

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

Docket No. 08F-259T

QWEST COMMUNICATIONS CORPORATION,

Complainant.

v.

MCIMETRO ACCESS TRANSMISSION SERVICES, LLC, *et al.*,

Respondents.

**ANSWER OF LEVEL 3 COMMUNICATIONS, LLC TO AMENDED
COMPLAINT**

Level 3 Communications, LLC (“Level 3”), by and through its undersigned counsel, hereby files its Answer to the Amended Complaint filed by Qwest Communications Corporation (“QCC”), and states as follows:

ANSWER

1. Level 3 lacks sufficient knowledge of the allegations contained in paragraph 1 of the Amended Complaint and, as such, neither admits nor denies those allegations.
2. Level 3 admits the allegations of paragraph 2(l) of the Amended Complaint. The other subparagraphs in paragraph 2 discuss the status of other companies and, as such, Level 3 lacks sufficient knowledge and neither admits nor denies those allegations.
3. The allegations of paragraph 3 of the Amended Complaint state a legal conclusion and Level 3 neither admits nor denies those allegations.

4. Level 3 lacks sufficient knowledge regarding the quantity of intrastate switched access charges that QCC purchases from any particular local exchange carrier or the other Respondent CLECs' tariffing practices, and, therefore, neither admits nor denies the first sentence of paragraph 4 of the Amended Complaint, or the second sentence of paragraph 4 of the Amended Complaint as it relates to other carriers. Level 3 admits that it tariffs intrastate switched access rates in Colorado. The third sentence of paragraph 4 of the Amended Complaint states a legal conclusion and Level 3 neither admits nor denies that allegation.

5. The allegations in paragraph 5 of the Amended Complaint are a matter of public record which speak for themselves and Level 3 neither admits nor denies the allegations.

6. Level 3 lacks sufficient knowledge regarding proceedings in this docket prior to Level 3's being served with the Amended Complaint and, as such, neither admits nor denies the allegations in paragraph 6 of the Amended Complaint.

7. The allegations in subparagraphs 7(a)-(k) and 7(m)-(n) of the Amended Complaint involve other carriers and, as such, Level 3 lacks sufficient knowledge and neither admits nor denies the allegations. As to the allegations in subparagraphs 7(l)(i) of the Amended Complaint, Level 3 admits the allegations in each of those three sentences.

As to the allegations in subparagraph 7(l)(ii) of the Amended Complaint, Level 3 admits that it is or was a party to agreements that are national in scope that include terms that relate to intrastate access charges in Colorado and other states, as well as other non-regulated and interstate services, that it has not filed in Colorado. Level 3 admits to receiving a letter from QCC requesting copies of its agreements and that Level 3 did not

provide information in response to such letter. Level 3 denies all remaining allegations of paragraph 7(1)(ii), including any allegations relating to its “affiliates, subsidiaries or predecessors,” who are not named as parties to this suit..

7. In response to the second numbered paragraph 7 of the Amended Complaint, Level 3 restates and incorporates its answers to the allegations above.

8. Paragraph 8 of the Amended Complaint states legal conclusions and, as such, Level 3 neither affirms nor denies those allegations.

9. Level 3 denies the allegations in paragraph 9 of the Amended Complaint as they relate to Level 3 only. Level 3 lacks sufficient knowledge to provide a response regarding the other Respondent CLECs and, therefore, neither admits nor denies those allegations.

10. Level 3 restates and incorporates its answers to the allegations above.

11. Paragraph 11 of the Amended Complaint states legal conclusions and, as such, Level 3 neither admits nor denies those allegations.

12. Level 3 lacks sufficient knowledge regarding allegations in paragraph 12 relating to any carrier other than Level 3 and, therefore, neither admits nor denies those allegations. Level 3 admits that it is or was a party to agreements that are national in scope that include terms that relate to intrastate access charges in Colorado and other states, as well as other non-regulated and interstate services, that it has not filed with the Commission, but denies that the agreements discriminate against any other carrier, including QCC. Level 3 denies all remaining allegations of paragraph 12 of the Amended Complaint.

13. The allegations in paragraph 13 of the Amended Complaint do not relate to Level 3 and, as such, Level 3 neither admits nor denies those allegations.

14. The allegations in paragraph 14 of the Amended Complaint do not relate to Level 3 and, as such, Level 3 neither admits nor denies those allegations.

15. The allegations in paragraph 15 of the Amended Complaint do not relate to Level 3 and, as such, Level 3 neither admits nor denies those allegations.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted.

2. The Complaint is barred, in whole or in part, by the applicable statute of limitations.

3. The Complaint is barred, in whole or in part, by the filed rate doctrine.

4. The Complaint is barred, in whole or in part, by the doctrines of waiver and estoppel.

5. The Complaint is barred, in whole or in part, because the Commission may lack jurisdiction over Level 3's agreements or portions thereof.

6. The Complaint is barred, in whole or in part, because Level 3's agreements must be read as a whole in determining whether a carrier is being discriminated against.

7. The Complaint is barred, in whole or in part, because QCC is not similarly situated to other IXCs who have certain terms and conditions in their agreements with Level 3.

