666,043.75 reflects an approximation of additional charges, at Qwest's tariffed special access rates, for the DTT facilities used to transport VNXX traffic between points within the same local calling area (i.e., from a Qwest end office to a Level 3 POI located in the same local calling area). Level 3 has disputed this amount, and will continue to dispute based upon Level 3's approximation, on the basis that Level 3 already pays for such facilities under the CABS invoices, that the Agreement does not require the payment of special access rates for facilities used to transport such traffic between Qwest's originating end office and Level 3's POI in the same local calling area, and that Qwest's attempt to bill Level 3 for these facilities at tariffed special access rates is inconsistent with Section 7.3.4.2 of the Agreement.

6. In early 2008, Level 3 and Qwest began meeting periodically in an effort to work toward resolution of the dispute, but the Parties have been unable to reach a resolution.

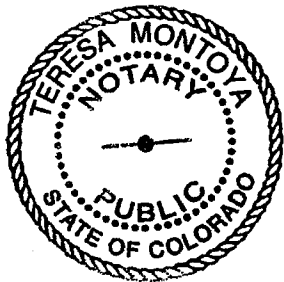
DATED this 9<sup>th</sup> day of December, 2008.

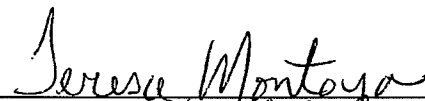
LEVEL 3 COMMUNICATIONS, LLC



Rhonda Tounget  
Director, Finance

Subscribed and sworn to before me this 9<sup>th</sup> day of December, 2008.



  
Notary Public for Level 3 Communications, LLC  
My commission expires: 10-11-2010

# McDowell & Rackner PC



LISA F. RACKNER  
Direct (503) 595-3925  
lisa@mcd-law.com

August 6, 2008

Director-Interconnection Agreements  
1801 California, Room 2420  
Denver, CO 80202

Qwest Law Department  
Attn: Corporate Counsel, Interconnection  
1801 California, 9<sup>th</sup> FL  
Denver, CO 80202

Public Utility Commission of Oregon  
Attn: Filing Center  
PO Box 2148  
Salem OR 97308-2148

Re Notice Pursuant to OAR 860-016-0050

Dear Qwest:

Pursuant to Oregon Administrative Rule 860-016-0050 (3)(a), Level 3 Communications, LLC ("Level 3) hereby provides notice to Qwest Communications ("Qwest") of Level 3's intent to file a complaint with the Oregon Public Utility Commission to enforce specific provisions of the interconnection agreement between Qwest and Level 3 approved by the Commission, dated April 18, 2007 ("Agreement").

Specifically, Qwest is violating Section 7.3.4.2 of the Agreement which provides:

- 7.3.4.2 Pursuant to Order No. 07-098, CLEC may make VNXX number assignments only for the purpose of assigning numbers to ISP Customers to facilitate the exchange of dial-up ISP-Bound traffic. CLEC shall compensate Qwest for paying all of the costs associated with transporting VNXX-routed ISP-Bound traffic from its primary and secondary POIs in Oregon to its media gateway. The compensation paid by CLEC to Qwest



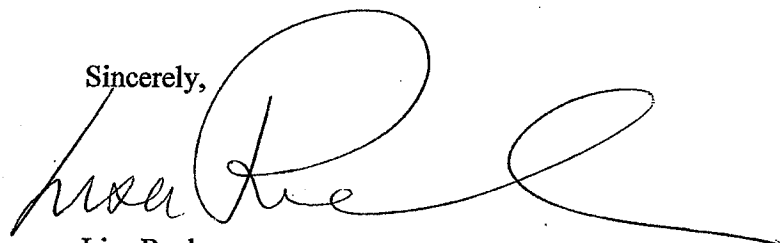
shall be based on the transport of the non TELRIC rates set forth in applicable Qwest tariffs.

The specific acts by Qwest that Level 3 maintains violate the cited terms of the Agreement are Qwest's billing Level 3 in the amount of \$1,419,421.33 to-date for local interconnection service ("LIS") trunks that extend beyond Level 3's primary and secondary POIs at Qwest's tariffed special access rates. Qwest is only permitted to charge Level 3 tariffed special access rates to transport VNXX-routed ISP-Bound traffic from Level 3's primary and secondary POIs to Level 3's media gateway. Qwest is compensated under the Agreement for any transport of such traffic to the applicable primary or secondary POI within the local calling area from which the call originated in accordance with the relative use of such facilities at TELRIC rates.

