

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

IC 14

In the Matter of

LEVEL 3 COMMUNICATIONS, LLC

Complainant

v.

QWEST CORPORATION,

Defendant

Complaint for Enforcement of Interconnection
Agreement

**QWEST CORPORATION'S ANSWER
TO LEVEL 3 COMMUNICATIONS'
COMPLAINT FOR ENFORCEMENT
OF INTERCONNECTION
AGREEMENT**

Defendant Qwest Corporation ("Qwest"), pursuant to OAR 860-016-0050(4), hereby submits its Answer to the Complaint for Enforcement of Interconnection Agreement ("Complaint") of Level 3 Communications, LLC ("Level 3") dated December 9, 2008 filed with the Oregon Public Utility Commission (the "Commission").

INTRODUCTION

Given that Qwest addresses each specific allegation of the Complaint separately hereafter, Qwest does not specifically respond to each point of Level 3's Executive Summary. Instead, Qwest hereby submits the following brief introduction in order to explain Qwest's general position on the issues raised by the Complaint.

Level 3's executive summary is fundamentally wrong because it mischaracterizes what the Commission ordered in the arbitration between Qwest and Level 3. Prior to the arbitration the Commission had, in a separate proceeding, banned the use of VNXX in its entirety in

Oregon. In its March 14, 2007 decision in the arbitration between Qwest and Level 3 (“*Order No. 07-098*”), the Commission established a limited exception that allowed Level 3 to carry only *VNXX-routed ISP-bound traffic* in Oregon subject to the specific condition that Level 3 pay Qwest’s tariffed rates for transport from points in Oregon defined by Level 3 witnesses to be “primary” and “secondary” POIs to Level 3’s Media Gateway in Seattle. A Primary POI, in Level 3’s parlance, is what is more generally known as a point of interconnection: the point at which the networks of two interconnecting carriers are connected to each other. Level 3 defined a “Secondary POI” to be the farthest end of Direct Trunked Transport (“DTT”) provided by Qwest that Level 3 paid for based on the relative use factor terms of the interconnection agreement (“ICA”) between the parties. Under *Order No. 07-098*, Level 3 was not permitted to engage in VNXX unless it paid for the transport from the primary and secondary POIs to the Media Gateway at Qwest’s tariffed rates. The Order presupposed that Level 3 was already paying the lower TELRIC rates for the DTT and directed Level 3 to pay an additional amount that adjusted the total rate paid up to Qwest’s tariffed rates. Qwest has properly charged Level 3 at the tariffed rates for transport from the primary and secondary POIs. Nothing in either *Order No. 07-098* or the ICA suggest or otherwise support Level 3’s claim that it is not required to pay for transport at tariffed rates for transport that begins within a local calling area at a secondary POI and then routes to a primary POI before leaving the state of Oregon.

In its Complaint, Level 3 attempts to avoid its responsibility for paying Qwest for transport from the primary and secondary POIs. Level 3’s complaint is without merit and the relief Level 3 seeks should be denied.

QWEST ANSWER TO COMPLAINT

In response to the numbered paragraphs of the Complaint filed by Level 3, Qwest admits, denies and otherwise alleges as set forth hereafter. Except where expressly admitted, Qwest denies each and every allegation of the Complaint.

I. PARTIES

1. Qwest admits the allegations of the first sentence of paragraph 1 of the Complaint. Qwest presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 1.

2. With regard to paragraph 2 of the Complaint, Qwest admits that it is an incumbent local exchange carrier (“ILEC”) in Oregon and that certain, but not all aspects, of its business are regulated by the Commission.

II. FACTUAL ALLEGATIONS

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

3. Qwest admits the allegations of paragraph 3 of the Complaint.

4. Qwest denies the allegations in the first sentence of paragraph 4. Since Level 3 does not incorporate the Affidavit of Rhonda Tounget as allegations in its complaint, the Affidavit requires no answer. However, to the extent that an answer is required, Qwest denies the allegations in paragraphs 3, 4 and 5 of the affidavit. Qwest denies that its billings were inconsistent with the terms of the ICA. Qwest admits that the parties began meeting in early 2008 in an effort to work toward a resolution of the dispute. Qwest incorporates its answer to Part B as its answer to the final sentence of paragraph 4.

