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Ex Parte – via Electronic Filing

Ms. Marlene Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 02-314 ; CC Docket Nos. 96-98 and 99-68

Dear Ms. Dortch:

Attached please find a copy of the Arbitrator's Recommended Decision issued by the state of Minnesota, Office of Administrative Hearings for the Minnesota Public Utilities Commission, *In the Matter of the Petition of Level 3 Communications, LLC, for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Communications*. The arbitrator's recommended decision is consistent with the record developed in this proceeding showing that Qwest is failing to provide interconnection in accordance with the Commission's interconnection rules and obligations in violation of competitive checklist item (i).

The arbitrator concludes that Level 3 is not responsible for the recurring costs of originating traffic on Qwest's side of the network, and that traffic originating on Qwest's network that is bound for Internet Service Providers (ISPs) should not be excluded from the relative-use calculation agreed to by the parties to determine the appropriate charges for interconnection facilities (direct trunk transport and entrance facilities). Importantly, the arbitrator recognizes the effect on competition of allowing Qwest to prevail in its position. As stated by the arbitrator:

Qwest's proposal would have an adverse competitive effect on Level 3 and potentially other CLECs, because it would make it more expensive for them to serve ISP customers than it would be for Qwest to serve ISP customers. There is nothing in the statute, the FCC's regulations, or the *ISP Remand Order* that would support this result.

Level 3 submits this recommended decision to further document Qwest's failure to meet the requirements of the section 271 competitive checklist.

In accordance with FCC Rules, a copy of this letter is being filed in each of the above captioned dockets.

Sincerely,

/s/ submitted electronically

Staci L. Pies
Director, Federal Regulatory Affairs

cc: Aaron Goldschmidt, Assistant Division Chief
Jennifer McKee
Diana Lee
Steve Morris

Attachment