

August 19, 2005

VIA ELECTRONIC MAIL AND US MAIL

Filing Center
Oregon Public Utility Commission
550 Capitol Street NE #215
PO Box 2148
Salem, OR 97308-2148

Re: ARB 665 – Level 3’s Reply in Support of Motion to Compel

Dear Sir or Madam:

Enclosed for filing in the above-referenced docket is Level 3 Communications, LLC’s Reply in Support of Motion to Compel. Please contact me with any questions.

Very truly yours,


Jessica A. Gorham

Enclosures

cc: ARB 665 Service List

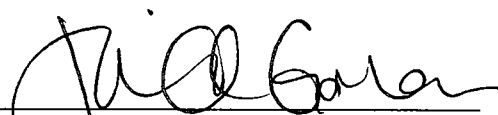
**CERTIFICATE OF SERVICE
ARB 665**

I hereby certify that a true and correct copy of **LEVEL 3'S REPLY IN SUPPORT OF MOTION TO COMPEL** was served via U.S. Mail on the following parties on August 19, 2005:

Thomas Dethlefs
Qwest Corporation
1801 California Street Suite 900
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Qwest Corporation
Suite 810
421 SW Oak Street
Portland OR 97204

ATER WYNNE, LLP



Jessica A. Gorham

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
ARB 665**

In the Matter of

LEVEL 3 COMMUNICATIONS, INC.'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

LEVEL 3's REPLY IN SUPPORT OF MOTION TO COMPEL

Level 3 Communications, LLC ("Level 3"), respectfully submits this Reply in Support of Level 3's Motion to Compel. On August 1, 2005, Level 3 submitted its motion.¹ Qwest responded on August 16, 2005.² Level 3 limits this reply to arguments raised in Qwest's Response that have not already been addressed in Level 3's Motion.³

I. BACKGROUND

In its Response to Level 3's Motion, Qwest complains that Level 3 has served Qwest with over 800 discovery requests across six states. Qwest fails to mention, however, that the vast majority of these requests are exactly the same across the states. Although there may be some minor variations to accommodate state-specific information, Level 3 has made its data requests as consistent as possible in order to ease the burden on Qwest.⁴

¹ Level 3 Communications, LLC's Motion to Compel Responses to Level 3's First Set of Data Requests and Memorandum in Support, Docket No. ARB 665, filed August 1, 2005 ("Level 3 Motion").

² Qwest Corporation's Response to Level 3's Motion to Compel, Docket No. ARB 665, filed August 16, 2005 ("Qwest's Response").

³ During the prehearing conference with Administrative Law Judge Sam Petrillo on August 5, 2005, Judge Petrillo stated that Level 3 would be permitted to submit a reply brief by August 22, 2005.

⁴ In those cases where there are differences, Level 3 notes that such differences are due to two factors: (a) different numbering requirements among the various states; and (2) slight changes that Level 3 made in response to Qwest's initial objections in other states (*e.g.*, correcting references to previous interrogatories).

1 After the date that Level 3 submitted its Motion in this docket, the parties received
2 rulings on similar motions in Iowa and Arizona.⁵ In both decisions, the commissions found that
3 any information that relates to possible discriminatory treatment of Level 3 by Qwest is relevant
4 and discoverable, including information regarding Internet access and VoIP services provided by
5 Qwest or its affiliates (Interrogatory Nos. 3 and 7).⁶

6 Although the Iowa and Arizona Commissions permitted discovery about Qwest's
7 affiliates, both limited such discovery to their respective states. Level 3 disagrees with this
8 limitation, particularly given the fact that Qwest actively markets Internet and VoIP services on a
9 nationwide basis (the only basis upon which such services realistically can be offered). In
10 addition, this information is relevant to Level 3's claims that, where Qwest or an affiliate
11 operates outside of Qwest's incumbent territory, the costs that would be incurred to operate in
12 the manner that Qwest has proposed Level 3 should operate in Qwest's incumbent territory
13 would prevent Qwest (or its affiliates) from being able to compete with the incumbent carrier in
14 those regions. With regard to the trunking issues (Interrogatory Nos. 14, 15, 17, 19, 21, 21, and
15 44), both Commissions recognized the probative value of the information and found that Qwest
16 was required to respond with state-specific information about its practices and, in some
17 instances, with information about its affiliates.⁷

18 In addition, Section 251 of the Act and the FCC's rules governing interconnection
19 support Level 3's argument that discovery in an interconnection arbitration should not be limited
20 to a particular state. Section 251(c)(2) is unequivocal. ILECs must provide interconnection that
21 is "equal in quality to that provided . . . to itself or to any subsidiary, affiliate, or any other party

22 ⁵ *In re: Level 3 Communications, LLC v. Qwest Corporation*, Iowa Utilities Board Docket No. ARB-05-4, *Order*
23 *Denying Request for Hearing and Granting in Part and Denying in Part Motion to Compel*, August 16, 2005 ("Iowa
24 *Decision*") (copy attached as Exhibit A); *In the Matter of the Petition of Level 3 Communications LLC for*
25 *Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to Section 252(b) of the*
Telecommunications Act of 1996, Arizona Corporation Commission Docket No. T-03654A-05-0350, T-01051B-05-
0350, Procedural Order August 18, 2005 ("Arizona Decision") (copy attached as Exhibit B).

26 ⁶ *Iowa Decision* at 5-7; *Arizona Decision* at 2-3.

⁷ *Iowa Decision* at 9-15; *Arizona Decision* at 6-7.

1 to which the carrier provides interconnection.”⁸ ILECs must also offer “rates, terms and
2 conditions that are just, reasonable, and nondiscriminatory, in accordance with . . . the
3 requirements of this section and section 252.”⁹ To allow an ILEC to avoid the responsibilities
4 outlined the Act by virtue of its use of affiliates or subsidiaries would undermine the most
5 fundamental of the Act’s principles – putting CLECs on an equal footing with ILECs. This
6 principle applies without regard to geographic boundaries. The FCC’s rules regarding
7 interconnection are instructive. Rule 51.305(c) and (d) require that evidence of interconnection
8 at a particular point in a network (or at a particular level of quality), using particular facilities,
9 constitutes substantial evidence that interconnection is technically feasible at that point, or at
10 substantially similar points in networks employing substantially similar facilities.¹⁰ The FCC
11 rules, in other words, do not limit the examination of what an ILEC is doing with regard to
12 interconnection to the ILEC’s territory or any other geographic area. Rather, what is relevant is
13 *whether* such interconnection is accomplished, *not where* it happens. Therefore, information
14 about Qwest’s networks *nationwide* is relevant to determining whether Qwest’s interconnection
15 proposals are discriminatory when compared to Qwest’s relationships with its affiliates.
16 Accordingly, this Commission should not limit the scope of discovery to Oregon. ¹¹

17 II. STANDARD OF REVIEW

18 In rebutting Level 3’s assertion that the party objecting to discovery carries a heavy
19 burden in showing why discovery should be denied, Qwest confuses the parties’ burden *on*
20 *appeal* with the parties’ initial burden at the trial court level.

23 ⁸ 47 U.S.C. § 251(c)(2)(C).

24 ⁹ 47 U.S.C. § 251(c)(2)(D).

25 ¹⁰ 47 C.F.R. § 51.305(c) and (d).

26 ¹¹ 47 C.F.R. § 51.301(c)(8) (In the context of interconnection negotiations [and arbitrations] ILECs have a duty to provide information necessary to reach an agreement, but the rule does not restrict that duty to geographic area or along jurisdictional lines).

1 First, Qwest attempts to distinguish the Ninth Circuit case relied on by Level 3,
2 *Blankenship v. Hearst*,¹² as applying only to “the complete denial of the right to take [a]
3 deposition.”¹³ *Blankenship*, however, is not so limited. The general rule set forth in *Blankenship*
4 applies to the denial – whether partial or complete – of all types of discovery. The court’s
5 directive that “the district court should reconsider its denial of plaintiff’s motion for production
6 of various documents in light of this opinion”¹⁴ makes it clear that the general rule applies to
7 discovery matters beyond the complete denial of a deposition.

8 Second, the two cases cited by Qwest are completely consistent with the decision in
9 *Blankenship*, which dealt with the standard for denying discovery at the *trial court level*. At that
10 level, which is analogous to the agency level in administrative proceedings, the burden to show
11 why discovery should be denied is on the party objecting to discovery.¹⁵ In both of the cases
12 cited by Qwest, the court was applying the appropriate burden *on appeal*.¹⁶ In both cases, the
13 trial court denied the parties’ motions to compel.¹⁷ In order to get a reversal of this denial, the
14 appealing party (which happened to be the party seeking discovery in both cases) has the burden
15 of showing that the trial court’s decision was an abuse of discretion.¹⁸ Qwest is inappropriately
16 attempting to apply the burden on appeal to this proceeding, which involves the initial burden at
17 the “trial court” level. Accordingly, Qwest applies the incorrect standard of review throughout
18 Qwest’s response. At this level, the appropriate standard of review places the burden on Qwest,
19 as the party objecting to discovery, to show why discovery should be denied.¹⁹

20 _____
21 ¹² *Blankenship v. Hearst Corp.*, 519 F.2d 418 (9th Cir. 1975).

22 ¹³ Qwest Response at 3.

23 ¹⁴ *Blankenship*, 519 F.2d at 429.