5. Qwest admits the allegations of paragraph 5 of the Complaint.

B. Statement of Facts

6. Qwest admits the allegations of the first sentence of paragraph 6 of the Complaint. As to the second sentence of paragraph 6 of the Complaint, Qwest admits that one of the principal issues in the arbitration centered on the issue of the legality and proper compensation for VNXX traffic, but affirmatively alleges that there were several other issues in the arbitration docket completely unrelated to VNXX. Qwest denies the remaining allegations of paragraph 6.

7. Qwest admits the allegations of the first sentence of paragraph 7 of the Complaint. Qwest denies the allegations of the second sentence of paragraph 7 to the extent that they differ from what is provided in *Order No. 07-098*.

8. Qwest admits the allegations of paragraph 8 of the Complaint.

9. With regard to paragraph 9, Qwest affirmatively states that the ICA approved by the Commission speaks for itself. Qwest denies the allegations of paragraph 9 of the Complaint to the extent that they are inconsistent with the terms and conditions of the ICA.

10. Qwest admits the allegations of the first sentence of paragraph 10 of the Complaint. Qwest denies the allegations of the second and third sentences of paragraph 10.

11. Qwest denies the allegations of paragraph 11 of the Complaint.

12. Qwest denies the allegations of the first sentence of paragraph 12. Qwest admits that Section 7.3.2 of the ICA relates to a portion of the payment for DTT and affirmatively alleges that the section speaks for itself. Qwest denies that Section 7.3.2 addresses all of the compensation due to Qwest for the transport of VNXX traffic. Qwest denies the remaining allegations in paragraph 12.

13. Qwest denies the allegations in the first sentence of paragraph 13. Qwest affirmatively states that Section 7.3.4.2 of the ICA speaks for itself. Qwest denies the allegations

in paragraph 13 that are inconsistent with Section 7.3.4.2 and the ICA. Qwest denies the remaining allegations in paragraph 13. Qwest affirmatively alleges that under *Order No. 07-098* and section 7.3.2 the ICA that Level 3 bears the legal responsibility to pay Qwest for the transport of VNXX-routed ISP-bound traffic regardless whether the traffic originates within a local calling area in which a “Primary POI” is located or whether it originates in another local calling area. Qwest’s position is based on the language of *Order No. 07-098*, the language of the ICA, and Level 3’s own testimony in the arbitration proceeding, which acknowledges that a secondary POI is simply one end of a DTT connection between a secondary POI and a primary POI. Mr. Wilson, Level 3’s expert witness, stated that “Secondary POIs are locations where Level 3 is paying for Direct End Office Trunks [which he later acknowledges is the same as DTT] from a Primary POI location to a Qwest End Office that *may be* in a different local calling area.”¹ Level 3’s witness thus acknowledged that a secondary POI and a primary POI may exist within the same local calling area.

14. Qwest presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 14. Qwest denies the remaining allegations in paragraph 14.

15. Qwest denies the allegations of paragraph 15 of the Complaint.

16. Qwest denies the allegations of paragraph 16 of the Complaint.

17. As to paragraph 17 of the Complaint, Qwest admits that the Commission established a limited exception to a prohibition on the use of VNXX and further admits that Level 3 has correctly quoted portions of *Order No. 07-098* (although the bolding has been added by Level 3). Qwest denies the remaining allegations of paragraph 17.

¹ Supplemental Technical Testimony of Kenneth L. Wilson, ARB 665, May 10, 2006, p. 4 (lines 20-23) (emphasis added).

18. Qwest denies the allegations of paragraph 18 of the complaint. Qwest presently lacks knowledge or information sufficient to admit or deny the allegations set forth in footnote 8 to paragraph 18.