The relief that Level 3 will seek in the complaint will include, but may not be limited to, an order by the Commission:

- (1) Clarifying that purchasing DS3 transport into Level 3's primary and secondary POIs at Qwest's special access tariffed rates satisfies the requirements under Section 7.3.4.2, and that Level 3 should not also be charged for special access on LIS trunking within the local calling area of a POI;
- (2) Requiring Qwest to credit or withdraw all billing for special access on LIS trunking within the local calling area of the POIs; and
- (3) Ordering Qwest to cease any such billing in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Rackner", with a large, stylized flourish extending to the right.

Lisa Rackner

Attorneys for Idaho Power

Cc: Judge Michael Grant  
Judge Sam Petrillo

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 In the Matter of

4

5 LEVEL 3 COMMUNICATIONS, LLC,

6 Complainant

7 v.

8 QWEST CORPORATION,

9 Defendant

10 Complaint for Enforcement of  
11 Interconnection Agreement

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Docket No. IC \_\_\_\_\_

**LEVEL 3 COMMUNICATIONS'  
EXECUTIVE SUMMARY OF COMPLAINT  
FOR ENFORCEMENT OF  
INTERCONNECTION AGREEMENT AND  
RELIEF REQUESTED**

13

**EXECUTIVE SUMMARY**

14 Pursuant to OAR 860-016-0050(2)(g), Level 3 Communications, LLC hereby submits  
15 this executive summary of its Complaint for Enforcement of Interconnection Agreement with  
16 Qwest Corporation, including a summary of the claim and the relief requested.

17 Level 3 and Qwest are parties to an arbitrated interconnection agreement  
18 ("Agreement")<sup>1</sup> that provides terms and conditions governing the interconnection of the  
19 Parties' networks for the purpose of exchanging traffic in Oregon. Among the traffic types  
20 exchanged by the Parties is what was termed "VNXX-routed ISP-Bound traffic." In its Order  
21 No. 07-098 resolving the disputed issues in the Parties' arbitration proceeding,<sup>2</sup> the  
22 Commission imposed upon Level 3 the obligation to compensate Qwest for facilities used to

23

24 <sup>1</sup> Interconnection Agreement approved by the Commission in Order No. 07-275 entered on June 18,  
2007.

25 <sup>2</sup> In the Matter of Level 3 Communications, LLC, Petition For Arbitration of an Interconnection  
26 Agreement with Qwest Corporation Pursuant to Section 252(b) of the Telecommunications Act,  
Docket No. Arb 665, Order No. 07-098 (March 14, 2007) (the "Arbitration Order").

1 transport VNXX-routed ISP-Bound traffic and, in particular, the obligation to pay tariffed  
2 special access rates for transporting such traffic from Level 3's POI out of the local calling  
3 area to Level 3's media gateway.

4 Level 3 does not dispute that pursuant to terms of the Agreement as directed by the  
5 Commission in the Arbitration Order Level 3 will compensate Qwest for facilities used to  
6 transport VNXX-routed ISP-Bound traffic in Oregon. In fact, Level 3 *has* compensated  
7 Qwest for all such facilities to-date. Specifically, Level 3 has paid Qwest's carrier access  
8 billing system ("CABS") invoices for facilities used to transport VNXX-routed ISP-bound  
9 traffic between points within the same local calling area (i.e., from a Qwest end office to a  
10 Level 3 POI located in the same local calling area) at rates set forth in the pricing exhibit to  
11 the Agreement. Level 3 has also paid approximately \$949,324.00 billed at Qwest's tariffed  
12 special access rates for what Level 3 estimates, based upon its reasonable knowledge and  
13 belief without sufficient supporting detail from Qwest, it owes for facilities used to transport  
14 VNXX-routed ISP-bound traffic out of the local calling areas where Level 3 maintains its  
15 POIs to its media gateway in Seattle.