24 ¹⁵ *Id.*

25 ¹⁶ *Sorosky v. Burroughs Corp.* 826 F.2d 794, 805 (9th Cir. 1987); *Nugget Hydroelectric, L.P. v. Pacific Gas and*
26 *Electric Comp.*, 981 F.2d 429, 438-139 (9th Cir. 1992).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Blankenship*, 519 F.2d at 429.

1 **III. ARGUMENT**

2 **A. Interrogatory No. 3 – Qwest Internet Access Service²⁰**

3 Qwest’s primary justification for its failure to respond to Level 3’s Interrogatory No. 3 is
4 that it is not relevant to this proceeding.²¹ In arguing that the information sought in this request
5 is irrelevant, Qwest narrowly interprets the interrogatory in a manner to suit Qwest’s purposes.
6 Qwest then ignores one important argument – that Interrogatory No. 3 is directly relevant to the
7 issue of whether Qwest is providing nondiscriminatory access to interconnection.²² Interrogatory
8 No. 3 is intended to elicit information regarding Qwest’s treatment of its affiliates who provide
9 Internet access. Information about Qwest’s affiliates is relevant to the determination of whether
10 Qwest’s proposed interconnection terms discriminate against Level 3.

11 Qwest also argues that the burden “to answer this interrogatory would be enormous,
12 given its extreme breadth (nationwide, by individual LCA).”²³ The interrogatory, however, does
13 not seek information “nationwide.” Interrogatory No. 3 seeks information only for the state of
14 Oregon.²⁴

15 Finally, Qwest asserts that there should be no discovery regarding VNXX issues because
16 this Commission has already decided “that VNXX traffic is not subject to reciprocal
17 compensation or the ISP traffic rate.”²⁵ But the dockets cited by Qwest do not support its

18 ²⁰ See Level 3’s Motion at 6-8 for a full discussion of this Interrogatory.

19 ²¹ Qwest also accuses Level 3 of attempting to use the discovery process in this proceeding to seek information
20 relevant to other pending proceedings (namely IC 12). Qwest’s unfounded accusation is not well taken. Level 3 has
21 issued separate discovery requests in IC 12.

22 ²² Level 3’s Motion at 8.

23 ²³ Qwest Response at 5.

24 ²⁴ Level 3’s Motion at 6; Exhibit A to Level 3’s Motion at 8. Interrogatory No. 3 states:

25 Does Qwest offer Internet access services in the state? If so, how many end user customers and
26 how many wholesale customers in the state does Qwest have?

a. Please identify each telephone company end office in the state in which Qwest has
collocated equipment such as modem banks, DSL equipment, routers, ATM switches, or
other equipment. Please identify the telephone company that owns/operates each such
end office.

b. Please list each local calling area within the state in which Qwest maintains a physical
presence as defined by Qwest in Section 4 – Definitions VNXX Traffic (Issue No. 3B) of
the Parties’ interconnection agreement.

1 position. First, Dockets ARB 527 and IC 8/9 did not deal with the issue of reciprocal
2 compensation for VNXX ISP-bound traffic, but rather dealt with whether relative use
3 calculations apply to nonrecurring charges for interconnection facilities that would be used to
4 transport ISP-bound traffic. Second, the Commission’s decision in UM 1058 (Order 04-504)
5 was simply an order closing the docket. As the Commission made clear in a subsequent order, it
6 made “neither findings of fact nor conclusions of law” in the order closing Docket UM 1058.²⁶
7 Third, the Administrative Law Judge’s decision in IC 12 was limited to the issue of whether the
8 Parties’ current Interconnection Agreement encompassed VNXX ISP-bound traffic. In addition,
9 that decision has been certified to the Commission for review and is not yet final.

10 **B. Interrogatory Nos. 6(b) and 6(e) – Qwest’s VoIP Service²⁷**

11 Qwest objects to responding to Interrogatory No. 6(b) as not reasonably calculated to lead
12 to the discovery of admissible evidence and complains that Level 3’s “sole basis” for requesting
13 the information is “nonsensical.”²⁸ Qwest provides three reasons for claiming that Level 3’s
14 reasoning is nonsensical, which are interrelated and will be addressed together.

15 Qwest asserts that the only information relevant to determining the impact of Qwest’s
16 interconnection proposal is the number of Level 3 customers.²⁹ However, Disputed Issue 4
17 involves the question of whether Qwest and Level 3 will compensate *each other* for the
18 exchange of IP-enabled or VoIP traffic.³⁰ To determine the impact of Qwest’s proposal to apply
19 access charges to certain VoIP traffic, Level 3 must be able to determine the amount it will *pay*
20 in access charges and the amount it may receive from Qwest, if any. If Qwest asserts it does not

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22 ²⁵ Qwest Response at 6 (citing ARB 527, IC 8/9, IC 12, and UM 1018).

23 ²⁶ *In the Matter of the Investigation into the Use of Virtual NPA/NXX Calling Patterns*, Docket No. UM 1058, Order
24 No. 04-704 at 3 (December 8, 2004).

25 ²⁷ Qwest has responded to Interrogatory No. 4, therefore Level 3 agrees that it is no longer included in Level 3’s
26 Motion.

²⁸ Qwest’s Response at 6.

²⁹ *Id.*

³⁰ *See* Level 3 Motion at 9-10.

1 now provide VoIP service and will not provide such services in the future, then this may not be
2 relevant, but Qwest has not indicated that it has no plans to provide VoIP service in the future.

3 Moreover, as discussed above, as well as in Level 3's Motion, Qwest has an obligation to
4 provide nondiscriminatory access to interconnection. Whether, and to what extent, Qwest
5 discriminates against Level 3 in favor of QCC is directly relevant to this proceeding. Without
6 further information about QCC, and Qwest's relationship with QCC, it is impossible to
7 determine the impact, if any, of Qwest's possibly discriminatory conduct. Finally, Qwest
8 provides no support for its contention that discovery should be limited to Oregon.³¹ Both Qwest
9 and Level 3 market their VoIP services in the same manner as other VoIP providers – on a
10 nationwide basis.³² Because Qwest has failed to show that discovery should be denied, the
11 Commission should compel Qwest to respond to Interrogatory No. 6(b).

12 With regard to Interrogatory No. 6(e), Qwest also fails to meet the burden of showing
13 that discovery should be denied. Qwest provides no legal basis for the argument that discovery
14 should be limited to Qwest Corporation and exclude Qwest's affiliates, or for the argument that
15 discovery is limited to the state of Oregon. Nothing in Sections 251(2)(C) and (D) supports the
16 proposition that Qwest's obligation to provide nondiscriminatory access to interconnection is
17 limited on a state-by-state basis. Even if the Commission accepts Qwest's argument, the
18 Commission should compel Qwest to provide Oregon-specific information.

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21
22 ³¹ See *supra* at 2-3.

23 ³² See www.qwest.com. Qwest claims that it is its affiliate (QCC) that provides VoIP service, not Qwest. As an
24 initial matter, Qwest should provide information for both Qwest Corporation and QCC (*see* Level 3's Motion at 7-
25 8). In addition, as a review of Qwest's website show, this distinction is not readily apparent. Any consumer looking
26 into Qwest's VoIP service would believe it was Qwest Corporation, and not some unnamed affiliate, that was
providing the service.

1 **C. Requests Nos. 13, 14, 16, 17, 19-21, and 44 – Efficient Use of Trunk Groups**³³

2 **1. Interrogatory Nos. 13, 14, 16, 17, 19, and 20**

3 Qwest primarily objects to Level 3's Interrogatory Nos. 13, 14, 16, 17, 19, and 20 as
4 overly broad and unduly burdensome because they ask for information outside of Oregon and for
5 information about Qwest's affiliates who are not parties to this proceeding. In order to expedite
6 resolution of this dispute and reduce the burden on Qwest, Level 3 agrees to accept responses
7 limited to the following: (1) all information for Qwest and its affiliates in the state of Oregon;
8 (2) information regarding Qwest's affiliates operating in SBC's incumbent territory in Nevada;
9 (3) information regarding Qwest's affiliates operating in Arkansas within BellSouth's incumbent
10 territory; and (4) information about Qwest's affiliates operating in Verizon's incumbent territory
11 in Pennsylvania. As discussed elsewhere in this Reply, as well as in Level 3's Motion,
12 information about Qwest and Qwest's affiliates is essential in determining whether Qwest is
13 providing non-discriminatory access to interconnection. Level 3 has largely addressed Qwest's
14 objections, and the Commission should compel Qwest to respond to Interrogatories 13, 14, 16,
15 17, 19, and 20.

16 **2. Interrogatory No. 21**

17 Qwest argues that Level 3's Interrogatory No. 21 is overbroad because it is not limited to
18 the state of Oregon.³⁴ Qwest, however, has provided no legal authority for this proposition.
19 Because Qwest has failed to meet its burden of showing why discovery should be denied, the
20 Commission should compel Qwest to respond to Interrogatory No. 21.

21 **3. Interrogatory No. 44**

22 Qwest states that it objected to this request as ambiguous. Qwest is incorrect.³⁵ Qwest
23 actually objected on the grounds that the request is unduly burdensome and not reasonably

24 _____
25 ³³ Level 3 has grouped interrogatories on the same topic together for the Commission's convenience. *See* Level 3's
26 Motion at 11-13 for further discussion of these interrogatories.

³⁴ Qwest's Response at 11.

³⁵ *See* Exhibit B to Level 3's Motion at 2.

