

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Ken Nickolai  
Tomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Complaint of Level 3  
Communications, LLC (Level 3) Against  
Qwest Corporation (Qwest) Regarding  
Compensation for ISP-Bound Traffic

ISSUE DATE: June 3, 2005

DOCKET NO. P-421/C-05-721

ORDER ASSERTING JURISDICTION,  
DENYING REQUEST FOR TEMPORARY  
RELIEF, AND REFERRING MATTER TO  
OFFICE OF ADMINISTRATIVE HEARINGS

**PROCEDURAL HISTORY**

On May 9, 2005, Level 3 Communications, LLC (Level 3) filed a complaint alleging that Qwest Corporation (Qwest) had –

- failed to pay Level 3 for calls originating on Qwest's network and terminating to an internet service provider (ISP) on Level 3's network, in violation of the interconnection agreement between Level 3 and Qwest,
- failed to negotiate in good faith an amendment to the agreement reflecting change in law, and
- threatened to interrupt service.

Level 3 requested, among other things, temporary relief enjoining the interruption of service, expedited proceedings to address its complaint, and compensation.

On May 23, 2005, Qwest filed an answer denying the bulk of Level 3's allegations and opposing the requested relief. Qwest also complained that Level 3 was circumventing the terms of their interconnection agreement by –

- using the local interconnection service cables (LIS trunks) connecting their two networks inappropriately,
- assigning telephone numbers inappropriately, and
- failing to abide by the interconnection agreement's amendment process.

The Commission met on May 24, 2005, to consider this matter.

## FINDINGS AND CONCLUSIONS

### **I. BACKGROUND**

#### **A. The Parties**

Qwest is an incumbent local exchange carrier providing retail telecommunications service to business and residential customers, and wholesale service to competitive local exchange carriers.

Level 3 is a competitive local exchange carrier specializing in providing retail telecommunications service to internet service providers (ISPs). “Dial-up” ISP customers connect to the internet by calling their ISP over their phone lines.

#### **B. Local vs. Long Distance Calls**

To permit the customers of one telecommunications carrier to call the customers of another carrier, the carriers must interconnect their networks and complete calls originated by the other carrier’s customers.<sup>1</sup> The financial consequences for such inter-carrier calls vary depending on whether the call is local or long distance. In the case of a local call, the caller’s carrier pays “reciprocal compensation” to the called party’s carrier for completing the call.<sup>2</sup> But in the case of a long-distance call, the caller’s long distance carrier pays “access charges” to both of the local carriers for the use of their networks to originate and terminate the long-distance call.<sup>3</sup>

#### **C. Interconnection Agreement**

In 2003 the Commission approved the current interconnection agreement between the parties, setting forth the terms under which they would interconnect and exchange calls.<sup>4</sup> The agreement includes –

- the types of calls that the parties will route over the LIS trunks to be completed on the other party’s network,
- a statement that each party is responsible for how it assigns telephone numbers to its

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<sup>1</sup> 47 U.S.C. § 251(a)(1).

<sup>2</sup> 47 U.S.C. § 251(b)(5); 47 C.F.R. § 51.701 *et seq.*

<sup>3</sup> 47 C.F.R. Part 69.

<sup>4</sup> *In the Matter of the Petition of Level 3 Communications, LLC for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. P-5733, 421/IC-02-1372 (March 3, 2003), amended *In the Matter of the Application of the August 8, 2003 Amendment Interconnection Agreement between Level 3 Communications LLC and Qwest Corporation (Originally Approved in Docket No. P-5733, 421/IC-02-1372); Setting Forth the Terms and Conditions for a Single Point of Presence (One Physical Point) in the LATA to Exchange Traffic*, Docket No. P-5733, 421/IC-03-1296 (September 2, 2003).

- customers, and for providing the data necessary for routing calls, the compensation that each party will pay the other for completing a call originating on the party's network,
- deadlines by which each party must make payments to the other, and the charges for late payments,
- prohibitions on discontinuing service to each other absent Commission approval, and
- provisions for conforming the agreement to subsequent changes in law.

## II. LEVEL 3's COMPLAINT

Level 3 seeks compensation for calls originating on Qwest's network and terminating to ISPs on Level 3's network. While the Federal Communications Commission (FCC) had previously limited the duty of telephone companies to make such payments,<sup>5</sup> Level 3 says that the FCC reversed this policy in 2004.<sup>6</sup> Level 3 claims to have sought to use the interconnection agreement's change-in-law provision to implement this new policy, but alleges that Qwest has not acted in good faith to facilitate the change.

Level 3 also objects to Qwest's demand that LIS trunks not be used for transmitting certain calls to Level 3's customers, and to Qwest's threats to block such calls.

In relief, Level 3 asks the Commission to –

- immediately bar Qwest, pursuant to Minnesota Statutes § 237.462, subdivision 7, from interrupting the parties' exchange of ISP-bound traffic,
- set this matter for an expedited proceedings pursuant to Minnesota Statutes § 237.462, subdivision 2,
- direct Qwest to accept Level 3's amendment to the interconnection agreement implementing the FCC's new policy,
- direct the parties to recalculate their bills to each other based on this new amendment, from the effective date of the FCC's new policy until the present, including late payment charges, and
- fine Qwest pursuant to Minnesota Statutes §§ 237.461 and 237.462, award attorney fees to Level 3, and order other relief as appropriate.