16 However, Level 3 disputes that it owes the *additional* special access charges Qwest  
17 is attempting to impose upon Level 3 for those facilities used to transport VNXX-routed ISP-  
18 Bound traffic between points within the same local calling area (i.e., from a Qwest end office  
19 to a Level 3 point of interconnection ("POI") located in the same local calling area). As  
20 described above, Qwest is fully compensated under the Agreement for any facilities used to  
21 transport VNXX-routed ISP-Bound traffic from its originating end office to Level 3's media  
22 gateway. In spite of the foregoing, Qwest has sought to extract windfall access revenue  
23 from Level 3 by forcing it to also pay special access rates for transporting traffic between  
24 points within the same local calling area where Level 3 has a POI. Level 3 estimates, based  
25 upon its reasonable knowledge and belief without sufficient supporting detail from Qwest,  
26 that Qwest has attempted to bill Level 3 approximately \$1,666,043.75 reflecting an

1 approximation of charges, at Qwest's tariffed special access rates, for direct trunk transport  
2 ("DTT") facilities used to transport VNXX-routed ISP-bound traffic between points within the  
3 same local calling area where Level 3 maintains a POI with Qwest (i.e., from a Qwest end  
4 office to a Level 3 POI located in the same local calling area).

5 Level 3 has disputed this amount, and continues to dispute this amount, on the basis  
6 that Qwest's attempt to bill Level 3 for these facilities at tariffed special access rates violates  
7 the Agreement, the Commission's Arbitration Order, and federal law, none of which require  
8 the payment of special access rates for facilities used to transport such traffic between  
9 points within the same local calling area. Further, Qwest's attempts directly conflict with FCC  
10 rules, recently made clear by the FCC's *ISP Mandamus Order*, in which the FCC reaffirmed  
11 that Qwest is not, nor ever has been, entitled to seek any compensation for facilities used to  
12 transport Qwest-originated traffic on its side of the POI – much less compensation at special  
13 access rates.<sup>3</sup>

14 The Parties attempted to resolve this dispute through negotiation, but such efforts  
15 have been unsuccessful. Level 3 requests that the Commission enter an order clarifying  
16 that the Agreement states that Level 3 will pay special access rates only for transport  
17 facilities used to carry VNXX-routed ISP-bound traffic out of a local calling area from Level  
18 3's POI to its media gateway, and prohibiting Qwest from charging Level 3 special access  
19 rates on transport facilities between points within the same local calling area. Level 3 also  
20 requests the Commission enter an order requiring Qwest to credit Level 3 for any amounts

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25 <sup>3</sup> Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, *Order on Remand*  
26 *and Report and Order and Further Notice of Proposed Rulemaking* (rel. November 5, 2008) ("*ISP*  
*Mandamus Order*").

1 billed for interconnection facilities used to transport VNXX-routed ISP-Bound traffic  
2 consistent with this determination.

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4 DATED: Dec. 9, 2008

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**MCDOWELL & RACKNER PC**



Lisa F. Rackner

**LEVEL 3 COMMUNICATIONS, LLC**

Richard E. Thayer, Esq.  
Scott Porter, Esq.  
1025 Eldorado Boulevard  
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Of Attorneys for Level 3 Communications

7.3.2.1.4 Fixed Charges per DS0, DS1 or DS3 and per mile charges are defined for DTT in Exhibit A of this Agreement.

7.3.2.2 If the Parties elect to establish LIS two-way DTT trunks, for reciprocal exchange of Exchange Service (EAS/Local) traffic the cost of the LIS two-way DTT facilities shall be shared among the Parties by reducing the LIS two-way DTT rate element charges as follows:

7.3.2.2.1 Direct Trunked Transport - The provider of the LIS two-way DTT facility will initially share the cost of the LIS two-way DTT facility by assuming an initial relative use factor of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the DTT facility, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data for non-ISP-bound traffic to substantiate a change in that factor. If a CLEC's End User Customers are assigned a NPA-NXXs associated with a rate center other than the rate center where the Customer is physically located, traffic that does not originate and terminate within the same Qwest local calling area (as approved by the Commission), regardless of the called and calling NPA-NXXs, involving those Customers is referred to as "VNXX traffic". For purposes of determining the RUF, the terminating carrier is responsible for ISP-bound traffic and for VNXX traffic. If either Party demonstrates with non-ISP-bound traffic data that actual minutes of use during the first quarter justify a new relative use factor, that Party will send a notice to the other Party. Once the Parties finalize a new factor, the bill reductions and payments will apply going forward, from the date the original notice was sent. ISP-bound traffic is interstate in nature. Qwest has never agreed to exchange VNXX Traffic with CLEC.

7.3.2.3 Multiplexing options (DS1/DS3 MUX or DS0/DS1 MUX) are available at rates described in Exhibit A.

### 7.3.3 Trunk Nonrecurring charges

7.3.3.1 Installation nonrecurring charges may be assessed by the provider for each LIS trunk ordered. Qwest rates are specified in Exhibit A.