8. The Complaint is barred, in whole or in part, because the Commission lacks jurisdiction to order the relief sought by QCC.

9. The Complaint is barred, in whole or in part, because the relief requested would violate the prohibitions against retroactive ratemaking.

10. The Complaint is barred, in whole or in part, to the extent it seeks to make any claims against affiliates, subsidiaries, predecessors or any other separately certificated entity associated in any way with Level 3. Qwest's complaint makes no allegations with particularity against any carrier other than Level 3, and without such particularized pleading, is barred from bringing such claims.

Dated this 5th day of January, 2009.

Respectfully submitted,

Level 3 Communications, LLC

By:



Mary B. Tribby
Robyn A. Kashiwa
Holland & Hart LLP
555 17th St., Suite 3200
Denver, CO 80202
303-295-8000
303-295-8261 (fax)

Gregory L. Rogers
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
720-888-2512
(720) 888-5134 (fax)

CERTIFICATE OF SERVICE

I hereby certify that the original and four (4) copies of the foregoing **ANSWER OF Level 3 Communications, LLC TO AMENDED COMPLAINT** was filed via hand-delivery on this 5th day of January, 2009, to the following:

Doug Dean, Director
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202

and I hereby certify that a true and correct copy of same was sent via electronic mail and regular U.S. Mail, (where no email address is listed) postage pre-paid, on this 5th day of January, 2009, addressed to the following:

Richard L. Corbetta, Esq.
Melissa A. O'Leary, Esq.
Corbetta & O'Leary, P.C.
999 18th Street, Ste. 3150
Denver, CO 80202
rich@co-legal.com
Melissa@co-legal.com

Thomas F. Dixon, Esq.
MCImetro Access Trans.Services, LLC
707 17th Street, Ste. 4000
Denver, CO 80202
Thomas.f.dixon@verizon.com

Ginny Zeller, Esq.
Senior Attorney
Eschelon Telecom, Inc.
730 Second Avenue South, Suite 900
Minneapolis, MN 55402
gazeller@eschelon.com

Gregory Merz
Gray Plant Mooty Mooty & Bennett, P.A.
500 IDS Center
80 South Eighty Street
Minneapolis, MN 55402
Gregory.merz@pgmlaw.com

Mr. Sam Kline
Vice President - Strategic Initiatives
Granite Telecommunications, Inc.
100 Newport Avenue
Quincy, MA 02171

Andrew M. Klein
Klein Law Group ^{PLLC}
601 13th St. NW
Suite 1000 South
Washington, D.C. 20005
AKlein@KleinLawPLLC.com
Counsel for Granite Telecommunications

Arizona Dialtone, Inc.
Dba Touch Home Phone Service
6115 So. Kyrene Rd., Ste. 103
Tempe, AZ 85283

Claudio E. Iannitelli, Esq.
Glenn B. Hotchkiss, Esq.
Daniel P. Velocci, Esq.
Cheifetz, Iannitelli, Marcollini, P.C.
1850 North Central Avenue
Viad Tower, 19th Floor
Phoenix, AZ 85004
cei@cimlaw.com
dpv@cimlaw.com
gbh@cimlaw.com

Adam L. Sherr, Esq.
Corporate Counsel
Qwest Communications Corporation
1600 7th Avenue, RM 3206
Seattle, WA 98101
adam.sherr@qwest.com

Cory Skluzak
Rate/Financial Analyst
Office of Consumer Counsel
1560 Broadway, Suite 200
Denver, CO 80202
Cory.skluzak@dora.state.co.us

Gregory E. Bunker, Esq.
Assistant Attorney General
Office of Consumer Counsel Unit
Office of the Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203
gregory.bunker@state.co.us
Dale.hutchins@state.co.us
Chere.mitchell@dora.state.co.us

MCImetro Access Transmission Services,
LLC
23001 Loudoun County Prkwy.
Ashburn, VA 20147

Gregory J. Kopta, Esq.
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101
Gregkopta@dwt.com

Eschelon Telecom of Colorado, Inc.
1201 Northeast Lloyd Blvd., Ste. 500
Portland, OR 97232

Susan Travis
Trial Advocacy Staff
Colorado Pubic Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202
Susan.travis@dora.state.co.us

Roxi Nielsen
Trial Advocacy Staff
Colorado Pubic Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202
Roxi.nielsen@dora.state.co.us

Pat Parker
Trial Advocacy Staff
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202
Pat.parker@dora.state.co.us

Lynn Notarianni
Trial Advocacy Staff
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202
Lynn.notarianni@dora.state.co.us

Becky Quintana
Advisory Staff
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202
Becky.quintana@dora.state.co.us

Bill Steele
Advisory Staff
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202
Bill.steele@dora.state.co.us

Michael Hydock
Advisory Staff
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202
Michael.hydock@dora.state.co.us

Michael J. Santisi
Office of Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203
Michael.santisi@state.co.us

Paul Gomez
Office of Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203
Paul.gomez@state.co.us

s/Virginia Oen
Virginia Oen