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BEFORE THE UTAH PUBLIC SERVICE COMMISSION

In the Matter of the Petition of Level 3
Communications, LLC for Enforcement of the
Interconnection Agreement Between Qwest and
Level 3

PETITION OF LEVEL 3
COMMUNICATIONS, LLC FOR
ENFORCEMENT OF THE
INTERCONNECTION AGREEMENT
BETWEEN QWEST AND LEVEL 3

AND

MOTION FOR EXPEDITED RELIEF

Docket No. 05-2266-__

Level 3 Communications, LLC (“Level 3”) through its undersigned counsel and pursuant to the provisions at Utah Code Annotated §§ 63-46b-3, 54-4-1, 54-8b-2.2(1)(e) and 54-8b-16 and R746-100-3 of the Utah Administrative Code, moves the Public Service Commission of Utah (“Commission”) for expedited and emergency relief and petitions for resolution of a dispute between Level 3 and Qwest Corporation (“Qwest”) over the terms and conditions of the Interconnection Agreement between them.

MOTION

The Commission issued its Report and Order in Docket 02-2266-02 (“Order”) on February 20, 2004. That Order resolved certain disputed matters that were litigated in front of the Commission in the replacement Interconnection Agreement between Qwest and Level 3. However, at approximately the same time that they commenced their arbitration proceeding, Qwest and Level 3 encountered a recurring billing dispute and Qwest has attempted to retroactively enforce the terms of the new Interconnection Agreement to resolve the billing dispute that arose under the Old Agreement. Qwest is attempting to collect from Level 3 for direct-trunked facilities that carried ISP-bound traffic from Qwest to Level 3 during a period of time before the Commission’s Order was issued and before the new Interconnection Agreement that allowed the collection of such charges became effective.

Level 3 has paid Qwest all undisputed charges. It has fully complied with the Commission’s Order in that regard and is current on its accounts with Qwest under the new Interconnection Agreement. It has also engaged in discussions with Qwest to resolve the dispute, and although it remains unresolved, Qwest has never claimed that Level 3 is delinquent on the payment of any charges authorized under the current Interconnection Agreement or the Commission’ Order.

Despite Level 3’s numerous attempts to informally resolve this matter that arose under the terms of the now expired agreement, Qwest has now threatened to suspend all of Level 3’s service order activity and to disconnect Level 3’s services by June 28, 2005. (A copy of Qwest’s letter is attached as Exhibit “A.”) Level 3 is principally a wholesale provider of communications services. Disconnection of its interconnection with Qwest in Utah would leave Level 3’s customers and their end users throughout Utah without Internet access and the ability

to complete voice communications as well. Such a result would adversely affect the health, safety and welfare of Level 3's Utah customers and their end users who rely on the services that Level 3 provides in Utah. The Commission has authority under its general statutes to protect against such harm to Utah residents. The Commission also has authority under Section 54-8b-2.2(1)(e) to expedite resolution of disputes over the interconnection of essential facilities.

Level 3, therefore, requests that the Commission consider this matter on an expedited basis and order that Qwest not disconnect or discontinue service to Level 3. Level 3 further requests that the Commission order that now and in the future, Qwest must follow the applicable terms of its Interconnection Agreement and may not terminate or disturb service to Level 3 until and unless the matter has been heard and resolved in favor of Qwest in accordance with those procedures. Further grounds for Level 3's Motion and for its Petition for Relief are set forth below.

PETITION FOR RELIEF

PARTIES

1. Petitioner's full name and its official business address are as follows:

Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

Level 3 is a Delaware limited liability company, and it is authorized by the Commission to provide local exchange service in Utah.¹ Level 3 is, and at all relevant times has been a "local exchange carrier" ("LEC") under the Act.

¹ *In the Matter of the Application of LEVEL 3 COMMUNICATIONS, LLC for Authority to Operate as a Competitive Local Exchange Carrier Providing Resold Local Exchange Service, Docket No. 98-2266-01 (March 8, 1999).*

2. Qwest is a corporation organized and formed under the laws of the State of Colorado, having an office at 1801 California Street, Denver, Colorado, 80202. Qwest provides local exchange and other services within its franchised areas in Utah. Qwest (in current name or as U S WEST Communications, Inc.) is, and at all relevant times has been, a “Bell Operating Company” and an “incumbent local exchange carrier” (“ILEC”) under the terms of the Telecommunications Act of 1996 (“Act”).