1 calculated to lead to the discovery of admissible evidence.³⁶ Qwest has failed to provide any
2 support for these arguments and failed to preserve its ambiguity objection. Accordingly, the
3 Commission should compel Qwest to respond to Level 3's Interrogatory No. 44.

4 **D. Interrogatory No. 22 – Efficient Use of Trunk Groups**

5 In its Response, Qwest objects that Level 3's Interrogatory No. 22 is overbroad and
6 requires Qwest to do legal research for Level 3.³⁷ Qwest did not assert either of these objections
7 in its original response to this request.³⁸ Qwest therefore did not preserve these objections and
8 cannot assert them now. Qwest originally objected to this request as ambiguous, but provides no
9 argument or authority in support of this objection. Accordingly, the Commission should compel
10 Qwest to respond to Interrogatory No. 22.³⁹

11 **E. Interrogatory Nos. 24 - 31 and 33 – Qwest's FX and FX-Like Services**

12 Qwest fails to provide any justification for its failure to adequately respond to Level 3's
13 Interrogatory Nos. 24, 25, 28(b), and 33. Qwest simply asserts that it responded by stating that
14 the Commission grandfathered FX service in 1983. But as explained in Level 3's Motion, this
15 response is not sufficient.⁴⁰ This Commission should compel Qwest to provide further
16 information regarding the grandfathered services.⁴¹

17 Qwest states that it will provide responses to Level 3's Interrogatories Nos. 26, 27, 28(a),
18 29, 30, and 31. Accordingly, Level 3 agrees to exclude these requests from its Motion to
19 Compel, but reserves the right to bring a future motion if Qwest fails to respond or provides

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21 ³⁶ *Id.*

22 ³⁷ Qwest's Response at 11.

23 ³⁸ See Exhibit B to Level 3's Motion at 2.

24 ³⁹ To the extent the Commission chooses to address Qwest's substantive argument, Level 3 replies that Interrogatory
25 No. 22 is not overbroad and requires no legal research. This request simply asks if Qwest "is aware" of any state
26 commission decisions requiring separate trunk groups for transit traffic. If Qwest is not aware of any such
27 decisions, it can simply answer "no." No legal research is required. However, if Qwest is aware of such a decision,
28 it is asked to list it.

29 ⁴⁰ Level 3's Motion at 14-15

30 ⁴¹ See *id.*

1 incomplete responses. Qwest also states that it has previously responded to Interrogatory No. 32.
2 Level 3, however, did not include Interrogatory No. 32 in its Motion to Compel.

3 **F. Request Nos. 43 and 45 – POIs and Other Facility Connections in Oregon.**

4 Qwest claims that neither Interrogatory No. 43 nor Interrogatory No. 45 is relevant to the
5 issues in this proceeding. Qwest is simply wrong. These requests seek information that is
6 directly relevant to Qwest’s contention that the Commission should depart from established
7 federal law and require that Level 3 establish more than a single point of interconnection or pay
8 Qwest’s costs of originating traffic to the POI.⁴²

9 Qwest further objects to these requests as burdensome. The burden is on Qwest,
10 however, to show that the requests are unduly burdensome. The Rules of Civil Procedure are not
11 designed to protect parties from any burdensome request – only requests that are unduly
12 burdensome given the probative value of the information sought and the importance of the
13 contested issues. Because Qwest has failed to meet its burden to show that discovery should be
14 denied, and because the requests are directly relevant to a disputed issue in this case, the
15 Commission should compel Qwest to respond.⁴³

16 **G. Request For Admissions Nos. 20, 26, 27, 31, 36, 41, 51, 53, 54, 55, 56, 57, and**
17 **58.**

18 Because Qwest primarily repeats the same arguments set forth in its responses to
19 Level 3’s requests for admissions, Level 3 will limit its response to new information only and
20 will not repeat the arguments set forth in Level 3’s Motion. Therefore, Level 3 will not
21 individually address each request for admission unless specific rebuttal is required.⁴⁴

22
23
24 _____
⁴² See *id.* at 16.

25 ⁴³ See *id.* at 15-16.

26 ⁴⁴ Qwest points out that it responded to Request for Admission No. 56. Qwest is correct. This request number was inadvertently included in Level 3’s Motion and is now withdrawn.

1 **1. Request for Admission No. 53**

2 Qwest states that Request for Admission “does not identify the service being referred
3 to.”⁴⁵ This is simply not true. Request 53 states:

4 Qwest physically collocates equipment at its or another carriers’ switch or
5 other location permitting collocation within the local calling area
6 associated with each of the NPA-NXX codes that Qwest uses to provide
7 *its dial up internet services*. If your answer is anything other than an
unqualified admission, please describe in detail your qualification or
denial, and provide any information or evidence which supports your
qualification or denial. (Emphasis added.)⁴⁶

8 **2. Request for Admission No. 50**

9 In its Response, Qwest claims that Level 3 agreed to rewrite Request for Admission No.
10 50 because it was unclear, and Level 3 has failed to do so. Qwest is correct that during an
11 extensive meeting between Qwest counsel and Level 3 counsel on July 5, 2005, Qwest counsel
12 objected to Level 3’s failure to provide a specific reference to state or federal tariffed rates, or to
13 use a specific rate in the request. Accordingly, Level 3 proposed to amend the question to
14 include a specific reference to specific tariffs, and Qwest agreed to this revision, stating that such
15 a question would be easier respond to than the question as originally written, or written to
16 include a specific rate such as \$0.068929 per minute of use. Thus, Level 3 amended the request
17 before serving discovery in Oregon to read: “pay Qwest originating access charges at the rate set
18 forth in Qwest’s Oregon tariffs.”⁴⁷ Level 3, therefore, believes that Qwest’s objection has been
19 adequately addressed and is puzzled by Qwest’s further refusal to provide a response.

20 **3. Requests for Admissions No. 10-13**

21 In response to Level 3’s Motion, Qwest claims that its responses to Requests for
22 Admissions Nos. 10 through 13 are adequate despite the fact that it admits that it made no
23 reasonable inquiry to determine whether denial was appropriate. Qwest asserts that it can

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⁴⁵ Qwest’s Response at 15.

25 ⁴⁶ In Level 3’s Motion, Level 3 incorrectly quoted Request for Admission No. 53. However, the correct quotation
26 was included in Exhibit A to Level 3’s Motion at page 28. Level 3 apologizes for any confusion.

⁴⁷ Exhibit A to Level 3’s Motion at 27.

1 circumvent the requirement to make a reasonable inquiry by denying the request, rather than
2 stating that it can neither admit nor deny. This argument is ludicrous. A party should not be able
3 to avoid the requirement to make a reasonable inquiry by simply denying the request.

4 III. CONCLUSION

5 For the foregoing reasons, Level 3 respectfully requests that the Commission grant Level
6 3's Motion and order Qwest to respond to Interrogatory Nos. 3, 6(b), 6(e), 13, 14, 16, 17, 19-22,
7 24-31, 33, and 43-45 and Requests for Admission Nos. 10-13, 20, 26, 27, 31, 36, 41, 42, 50, 51,
8 53-55, and 57-58 by August 31, 2005.

9 Respectfully submitted this 19th day of August, 2005.

10
11 ATER WYNNE, LLP

12
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STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>LEVEL 3 COMMUNICATIONS, LLC,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>QWEST CORPORATION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">DOCKET NO. ARB-05-4</p>
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**ORDER DENYING REQUEST FOR HEARING AND
GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL**

(Issued August 16, 2005)

BACKGROUND

On June 30, 2005, Level 3 Communications, LLC (Level 3), filed with the Utilities Board (Board) a motion to compel discovery in Docket No. ARB-05-4, asking the Board to issue an order requiring Qwest Corporation (Qwest) to immediately provide substantive responses to Level 3's first set of data requests.

On July 7, 2005, Qwest filed its response to Level 3's motion to compel discovery. Qwest stated that it answered approximately 70 of the 106 data requests and that Qwest objected to the remaining requests. Qwest stated that Level 3 did not challenge any of these objections and, therefore, the Board should dismiss Level 3's motion.

Four weeks later, on August 5, 2005, Level 3 filed a further motion to compel responses to its first set of data requests, a request for oral hearing, and a motion for extension of time. Level 3 stated that it will be prejudiced if it is required to prepare its rebuttal testimony before it receives Qwest's responses to Level 3's data requests. Level 3 also sought an amendment of the procedural schedule to allow for the submission of rebuttal testimony on or before August 19, 2005, instead of August 12, 2005.

On August 9, 2005, the Board issued an order in this docket requiring Qwest to file a response to Level 3's August 5 motion on or before August 10, 2005. Also in that order, the Board denied Level 3's request to amend the procedural schedule because such an amendment would not provide the Board sufficient time to prepare for the hearing in this docket.

On August 10, 2005, Qwest filed a response to Level 3's August 5 motion. In its response, Qwest states that many of Level 3's requests are unreasonable, overly broad, and are not likely to lead to the discovery of admissible evidence. Qwest requests the Board deny Level 3's motion.

As part of its August 5 motion, Level 3 requests a hearing before the Board regarding its motion to compel. The Board notes that Level 3's initial motion to compel data requests was filed with the Board on June 30, 2005, and Qwest filed its initial response on July 7, 2005. The Board did not receive any additional information

from either party regarding improper requests or inadequate responses until Level 3's August 5 motion, nearly a month after Qwest's response.

