

ORIGINAL



0000022997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
MARC SPITZER
Commissioner
WILLIAM MUNDELL
Commissioner
MIKE GLEASON
Commissioner
KRISTIN MAYES
Commissioner

RECEIVED
2005 AUG -8 P 2:46
AZ CORP COMMISSION
DOCUMENT CONTROL

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 ACTS OF 1996,
AND THE APPLICABLE STATE LAWS FOR
RATES, TERMS, AND CONDITIONS OF
INTERCONNECTION WITH QWEST
CORPORATION.

DOCKET NOS. T-01051B-05-0350
T-03654A-05-0350

NOTICE OF ERRATA

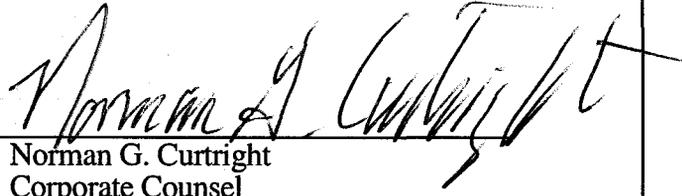
Please take notice that on July 15, 2005, Qwest Corporation filed the Direct Testimony of Larry Brotherson. Qwest recently identified errors in Mr. Brotherson's testimony. Replacement pages are attached as well as a complete corrected copy. The text affected is set forth below:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Page	Line	Correction	Should Read
27	5	Remove extra number 2	7.2.2.12.1
32	9	Add the word NOT in the sentence.	Because the traffic originates in TDM, it does not meet the criteria for VoIP traffic.
59	4	Delete duplicate reference to Level 3 in sentence	Qwest's major objection to Level 3's language stems from the fact that Level 3 has
59	7	Missing bracket around 251 (b) (5)	"section 251 (b)(5) traffic"
62	1-2	Delete duplicate sentence	established by the Commission for voice traffic. The FCC did nothing to take away the state commissions' right to set the voice rate for reciprocal compensation.
64	22-23	Delete duplicate sentence	In Arizona, because Qwest has not yet brought this matter before the Commission, the Commission has not yet ruled on Qwest's method of identifying ISP traffic. Because Level 3 does not object to the language "Either party may rebut . . .
Exhibit LBB-1		Replace Denver with Phoenix. Replace Steamboat with Flagstaff	Phoenix LCA Flagstaff LCA
Exhibit LBB-		Replace Denver with Phoenix	Phoenix
Exhibit LBB-3		Replace Denver with Phoenix. Replace Steamboat with Flagstaff	Phoenix LCA Flagstaff LCA

RESPECTFULLY SUBMITTED this 8th day of August, 2005.

QWEST CORPORATION

By: 
Norman G. Curtright
Corporate Counsel
4041 N. Central Ave., Suite 1100
Phoenix, Arizona 85012
Telephone: (602) 630-2187

1 ORIGINAL and 13 copies hand-delivered
2 for filing this 8th day of August, 2005, to:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, AZ 85007

7 COPY of the foregoing hand delivered
8 this 8th day of August, 2005, to:

9 Lyn Farmer, Chief Administrative Law Judge
10 Jane Rodda, Administrative Law Judge
11 Hearing Division
12 ARIZONA CORPORATION COMMISSION
13 1200 W. Washington
14 Phoenix, AZ 85007

15 Maureen A. Scott, Esq.
16 Legal Division
17 ARIZONA CORPORATION COMMISSION
18 1200 W. Washington Street
19 Phoenix, AZ 95007

20 Ernest Johnson, Director
21 Utilities Division
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, AZ 85007

25 Copy of the foregoing mailed
26 this 8th day of August, 2005, to:

Thomas H. Campbell
Michael T. Hallam
LEWIS AND ROCA LLP
40 N. Central Avenue
Phoenix, AZ 85004

1 Henry T. Kelley
Joseph E. Donovan
2 Scott A. Kassman
Kelley, Drye & Warren, LLP
3 333 W. Wacker Drive
Chicago, IL 60606
4

5 Christopher W. Savage
Cole, Raywid & Braverman, LLP
6 1919 Pennsylvania Avenue, NW
Washington, D.C. 20006
7

8 *Diane Hyman*
9 _____

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

REPLACEMENT PAGES

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
MARC SPITZER
Commissioner
WILLIAM A. MUNDELL
Commissioner
MIKE GLEASON
Commissioner
KRISTIN MAYES
Commissioner