JURISDICTION

3. The Commission has jurisdiction over Level 3’s Petition pursuant to the provisions of the Act and Utah Code Ann. §§ 54-4-1, 54-8b-2.2 and 54-8b-16.

STATEMENT OF FACTS

4. On or about September 7, 2000, Level 3 and Qwest entered into an interconnection agreement (“Old Agreement”) pursuant to the Act and Utah Code Annotated § 54-8b-2.2, which was subsequently approved by the Commission on January 10, 2001. Before the Old Agreement expired, Level 3 and Qwest began negotiations for a new interconnection agreement (“New Agreement”). The parties were unable to reach agreement on all issues of the New Agreement before the Old Agreement expired on June 26, 2001 and ultimately needed to arbitrate outstanding issues before the Commission.

5. The agreed upon Term of the Old Agreement was described as follows:

This Agreement shall be effective upon Commission approval and shall remain in effect until June 26, 2001 *and thereafter shall continue in force and effect unless and until a new agreement addressing all of the terms of this Agreement, becomes effective between the Parties*. Either Party may request resolution of open issues in accordance with the provisions of Section 27 of this Part A of this Agreement, Dispute Resolution, beginning nine (9) months prior to the expiration of this Agreement. Any disputes regarding the terms and conditions of the new interconnection agreement shall be resolved in accordance with said Section 27 and the resulting agreement shall be submitted to the Commission.

This Agreement shall remain in effect until a new interconnection agreement approved by the Commission has become effective.

Part A, Section 20.1 (emphasis added). Thus, the terms of the Old Agreement were to apply until the New Agreement was approved by the Commission.

6. The parties were able to agree to all the terms of the New Agreement except for one general issue. On August 6, 2002, Level 3 filed its Petition for Arbitration to resolve that one outstanding issue in the New Agreement. The arbitrated issue was whether or not ISP-bound traffic should count as Qwest originating minutes of use for the calculation of “relative use” of direct-trunked transport on Qwest’s side of the point of interconnection (“POI”). Docket No. 02-2266-02.

7. The only mention of a relative use factor in the Old Agreement was found in Section 5.1.2.4 of Attachment 1.² The relative use treatment in the Old Agreement was consistent with what Level 3 advocated be adopted in the New Agreement – that is, that the relative use of direct-trunked facilities reflect the originating minutes of use on the trunks. Because Qwest end-users originated all the traffic that was exchanged on the facilities in question and there was no exclusion of ISP-bound minutes, the Old Agreement does not provide any basis for Qwest to charge Level 3 for direct-trunked facilities deployed by the parties. None of the amendments that were made to the Old Agreement during its term, including the

² Section 5.1.2.4 of Attachment 1 states:

If the Parties’ elect to establish two-way direct trunks, the compensation for such jointly used ‘shared’ facilities shall be adjusted as follows. The nominal compensation shall be pursuant to the rates for direct trunk transport in Appendix A. The actual rate paid to the provider of the direct trunk facility shall be reduced to reflect the provider’s use of that facility. The adjustment in the direct trunk transport rate shall be a percentage that reflects the provider’s *relative use* (i.e. *originating minutes of use*) of the facility in the busy hour.

amendment implementing the FCC's *ISP Remand Order*,³ changed the manner in which relative use would be determined.

8. One of the sub-issues that arose during the course of the Arbitration proceeding was, once a relative use factor was determined pursuant to the terms of the New Agreement, should it be used on a prospective basis only or should there be a true-up that applied retroactively. Qwest proposed that the relative use factor should be used to retroactively adjust the initial billing quarter under the New Agreement. Level 3 argued that any new relative use factor should be used prospectively only.

9. On December 10, 2002, a hearing was held and testimony was received in the Arbitration proceeding.

10. On February 20, 2004, the Commission issued its Order, approving the New Agreement (a copy of the Order is attached hereto as Exhibit "B"). Although the Commission adopted Qwest's new proposed language that excludes ISP-bound traffic from the calculation of a relative use factor, it adopted Level 3's position prohibiting the retroactive application of the new factor that would be established by studying the traffic exchanged between the parties in the first three months of the term of the New Agreement. The Commission ordered that "the contract language be modified so that no true-up will be made and *the new relative use factors will apply prospectively only.*" (Emphasis added.)

