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Carla M. Butler
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May 15, 2006

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

Re: ARB 665

Dear Ms. Nichols Anglin:

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

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

Sincerely,

Carla M. Butler

CMB:
Enclosures
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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

ARB 665

In the Matter of LEVEL 3 COMMUNICATIONS, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communication Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions with QWEST CORPORATION	**RESPONSE OF QWEST CORPORATION TO LEVEL 3'S MOTION TO COMPEL**

Qwest Corporation ("Qwest" or "QC") respectfully submits the following response to the motion to compel that Level 3 Communications, LLC ("Level 3") filed on May 4, 2006.

INTRODUCTION

Level 3 has moved to compel responses to discovery requests that seek information far afield from the matters at issue in this proceeding. This is an arbitration proceeding to establish the terms and conditions under which Qwest and Level 3 will interconnect and exchange telecommunications traffic on a going forward basis. It is not a dispute about the past operations of either company or about matters in states other than Oregon. The Commission's task is to determine the appropriate prospective terms and conditions for interconnection in the state of Oregon.

The discovery standard in Oregon allows discovery with regard to any matter, not privileged, that appears reasonably calculated to lead to the discovery of evidence relevant to the subject matter involved in the pending action. OAR 860-014-0010. Application of this standard necessarily involves balancing the potential relevance of the information sought against the breadth and burden of specific requests. *Sorosky v. Burroughts Corporation*, 826 F.2d, 794, 805 (9th Cir. 1987). To prevail in its motion to compel, Level 3 must demonstrate that the potential relevance of the information it

seeks outweighs the burden of responding. *Nugget Hydroelectric, L.P. v. Pacific Gas and Electric Company*, 981 F.2d 429, 438-39 (9th Cir. 1992). In no event is Level 3 entitled to engage in a fishing expedition for information that has little or no relevance to the issues in dispute. *Hardrick v. Legal Services Corp*., 96 F.R.D. 617, 618 (D.D.C.1983).

The discovery requests that are the subject of Level 3's motion to compel are not reasonably calculated to lead to the discovery of admissible evidence. In most instances, Level 3 bases its argument for relevance on an inaccurate description of Qwest's position in this proceeding. In many of its arguments, Level 3 refers to issues in the proceeding, but draws no connection between its data requests and the issues it discusses. For example, one of the recurring arguments that Level 3 offers to justify its discovery requests is a claim that it is exploring whether the interconnection terms that Qwest proposes in this proceeding "discriminate" against Level 3. However, there is no conceivable way that any of the discovery requests that Level 3 asks concerning retail or wholesale telecommunications services that QC offers could lead to relevant evidence on this issue for the simple reason that Level 3, as a CLEC, has a right under undisputed language of the interconnection agreement to purchase Qwest's retail telecommunications services at a wholesale discount and to purchase QC's wholesale telecommunications services (such as access services) pursuant to tariff. Level 3 never challenges this and indeed has never argued that it wants to be able to purchase retail or wholesale services from Qwest. Clearly Level 3's repetition of the mantra "nondiscrimination" does not make its requests reasonably calculated to lead to the discovery of admissible evidence.

In many instances, Level 3 seeks detailed information concerning the operations of Qwest or its affiliate, QCC, in states other than Oregon. This Commission, however, previously rejected Level 3's motion to compel such information in ruling on Level 3's first motion to compel. Four other

commissions, including the Washington Commission in the order that Level 3 attaches to its motion, have similarly rejected discovery outside of the state at issue. For the reasons that follow, Level 3's motion to compel should be denied.[1]

ARGUMENT

I. Data Request No. 5-2 – Qwest Internet Access Service

Data Request No. 5-2 is a follow-up question to Data Request No. 5-1, which asked whether Qwest Corporation ("QC") provides any telecommunications services that Qwest Communications Corporation ("QCC") uses as an input to providing dial-up access to ISPs that are customers of QCC. Qwest responded to that question in the affirmative, noting that QC does provide certain tariffed or catalogued services (PRS and private line transport services) to QCC that QCC uses in serving ISPs. The specific service provided by QCC to ISPs that uses services provided to QC as component parts is known as "Wholesale Dial." Data Request No. 5-2 seeks more detailed information on the same subject. Of the seven subparts to Data Request No. 5-2, Qwest responded to subparts 5-2a, c, and g, but objected to subparts b, d, e, and f. For reasons that are unclear, even though Qwest responded to subpart g, Level 3 listed it as one of the subparts to which it is seeking to compel a response.

