Robert C. Brown
Qwest Services Corporation
1801 California, 10th Floor
Denver, CO 80202
(303) 383-6642
(303) 296-3132 (fax)
robert.brown@qwest.com

Ted D. Smith (3017)
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
(801) 328-3131
(801) 578-6999 (fax)
tsmith@stoel.com

Attorneys for Qwest Corporation

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN RE:	:	Docket No. 05-2266-01
	:	
PETITION OF LEVEL 3 COMMUNICATIONS, LLC FOR ENFORCEMENT OF THE INTERCONNECTION AGREEMENT BETWEEN QWEST AND LEVEL 3	:	**QWEST CORPORATION'S RESPONSE TO LEVEL 3's PETITION FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT AND MOTION FOR EXPEDITED RELIEF**
	:	
	:	**QWEST'S CORPORATION'S COUNTERCLAIM AGAINST LEVEL 3 FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT**
	:	

Qwest Corporation ("Qwest") hereby responds to the Petition of Level 3 Communications, LLC ("Level 3's") Petition for Enforcement of The Interconnection Agreement Between Qwest and Level 3 And Motion For Expedited Relief ("Petition).

I. QWEST'S RESPONSE TO LEVEL 3'S PETITION

A. Response to Motion and Introductory Paragraphs

Level 3's Petition ignores critical provisions of the Federal Telecommunications Act (the "Act") and ignores the reasoning of this Commission in its most recent arbitration decision with Level 3. In doing so, Level 3 turns both law and logic on its head. Qwest files its Response, and comes before this Commission after nearly three years of discussing, negotiating, and often prodding Level 3 over a straightforward issue: the payment Level 3 owes Qwest for the purchase of Direct Trunk Transport ("DTT") facilities purchased by Level 3 as part of its interconnection agreement ("ICA") with Qwest.

For its part, Qwest has been attempting to obtain payment for these facilities since July of 2002 when Level 3 ordered them from Qwest. Level 3 refused to pay a single penny for these DTT facilities between July of 2002 and February 7, 2004 (the "dispute period") until this Commission ordered them to do so on February 20, 2004 pursuant to the requirements of the Act during an arbitration over the same issue in the context of the parties' new ICA.[1] Although the Commission's Order following the parties' arbitration was to clarify the prospective terms of the parties' new ICA, the Commission's sound economic reasoning applied equally to the DTT facilities purchased during the dispute period as well. But, instead of acknowledging this fact, and instead of negotiating this dispute in good faith with Qwest, Level 3 has persistently refused to acknowledge that it owes even a single penny for these facilities during the dispute period.

[1] Report and Order, *In the Matter of Level 3 Communication, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunication Act of 1996 with Qwest Corporation Regarding Rates, Terms, and Conditions for Interconnection,* Docket No. 02-2266-02 (Utah PSC February 20, 2004)

Despite its past history of non-negotiation over this issue, Level 3 filed its Petition claiming the need for "emergency relief." There is no emergency here, other than one of Level 3's own making.[2] Qwest readily acknowledges that it sent Level 3 a notice of default on June 13, 2005, and that this letter demanded payment for the DTT facilities purchased by Level 3 during the dispute period. Because negotiations aimed at resolving the disputed period bills were unsuccessful, Qwest had no choice but to resume its collection efforts. Qwest also concedes that this letter informed Level 3 that Qwest would suspend further order activity, and would eventually disconnect Level 3 if payment was not made. This letter, however, was sent because Level 3 has persistently refused to acknowledge any responsibility for these DTT facilities, and because Qwest has been unable to resolve this dispute despite its repeated attempts to negotiate with Level 3 during the past year. Qwest simply had no choice but to send this letter. And, importantly for the purposes of this proceeding, Qwest sent this default letter to Level 3 pursuant to the terms and conditions of the parties' ICA. Had Qwest not sent this letter, and had it taken some alternative action to collect these past due amounts, Level 3 would surely have argued that Qwest was discriminating against it by refusing to follow the ICA. Failure to follow this process could also have exposed Qwest to discrimination claims from other CLECs who are also in default with Qwest and who have faced the same disconnection process.

In any event, there is no emergency here, but the parties have agreed that it is important to move forward expeditiously on this matter. In that regard, Qwest has again

[2] Level 3 has no end user customers that exchange voice traffic with Qwest. Thus, its allegations about the health, safety and welfare of its customers are not credible and Qwest specifically denies each of those allegations.

agreed that it will not suspend order activity by Level 3, and it will not disconnect Level 3 during the pendency of this proceeding. Qwest supports the need for expedited relief pursuant to the terms of Utah Code Ann. § 54-8b-17 and requests that the Commission enforce the terms of the parties' ICA by declaring that Level 3 is obligated to immediately pay the $563,616.99 billed by Qwest during the dispute period. After all, Qwest has been waiting on payment for these DTT facilities purchased by Level 3 since July of 2002.

