

May 31, 2007

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: 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

Dear Ms. Van Gerpen:

Enclosed for filing is Level 3 Communications, LLC's Reply Comments regarding the above-referenced matter.

If you have any questions, please do not hesitate to call the undersigned at 303-295-8461 or Richard Thayer at Level 3 Communications.

Very truly yours,



Mary B. Tribby
for Holland & Hart LLP

MBT:sc

Enclosures

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**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.**

Docket No.: TC06-007

LEVEL 3 COMMUNICATIONS, LLC'S REPLY COMMENTS

Level 3 Communications, LLC ("Level 3") hereby replies to Qwest Corporation's ("Qwest") Response to Level 3's Notice of Adoption of Qwest's Statement of Generally Available Terms and Conditions ("SGAT").

I. Qwest has Completely Misconstrued Level 3's Filing

As Level 3 makes clear in its Notice of Adoption of Qwest's SGAT, Level 3 wishes to opt into a current version of Qwest's SGAT. Qwest has argued in other states that it has not taken the time or made the effort to update its SGAT for years, and indicates in its Response that it will make the same argument in South Dakota.¹ As discussed in sections II-III below, Level 3 does not believe that there exists any legal support for Qwest's failure to make available to competitors a current and updated SGAT in South Dakota. However, Level 3 also wishes to clear up any confusion about its request to opt into Qwest's SGAT.

Level 3's Notice asks Qwest to "identify docket numbers and Commission approval dates of all operative components of the SGAT."² Level 3 then lists some components of agreements

¹ Qwest's Response, p. 2.

² Level 3's Notice, p. 4.

that it believes Qwest has agreed to with other competitors in South Dakota. However, Level 3 did not intend nor did it request to opt into any of these agreements or exhibits to these agreements unless they are part of a current SGAT approved by the South Dakota Commission. Although Level 3 has seen filings related to these components, it has no way of knowing whether these were part of a Commission review and approval of an SGAT, or whether they were voluntarily negotiated between Qwest and other carriers. Further, Level 3 has not even had the opportunity to review these agreements and exhibits to know what they contain. Instead, Level 3 wishes to opt into a Commission-approved SGAT in South Dakota that is current and up to date.

Agreements or exhibits that may have been approved or allowed to go into effect between two carriers do not constitute an SGAT. By its very terms, an SGAT is a statement of terms and conditions generally available to all carriers. Hence, an SGAT must go through an approval process by which all carriers are given an opportunity to comment in order to constitute an approved SGAT filing. This is the process that has been followed by the South Dakota Commission for all prior SGAT versions and exhibits in this state.³ Further, agreements adopted by voluntary negotiation and approved by the Commission under 47 U.S.C. § 252(a)(1) need not satisfy the requirements of section 251 even though the SGAT must under § 252(f). Therefore, unless the agreements and exhibits listed by Level 3 and referenced by Qwest have been

³ See, e.g., *In the Matter of the Filing By Qwest Corporation of Its Notice of Modifications to Exhibit B and Motion to Modify the Qwest Performance Assurance Plan Found in Exhibit K to its Statement of Generally Available Terms and Conditions*, Docket TC04-257, 2005 S.D. PUC LEXIS 28 (March 28, 2005); *In the Matter of the Filing by Qwest Corporation of its Notice of Deletion of Exhibit B-1 and Modifications to Exhibit B of its Statement of Generally Available Terms and Conditions (SGAT) and Motion to Modify the Qwest Performance Assurance Plan Found in Exhibit K of its SGAT*, Order Approving Amendments to Exhibit B and the QPAP, TC04-201 (Nov. 4, 2004); *In the Matter of the Filing by Qwest Corporation of its Notice of Modification to the Statement of Generally Available Terms and Conditions (SGAT) Exhibit B, Notice of Qwest's Changes to its Performance Assurance Plan and Motion for Tier Designation, Volume Differentiated Benchmark and Measurement Stabilization Period for the Revised PID PO-20*, Docket TC-04-110 (Nov. 4, 2004).

analyzed and approved specifically as part of an SGAT approval process, they do not satisfy the conditions for the SGAT which Level 3 requests to opt into.

II. Qwest is Legally Obligated to Allow Level 3 to Opt Into a Current South Dakota SGAT.

Qwest's objection to Level 3's request to opt in to its SGAT in other states, and the objection it apparently intends to make here since it has not submitted an SGAT for approval to the South Dakota Commission since February of 2004,⁴ is solely that the SGAT is out of date. Apparently Qwest does not wish to take the time and effort to update the SGAT to reflect the current law, so argues that the Commission should deny Level 3's request. Qwest cites no authority for this position, and Level 3 is unaware of any support. This Commission has been actively involved in review and approval of Qwest's SGAT and amendments to its SGAT, which Qwest has updated and submitted to the Commission for approval in the past. The Commission should continue to require necessary updates and actively review and approve such updates.