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<sup>5</sup> *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, CC Docket No. 99-68, 16 FCC Rcd. 9151 (rel. April 27, 2001).

<sup>6</sup> *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, Order, FCC 04-241, WC Docket No. 03-171 (rel. Oct. 18, 2004) (*Core Forbearance Order*).

### **III. QWEST'S ANSWER AND CROSS-COMPLAINT**

In answer to Level 3's complaint, Qwest acknowledges that the law has changed regarding the duty to pay compensation for local calls terminating to ISPs. But Qwest disputes Level 3's contention that the FCC requires originating carriers to pay reciprocal compensation for long-distance calls to ISPs.

Qwest also acknowledges difficulty in distinguishing between local and long-distance ISP-bound calls. According to Qwest, Level 3 assigns phone numbers to ISPs in a manner designed to obscure when ISP subscribers make long distance call to their ISPs. Qwest denies that it has an obligation to pay reciprocal compensation for such long-distance calls, and Qwest objects to the use of LIS trunks to route such calls because the parties' interconnection agreement does not provide for this usage.

Qwest denies that it has threatened to block calls to Level 3's subscribers unilaterally, and notes that the parties' interconnection agreement requires Qwest to secure Commission approval before interrupting service. Qwest does not, however, waive its right to pursue any appropriate remedy available to it.

Consistent with its answer, Qwest complains that Level 3 is billing Qwest pursuant to Level 3's proposed amendment to the interconnection agreement when that amendment has not yet been implemented pursuant to the agreement's change-in-law provision. Qwest alleges that Level 3 is assigning telephone numbers in a manner designed to frustrate implementation of the interconnection agreement. And Qwest objects to Level 3 using the LIS trunks to receive certain long-distance calls when those calls are not provided for in the interconnection agreement.

As a remedy, Qwest asked the Commission to –

- dismiss Level 3's complaint as premature, deny the request for expedited proceedings, and deny the requested relief,
- enjoin Level 3's practice of assigning telephone numbers,
- direct Level 3 to abide by the interconnection agreement's terms for amending the agreement, and
- penalize Level 3 pursuant to Minnesota Statutes § 237.462 and order other relief as appropriate.

### **VI. DEPARTMENT OF COMMERCE COMMENTS**

At the hearing, the Minnesota Department of Commerce (the Department) stated that the current state of the record, as well as the short time for analysis, provided an insufficient basis for evaluating Level 3's complaint or Qwest's counter-claim. The Department did not oppose sending the matter to the Office of Administrative Hearings (OAH) for further development.

## V. COMMISSION ANALYSIS AND ACTION

### A. Jurisdiction

Minnesota Rules part 7829.1800, subpart 1, states that:

The commission shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation. On concluding that it lacks jurisdiction or that there is no reasonable basis to investigate the matter, the commission shall dismiss the complaint.

The complaint and cross-complaint were filed pursuant to Minnesota Statutes §§ 237.081 and 237.462, and address local service issues involving intrastate tariffs and interconnection agreements. The Commission has jurisdiction to interpret and enforce the terms of interconnection agreements pursuant to 47 U.S.C. § 252(e), which “vests in the state commissions the power to enforce the interconnection agreements they approve.”<sup>7</sup>

The Commission concludes that the complaint and cross-complaint fall within the Commission’s jurisdiction. In addition, based on a review of the pleadings and arguments by the parties at hearing, the Commission concludes that there is a reasonable basis for investigation.

### B. Temporary Relief

Level 3 asks that the Commission order Qwest not to interrupt Level 3's service while this complaint is pending. This request will be denied.

To grant such temporary relief the Commission must find, among other things, that “the order is necessary to protect the public’s interest in fair and reasonable competition....”<sup>8</sup> As noted above, Qwest denies that it threatened to interrupt Level 3's service. Moreover, Qwest acknowledges that the parties’ interconnection agreement requires Qwest to secure Commission approval before discontinuing service. Consequently, the record reveals no imminent threat to the public’s interest or to fair and reasonable competition. Absent such a showing, the Commission finds it premature to rule on whether Qwest should be barred from interrupting Level 3's service in the future. The interconnection agreement sets forth the appropriate process for addressing that issue, should the need arise.

### C. Referral to the Office of Administrative Hearings

As the Department notes, the current record is not adequately developed to allow the Commission to reach the merits regarding Level 3's or Qwest’s requests for permanent relief. The Commission will

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<sup>7</sup> *Iowa Util. Bd. v. FCC*, 120 F.3d 753, 803 (8<sup>th</sup> Cir. 1997), aff’d in part, rev’d in part on other grounds, *AT&T Corp. v. Iowa Util. Bd.*, 525 U.S. 366 (1997); see also *Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 946 (8<sup>th</sup> Cir. 2000).

<sup>8</sup> Minn. Stat. § 237.462, subd. 7(c).

therefore refer this matter to the OAH for a contested case proceeding regarding Level 3's complaint and Qwest's counter-claims. The Commission will ask the Administrative Law Judge (ALJ) assigned to this matter to develop the record and make recommendations regarding Level 3's and Qwest's requests for permanent relief.

**ORDER**

1. The Commission finds that the complaint and cross-complaint lie within the Commission's jurisdiction and that there is a reasonable basis for investigation.
2. Level 3's petition for temporary relief is denied.
3. This matter is referred to the Office of Administrative Hearings for record development and recommendations by an Administrative Law Judge on the issues raised in Level 3's complaint and Qwest's counter-claims.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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