B. Response to Parties and Jurisdictional Paragraphs

1. Qwest admits the allegations of paragraph 1.

2. Qwest admits the allegations of paragraph 2, with the exception that under both state and federal statutes the concept of "franchised areas" no longer exists in the sense of a territory in which a carrier has exclusive rights to serve customers. Qwest admits that it provides local exchange and other services in specific geographic areas of Utah.

3. Qwest admits the allegations of paragraph 3.

C. Response to Level 3's Statement of Facts

4. With regard to paragraph 4, Qwest admits that pursuant to the Telecommunications Act of 1996 (the "Act") Level 3 and Qwest entered into an ICA resulting from Level 3 opting into another ICA that had been approved by the Commission. The ICA between Level 3 and Qwest was filed with the Commission and was approved on January 10, 2001. Qwest also admits that the parties' negotiated a new ICA and that there was a single issue in dispute between the parties (the same issue that is

in dispute here) that was resolved in Qwest's favor during the arbitration over this term in the new ICA.

5. With regard to paragraph 5, Qwest admits that the January 10, 2001 Agreement between the parties' contained a term with the quoted language. Qwest states that this quoted language speaks for itself as do all other provisions of the ICA.

6. With regard to paragraph 6, Qwest admits that the parties were able to reach agreement on all but one issue and that the parties' resolved that issue during their arbitration. That issue was ruled on by the Commission in Qwest's favor in the February 20, 2004 Order.

7. With regard to the allegations of paragraph 7, Qwest admits, based on information and belief, that all minutes of use were generated by Qwest customers who were also the customers if ISPs served by Level 3. The remaining allegations of paragraph 7 contain legal conclusions to which no response is required. Qwest further states that the terms of the old ICA, as referenced in the first sentence of this paragraph, speak for themselves.

8. Qwest admits the allegations of paragraph 8, but denies that the issue discussed therein is relevant to the issues of this case.

9. Qwest admits the allegations of paragraph 9.

10. With regard to paragraph 10, Qwest admits that Exhibit B is the Commission's Order, and that the language quoted in the final sentence of paragraph 10 is a correct quotation of a portion of the Order. The remaining allegations of paragraph 10 are legal conclusions to which no response is required. Qwest affirmatively states that the issue regarding the true-up based on a new relative use factor determined by studying

traffic during the first three months of the new ICA relates *only to those first three months of the New Agreement*. Qwest also affirmatively states that the Commission's Order addressed the prospective application of the new ICA, but its reasoning was based on the Act and its principles are reflected in the terms and conditions found in the old ICA as well. Thus, the Commission's Order applies equally to the disputed period as well.

11. With regard to the allegations of paragraph 11, Qwest admits that it billed Level 3 for the DTT facilities it purchased from Qwest during the dispute period, that such charges total approximately $563, 616.99, that Level 3 has refused to pay for these DTT facilities it purchased during the dispute period, and that the parties' have held multiple discussions in an attempt to resolve this dispute without success. Qwest denies the allegation that there was no basis for these charges.

12. Qwest admits the allegations of paragraph 12. Qwest further submits that it sent initial collections notices to Level 3 on June 14, 2004 over the same dispute.

13. Qwest admits the allegations of paragraph 13, but Qwest affirmatively states that during the disputed period, Level 3 made no payments for the DTT facilities at issue in this matter.

14. Qwest denies the allegations of paragraph 14, and affirmatively states that (1) Qwest is not violating the terms of the old ICA, the Commission's Order, or applying the Order retroactively; (2) Qwest is, consistent with the law and the governing agreement, excluding ISP-bound traffic from the relative use of the DTT facilities purchased by Level 3 during the dispute period; and (3) Level 3 is in default for its failure to pay the $563,616.99 that it owes for the DTT facilities it purchased from Qwest.

15. Qwest denies the allegations in paragraph 15 of the Complaint. Qwest affirmatively states that it is following the collections activities on unpaid balances pursuant to the ICA and its standard billing procedures. Qwest denies that any disconnection activity (which Qwest has agreed to suspend pending the resolution of the dispute now in front of the Commission) would impact Level 3 voice customers in Utah as Level 3 has no voice traffic being exchanged with Qwest. Thus, Level 3's allegations relating to the health, safety and welfare of its customers is without substance. Moreover, any damage to Level 3's reputation among its customer rests solely upon its own decision to refuse to pay Qwest for facilities it has purchased from Qwest and that Qwest is rightfully entitled to be compensated for.

D. Response to Level 3's Requested Relief

Qwest requests an order of the Commission denying Level 3's requested relief. Qwest also request an order from this Commission affirmatively declaring that Level 3 is required to pay the charges incurred during the dispute period which were incurred as a result of Level 3's purchase of DTT facilities from Qwest.