Level 3's argument that Qwest should respond to these subparts is built on factual assumptions and legal propositions that are either wrong or irrelevant. The issues in this docket relate specifically to an interconnection agreement between Level Communications, LLC (an Oregon CLEC) and QC (an ILEC operating in Oregon). Thus, the issues relate only to those two parties and the central issue in the case is, as to each disputed item, which of the competing disputed language proposed by the

[1] In a footnote on page 5 of its motion, Level 3 makes a number of false allegations, including a false claim that Colorado Judge Isley questioned whether Qwest witnesses were engaged in a "shell game" in which one witness would refer a question to a second witness, who would then refer the question back to the first witness. As Level 3 is well aware, it was Level 3's counsel who made that allegation and to refute it, Qwest offered to allow Level 3 to question the first witness again. Level 3 declined Qwest's offer.

parties is consistent with the 1996 Act and other governing authorities relating to interconnection agreements under section 251(c)(2) of the Act. QCC, which is an affiliate of QC, is not a party to the interconnection agreement, nor is it a party to this arbitration docket. Therefore, as a preliminary matter, Level 3 bears a significant burden to demonstrate that information related to a non-party meets the standards of discovery.

Level 3's motion to compel is premised on the false assertion that "Qwest is attempting to impose upon Level 3 a network architecture for serving it's [sic] ISP customers that is inefficient and outdated." (Level 3 Motion, p. 8, lines 15-16.) Level 3 does not and cannot point to any Qwest-proposed language that imposes a particular network architecture on Level 3. In fact, there is nothing in any Qwest-proposed language that purports to require Level 3 to construct its network in any particular manner. It is certainly true that the network architectures a carrier chooses may have intercarrier compensation implications under any interconnection agreement, but the type of architecture that Level 3 deploys is Level 3's own business decision. Level 3 is a large, sophisticated company, with well-qualified management and legal counsel; as such, Level 3 is fully capable of assessing the legal and operational implications of its network deployment and network architecture decisions and is capable of making well-informed business decisions based on those and other factors. But Qwest's language mandates no specific network architecture for Level 3.

Furthermore, there is nothing about the billing address of ISPs, the location of modems of ISPs served by QCC, or the location of the services provided by QC to QCC (*e.g.,* subparts d, e, and f) that is calculated to lead to the discovery of admissible evidence in this case. The reason for this is simple. Other than the fact that both Level 3 and QCC serve ISPs, there is virtually nothing similar about their methods of operation. Level 3 serves ISPs by virtue of its CLEC status, based on services

provided under an interconnection agreement, wherein at least two forms of intercarrier compensation are at issue: (1) financial responsibility for Local Interconnection Service ("LIS") such as entrance facilities ("EF") and direct trunked transport ("DTT"), and (2) whether terminating compensation is appropriate for ISP traffic originated on Qwest's network and terminated to ISPs on Level 3's network. Neither of these issues has anything to do with Wholesale Dial.

QCC does not provide Wholesale Dial as a CLEC or through an interconnection agreement with QC. It provides Wholesale Dial as an enhanced services provider ("ESP"). QCC purchases retail (tariffed or price listed) local exchange service (Primary Rate Service or PRS) in each local calling area ("LCA") from which it seeks to originate traffic for its ISP customers and pays the full retail rate for that service. In order to deliver the traffic to the modems that serve the ISPs (which are provided by QCC), QCC purchases private line/special access services at full retail prices (which are substantially higher prices than those for TELRIC-based LIS services) to transport the traffic to the site of the modems. Because the service is provided to QCC as end user customer, QCC pays full retail prices for the services it obtains from QC. Since QCC operates as an ESP when it offers Wholesale Dial, it cannot charge intercarrier compensation that a telecommunications carrier would be entitled to charge.

Thus, two conclusions pertinent to the data requests at issue are obvious. First, since the local telephone numbers that QCC obtains pursuant to Wholesale Dial are provided as part of the PRS local service provided in each LCA in which QCC seeks to originate traffic, there is no issue related to NPA/NXXs used in Wholesale Dial. The provisioning of Wholesale Dial therefore has no bearing on the numbering rules related to NPA/NXXs. Thus, Data Request Nos. 5-2.d, e, and f cannot, under any circumstance, be viewed as calculated to lead to relevant evidence. Second, nondiscrimination is not

an issue because, with Wholesale Dial, QCC does not interconnect with QC under section 251(c)(2). Because QCC purchases retail services, as any other end-user customer may do so, Level 3 has failed to state even a *prima facie* basis for a discrimination claim. To the extent that Level 3 were willing to operate as an ESP in similar manner, it too could purchase retail services from Qwest (or from another carrier providing similar services) without any need to interconnect with Qwest under section 251(c)(2). Because Level 3 does not do so, however, any comparison is inapposite.