Pursuant to an agreement by the parties, the deadline for Board action in this docket is November 1, 2005, and the procedural schedule in this docket, as established in the Board's June 30, 2005, order, was created to give the parties due process and allow the Board to act on the petition in a timely manner. The hearing for this docket is scheduled for August 30, 2005, and various schedule conflicts preclude setting the hearing for a later date. Having lost a significant amount of time in an already tight schedule, a hearing at this time on Level 3's motion to compel would not allow the Board to act on the petition for arbitration in the time frame agreed by the parties. Therefore, the Board will not set Level 3's motion for hearing. Rather, the Board will rule on the motion based on the written submissions by both parties.

DATA REQUEST NO. 3:

In Data Request No. 3, Level 3 seeks information regarding Qwest's offering of Internet access services in Iowa, including the number of end user and wholesale customers Qwest has in Iowa. Level 3 also asks that the response include information regarding each end office in the state and a list of each local calling area in the state where Qwest maintains a physical presence.

Qwest objects to this request because it asks for information regarding end user customers and wholesale customers its affiliates have in Iowa, which constitutes

a trade secret and is highly confidential and proprietary. Qwest also objects to this request on the grounds that it is not relevant and will not result in the discovery of admissible evidence.

Level 3 states that this request is directly relevant to Issue 3 in its petition for arbitration and concerns whether the geographic location of the Internet service provider (ISP) is relevant to compensation exchanged by the parties for the transport and termination of ISP-bound traffic. Level 3 contends that the jurisdiction of calls should be determined by the NPA-NXX, in accordance with long-standing industry practice. Level 3 asserts that Qwest is attempting to rate traffic based upon the physical location of the customers, not the NPA-NXX. Level 3 also states that a protective order has been entered in this case and, therefore, Qwest's confidentiality objection is moot.

Qwest states that this request does not seek any information relevant to this proceeding. Qwest states that its position in this proceeding is that under the North American Numbering Plan (NANP), NPA-NXXs are supposed to be assigned to customers that are physically located in the same rate center to which the NPA-NXXs are assigned; thus, calls are rated as local or toll based on the rate centers in which the parties are located. Qwest states that this request does not seek information that relates to the assignment of NPA-NXXs and that the number of Qwest's Internet access customers has no bearing on the VNXX issue. Qwest also states that there

has not been any request made to the Board for the issuance of a protective order and that there is no protective agreement between Qwest and Level 3 in Iowa.

Analysis

The Board finds that Level 3's request, as written, is within the scope of this proceeding and could result in the production of admissible evidence. The Board will require Qwest to respond to Level 3's request. The Board also finds, however, that the number of end user customers and wholesale customers that Qwest has in Iowa is confidential in nature. Level 3 indicates that a protective order exists; Qwest states that there is not one. The Board notes that it has not been asked by either party to issue a protective order in this proceeding. Absent a protective agreement between the parties, Qwest will not be required to respond to Level 3's request with respect to specific customer count information.

DATA REQUEST NO. 4:

In Data Request No. 4, Level 3 asks for information regarding whether Qwest offers dedicated inward dialing (DID) or dedicated outward dialing (DOD) services to ISPs in Iowa.

Qwest's initial response states that it is in the process of preparing a response to this request.

Level 3 states that as of August 5, 2005, Qwest had not provided a response to this request.

Qwest responds by stating that it has now prepared and served an answer to Level 3's request.

Analysis

Based on Qwest's statement that it has prepared and served an answer to Level 3's request No. 4, the Board finds that this request has been satisfied.

DATA REQUEST NO. 6(b):

In its Data Request No. 6(b), Level 3 seeks the number of retail and wholesale customers of Voice over Internet Protocol (VoIP) in Iowa.

Qwest objects to this request on the grounds that the information is a trade secret and is confidential. Qwest also states that the request asks for information that is not relevant to this proceeding.

Level 3 states that the information requested in No. 6(b) is needed to demonstrate the effect that Qwest's VoIP interconnection proposal will have on Level 3.

Qwest states that Qwest does not offer VoIP and that it is the number of Level 3 VoIP customers that will determine the impact of Qwest's VoIP proposal on the Interconnection Agreement.

Analysis

The Board finds that Level 3's request, as written, is within the scope of this proceeding and could result in the production of admissible evidence. The Board will require Qwest to respond to Level 3's request. The Board also finds, however, that

the number of Qwest's retail and wholesale customers in Iowa is confidential in nature. Level 3 indicates that a protective order exists; Qwest states that there is not one. The Board notes that it has not been asked by either party to issue a protective order in this proceeding. Absent a protective agreement between the parties, Qwest will not be required to respond to Request No. 6(b) with respect to specific customer count information.

DATA REQUEST NO. 6(e):

In Data Request No. 6(e), Level 3 seeks to determine whether Qwest purchases any wholesale VoIP services from any other provider. Level 3's request also asks for the name of the provider, the services purchased, and the various states in which such service is purchased.

Qwest objects to this request on the grounds that the request seeks information concerning Qwest's purchases of services outside the state of Iowa and outside the 14-state territory where Qwest operates as the incumbent local exchange carrier (ILEC). Qwest also states that the request is overly broad, burdensome, and is not likely to lead to the discovery of admissible evidence.

Level 3 states that request No. 6(e) is relevant to the disputed issue regarding whether Qwest and Level 3 will compensate each other at the rate of \$0.0007 per minute of use for the exchange of IP-enabled or VoIP traffic. Level 3 also states that at a minimum, Qwest should be required to provide Iowa information in response to this request.

Qwest states that there is no justification for requesting Qwest to provide information pertaining to states outside of Iowa. Qwest also asserts that this request does not relate to whether Qwest and Level 3 will compensate each other at the rate of \$0.0007 per minute of use for VoIP traffic. Qwest again states that it does not offer VoIP.

Analysis

The Board finds that Level 3's request, as written, is overly broad insofar as it seeks information regarding Qwest's purchases of services outside Iowa. It is unclear whether the information will lead to the production of relevant or admissible evidence. As such, the Board will require Qwest to respond to this request with Iowa information, to the extent it is available.

DATA REQUEST NO. 13

In Data Request No. 13, Level 3 seeks information regarding every state in which Qwest or one of its affiliates offers service. The subparts to Request No. 13 seek information concerning five different circumstances.

Qwest objects to this request to the extent that it seeks information about states other than Iowa and says it is overbroad when it includes states in which Qwest is not the ILEC. Qwest also states that the request is irrelevant, overbroad, burdensome, and is not likely to lead to the discovery of admissible evidence.

Level 3 states that the information sought in this request is central to the disputed issue regarding whether Level 3 may exchange all traffic over the

interconnection trunks established under the Interconnection Agreement. Level 3 states that it seeks to use its existing trunk groups to exchange all traffic with Qwest, but Qwest seeks to limit Level 3's ability to use trunks efficiently. Level 3 states that information related to Qwest's current practices, the practices of its affiliates, and the obligations imposed on competitive local exchange carriers (CLECs) with which Qwest exchanges traffic, is central to understanding and rebutting Qwest's position in this proceeding.

Qwest states that it maintains its objection because Level 3 has not agreed to limit this request to the state of Iowa, to the commingling of traffic on interconnection trunks, or to interconnection with Qwest. Qwest also states that its affiliates do not have interconnection obligations under Section 251 of the Telecommunications Act of 1996 (the Act) and, therefore, this request is overbroad.

Analysis

The Board finds that Level 3's request, as written, is overly broad insofar as it seeks information regarding Qwest and Qwest's affiliates outside of Iowa. Qwest has not appeared to object to the production of the requested information as it relates to Iowa. As such, the Board will require Qwest to respond to this request with information limited to Iowa and limited to the commingling of traffic on interconnection trunks or to the interconnection with Qwest.

DATA REQUEST NOS. 14, 17

In Data Request Nos. 14 and 17, Level 3 seeks information concerning every local calling area in the country in which Qwest and Qwest's CLEC affiliates have trunk groups.

Qwest objects to these requests on the grounds that they are unduly burdensome, seek information about the activities of Qwest's affiliates in states other than Iowa, and are irrelevant and not likely to lead to the discovery of admissible evidence.

Level 3 states that the information sought in this request is central to the disputed issue regarding whether Level 3 may exchange all traffic over the interconnection trunks established under the Interconnection Agreement. Level 3 states that it seeks to use its existing trunk groups to exchange all traffic with Qwest, but Qwest seeks to limit Level 3's ability to use trunks efficiently. Level 3 states that information related to Qwest's current practices, the practices of its affiliates, and the obligations imposed on CLECs with which Qwest exchanges traffic is central to understanding and rebutting Qwest's position in this proceeding.

Qwest states that the requests are extraordinarily burdensome because there are thousands of local calling areas in the United States. Qwest also states that these requests seek information concerning trunk groups operated by Qwest's CLEC affiliates who are not parties to this proceeding.

Analysis

The Board agrees with Qwest and finds this request to be unduly burdensome. Qwest is not required to respond to Data Request Nos. 14 and 17.

DATA REQUEST NO. 18

In Data Request No. 18, Level 3 seeks information regarding the states in which Qwest combines CLEC local and toll traffic on a single trunk. The subparts of this request also ask Qwest to provide a list of all CLECs for whom Qwest combines traffic and when Qwest started to combine this traffic.

Qwest objects to this request on the grounds that it is unduly burdensome, seeks information about the activities of its affiliates in states other than Iowa, is irrelevant, and is not likely to lead to the discovery of admissible evidence.