19. Qwest denies the allegations of paragraph 19 of the complaint.

20. Qwest admits that a portion of the billing submitted to Level 3 is contained in Qwest's mechanized CABS invoices. Qwest denies that these bills are intended to encompass all of the compensation due to Qwest under the ICA. Qwest denies the remaining allegations set forth in paragraph 20.

21. With the exception of Level 3's allegation that it disputes some portion of Qwest's billings for transport services under the ICA, Qwest denies the allegations of paragraph 21 of the complaint.

22. Qwest presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22.

23. Qwest admits the allegations of the first sentence of paragraph 23. As to the second and third sentences of paragraph 23, Qwest denies that it has refused to make an effort to reconcile the invoices in question.

III. LEVEL 3'S REQUEST FOR RELIEF

24. Qwest requests that the Commission deny the relief sought in paragraph 24 of Level 3's Complaint.

25. Qwest requests that the Commission deny the relief sought in paragraph 25 of Level 3's Complaint.

26. Qwest requests that the Commission deny the relief sought in paragraph 26 of Level 3's Complaint.

IV. ADDITIONAL ALLEGATION RELATED TO GOOD FAITH NEGOTIATION

1. Pursuant to OAR 860-016-0050(3)(a), Qwest hereby alleges that Qwest conferred in good faith with Level 3 to resolve the dispute set forth in the Complaint and despite those efforts the parties failed to resolve the dispute. In paragraph 3 of its Complaint, Level 3 likewise alleges that the parties have attempted in good faith to resolve their disputes on the issues in the Complaint.

V. QWEST'S REQUESTS FOR RELIEF

Qwest respectfully requests that the Commission deny each of Level 3's claims for relief and that it enter an order declaring that Qwest's billings are legal, valid, and consistent with the decision of the Commission in *Order No. 07-098* and the ICA provisions that implement that Order.

VII. SEPARATE STATEMENT OF FACTS AND LAW UNDER OAR 860-016-0050(4)(c)

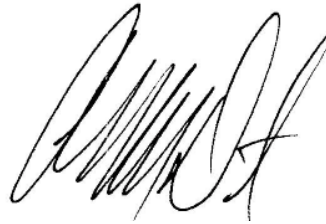
As suggested in the Introduction and paragraph 13 of the Answer, the issue in this case is fundamentally a legal question based on *Order No. 07-098* and the ICA. The factual support for Qwest's position in this matter is testimony already in the arbitration record on which Order No. 07-098 is based (in particular, the testimony of Level 3 Witness Wilson).

Thus, pursuant to OAR 860-016-0050(4)(c), Qwest relies primarily on the following in support of its position in this matter:

1. Order No. 06-190, *In the Matter of Qwest Corporation's Petition for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Universal Telecommunications, Inc*, Docket ARB 671, pp. 4-7, App. A, 7-16 (OPUC, April 19, 2006).
2. Order No. 07-098, *In the Matter of Level 3 Communications, LLC Petition for Arbitration of an Interconnection Agreement with Qwest Corporation, Pursuant to Section 252(b) of the Telecommunications Act*, Docket ARB 665, pp. 3-8, App. A, pp. 2-5, 13-20, 24-31 (OPUC, March 14, 2007).

3. Supplemental Technical Testimony of Kenneth L. Wilson, Docket ARB 665, May 10, 2006, pp. 4-5.
4. The provisions of the current ICA between Qwest and Level 3, in particular Sections 7.3.2 and 7.3.4.2.
5. Qwest's Introduction and response to paragraph 13 of the Complaint, *supra*.

DATED: January 9, 2009



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CERTIFICATE OF SERVICE

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I hereby certify that on the 9th day of January, 2009, a true and correct copy of the foregoing QWEST CORPORATION'S ANSWER TO LEVEL 3 COMMUNICATIONS' COMPLAINT FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT the above entitled docket, was served upon the following persons via means of e-mail transmission to the e-mail addresses listed.

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DATED this 9th day of January, 2009.

QWEST CORPORATION



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