11. From July 2002 to February 2004 ("Dispute Period"), roughly the same period of time that the parties arbitrated the question of whether the New Agreement should introduce language that excluded ISP-bound traffic from the calculation of originating minutes, Qwest

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, 16 FCC Rcd 9151, (2001) ("*ISP Remand Order*"), remanded *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002); *Internet Service Provider Bound Traffic Amendment to the Interconnection Agreement between Qwest Corporation and Level 3 Communications, LLC, for the State of Utah*, filed November 14, 2002.

billed Level 3 approximately \$563,616.99 in charges for interconnection trunks in Utah. Level 3 has consistently disputed such charges because there was no basis for them according to the terms of the Old Agreement. Although the parties have held multiple discussions in an attempt to resolve the dispute, they have been unable to reach any agreement as a result of those discussions.

12. On June 13, 2005, Qwest sent to Level 3 its demand letter denying Level 3's dispute, demanding payment of \$563,616.99, and threatening suspension of all service order activity and disconnection of services, effective June 28, 2005. See Exhibit "A".

13. Level 3 has paid Qwest all undisputed charges during the Dispute Period and after the effective date of the New Agreement.

14. In violation of the terms of the Old Agreement, which were in effect during the Dispute Period, and in violation of the Commission's Order, which prohibited retroactive application of the new relative use calculations, Qwest is attempting to exclude ISP-bound traffic from its originating minutes of use and impose direct-trunked transport charges on Level 3 during the Dispute Period. As a result, Qwest claims that Level 3 is in default by \$563,616.99.

15. Also in violation of both the Old and the New Agreements, Qwest is threatening to disconnect services to Level 3, effective June 28, 2005. Level 3 and its customers would be irreparably harmed by such action. Disconnection of Level 3's interconnection with Qwest would result in the elimination of Internet access and voice telephony for Level 3's customers and for many Utah end users for whom Level 3 provides underlying services. The result would be to jeopardize the health, safety and welfare of a group of customers without just cause and without giving those customers a chance to make other arrangements for their communications services. Moreover, by disrupting Level 3's service, Qwest would cause

damage to Level 3's reputation among its customers as a reliable service provider, with accompanying economic harm to Level 3 that would be incalculable and irreparable.

REQUEST FOR RELIEF

WHEREFORE, Level 3 respectfully requests that the Commission grant the following relief:

A. That on or before June 28, 2005, the Commission enjoin Qwest from taking any actions with respect to Level 3's accounts with Qwest, including, but not limited to, the suspension of service order activity and disconnection of services, and that the Commission rule that Qwest may not in the future disconnect or terminate service to Level 3 without first complying with the procedures set forth in the applicable Interconnection Agreements.

B. That the Commission issue an order declaring that Level 3's payments are current for the Disputed Period and that Qwest cannot bill or collect from Level direct-trunked transport charges based on the exclusion of ISP-bound traffic from Qwest originating minutes of use during the Disputed Period.

C. That the Commission retain jurisdiction of this matter and the parties hereto until Qwest has complied with all relevant Commission orders.

D. That the Commission take such other and further actions as it deems necessary and appropriate.

DATED this ____ day of June, 2005.

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Level 3 Communications, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of June, 2005, I caused a true and correct copy of the foregoing **PETITION OF LEVEL 3 COMMUNICATIONS, LLC FOR ENFORCEMENT OF THE INTERCONNECTION AGREEMENT BETWEEN QWEST AND LEVEL 3 AND MOTION FOR EXPEDITED RELIEF** to be sent in the following manner:

Via Hand Delivery

Ted D. Smith
Stoel Rives
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111

Via Hand Delivery

Michael Ginsberg
Assistant Attorney General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84111

PETITION OF LEVEL 3 COMMUNICATIONS, LLC

EXHIBIT A

PETITION OF LEVEL 3 COMMUNICATIONS, LLC

EXHIBIT B