Level 3 states that the information sought in this request is central to the disputed issue regarding whether Level 3 may exchange all traffic over the interconnection trunks established under the Interconnection Agreement. Level 3 states that it seeks to use its existing trunk groups to exchange all traffic with Qwest, but Qwest seeks to limit Level 3's ability to use trunks efficiently. Level 3 states that information related to Qwest's current practices, the practices of its affiliates, and the obligations imposed on CLECs with which Qwest exchanges traffic is central to understanding and rebutting Qwest's position in this proceeding.

Qwest states that this request is not limited to Iowa, to interconnection trunks, or to Qwest's ILEC operations. Qwest also states that Level 3 appears to want

Qwest to perform a historical study of traffic passing across trunk groups to determine when traffic was first combined.

Analysis

The Board finds that this request, as written, is overly broad insofar as it seeks information regarding Qwest and Qwest's affiliates outside of Iowa. Qwest has not appeared to object to the production of the requested information in Request No. 18(a) as it relates to Iowa. As such, the Board will require Qwest to respond to Request No. 18(a) with information limited to Iowa and limited to the commingling of traffic on interconnection trunks or to the interconnection with Qwest.

The Board finds the information sought in Request No. 18(b), however, to be overly broad and burdensome. Qwest is not required to respond to Request No. 18(b).

DATA REQUEST NO. 20

In Data Request No. 20, Level 3 seeks information regarding each CLEC with which Qwest exchanges local and toll traffic and uses a percent local use (PLU) or similar method of establishing the apportionment of local versus toll traffic on the combined trunk group in the 14 states where Qwest operates as an ILEC.

Qwest objects to this request on the grounds that it is unduly burdensome, seeks information about the activities of its affiliates in states other than Iowa, and is irrelevant and not likely to lead to the discovery of admissible evidence.

Level 3 states that the information sought in this request is central to the disputed issue regarding whether Level 3 may exchange all traffic over the interconnection trunks established under the Interconnection Agreement. Level 3 states that it seeks to use its existing trunk groups to exchange all traffic with Qwest, but Qwest seeks to limit Level 3's ability to use trunks efficiently. Level 3 states that information related to Qwest's current practices, the practices of its affiliates, and the obligations imposed on CLECs with which Qwest exchanges traffic is central to understanding and rebutting Qwest's position in this proceeding.

Qwest states that this request seeks information that is contained in the interconnection agreements for each CLEC in each of the 14 states where Qwest is the ILEC and that these interconnection agreements are publicly available to Level 3 through the various state public utility commissions. Qwest states that there are over 1,000 interconnection agreements on file throughout the 14 states where Qwest operates as the ILEC and that these agreements are more easily reviewed by Level 3 since Level 3 knows what specific information is wanted.

Analysis

The Board agrees with Qwest and finds that this request, as written, is overly broad insofar as it seeks information outside of Iowa. Qwest appears not to object to the production of the requested information in Request No. 20 as it relates to Iowa. As such, the Board will require Qwest to respond to Request No. 20 with information

limited to Iowa and limited to the interconnection agreements it has with CLECs in Iowa.

DATA REQUEST NO. 21

In Data Request No. 21, Level 3 seeks information regarding Qwest's CLEC affiliates and whether they combine local and toll traffic on a single trunk group. Level 3 also seeks information regarding whether Qwest's CLEC affiliates use a PLU or similar method of establishing the apportionment of local versus toll traffic on the combined trunk group.

Qwest objects to this request on the grounds that it seeks information regarding Qwest's affiliates' operations in states other than Iowa. Qwest also objects on the grounds that the request seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence.

Level 3 states that the information sought in this request is central to the disputed issue regarding whether Level 3 may exchange all traffic over the interconnection trunks established under the Interconnection Agreement. Level 3 states that it seeks to use its existing trunk groups to exchange all traffic with Qwest, but Qwest seeks to limit Level 3's ability to use trunks efficiently. Level 3 states that information related to Qwest's current practices, the practices of its affiliates, and the obligations imposed on CLECs with which Qwest exchanges traffic, is central to understanding and rebutting Qwest's position in this proceeding.

Qwest states that this request is not limited to Iowa, to interconnection trunks, or to Qwest's ILEC operations. Qwest also states that Level 3 appears to want Qwest to perform a historical study of traffic passing across trunk groups to determine when traffic was first combined.

Analysis

The Board finds that this request, as written, is overly broad insofar as it seeks information regarding Qwest's affiliates outside of Iowa. Qwest appears not to object to the production of the requested information in Request No. 21 as it relates to Iowa. As such, the Board will require Qwest to respond to Request No. 21 with information limited to Iowa and limited to the commingling of traffic on interconnection trunks or to the interconnection with Qwest.

DATA REQUEST NOS. 22 and 23

In Data Request Nos. 22 and 23, Level 3 seeks information regarding each system that Qwest uses to estimate or track the amount of local and toll traffic exchanged with a CLEC and whether Qwest is aware of any state commissions that require separate trunk groups for transit traffic.

Qwest objects to these requests on the grounds that they are overbroad, seek information about Qwest operations in states other than Iowa, and that the requests seek information that is irrelevant and not likely to lead to the production of admissible evidence.

Level 3 states that the information sought in this request is central to the disputed issue regarding whether Level 3 may exchange all traffic over the interconnection trunks established under the Interconnection Agreement. Level 3 states that it seeks to use its existing trunk groups to exchange all traffic with Qwest, but Qwest seeks to limit Level 3's ability to use trunks efficiently. Level 3 states that information related to Qwest's current practices, the practices of its affiliates, and the obligations imposed on CLECs with which Qwest exchanges traffic is central to understanding and rebutting Qwest's position in this proceeding.

Qwest states that neither of these requests is limited to Iowa. Qwest also states, however, that if these two requests are limited to Iowa, Qwest will withdraw its objection and provide responses.

Analysis

Qwest has agreed to provide responses to Level 3 if these requests are limited to Iowa. The Board will require Qwest to respond to Requests Nos. 22 and 23 with information limited to Iowa.

DATA REQUEST NO. 46

In Data Request No. 46, Level 3 seeks information regarding the number of CLECs in Iowa for which Qwest assigns traffic to different jurisdictional or rating categories based on PLU or similar factors.

Qwest objects to this request on the grounds that it is burdensome and would require a special study. Qwest also objects on the grounds that the request is not likely to lead to the production of admissible evidence.

Level 3 states that the information sought in this request is central to the disputed issue regarding whether Level 3 may exchange all traffic over the interconnection trunks established under the Interconnection Agreement. Level 3 states that it seeks to use its existing trunk groups to exchange all traffic with Qwest, but Qwest seeks to limit Level 3's ability to use trunks efficiently. Level 3 states that information related to Qwest's current practices, the practices of its affiliates, and the obligations imposed on CLECs with which Qwest exchanges traffic is central to understanding and rebutting Qwest's position in this proceeding.

Qwest responds that it is not clear to Qwest what Level 3 means by "assign traffic to different jurisdictional" or rating categories. Qwest states that when PLU or similar 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. Qwest reiterates that to answer this question would require a special study.

Analysis

The Board finds that based on Qwest's assertion that PLU factors are applied to an overall volume of traffic, this request is vague and ambiguous. The Board also finds that Level 3 has not established that Qwest should be required to conduct a

special study to answer this request. As such, the Board will not require Qwest to respond to Request No. 46.

DATA REQUEST NOS. 27, 28, 32, and 33

In Data Request Nos. 27, 28, 32, and 33, Level 3 seeks information regarding whether Qwest offers any foreign exchange (FX) or similar services. Specifically, Level 3 seeks information regarding the identification of FX or FX-like services, the product descriptions, the number of customers and lines in Iowa, how long the service has been ordered by Qwest, the number of ISPs that purchase the service, whether Qwest has billed or received reciprocal compensation or other terminating compensation for calls received from Qwest's FX or FX-like customers and details regarding such billings, and whether Qwest has paid access charges to the originating carrier for calls originated by another carrier and terminated to a Qwest FX or FX-like customer.

Qwest objects to these requests on the grounds that they seek information beyond Iowa, that Level 3 can obtain responsive information regarding these requests from its catalogs and tariffs, and that the requests seek confidential information. Qwest also objects on the grounds that the requests are overly burdensome and are irrelevant and not likely to result in the production of admissible evidence.

Level 3 states that the information sought in these requests is relevant to Issue 3, which involves whether intercarrier compensation applies to all ISP-Bound

traffic, including FX and FX-like services. Level 3 states that its service provides the same functionality as FX and FX-like services and that Qwest treats its FX and FX-like services as local service. Level 3 contends that Qwest seeks to impair Level 3's ability to compete with Qwest's FX and FX-like service by imposing access charges on Level 3's comparable FX service.

Qwest states that these requests are difficult to answer because Level 3 does not define what it means by "FX-like." Qwest asserts that it is Level 3's responsibility to provide the criteria to be used for determining whether services are FX-like. Qwest also states that the descriptions, terms, and conditions for the services Qwest offers are set forth in its tariffs and catalogs that are publicly available to Level 3. Qwest also states that none of these requests are limited to Iowa.

Analysis

The Board finds that despite Qwest's confusion over the definition of "FX-like," these requests are not vague or ambiguous. However, these requests, as written, are overly broad insofar as they seek information outside of Iowa. Qwest has not appeared to object to the production of the requested information in these requests as it relates to Iowa. As such, the Board will require Qwest to respond to Request Nos. 27, 28, 32, and 33 with information limited to Iowa.