Given the foregoing, Data Request No. 5-2.d fails to meet the discovery standard because providing billing addresses of ISP customers cannot possibly be relevant in this case. (Indeed, neither Qwest nor Level 3 has ever suggested that an ISP's billing address is relevant to any disputed issue under an interconnection agreement.) Data Request No. 5-2.e fails the same test. Given QCC's method of operation, under which it does not interconnect under section 251(c)(2) and does not seek terminating compensation, the location of QCC's modems/servers is completely irrelevant. (Further, Qwest has already responded to data request 5-2.g, which identified the two cities in Oregon in which QCC's Cisco equipment—the QCC equipment that provides modem functionality for QCC ISPs—is located). Thus, Qwest has already answered the question.

Data Request No. 5-2.f fails for all the reasons set forth above. Given the fundamental differences between Wholesale Dial and Level 3's method of operation, the physical location of QC services provided to QCC is irrelevant. Qwest respectfully requests that the Commission deny Level 3's motion as it relates to Data Request Nos. 5-2.d, e, and f.

Data Request No. 5-2.b asks for copies of all invoices for all services from QC to QCC for the services provided for Wholesale Dial. This request is apparently premised on the belief that QC may not be billing QCC for services provided to QCC. Level 3 provides nothing to suggest that such a

concern has any factual basis. In fact, Qwest, as it is legally obligated to do, maintains a public section 272 Internet website that contains a variety of detailed information regarding transactions between QC and the section 272 entity, QCC. The link to that public Internet website is: http://www.qwest.com/about/policy/docs/qcc/currentDocs.html. Level 3 may access this website and review the information posted there, but without some basis to believe that Qwest's transactions violate section 272, it would be entirely inappropriate to require QC to provide the reams of billing information sought in Data Request No. 5-2.b. Indeed, Level 3 has not made any allegation that transactions between QC and QCC are inappropriate. In the absence of such an allegation and a demonstration that it has some basis, this data request is inappropriate. Qwest should not be required to respond to it.

Finally, as noted, Level 3 lists Data Request No. 5-2.g as one that falls within its motion to compel. However, Qwest responded to that request by providing a confidential attachment (Attachment B) that lists the Oregon cities in which the Cisco AS 400 equipment is located.

II. Data Request No. 5-4 – QCC's VoIP Service

The issues here are very similar to the issues raised under Data Request No. 5-2. In this case, however, instead of services to ISPs, the questions relate to services purchased from QC by QCC related to QCC's VoIP offering known as OneFlex™. Qwest has responded to subparts 5-4.a, e, and g (there was no subpart c). Thus, subparts 5-4.b, d, and f are the only ones at issue.

As with its argument on Data Request No. 5-2, Level 3 claims that "Qwest . . . is attempting to force Level 3 to provision its VoIP services via an outdated and inefficient network architecture—one that it does not impose on itself or its own affiliates." (Level 3 Motion, p. 16, lines 12-14.) This claim is truly perplexing given that, as Level 3 is well aware, QC (the ILEC) does not provide VoIP service.

Thus, the allegation that QC does not impose the same requirements on "itself" as on other VoIP providers makes no sense. Moreover, Level 3 cannot point to any Qwest-proposed language that imposes any particular network architecture on Level 3. To be sure, there is nothing in any Qwest language that requires Level 3 to construct its network in any particular manner.

Data Request No. 5-4.a, like Data Request No. 5-2.b, asks for copies of all "invoices" for all services from QC to QCC that became components of a QCC service, in this case, QCC's VoIP service. For the same reasons that Qwest objects to responding to Data Request No. 5-2.b, it should not be required to respond to Data Request No. 5-4.a.

Data Request No. 5-4.d asks for the "billing address" of QCC's VoIP customers. Under no conceivable circumstances do the billing addresses of QCC's VoIP customers need to be revealed for any purpose in this case. QCC is not a party here, and it does not provide its VoIP service through an interconnection arrangement with QC under section 251(c)(2). Rather, QCC purchases retail services as an end user. Thus, a requirement that it provide such information will not lead to any relevant evidence. Providing such information would also be unduly burdensome and would require the disclosure of customer-specific information of a highly-confidential nature. Qwest's position is that, for purposes of rating VoIP calls, the relevant locations are the PSTN end user and the VoIP provider POP. Level 3, on the other hand, takes the position that access charges should never apply to VoIP calls. Under either party's proposal, the VoIP end user's billing address is simply irrelevant. The Commission should deny Level 3's motion as it relates to Data Request No. 5-4.d.