E. Qwest's Affirmative Defenses

1. Level 3's claims and requests for emergency relief, while unfounded and exaggerated, are moot.

2. Level 3's Petition fails to state a claim upon which relief can be granted.

3. Qwest's actions in this matter in demanding payment is consistent with prior Commission decisions, as reflected in the old ICA language and the activities it has undertaken are in compliance with dispute resolution and collections actions available to it under the ICA.

II. QWEST'S COUNTERCLAIM AGAINST LEVEL 3

Qwest, pursuant to the provisions of Utah Code Annotated §§ 63-46b-3, 63-46b-6, 54-4-1, 54-8b-2,2(1)(e), and 54-8b-16 and R746-100-3, hereby counterclaims against Level 3 for resolution of a dispute over the terms and conditions of the ICA between the parties in effect during the period from July 2002 through February 20, 2004 (referred to herein as the "Old Agreement"). In support of this Counterclaim, Qwest hereby alleges as follows:

1. Qwest's Counterclaim arises out of the same set of facts and the same ICA (the Old Agreement) that is the subject of Level 3's Petition against Qwest.

2. The Commission has jurisdiction over this Counterclaim pursuant to the provisions of the 1996 Federal Telecommunications Act (the Act) and Utah Code Ann. §§ 63-46b-3, 63-46b-6, 54-4-1, 54-8b-2,2(1)(e), and 54-8b-16.

3. Prior to the Commission's decision in Docket No. 02-2266-02, Qwest took the position that, pursuant to paragraph 1.3.1 of the SPOP Amendment to the Old Agreement, paragraph 5.1.2.4 of the Old Agreement, and other provisions of the Agreement in light of prior decisions of the Utah Commission, Level 3 was responsible for the proper rates for Direct Trunked Transport ("DTT") provided by Qwest to transport traffic to Level 3 in Utah because all or virtually all traffic delivered to Level 3 in Utah was traffic bound for the Internet.

4. Qwest billed Level 3 on a monthly basis for DTT services at the rates established for those services by the Commission, and as incorporated into the Parties' ICA.

5. Level 3 refused to pay those bills when rendered and to date has made no payment to Qwest for the DTT services provided to Level 3 by Qwest from July 2002 through February 20, 2004, when the New Agreement became effective.

6. The principal amount of those bills is $563,616.99.

7. The Commission's reasoning in its order in the Docket No. 02-2266-02, wherein it interpreted the Act and set forth the underlying basis for its decision to exclude ISP-bound traffic from the relative use factor in the New Agreement, applies with equal force and effect to the provisions of the Old Agreement, and the language of the Old Agreement is consistent with that decision and the concepts which underlie the decision.

8. Thus, ISP-bound traffic should likewise be excluded from the application of the relative use factor under the Old Agreement. Given the fact that all or virtually all of the traffic delivered to Level 3 over the DTT services was ISP-bound, Level 3 is financially responsible under the ICA to Qwest for all DTT charges for the period from July 2002 through February 20, 2004.

9. Given the fact that the issues in this Counterclaim mirror the issues raised by Level 3 in its claim against Qwest, and arise from the same set of facts, it will not burden Level 3 or the Commission to consider the issues raised in this Counterclaim under the procedural schedule already established herein.

10. Qwest's actions in this matter in demanding payment is consistent with prior Commission decisions, as reflected in the language of the Old Agreement and the activities it has undertaken are in compliance with dispute resolution and collections actions available to it under that Agreement.

QWEST'S REQUEST FOR RELIEF

WHEREFORE, Qwest respectfully requests that the Commission grant the following relief on Qwest's Counterclaim:

A. The Commission issue an order declaring that, pursuant to the Old Agreement, Level owes Qwest the sum of $563,616.99, plus interest as allowed under the that agreement, for DTT services as described herein.

B. That the Commission take such other and further actions as it deems necessary and appropriate within it jurisdiction.

RESPECTFULLY SUBMITTED: July 6, 2005.

_____

Ted D. Smith
Stoel Rives LLP

Robert C. Brown
Qwest Services Corporation

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **QWEST CORPORATION'S RESPONSE TO LEVEL 3's PETITION FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT AND MOTION FOR EXPEDITED RELIEF; QWEST'S CORPORATION'S COUNTERCLAIM AGAINST LEVEL 3 FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT** was served upon the foregoing, on this 6th day of July, 2005.

By Hand Delivery and electronic service to:

William J. Evans
Vicki M. Baldwin
PARSONS, BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898

By U.S. Postal Service, postage prepaid to:

Gregory L. Rogers
LEVEL 3 COMMUNICATIONS, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

By U.S. Postal Service, postage prepaid and electronic service to:

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

_____