DATA REQUEST NOS. 45 and 47

In Data Request Nos. 45 and 47, Level 3 seeks information regarding the number of points of interconnection (POIs) in Iowa between Qwest and CLECs, as

well as information regarding how many CLECs in Iowa connect to Qwest's network by means of a Qwest-supplied entrance facility, a CLEC-supplied facility, or some other means.

Qwest objects to these requests on the grounds that they are unreasonably burdensome and that providing a response would require a special study. Qwest also objects on the grounds that the information is not likely to lead to the production of admissible evidence.

Level 3 states that the information requested is relevant to Issue 1 of the arbitration proceeding regarding the number of POIs per LATA that may be allowed under the agreement.

Qwest states that to answer these requests, Qwest would have to review the interconnection arrangements that are in place for each CLEC that has an interconnection agreement in Iowa and conduct a special study of the facilities that are actually in place for each CLEC. Qwest states that there is no central repository of this information.

Analysis

* The Board finds that Request No. 45 regarding the number of POIs that exist in Iowa between Qwest and CLECs is reasonable. Qwest is required to respond to Request No. 45.

However, based on Qwest's statement that the information sought in Request No. 47 is not readily available in a central repository, the Board finds that this

request, as written, is unduly burdensome. Qwest is not required to submit a response to Data Request No. 47.

REQUEST FOR ADMISSION NO. 66

In Request for Admission No. 66, Level 3 asks Qwest to admit that Qwest's VoIP offering is less expensive than Qwest's Choice Home Plus package.

Qwest states that it cannot admit or deny this request because it is not clear what is being referred to by "Qwest VoIP offering."

Level 3 states that Qwest's objection is designed to avoid providing an easy explanation. Level 3 also states that the request is based upon information found on Qwest's Web site.

Qwest states that a review of the Web site cited by Level 3 indicates that both Qwest's VoIP offering and the Choice Home Plus package have a base rate plus a rate for other features and services such as long distance. Qwest asserts that Level 3 has not been clear what packages it wants Qwest to compare.

Analysis

It appears that this request seeks information that could easily be obtained by viewing the Web sites cited by Level 3 and further explored at hearing in this proceeding. Nevertheless, the Board finds Qwest's response to be inadequate. Qwest is required to admit or deny the request based on the base rate for the VoIP offering and Choice Home Plus.

REQUESTS FOR ADMISSION NOS. 71, 72, 76, 77, 81, 95, 97, 98, 99, 101, and 102

In these Requests for Admission, Level 3 asks for Qwest to admit or deny information relating to interconnection contract language (71), local exchange services (72), increased competition for wireline voice service (76), federal and state regulatory policies (77), end office and tandem switches (81), rules by the Federal Communications Commission (FCC) regarding interexchange carriers (95), collocation equipment (97), revenues for Qwest's local voice services (98), origination and termination of local calls by VoIP providers (99), and recent FCC orders (101 and 102).

Qwest objects to these requests on the grounds that they are overly broad and that there are too many variables to predict the result described is probable, along with other objections. Notwithstanding these objections, in each case Qwest provided some form of explanatory response supporting its reasons for declining to answer.

Level 3 asserts that Qwest has not provided rational, reasonable basis for its failure to admit or deny these requests.

Qwest states that its objections are reasonable and that it has stated its reasons for not being able to admit or deny each request.

Analysis

The Board has reviewed each of these Requests for Admission as well as Qwest's responses and objections. The Board finds that Qwest has provided

sufficient explanations regarding its inability to admit or deny each request and that Qwest has, in many cases, provided Level 3 with appropriate information that can be further explored at hearing in this proceeding, if necessary. Therefore, the Board finds that Requests for Admission Nos. 71, 72, 76, 77, 81, 95, 97, 98, 99, 101, and 102 have been adequately answered.

REQUESTS FOR ADMISSION NOS. 57, 58, and 59

In Requests for Admission Nos. 57, 58, and 59, Level 3 asks Qwest to admit or deny whether certain information exists in Qwest's federal and state tariffs regarding intercarrier compensation for VoIP traffic and information services.

Qwest objects to these requests on the grounds that they call for legal conclusions and are not appropriate subjects for discovery. Qwest also states that its state and federal tariffs speak for themselves.

Level 3 asserts that Qwest has failed to undertake a reasonable investigation of its tariffs to respond to these requests.

Qwest states that it clearly denied these requests for admission and that there is no failure by Qwest to respond to Level 3.

Analysis

The Board has reviewed these Requests for Admission as well as Qwest's responses and objections. The Board finds that Qwest denied Level 3's requests and supplied appropriate information in support of those denials that can be further

explored at hearing in this proceeding, if necessary. Therefore, the Board finds that Requests for Admission Nos. 57, 58, and 59 have been adequately answered.

REQUESTS FOR ADMISSION NOS. 86 and 87

Requests for Admission Nos. 86 and 87 ask Qwest to admit or deny information regarding Qwest's call routing systems and billing systems.

Qwest denies the requests and references previous responses to support its position.

Level 3 states that Qwest's responses are not responsive.

Qwest states that it denied these requests and has fully satisfied any obligation it has to respond to these requests.

Analysis

The Board has reviewed Requests for Admission Nos. 86 and 87 as well as Qwest's responses and objections. The Board finds that Qwest denied Level 3's requests and supplied appropriate information in support of those denials that can be further explored at hearing in this proceeding, if necessary. Therefore, the Board finds that Requests for Admission Nos. 86 and 87 have been adequately answered.

IT IS THEREFORE ORDERED:

1. The Motion to Compel Discovery Responses filed by Level 3 Communications, LLC, on June 30, 2005, and amended on August 5, 2005, is granted in part and denied in part as described in this order. Qwest is directed to

respond to the appropriate data requests and requests for admission within three days of the date of this order.

2. The request for hearing regarding the Motion to Compel Discovery Responses filed by Level 3 Communications, LLC, on August 5, 2005, is denied as described in this order.

3. On or before August 22, 2005, Level 3 Communications, LLC, may file supplemental testimony and exhibits based on the information produced in response to this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Margaret Munson
Executive Secretary, Deputy

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 16th day of August, 2005.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE PETITION OF LEVEL
9 3 COMMUNICATIONS LLC FOR ARBITRATION
10 OF AN INTERCONNECTION AGREEMENT
11 WITH QWEST CORPORATION PURSUANT TO
12 SECTION 252(b) OF THE
13 TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-03654A-05-0350

DOCKET NO. T-01051B-05-0350

PROCEDURAL ORDER

14 **BY THE COMMISSION:**

15 Pursuant to the verbal request of the parties, on August 3, 2005, the Arbitrator in the above-
16 captioned matter heard oral argument on a Motion to Compel brought by Level 3 Communications,
17 LLC ("Level 3") against Qwest Corporation ("Qwest") in the above captioned arbitration. During the
18 course of the August 3, 2005 proceeding, the parties were able to narrow somewhat the issues in
19 dispute, but because of the extensive scope of the Motion to Compel, the Arbitrator requested that
20 Level 3 file a written Motion.

21 On August 8, 2005, Level 3 filed its written Motion to Compel. Level 3 identified at least 36
22 different Data Requests and Requests for Admission for which it believed Qwest's objections were
23 baseless or its responses inadequate. Level 3 also requests an extension for the discovery cutoff
24 deadline.

25 On August 12, 2005, Qwest filed its Response.

26 **Data Request No. 4 – Qwest Internet Access Service**

27 Level 3's Data Request No. 4 asks if Qwest offers Internet access service in the state and how
28 many end user and wholesale customers Qwest has. It requests that that Qwest identify each end
office in which Qwest has collated certain equipment and list each local calling area within the state
in which Qwest maintains a physical presence. Qwest objected to the request because it called for
proprietary information related to the operations of Qwest's affiliates and sought information that was
not relevant to the proceeding.

1 Level 3 argues that its request is relevant to the third issue in this proceeding which Level 3
2 identifies as whether Qwest's election to be subject to the *ISP-Remand Order* for the exchange of
3 ISP-bound traffic requires Qwest to compensate Level 3 for ISP-bound Traffic at the rate of \$0.0007
4 per minute of use. Level 3 asserts it is relevant to the question of whether the geographic location of
5 the ISP is relevant to the compensation exchanged by the parties for the transport and termination of
6 ISP-bound traffic. According to Level 3, the information is also relevant to the question of whether
7 Qwest treats its affiliates the same as it treats Level 3. Qwest argues that Data Request No. 4 does
8 not seek information in any way relating to the numbering assignment rule for the assignment of
9 NPA-NXXs.

10 Resolution:

11 Whether Qwest's proposals discriminate against Level 3 in Arizona are relevant to this
12 proceeding. The information sought in this Data Request appears reasonably calculated to lead to the
13 discovery of admissible evidence. Any proprietary information should be protected by the existence
14 of the Protective Agreement between the parties. Consequently, Qwest should respond as soon as
15 possible to this Data Request.

16 **Data Request No. 5 – PRI or DID/DOD Service**

17 Level 3's Data Request No. 5 asks whether Qwest offers PRI or DID (Dedicated In
18 Dialing)/DOD (Dedicated Out Dialing) service to ISP customers in the state and if so, does Qwest
19 pay carriers originating access charges. According to Level 3, Qwest had not provided any response
20 to this request. Qwest has indicated that Level 3 has clarified ambiguities in the question and that
21 Qwest has served an answer. Qwest's response indicates that this dispute has been resolved.

