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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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| <p>In the Matter of the Petition of LEVEL 3 COMMUNICATIONS, LLC for Enforcement of the Interconnection Agreement with Between QWEST CORPORATION and Level 3</p> | <p>Docket No. 05-2266-01</p> <p><b>QWEST'S MOTION FOR LEAVE TO FILE RESPONSE TO LEVEL 3'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR ENTRY OF ORDER</b></p> |
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Qwest Corporation ("Qwest"), pursuant to Utah Administrative Code R746-100-3.A.1.a and R746-100-4.D, hereby moves the Commission for leave to file a response to the Reply Memorandum in Support of Motion for Entry of Order ("Reply") filed by Level 3 Communications, LLC ("Level 3") on October 1, 2007. In support of this motion, Qwest states as follows:

1. On August 31, 2007, Level 3 filed its Motion of Level 3 Communications, LLC for Entry of Order Consistent with Court's Decision ("Motion"). Excluding the caption, the Motion was less than one page in length. It requested the Commission to issue an order requiring Qwest to refund \$833,616.79, plus interest at 1.2 percent per month from May 10, 2006 through the date of payment. The Motion contained no legal argument in support of the relief sought.

2. Level 3 filed the Affidavit of Rhonda Tounget in support of the Motion. According to the affidavit, the amount Level 3 believes Qwest should refund through August 31, 2007 is \$1,005,930.71.

3. On September 17, 2007, Qwest filed Qwest's Opposition to Level 3's Motion for Entry of Order ("Opposition"). Excluding the caption, the Opposition was over 12 pages in length and provided legal argument in support of Qwest's position that the Motion was premature and the Commission should schedule further proceedings to perform the function Level 3 requested the Commission to perform in its petition in this matter, enforcing the interconnection agreement between the parties pursuant to Utah Code Ann. §§ 54-4-1, 54-8b-2.2(1)(e) and 54-8b-16. Qwest requested in the Opposition that the Commission perform this function consistent with the decision of the Utah Court of Appeals in *Level 3 Communications, LLC v. Public Service Comm'n*, 2007 UT App 127 ("Decision").

4. On October 1, 2007, Level 3 filed the Reply. Excluding the caption, the Reply is approximately 13 pages in length. The Reply represents the first occasion in which Level 3 has offered legal argument in support of the Motion.

5. In responding to the Opposition, the Reply raises arguments regarding whether the Commission may consider extrinsic evidence, whether Qwest is barred by res judicata or

collateral estoppel from contending that section 5.1.2.4 of the interconnection agreement does not apply to virtual NXX (“VNXX”) traffic, whether Qwest is barred by res judicata or collateral estoppel from contending that section 252 of the Telecommunications Act of 1996 applies to interpretation of the interconnection agreement, and whether enforcement of the interconnection agreement is a legislative function. Qwest has not had an opportunity to address any of these arguments because they were not made in the Motion. If the Commission intends to consider Level 3’s new legal arguments, Qwest asks that it be given the opportunity to respond, consistent with the basic principle of administrative due process.

6. Qwest believes that a response to these arguments would be helpful to the Commission in deciding whether to grant or deny the Motion. Qwest believes that Level 3’s characterization of the Decision and of Qwest’s position in the Reply is inaccurate. Furthermore, Level 3 has cited cases in the Reply which require further explanation.

7. As a result of the fact that Level 3 did not file legal argument in support of the Motion, the Reply is the equivalent of a memorandum in support of the Motion. Allowing Qwest to respond to the Reply is consistent with the normal process before the Commission in which a party filing a motion supports it with legal argument, the other party responds and the party filing the initial argument replies to the response. This normal procedure was not followed in this case because Level 3 did not file legal argument in support of the Motion until after Qwest opposed the Motion.

8. Prior to appeal of the Commission’s August 18, 2005 Report and Order in this docket, the Commission granted a motion of Level 3 to reply to Qwest’s response to Level 3’s petition for reconsideration and rehearing of the Commission’s Report and Order. Although the Commission’s rules contemplate a reply in the case of regular motion practice, *see* Utah Admin.

Code R746-100-4.D, they do not contemplate a reply in the case of a petition for reconsideration. *See id.* R746-100-11.F. Granting this motion would be consistent with the spirit of that prior ruling.

9. Consistent with Utah Admin. Code R746-100-4.D, Qwest requests that the Commission allow it 15 days following a decision on this motion to file its response to the Reply.

Based on the foregoing, Qwest respectfully requests that the Commission grant it leave to file a response to the Reply within 15 days following the ruling on this motion.

RESPECTFULLY SUBMITTED: October 9, 2007.

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **QWEST'S MOTION FOR LEAVE TO FILE RESPONSE TO LEVEL 3'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR ENTRY OF ORDER** was served upon the following in the manner indicated on October 9, 2007:

**By U.S. Mail:**

Gregory L. Rogers  
Level 3 Communications, LLC  
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**By Email:**

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