7.3.3.2 Nonrecurring charges for rearrangement may be assessed by the provider for each LIS trunk rearrangement ordered, at one-half (1/2) the rates specified in Exhibit A.

### 7.3.4 Exchange Service (EAS/Local) Traffic

7.3.4.1 Intercarrier compensation for Exchange Service (EAS/Local) traffic exchanged between CLEC and Qwest (where the end users are physically located within the same Local Calling Area) will be billed at \$.0007 per MOU.

7.3.4.2 Pursuant to Order No. 07-098, CLEC may make VNXX number assignments only for the purpose of assigning numbers to ISP Customers to facilitate the exchange of dial-up ISP-Bound traffic. CLEC shall compensate Qwest for paying all

of the costs associated with transporting VNXX-routed ISP-Bound traffic from its primary and secondary POIs in Oregon to its media gateway. The compensation paid by CLEC to Qwest shall be based on the transport of the non TELRIC rates set forth in applicable Qwest tariffs.

7.3.4.3 Pursuant to Order No. 07-098 of the Commission, entered March 14, 2007, this Agreement does not contain rates, terms and conditions for the exchange of Voice over Internet Protocol ("VoIP") traffic. The Parties agree to negotiate interim arrangements and execute an amendment to this Agreement which will govern the exchange of VoIP traffic until the FCC has issued a substantive decision for the exchange of VoIP traffic that the Parties will implement as a change in law according to Section 2.2.

### 7.3.5 Miscellaneous Charges

7.3.5.1 Cancellation charges will apply to cancelled LIS trunk orders, based upon the critical dates, terms and conditions in accordance with the Access Service Tariff Section 5.2.3, and the trunk nonrecurring charges referenced in this Agreement.

7.3.5.2 Expedites for LIS trunk orders are allowed only on an exception basis with executive approval within the same timeframes as provided for other designed services. When expedites are approved, expedite charges will apply to LIS trunk orders based on rates, terms and conditions described in Exhibit A.

7.3.5.3 Intentionally Left Blank.

### 7.3.6 ISP-Bound Traffic

7.3.6.1 Subject to the terms of this Section, intercarrier compensation for ISP-bound traffic exchanged between Qwest and CLEC (where the end users are physically located within the same Local Calling Area) will be billed as follows, without limitation as to the number of MOU ("minutes of use") or whether the MOU are generated in "new markets" as that term has been defined by the FCC:

\$.0007 per MOU or the state ordered rate, whichever is lower.

7.3.6.2 Identification of ISP-Bound Traffic – unless the Commission has previously ruled that Qwest's method for tracking ISP-bound Traffic is sufficient, Qwest will presume traffic delivered to CLEC that exceeds a 3:1 ratio of terminating (Qwest to CLEC) to originating (CLEC to Qwest) traffic is ISP-Bound traffic. Either Party may rebut this presumption by demonstrating the factual ratio to the state Commission.

7.3.6.3 Qwest will not pay reciprocal compensation on VNXX traffic.

### 7.3.7 Transit Traffic

The following rates will apply:

7.3.7.1 Exchange Service and Information Service Transit: The applicable LIS tandem switching and tandem transmission rates at the assumed mileage contained in Exhibit A of this Agreement, apply to the originating Party. The assumed mileage will be

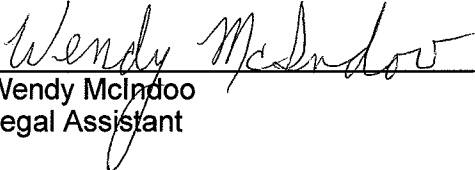
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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of **Level 3 Communications' Complaint for Enforcement of Interconnection Agreement; Level 3 Communication's Executive Summary of Complaint for Enforcement of Interconnection Agreement and Relief Requested; and the portion of the interconnection agreement that Level 3 contends is being violated** on the following named person(s) on the date indicated below by email, facsimile and overnight courier addressed to said person(s) at his or her last-known address(es) indicated below.

Alex M. Duarte  
Qwest Corporation  
421 SW Oak St Ste 810  
Portland OR 97204  
[alex.duarte@qwest.com](mailto:alex.duarte@qwest.com)

DATED: December 9, 2008.

  
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Wendy McIndoo  
Legal Assistant  
Of Attorneys for Level 3 Communications, LLC