22 **Data Request No. 7(b), 7 (c) and 7 (e) – Qwest's VoIP Service**

23 In Data Request 7(b), Level 3 requests that Qwest provide the number of retail and wholesale
24 VoIP customers in the state. Data Request 7(c) asks for a list of each local calling area in which
25 Qwest maintains a physical presence. Data Request 7(e) asks whether Qwest purchases any
26 wholesale VoIP services from another provider, and if so, the name of the provider, the services
27 purchased and the states in which such service is provided. Qwest objects to these Data Requests on
28 the basis of relevancy.

1 Level 3 contends that VoIP is not subject to access charges, but that Qwest seeks to impose
2 access charges on certain VoIP traffic, and that the information requested in 7(b) is necessary to
3 demonstrate the impact that Qwest's VoIP proposal will have on Level 3. With respect to Data
4 Request No. 7(e), Level 3 argues the information sought is relevant to determining whether Qwest's
5 proposals discriminate against Level 3.

6 With respect to Data Request 7(b), Qwest argues that it is the number of Level 3 VoIP
7 customers that will determine the "impact" on Level 3. Qwest states the relevant issue in this
8 proceeding is the proper application of inter-carrier compensation rules, not the impact of those rules
9 on one competitor.

10 Qwest states it is preparing a response to Data Request 7(c).

11 With respect to Data Request 7(e), Qwest argues that information concerning its affiliate,
12 QCC's, wholesale providers and the service it purchases from them on a nationwide basis is overly
13 broad and not relevant to this proceeding in Arizona. Qwest argues the only discrimination issue that
14 could be relevant is whether Qwest is discriminating against Level 3 in favor of QCC in Arizona, and
15 thus, this request goes far beyond the issues in the case and would be extremely burdensome and
16 time-consuming for Qwest to provide. Qwest offered to provide the information sought in Data
17 Request No. 7(e) for Arizona.

18 Resolution:

19 Similar to our finding with respect to Data Request No. 4, the issue of discrimination is
20 relevant. Qwest should respond to Data Request 7(a). We agree, however, with Qwest that this
21 proceeding involves an interconnection agreement in Arizona and that we are concerned with
22 Qwest's practices in Arizona. Level 3's Data Request 7(e) is overly broad to the extent it seeks
23 information concerning purchases outside of Arizona. Consequently, Qwest should be required to
24 respond to Data Request 7(e) only as it would relate to Arizona.

25 **Data Request No. 8 – traffic exchange arrangements**

26 Data Request No. 8 asks Qwest to describe any traffic exchange arrangements applicable to
27 enhanced or Internet Enabled services that Qwest has in Arizona with other ILECs, CLECs, or any
28 other party.

1 Level 3 argues the arrangements that Qwest or a Qwest affiliate has with other LECs is
2 directly relevant to the issue of whether Qwest, directly or indirectly, is acting in a discriminatory
3 manner vis-a-vis Level 3. Level 3 asserts that in the past Qwest has taken the position that certain
4 types of agreements need not be filed with the Commission, and that Qwest is in the best position to
5 provide the requested information.

6 Qwest asserts that interconnection agreements between Qwest Corporation and CLECs or
7 Qwest Corporation and QCC are on file with the Commission, and given the breadth and ambiguity
8 of the inquiry, Level 3 is capable of reviewing the filed interconnection agreements in Arizona as
9 easily as Qwest.

10 Resolution:

11 Despite Level 3's intimations that Qwest has not filed interconnection agreements, there is no
12 evidence that subsequent to the resolution of the inquiry into Qwest's compliance with Section 252(e)
13 of the Telecommunications Act in Decision No. 66949 (April 30, 2004), Qwest has not filed
14 interconnection agreements, or that any interconnection agreements remain unfiled. We find that
15 Level 3 can obtain the information it seeks in this Data Request from public sources and that Qwest
16 should not be required to respond further.

17 **Data Requests Nos. 14, 15, 19, 20-21 and 44 – Efficient Use of Trunk Groups**

18 Level 3 groups these requests together and states that they seek information on the use of
19 combined trunk groups by Qwest and Qwest affiliates; the imposition of separate trunking obligations
20 upon other CLECs by Qwest; the use of traffic apportionment factors, such as percent interstate usage
21 (PIU) and percent local usage (PLU), by Qwest or any other LEC that delivers traffic to Qwest; and
22 Qwest's knowledge regarding any state commissions that have required separate trunk groups. Level
23 3 states that one of the issues in this proceeding is whether Level 3 may exchange all traffic over the
24 interconnection trunks established under the Interconnection Agreement. Level 3 seeks to use its
25 existing trunk groups to exchange all traffic, but according to Level 3, Qwest seeks to limit Level 3's
26 ability to use trunks efficiently by requiring Level 3 to establish separate Feature Group D trunks to
27 transmit traffic Qwest claims is "toll" or otherwise subject to access rates. Level 3 argues that
28 information related to Qwest's current practices, the practices of its affiliates, and the obligations

1 imposed on CLECs with whom Qwest exchanges traffic is central to understanding and rebutting
2 Qwest's position in this proceeding. Level 3 argues that Qwest has provided no authority to support
3 its argument that information regarding its affiliates and information about its business activities
4 outside of Arizona are not within the realm of discovery. Level 3 argues that to the extent that Qwest
5 has not required its affiliates or other CLECs to separate traffic onto different trunks and has
6 employed PIUs, PLUs or some other traffic allocation factor to rate traffic, or has itself asserted its
7 right to commingle traffic on trunk groups, such information is directly relevant to the reasonableness
8 of a separate trunking requirement and possible discriminatory treatment.

9 Qwest asserts that to treat these Data Requests as a group conceals the fact that each request is
10 extraordinarily burdensome and does not seek relevant information.

11 Data Request No. 14 requests Qwest to identify every state in which Qwest combines local
12 (including intraMTA CMRS traffic) and toll traffic (including interLATA or IntraLATA toll traffic or
13 any combination thereof) on the same trunk grouping in any of the following situations: 1) local and
14 toll traffic are combined on a direct trunk group between two end offices; 2) local and toll traffic are
15 combined on a trunk group between a Qwest end office and a Qwest tandem; 3) local and toll traffic
16 combined on a trunk group between a Qwest end office and a third party carrier switch; 4) local and
17 toll traffic are combined on a trunk group between a Qwest tandem and a third party switch; and 5)
18 local and toll traffic are combined on a trunk group between two Qwest tandems. Qwest argues that
19 Data Request No. 14 is overbroad as it requests information for every state in which Qwest or one of
20 its affiliates operates and further, that only two of the circumstances listed involve interconnection.

21 Data Request No. 15 asks Qwest to identify the local calling areas ("LCAs") in states where
22 Qwest does not operate as an ILEC, where Qwest's CLEC affiliates combine their own local and toll
23 traffic on a single trunk. Qwest asserts that Data Request No. 15 calls for information involving
24 thousands of LCAs and trunk groups operated by CLEC affiliates and is not in any way limited to
25 interconnection trunks. Qwest claims this information could not possibly lead to the discovery of
26 admissible evidence in this case. Qwest argues the burden imposed by Data Request No. 15 clearly
27 outweighs any possible relevance of the information sought.

28 Data Request No. 17 asks that with respect to those states in which Qwest operates as an

1 ILEC, that it list each CLEC for which local and toll traffic has been combined on any trunk group.
2 Qwest argues the request is extremely overreaching in scope and clearly not reasonably calculated to
3 lead to the discovery of admissible evidence.

4 Data Request No. 19 requests information concerning specific CLECs that exchange local and
5 toll traffic on a single trunk group and which uses PLU or similar method of apportionment in each of
6 the 14 Qwest in-region states. Qwest argues this information is contained in the interconnection
7 agreements for each CLEC in each state and which are publicly available to Level 3 and can be
8 reviewed more easily by Level 3 as it knows what it is looking for. Qwest states there are over 1,000
9 interconnection agreements on file with the state public utility commissions and it is unreasonable for
10 Level 3 to insist that Qwest assemble the information on Level 3's behalf.

11 Data Request No. 20 requests Qwest to provide information concerning the use of PLU or
12 similar apportionment method where a Qwest CLEC affiliate combines local and toll traffic on a
13 single trunk. Qwest states this request is not limited to interconnection trunks, but even if it were, it
14 would call for a review by Qwest of every interconnection agreement Qwest's CLEC affiliate has
15 entered into anywhere in the United States. Qwest argues Data Request No. 20 is clearly
16 unreasonable especially since Qwest's CLEC affiliates are not parties to this proceeding and do not
17 have obligations to interconnect under Section 251 of the Act.

18 Data Request No. 21 asks Qwest to describe each system and/or method that Qwest uses to
19 track or estimate the amount of local and toll traffic exchanged with a CLEC. Qwest does not object
20 to this request if it is limited to the state of Arizona.

21 Data Request No. 44 asks for the number of CLECs in Arizona for which Qwest assigns
22 traffic to different jurisdictional/rating categories based on PIU/PLU or similar factors. Qwest objects
23 to Data Request No. 44 on the grounds it is ambiguous as to what Level 3 means by "assign traffic to
24 different jurisdictional/rating categories." Qwest also objects because it is unreasonably burdensome
25 and would require a special study.