**IN THE MATTER OF THE PETITION)
OF LEVEL 3 COMMUNICATIONS, LLC)
FOR ARBITRATION OF AN)
INTERCONNECTION AGREEMENT)
WITH QWEST CORPORATION)

PURSUANT TO SECTION 252 (b) OF)
THE TELECOMMUNICATIONS ACT)
OF 1996)**

Docket No. T-03654A-05-0350

T-01051B-05-0350

DIRECT TESTIMONY OF LARRY B. BROTHERSON

ON BEHALF OF

QWEST CORPORATION

(Disputed Issue Nos. 1a, 3, 4, 10, 11, 12, 14, 15, 16, 19)

**JULY 15, 2005
CORRECTED AUGUST 3, 2005**

1 compensation rules and treatment accordingly under this Agreement based on
2 treating the VoIP Provider Point of Presence ("POP") is an end user premise
3 for purposes of determining the end points for a specific call.
4

5 7.2.2.12.1 CLEC is permitted to utilize LIS trunks to terminate VoIP
6 traffic under this Agreement only pursuant to the same rules that apply to
7 traffic from all other end users, including the requirement that the VoIP
8 Provider POP must be in the same Local Calling Area as the called
9 party.
10

11 **Q. LEVEL 3 OBJECTS TO THE REQUIREMENT THAT THE VOIP**
12 **PROVIDER POINT OF PRESENCE (POP) BE CONSIDERED AN END**
13 **USER CUSTOMER FOR PURPOSES OF DETERMINING THE END**
14 **POINTS OF A CALL. CAN YOU COMMENT?**
15

16 A. The language requiring that the VoIP POP be considered an end user customer was
17 a portion of the definitions moved into the body of the agreement at 7.2.2.12. Level
18 3's definition deletes that language. The language is critically important due to the
19 ESP Exemption, and must be included somewhere in the agreement. Since both
20 Level 3 and Qwest agree that the traffic that is handed off to the public network
21 from the VoIP POP arrived over the Internet and is an alternative to traditional IXC
22 traffic, the only real question is whether or not the VoIP provider must purchase
23 FGD to terminate its calls. In answer to that question, the FCC has said no. *If* the
24 VoIP provider is acting as an ESP, it is entitled to purchase its connection out of the
25 local exchange tariffs and obtain local service *within the LCA where it is physically*
26 *located*. In this respect, the ESP is treated as any other end user customer.
27

28 **Q. BASED UPON THESE FACTS WHAT SHOULD THE COMMISSION DO**

1 reason why VoIP should be given special treatment. There is certainly no good
2 policy reason. It is easy to see why Level 3 wants to change the compensation
3 scheme in such a radical manner; it would allow Level 3 or its VoIP provider
4 customers to avoid charges that other identically-situated carriers must pay. Qwest
5 strongly opposes such an approach.

6
7 **Q. PLEASE DISCUSS TDM-IP-TDM (IP IN THE MIDDLE) TRAFFIC.**

8 A. While Level 3 also appears to seek special treatment for this traffic, it should not be.
9 Because this traffic originates in TDM, it does not meet the criteria for VoIP traffic.
10 Therefore, as the FCC clearly ruled in the AT&T decision, this traffic is not VoIP, is
11 not an information service (and thus does not qualify for the ESP exemption), and
12 therefore is not exempt from access charges that apply to other carriers in identical
13 circumstances. Thus, Qwest's language treats this type of traffic no different than
14 any other TDM originated traffic for intercarrier compensation purposes. The
15 Commission should reject Level 3's efforts to remove this traffic from existing
16 intercarrier compensation rules and should adopt Qwest's language.

17 **V. DISPUTED ISSUE 1A: SECTION 7.1.1.1 OPERATION AUDITS**

18 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 1A ?**

19 A. This dispute first highlights the reason that I am addressing the issues in a different
20 order than that presented by Level 3. In its petition and matrix, Level 3 lists issue
21 1A as the first of its Tier 1 issues. This single issue number, 1A, has three Qwest

1

2 **Q WHY DOES QUEST OBJECT TO LEVEL 3'S PROPOSED LANGUAGE IN**
3 **7.3.6.1?**

4 A. Qwest's major objection to Level 3's language stems from the fact that Level 3 has
5 inserted additional types of traffic into the paragraph for which it wants to receive
6 reciprocal compensation at the rate of \$.0007. The two additional types of traffic
7 are the imprecise reference to "section 251(b)(5) traffic" as well as "VoIP traffic."
8 As I explain below, by proposing this definition, Level 3 is attempting, in effect, to
9 obtain a decision from the Arizona Commission that access rates do not apply to
10 any Level 3 traffic in Arizona.