Finally, for the same reasons that Data Request No. 5-2.f should be denied, the Commission should deny the request in Data Request 5.4.f seeking the specific locations of each PRI used by QCC

to provide VoIP services. Those locations would be unduly burdensome to provide and, if produced, would present no information even potentially relevant to the interconnection issues in this case.

III. Request Nos. 5-5.A, 5-5.B, 5-5.C and 5-13.C – ISP "Physical Presence" and POP

These requests fall into two categories. The first, Data Request No. 5-5.A, asks for information related to the state of Oregon. The second category includes the other three requests—5-5.B, 5-5.C and 5-13.C—which seek information related to services in other states.

As to Data Request No. 5-5.A, the Commission should reject Level 3's motion. The question simply makes no sense because it asks about the location of the "physical presence" for QC[2] (not QCC) in each LCA in Oregon for three separate services ("Digital Signal Level 1," "Voice Termination," and "Outbound Voice Services") as they are used "for the provision of wholesale dialup services." Whether the listed services create a "physical presence" for QC has no bearing on any issue in this case. The presence of a telecommunications carrier is simply not at issue in the case. It is the presence of enhanced service providers (ESPs) that is relevant because it impacts the rating of telephone calls. Level 3 has provided nothing in its motion to demonstrate why this information is even potentially relevant. None of these services are mentioned in the interconnection agreement, nor are there any disputed issues related to them. Thus, Data Request No. 5-5.A is simply not relevant nor calculated to lead to the discovery of admissible evidence.

Further still, to the extent this request seeks to know the physical location of each component piece of QC's Oregon network that has anything to do with providing the three listed services, it is unduly burdensome. This is especially so because Qwest's network extends across the state and includes 77 wire centers.

[2] The instructions in Level 3's data requests state that "Qwest" refers to "Qwest Corporation." (See Instruction D.) Qwest Corporation is the ILEC party to this case and is also referred to as "QC."

With regard to Data Request Nos. 5-5.B, 5-5.C and 5-13.C, each of the arguments set forth above apply with equal force to them. However, there is also one additional reason why the motion should be denied as to those three subparts, and that is that the requests seek information for *states other than Oregon*. This docket, however, relates to an interconnection agreement that will govern the parties in *Oregon*. As such, information about what QC may or may not do in other states is simply outside the scope of this proceeding. This general issue has been addressed in Level 3's prior motion to compel in which the Commission denied discovery outside of the state of Oregon. The Arizona, Iowa, and Washington commissions have also denied discovery outside of their respective states.

Finally, with regard to Data Request Nos. 5-5.C and 5-13.C, Qwest stated that QC offers no service in those states. While Qwest objects to those two requests, the fact that QC (the entity the requests are directed to) offers no services in the states identified in Data Request Nos. 5.C and 13.C makes it clear that, even if Qwest were compelled to respond, Level 3 already knows the answer to those questions.

Accordingly, Qwest respectfully submits that the Commission should deny Level's motion in regard to all subparts of Data Request No. 5-5 and Data Request No. 5-13.C.

IV. Request Nos. 5-6, 5-7, 5-9 and 5-10

Data Request Nos. 5-6, 5-9 and 5-10 request information concerning "access revenues" that Qwest has received in the past in Oregon. Data Request No. 5-7 seeks information concerning "universal service payments" that Qwest has received in the past in Oregon. To justify these requests, Level 3 asserts, without any basis, that "Qwest claims that local rates will go up if [Level 3's] interconnection requirements are adopted." (Level 3 Motion, p. 19, lines 14-15.) In fact, Qwest has not made any such statement in its response to Level 3's arbitration petition, or elsewhere.

Qwest's position in this proceeding is that the Act and the FCC's rules require Level 3 to compensate Qwest for the costs that Qwest incurs to provide interconnection. For example, in the FCC's *Local Competition Order*, the FCC expressly stated that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."[3] The FCC further stated that "to the extent incumbent LECs incur costs to provide interconnection or access under sections 251(c)(2) or 251(c)(3), incumbent LECs may recover such costs from requesting carriers." Level 3's proposed contract language in this proceeding repeatedly disclaims responsibility to compensate Qwest for interconnection costs that Qwest incurs.