26 Resolution:

27 As drafted Data Request No. 14 is overly broad and burdensome as it concerns agreements
28 outside Arizona. Consequently, Qwest should be required to respond to Data Request No. 14 and its

1 subparts as it relates solely to Qwest Corporation.

2 Data Request No. 15 is overbroad as it is directed at obtaining information about the practices
3 of Qwest's CLEC affiliate and is not relevant to the issues in this proceeding. Qwest should not be
4 required to respond.

5 Data Requests Nos. 17, 19, 20 and 21 are overly broad to the extent they seek information
6 regarding Qwest or Qwest's affiliate's operations outside of Arizona. Qwest should respond to each
7 of these Data Requests as they relate to Arizona.

8 Data Request No. 44 is vague and ambiguous. Furthermore, Qwest should not be required to
9 conduct a special study. Consequently, Qwest is not required to respond to this Data Request.

10 **Data Request No. 22 – Efficient Use of Trunk Groups**

11 Data Request No. 22 asks whether Qwest is aware of any state commission that has required
12 separate trunk groups for transit traffic. Qwest objected on the grounds that the request is overbroad,
13 unduly burdensome to the extent it is not limited to Qwest interconnection agreements and further it
14 is tantamount to asking Qwest to do legal research for Level 3.

15 Resolution:

16 Data Request No, 22 is overbroad and Level 3 has equal access to the information sought.
17 Qwest should not be required to respond further.

18 **Data Requests Nos. 24-27, 28(a), 29-33 – Qwest FX and FX-like Services**

19 Data Request No. 24 asks if Qwest provides any kind of foreign exchange ("FX") service in
20 Arizona. Data Request No. 25 Requests information on the number of FX customers. Data Request
21 No. 33 addresses whether FX service associated with broadband is treated differently than voice
22 service. Neither Data Request Nos. 24 or 25 were included in Level 3's Matrix of disputed issues
23 that was provided at the August 3, 2005 proceeding. During the August 3, 2005 proceeding, Level 3
24 stated that it had included Data Request No. 33 in error. Qwest states that it has responded to these
25 requests. Thus, no action is required concerning Data Requests Nos. 24, 25 and 33.

26 Data Requests Nos. 26, 27 and 28(a), and 29 through 32 seek information related to "FX-like"
27 services. At the August 3, 2005 proceeding, Qwest agreed to respond to Data Requests Nos. 26-27,
28 28(a) and 29-31 based on the definition of "FS-like service" used in interrogatories in a Level 3

1 complaint docket in Washington. Qwest states that it is in the process of responding to these
2 requests, and will provide responses to Level 3 as soon as possible.

3 Data Request No. 32 asks whether Qwest knows or has reason to believe that any independent
4 LEC with whom Qwest has EAS arrangements provide FX or FX-like services. Qwest states that it
5 responded to Data Request No. 32. Data Request No. 32 was not included in Level 3's August 3,
6 2005 Matrix.

7 Resolution:

8 Based on Qwest's previous responses to Data Request Nos. 24, 25, 32 and 33, and its
9 commitment to respond to Data Requests 26, 27, 28(a), 29 and 30, we take no further action with
10 respect to these items.

11 **Data Requests Nos. 43 and 45 – POIs and Other Facility Connections in Arizona**

12 Data Request No. 43 seeks the number of physical Points of Interconnection (POIs) in
13 Arizona between Qwest and CLECs. Data Request No. 45 seeks the number of CLECs in Arizona
14 that connect to Qwest's network by means of Qwest supplied entrance facilities, CLEC supplied
15 facilities, and other means.

16 Qwest objects to these requests as it claims they do not bear on the issues in this proceeding
17 and are burdensome. Qwest claims that to respond would require it to review the interconnection
18 agreements in place for each CLEC that has an interconnection agreement in Arizona and to conduct
19 a special study of the facilities that are actually in place for each CLEC.

20 Level 3 argues that these requests are relevant to the issue regarding the points of
21 interconnection per LATA that may be allowed under the Interconnection Agreement. In addition,
22 Level 3 states it is important for it to understand which points of interconnection Qwest considers to
23 be POIs under Qwest's interpretation of the law.

24 Resolution:

25 Neither of these items were included on the August 3, 2005, Matrix nor discussed at that
26 proceeding. However, we find Data Request No. 43 is relevant to the proceeding and Qwest should
27 be required to respond. Because the data sought in Data Request No. 45 is not contained in a central
28

1 repository, we find that it is unduly burdensome and Qwest should not be required to respond.

2 **Requests for Admission Nos. 55-59 – Qwest’s State and Federal tariffs**

3 In Requests for Admission Nos. 55-59, Level 3 seeks Qwest’s admission that certain
4 information is not set forth in Qwest’s state or federal tariffs. Qwest denied each of the requests, but
5 states that it did not conduct a review of the tariffs to ascertain the accuracy of its response. Level 3
6 argues that Qwest has failed to undertake the reasonable investigation of its tariffs necessary to
7 respond to these requests.

8 Resolution:

9 Qwest has responded to these requests. The tariffs speak for themselves and Level 3 is able to
10 review them to obtain the information it desires. We do not require Qwest to respond further.

11 **Requests for Admissions Nos. 66, 82, 96 and 99**

12 Qwest neither admits nor denies Requests for Admissions Nos. 66, 82, 96 and 99. Level 3
13 asserts that the Rules of Civil Procedure provide that to the extent a party cannot admit or deny a
14 request for admission, the answer shall specifically set forth in detail the reasons why. Level 3 argues
15 that Qwest has provided no reasonable bases for its failure to admit or deny.

16 Qwest claims it could neither admit nor deny the requests because they are not sufficiently
17 complete. In Request for Admission No. 66, Level 3 asks Qwest to admit that the OneFlex VoIP
18 offering is less expensive than the Choice Home Plus package. Qwest states that in its response, it
19 stated that it is not clear which particular OneFlex VoIP or the precise Choice Home Plus package
20 that it was meant to compare, this it could not be admitted or denied without further clarification.

21 Request for Admission No. 82 asks Qwest to admit that “Qwest’s end offices and tandem
22 switches do not store *any information* indicating the *address or location* of any end user’s premises.”
23 (emphasis added) Qwest acknowledges that the switches do not contain specific street addresses for
24 individual customers, but states that they do contain information indicating the general geographic
25 location. Qwest states it cannot admit or deny because Level 3 has failed to define the level of
26 specificity that the phrase “any information” refers to. Qwest would deny the request on the basis
27 that its switches do store information that indicates the location of a customer.

28 Request for Admission No. 96 asks Qwest to admit “that where Qwest proposes to rate ISP-

1 bound traffic as toll traffic, Level 3 would pay Qwest \$0.016270 per MOU instead of Qwest paying
2 Level 3 \$.0007 per MOU for terminating a call received at the Parties' POI." Qwest objected on the
3 ground that the request is ambiguous and compound.

4 Qwest states that Request for Admission No. 99 used the ambiguous term "this service"
5 without identifying the particular service. Qwest further states that Level 3 has clarified the term to
6 refer to the service in the preceding request. Qwest states that it will respond to this Request for
7 Admission shortly.

8 Resolution:

9 As drafted, Request for Admission No. 66 does not provide sufficiently specific information
10 to allow Qwest to admit or deny the request, and thus Qwest should not be required to admit or deny
11 this request.

12 Through its explanation in its Response to the Motion to Compel, Qwest denies Request for
13 Admission No. 82, thus no further action is required.

14 Request for Admission No. 96 is compound and ambiguous, Qwest should not be required to
15 admit or deny this request.

16 **Request for Admission No. 88 – Qwest's call Routing and Billing System**

17 Request for Admission No. 88 asks Qwest to admit that its billing systems never sample any
18 data regarding the address or location of any end user's premises for purposes of billing. Qwest
19 denied this request "for the same reasons as set forth in Qwest's responses to Request Nos. 82 and
20 86." Qwest states that the fact that it denied the request is fully responsive under applicable
21 discovery rules.

22 Resolution:

23 Qwest has denied Request for Admission No. 88, thus, satisfying its obligations.

24 **Request for Admission No. 100 – Impact of VoIP Services on Qwest Revenue.**

25 Request No. 100 asks Qwest to admit its revenues may be adversely affected should
26 "providers of VoIP services attract a sizeable base of customers who use VoIP to bypass traditional
27 local exchange carriers." Qwest objected on the ground that this request is ambiguous and calls for
28 speculation. Qwest further states that it could not admit or deny this request because there were too

1 many variables to predict the result.

2 As drafted Request for Admission No. 100 is ambiguous and Qwest should not be compelled
3 to admit or deny.

4 IT IS THEREFORE ORDERED that Qwest shall respond to the outstanding Data Requests
5 and Request for Admission as discussed herein by August 26, 2005.

6 IT IS FURTHER ORDERED that the deadline for filing discovery requests shall be extended
7 until August 31, 2005, and that all responses to discovery requests shall be made within five days of
8 receipt, and any objections made within three days of receipt.

9 IT IS FURTHER ORDERED that any rejoinder or surrebuttal testimony may be presented
10 orally at the arbitration.

11 IT IS FURTHER ORDERED that the Arbitrator(s) may rescind, alter, amend, or waive any
12 portion of this Procedural Order either by subsequent Procedural Order or by ruling at arbitration.

13 DATED this ____ day of August, 2005.

14

15

JANE L. RODDA
ARBITRATOR

16

17 Copies of the foregoing mailed
this ____ day of August, 2005 to:

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