Section 252(f) of the Federal Telecommunications Act allows Qwest to satisfy its obligations under Section 251 and accompanying regulations by filing an SGAT setting forth terms and conditions offered to competitors within the state. Qwest chose to do that in South Dakota. Qwest's SGAT, therefore, unlike other terms and conditions which Qwest may be willing to offer, is already approved as an interconnection agreement in South Dakota.

Similarly, any updates or changes to that agreement will have the benefit of Commission approval and oversight. Level 3, therefore, has the right to opt into that agreement under 47

⁴ *In the Matter of the Filing by Qwest Corporation for Approval of Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services and Resale of Telecommunications*, Order Granting Motion to Withdraw Notice of Updated Statement of Generally Available Terms and Conditions and Statement of Compliance, Docket No. TC04-037 (April 19, 2004).

U.S.C. § 252(i). There is no authority for denying Level 3 this right to opt into an agreement previously approved by the Commission.

Further, Qwest partially satisfied its 271(c)(1) obligations, and thereby received approval to offer long distance services in the state of South Dakota, by offering its SGAT. This Commission and the FCC relied on Qwest's SGAT in making its 271 determinations.⁵ Having received 271 approval in reliance upon that agreement, Qwest cannot pull the rug out from under its competitors who wish to take advantage of an SGAT.

III. Efficiency and Public Policy Support the Use of an SGAT in South Dakota.

The use of SGATs are intended to promote competition and to save the resources of the Commission and competitors who may not have the resources to negotiate their own interconnection agreement with Qwest. The use of an SGAT lowers the transaction costs of competitors. Particularly with pick and choose no longer an option under the law, the SGAT provides a quick and easy way into the market with a defined and approved set of terms and conditions that have the benefit of Commission approval. According to Qwest, however, Level 3 has no choice but to accept Qwest's current ICA offering in the state, which does not have the benefit of the South Dakota Commission's review and approval, or to proceed with a costly and time-consuming arbitration to argue over any terms which Level 3 cannot accept. Apparently, any other carrier who wishes to interconnect with Qwest in South Dakota would be faced with the identical dilemma. Instead of forcing every carrier as well as the Commission to go through these lengthy proceedings, the most efficient way to promote competition is to require Qwest to

⁵ See *In the Matter of the Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota*, Before the Federal Communications Commission, WC Docket No. 03-11, Comments and Reply Comments of the Public Utilities Commission of South Dakota (February 4 and 23, 2003); Memorandum Opinion and Order (April 15, 2003).

maintain an updated SGAT available for any competitor to opt into as required by the law. As the FCC noted in discussing the opt in provision under section 252(i):

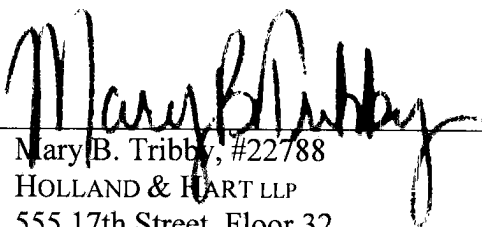
We conclude that the nondiscriminatory, pro-competition purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251 before being able to utilize the terms of a previously approved agreement.⁶

Given how important to competition the SGAT is in South Dakota, the Commission should continue to allow all carriers to participate in any approval process that the Commission undertakes with respect to Qwest's updated SGAT.

WHEREFORE Level 3 respectfully requests that the Commission require Qwest to file for approval an updated SGAT which any competitor may opt into under 47 U.S.C. §§ 252(f) and (i). Level 3 further requests that all carriers operating in South Dakota have the opportunity to participate in the approval process regarding the SGAT. Further, Level 3 requests that the Commission order Qwest to allow Level 3 to continue to operate under its current interconnection agreement with Qwest until an updated SGAT has been submitted and approved by the Commission. Finally, Level 3 requests such further relief as the Commission deems appropriate.

⁶ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Before the Federal Communications Commission, CC Docket No. 96-98, August 8, 1996, ¶ 337.

Respectfully submitted this 31st day of May, 2007.

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CERTIFICATE OF SERVICE

This is to certify that on May 31, 2007, a true and correct copy of the foregoing was E-Filed upon the following party:

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and copies sent via U.S. mail, addressed to the following:

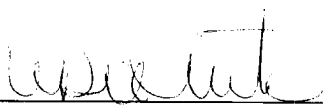
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