Clearly, there is no connection between any access revenues or universal service payments that Qwest has received or collected in Oregon in the past and Level 3's obligation to compensate Qwest for costs that Qwest incurs to provide interconnection to Level 3. Qwest submits that Level 3's motion to compel responses to Data Request Nos. 5-6, 5-7, 5-9 and 5-10 should be summarily denied.

V. Data Request Nos. 5-14 and 5-15 –QCC's Wholesale Voice Termination and Dial Services

The seventeen subparts of Data Request No. 5-14 relate to a product known as "Wholesale Voice Termination." This service is offered to interexchange carriers (IXCs) and not to VoIP providers. In response to subparts 5-15.A to 5-15.C, Qwest made it clear that Wholesale Voice Termination is a long distance service that uses the access tariffs of Oregon LECs (QC, Verizon, and Sprint) that terminate the traffic. In light of that, and given Level 3's position that no access charges should apply either to VoIP or VNXX traffic under any circumstance, it is clear that the remaining questions are not calculated to lead to the discovery of relevant evidence. Thus, while Qwest

[3] First Report and Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* ("*Local Competition Order*"), 11 FCC Rcd 15499 (1996), ¶¶ 199-200.

responded to the first three subparts, those responses demonstrate that the service that is the subject of the question is completely unlike either VNXX or VoIP. Further responses, by definition, could not lead to anything even potentially relevant to this docket.

Data Request Nos. 5-14.D to 5-14.F seek similar information about Wholesale Voice Termination in potentially 47 other states (excluding Hawaii and Alaska). Given the obvious lack of relevance of the line of questions in the first instance, and the fact that information from other states is irrelevant for reasons stated above, these requests would be unduly burdensome to respond to and are demonstrably not calculated to yield anything relevant to this docket. Furthermore, the question is directed to QC, which does not operate outside its traditional 14-state ILEC territory. Data Request No. 5-14.K is objectionable for the same reasons.

In Data Request Nos. 5-14.G through 5-14.J, Level 3 asks a variety of questions about whether Wholesale Voice Termination is offered as an "input" to VoIP providers. It is not. Wholesale Voice Termination is a service offered to smaller IXCs who, for cost or other reasons, have decided not to establish direct Feature Group D (FGD) interconnection with LECs who terminate their IXC traffic. Thus, for reasons set forth above—most notably that the service is based on buying FGD access services—it cannot conceivably lead to relevant evidence.

Further still, Data Request Nos. 5-14.K through 5-14.Q (with the exception of Data Request No. 14.L, to which Qwest has already responded) are all directed to Qwest (meaning QC), and Qwest has already responded that QC does not provide the specific service. In fact, the service is provided by QCC, which is not a party to this case. Further, this service, for the reasons set forth above, bears no similarity to any of the services at issue in this proceeding and is therefore not calculated to lead to the discovery of admissible evidence. With regard to Data Request No. 5-14.L, Qwest identified the

locations of QCC's Network Access Servers (NASs) in Oregon in response to Data Request No. 5-2.g. Thus, while Data Request No. 5-14.L is objectionable, Qwest has already provided the information.

Finally, Data Request 5-15.F appears to be the same question as Data Request No. 5-2.b. Qwest requests that the Commission deny the motion to compel a response to Data Request 5-15.F for the same reasons as set forth in Qwest's response to Data Request No. 5-2.b.

VI. Data Request No. 5-19 – Efficient Use of Trunk Groups

Data Request No. 5-19 seeks information for every state in the country concerning the combination by Qwest's CLEC affiliate, QCC, of traffic on a single trunk group in combination with the use of factors to apportion toll and local traffic. By its terms, this request is not limited to interconnection between QCC and Qwest. This request is identical to Level 3 Interrogatory 1-20 which was the subject of Level 3's first motion to compel. In ruling on the prior motion, the Commission limited the scope of this request to Oregon and to interconnection trunks between Qwest affiliates and Qwest. Qwest complied with the August 25, 2005 ruling on the motion to compel on or about August 31, 2005, and Level 3 has never alleged that Qwest has not fully complied with the August 2005 motion to compel ruling.

This is another example of Level 3 mischaracterizing the issues in this case so that it can engage in a fishing expedition. Level 3's motion to compel is based on three false premises. First, Level 3 erroneously asserts that Qwest is requiring Level 3 to deliver its local and toll traffic over separate interconnection trunks. Qwest is not, however. Qwest's proposed paragraph 7.2.2.9.3.2 clearly allows for a single interconnection trunk group for the exchange of all traffic types:

> CLEC may combine originating Exchange Service (EAS/Local) traffic, ISP-Bound Traffic, IntraLATA LEC Toll, VoIP Traffic and Switched Access Feature Group D traffic including Jointly Provided Switched Access traffic, on the same Feature Group D trunk group.

