

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Level 3 Communications,  
LLC's Petition for Arbitration Pursuant to  
Section 252(b) of the Communications Act of  
1934, As Amended by the Telecommunications  
Act of 1996, and the Applicable State Laws For  
Rates, Terms, and Conditions of  
Interconnection with Qwest Corporation

ISSUE DATE: February 8, 2006

DOCKET NO. P-5733,421/1C-06-49

ORDER REFERRING MATTER TO OAH  
FOR ARBITRATION

**PROCEDURAL HISTORY**

Since its operations in Minnesota began, Level 3 Communications, LLC (Level 3) has operated under the terms and conditions of an interconnection agreement with Qwest Corporation (Qwest).

On August 8, 2005, Level 3 sent Qwest a request to negotiate a new interconnection agreement. On January 17, 2006, having failed to reach agreement on all of the issues submitted for negotiation, Level 3 filed a request for arbitration of unresolved issues pursuant to Minn. Rules Part 7812.1700.

The matter came before the Commission on February 2, 2006.

**FINDINGS AND CONCLUSIONS**

**I. Level 3's Petition**

Level 3 asserts that although the negotiations with Qwest were successful in resolving a number of disputed issues, the negotiations ultimately left 22 issues unresolved:

1. Does each party bear its own costs of exchanging traffic at a Single Point of Interconnection (SPOI) per LATA?
2. May Level 3 exchange all traffic over the interconnection trunks established under the ICA?
3. Does Qwest's election to be subject to the *ISP Remand Order* for the exchange of ISP-bound traffic require Qwest to compensate Level 3 for ISP-bound traffic at the rate of \$0.0007 per minute?
4. Should Qwest and Level 3 compensate each other at the rate of \$0.0007 per minute for the exchange of IP-enabled or VOIP traffic?

5. Should the ICA incorporate by reference, interconnection terms and conditions that conflict with the specific terms of the ICA at issue in this proceeding?
6. Should the ICA provide that Automated Message Accounting (AMA) records are inherent in the parties' network?
7. Should the ICA provide that End User Customers are those customers that are on the public switched telecommunications network (PSTN), and that end users only exchange calls to or from the PSTN?
8. Should the parties be permitted to agree on the types of call record information?
9. What is the proper definition of "exchange access"?
10. Should the definition of "Interconnection" include terms that would exclude the parties from exchanging VOIP traffic, and certain ISP-bound traffic?
11. Should the definition of "Interexchange Carrier" be defined by relying on a type of traffic that is defined by the federal Act?
12. Should the ICA define "IntraLATA Toll Traffic" using terms defined in the federal Act?
13. Should the ICA contain a definition of a term that is used by Qwest to shift to Level 3 the costs of Qwest's facilities on Qwest's side of the POI?
14. Should the definition of "Telephone Exchange Service" be defined based on the unknown geographic physical location of the originating and terminating caller, or should it mirror the federal Act?
15. Should the definition of "Telephone Toll Service" be defined based on the federal Act definition?
16. Should the definition of "VOIP" contain substantive terms that limit the circumstances in which the parties will exchange traffic?
17. Is Level 3 required to forecast and manage the capacity requirements of Qwest's network facilities and trunks on the Qwest side of the POI?
18. May the parties rely upon jurisdictional allocation factors to identify the compensation for the types of the traffic exchanged?
19. What method should the parties use to determine what traffic is ISP-bound?
20. In identifying IP-enabled traffic should the parties allow for call records that include information other than Calling Party Number (CPN)?
21. When ordering Interconnection should Level 3 pay the costs of trunks and facilities on Qwest's side of the POI?

22. May Qwest compel Level 3 to incur special construction charges for work completed on Qwest's facilities and network on Qwest's side of the POI?

## **II. Decision to Arbitrate**

### **A. Background**

Section 252(b)(1) of the federal Telecommunications Act of 1996 (the Act)<sup>1</sup> establishes the right of a negotiating party to request arbitration from a State commission:

During the period from the 135<sup>th</sup> to the 160<sup>th</sup> day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(2)(A) of the Act imposes three conditions for a valid arbitration filing. First, the petitioner must be a party to the negotiations. Second, the petitioner must file its request within the prescribed 135 to 160 day window following the request for negotiation. Finally, the petitioner must include as part of its petition all relevant documentation concerning the issues and the parties' positions on those issues.

### **B. Commission Action**

The Commission finds that Level 3 has met all three conditions in the Act as well as the more specific filing requirements of Minn. Rules, Part 7812.1700, subp.1. First, Level 3 is one of the two parties to the negotiation. Second, Level 3 filed its petition in a timely manner.<sup>2</sup> Finally, Level 3's petition clearly states the issues it has submitted for arbitration and states the position of the parties on each issue.

Therefore, Level 3 meets the three conditions for arbitration filings under the Act, and the Commission grants the request for arbitration.

## **III. Assignment of Arbitrator**

The Commission will send this matter to the Office of Administrative Hearings for arbitration proceedings under Minn. Rules, Part 7812.1700. The Administrative Law Judges assigned to this arbitration are Kathleen Sheehy and Steve M. Milhalchick.

The Commission requests that the arbitrators conduct the arbitration consistent with the Commission's arbitration rules, Minn. Rules Part 7612.1700.

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<sup>1</sup> Pub.L.No. 104-104, 110 Stat. 56, codified in various sections of Title 47, United States Code.

<sup>2</sup> Level 3 filed its petition January 17, 2006, 162 days after its request for negotiation. As the 160<sup>th</sup> day fell on a weekend, January 17<sup>th</sup> was the first business day following the 160<sup>th</sup> day.

Minn. Rules, Part 7812.1700, subp.16 provides that the assigned arbitrator must hold at least one prehearing conference no later than ten days after the response to the petition is received. In this case, Qwest's response must be filed no later than February 13, 2006. The parties agree that all timelines in this matter will be set by the Administrative Law Judges.

**ORDER**

1. The Commission hereby assigns this matter to the Office of Administrative Hearings for arbitration. The arbitrators are Administrative Law Judge Kathleen Sheehy and Steve M. Milhalchick. The arbitrators are requested to conduct the arbitration consistent with the Commission's arbitration rules, Minn. Rules, Part 7812.1700.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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