The dispute between the parties is *not* whether Level 3 should be permitted to exchange all of its traffic over the same interconnection trunks. Rather, the dispute is whether Level 3 may terminate *interexchange* traffic (referred to as "switched access traffic" in Qwest's proposed language) to Qwest over interconnection trunks that do not have the capability to properly record this IXC traffic. Feature Group D interconnection trunks have this capability, but LIS trunks do not. This is a very significant issue now because Level 3 recently acquired Wiltel, a major carrier of interexchange traffic. The Wiltel acquisition means that the volume of interexchange traffic that Level 3 delivers to Qwest under the agreement will be substantial and not trivial, as Level 3 has asserted in its prefiled testimony.

Second, Level 3's motion is based on the false premise that it has the legal right to deliver interexchange traffic to Qwest over interconnection trunks established pursuant to section 251(c) of the Act. Level 3 does not have such a right, however. Interconnection rights arising under section 251(c) of the Act are limited to interconnection that Level 3 uses to provide "telephone exchange service" or "exchange access." Section 251(c) interconnection rights do not encompass or extend to interconnection to be used by a CLEC to terminate its *interexchange* traffic on the network of an ILEC providing interconnection. The FCC has specifically ruled on this issue:

> [A]ll carriers (including those traditionally classified as IXCs) may obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating calls originating from their customers residing in the same telephone exchange (*i.e.*, non-interexchange calls).
>
> We conclude, however, that an IXC that requests interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC's network is not entitled to receive interconnection pursuant to section 251(c)(2). *Local Competition Order*, ¶¶ 190-91.

The FCC reasoned that a carrier that requests interconnection to terminate a long distance call is not "offering" access services, but rather is "receiving" access services. *Id.*, ¶ 186. Since such interconnection is not for the purpose of providing "telephone exchange service" or "exchange

access," an ILEC is not required to provide such interconnection under section 251(c)(2). Since section 251(c)(2) is not applicable here, the FCC's rules that interpret section 251(c)(2), including specifically the rules set forth at 47 C.F.R. §§ 51.5 and 51.305, are likewise not applicable.

Interconnection for the purpose of originating or terminating long distance calls is governed by section 251(g) of the Act. Section 251(g) provides:

> On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same *equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation)* that apply to such carrier on the date immediately preceding February 8, 1996, under any court order, consent decree, or regulation, order or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996.

In this proceeding, Level 3 is inappropriately attempting to extend the interconnection rights it has under section 251(c)(2) to encompass the exchange of long distance traffic with Qwest. However, the rules applicable to local interconnection under section 251(c)(2) do not apply to interconnection used to deliver interexchange calls. Qwest is required by section 251(g) to provide interconnection to interexchange carriers (IXCs), including CLECs acting in the capacity as IXCs, on a nondiscriminatory basis, and that includes the terms of compensation.

Finally, Level 3's argument is based on the false premise that QCC has a "nondiscrimination" obligation under Section 251 when it interconnects with carriers other than Qwest, the ILEC. QCC is not an ILEC, however, and thus does not have the obligations of an ILEC. Level 3 is therefore simply wrong when it states that Data Request No. 5-19 "is critical to assessing whether Qwest's proposals in this arbitration discriminate against Level 3 relative to the manner in which Qwest [the ILEC] provides its interconnection to itself, its affiliates, and other carriers throughout its network." (Level 3 Motion, p. 28.) Data Request No. 5-19 does not ask for information concerning Qwest's

interconnection "with itself, its affiliates, and other carriers throughout its network." Data Request No. 5-19 is directed solely to QCC's operations and does not even use the word "interconnection."

CONCLUSION

For the reasons set forth herein, Qwest respectfully submits that the Commission should deny Level 3's Motion to Compel in its entirety.

DATED this 15th day of May, 2006.

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CERTIFICATE OF SERVICE VIA E-MAIL

I do hereby certify that a true and correct copy of the foregoing QWEST'S CORPORATION'S Response to Level 3's Motion to Compel was served on the 15th day of May, 2006 via e-mail electronic transmission upon the following individuals:

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DATED this 15th day of May, 2006.

QWEST CORPORATION

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