11

12 **Q. HOW IS LEVEL 3 ATTEMPTING TO ELIMINATE ACCESS CHARGES**
13 **IN ARIZONA?**

14 A. In a very roundabout, but very clever way. Level 3 proposes language saying the
15 rate of \$.0007 shall apply to "251(b)(5) traffic." To find out what this means, one
16 must go to the definitions section of Level 3's proposed agreement to see how it
17 defines "251(b)(5) traffic." It does this in its definition of the term
18 "telecommunications," which, under Level 3's definition, "includes, but is not
19 limited to *Section 251(b)(5) Traffic, which is defined as Telephone Exchange*
20 *Service, Exchange Access Service, Information Service, and Telephone Toll Service*
21 *(including but not limited to IntraLATA and InterLATA Toll) traffic and is also*
22 *defined to include ISP-Bound traffic, VoIP traffic."* Thus, while including "ISP-
23 bound traffic and VoIP," Level 3 also includes toll traffic in section 251(b)(5)
24 traffic. As far as I know, it is unprecedented for a CLEC to claim that toll traffic is

1 established by the Commission for voice traffic. The FCC did nothing to take away
2 the state commissions' right to set the voice rate for reciprocal compensation. Level
3 3 thinks a different rate, \$.0007, should apply and not the rate established by the
4 Arizona Commission. In addition, Level 3 again tries to insert 251(b)(5) language,
5 which, based on the discussion above, includes toll. Level 3 also attempts to
6 include any VNXX calls by tying the traffic to the NPA-NXX, and not to the towns
7 where the customers reside.

8
9 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE**
10 **OVER THE LEVEL 3 LANGUAGE?**

11 A. I will not repeat the arguments on this issue. I addressed them in the VNXX
12 definition section, as well as the compensation for ISP issue. In both instances,
13 Level 3 sought to expand the definition of 251(b)(5) traffic to include calls from
14 outside the LCA if the terminating party had an assigned NXX associated with the
15 local exchange of the calling party. Level 3 is attempting through its language in
16 7.3.4.1 to do the same thing for voice and VoIP calls. Qwest's language makes
17 clear that VNXX traffic, including voice and VoIP VNXX traffic, is not local and is
18 not subject to reciprocal compensation rules for local traffic. Level 3's attempt to
19 change the FCC's orders and redefine 251(b)(5) to include toll is also addressed in
20 Issues 10 and 19.

21
22 **IX. DISPUTED ISSUE 19: ISP BOUND 3:1 RATIO, Section 7.3.6.2**

23
24 **Q. WHAT IS THE DISPUTED LANGUAGE FOR SECTION 7.3.6.2?**

1 *method for tracking ISP-Bound Traffic is sufficient*" is language proposed by Qwest
2 for all states. Qwest's proposed language simply provides that *if* a Commission has
3 previously ruled that Qwest's method of identifying actual ISP-bound traffic is
4 sufficient, then that method of identifying actual local and ISP minutes should be
5 employed instead of the presumption formula. The FCC gave this right to both
6 parties as part of the decision in the ISP Remand Order establishing the 3:1 ratio.

7
8 "A carrier may rebut the presumption, for example, by demonstrating to the
9 appropriate state commission that traffic above the 3:1 ratio is in fact local
10 traffic delivered to non-ISP customers. In that case, the state commission will
11 order payment of the state-approved or state-arbitrated reciprocal compensation
12 rates for that traffic. Conversely, if a carrier can demonstrate to the state
13 commission that traffic it delivers to another carrier is ISP-bound traffic, even
14 though it does not exceed the 3:1 ratio, the state commission will relieve the
15 originating carrier of reciprocal compensation payments for that traffic, which
16 is subject instead to the compensation regime set forth in this Order".²⁵
17

18 Qwest has brought this issue up elsewhere and has successfully rebutted the 3:1
19 presumption. In Arizona, because Qwest has not yet brought this matter before the
20 Commission, the Commission has not yet ruled on Qwest's method of identifying
21 ISP traffic. Because Level 3 does not object to the language "Either party may rebut
22 this presumption by demonstrating the factual ratio to the state Commission",
23 Qwest has no objection to the language '~~unless the Commission has previously~~
24 ~~ruled that Qwest's method for tracking ISP-Bound Traffic is sufficient,~~² being
25 struck.
26

27 **Q. WHY DOES QWEST OBJECT TO LEVEL 3'S INSERTION OF**

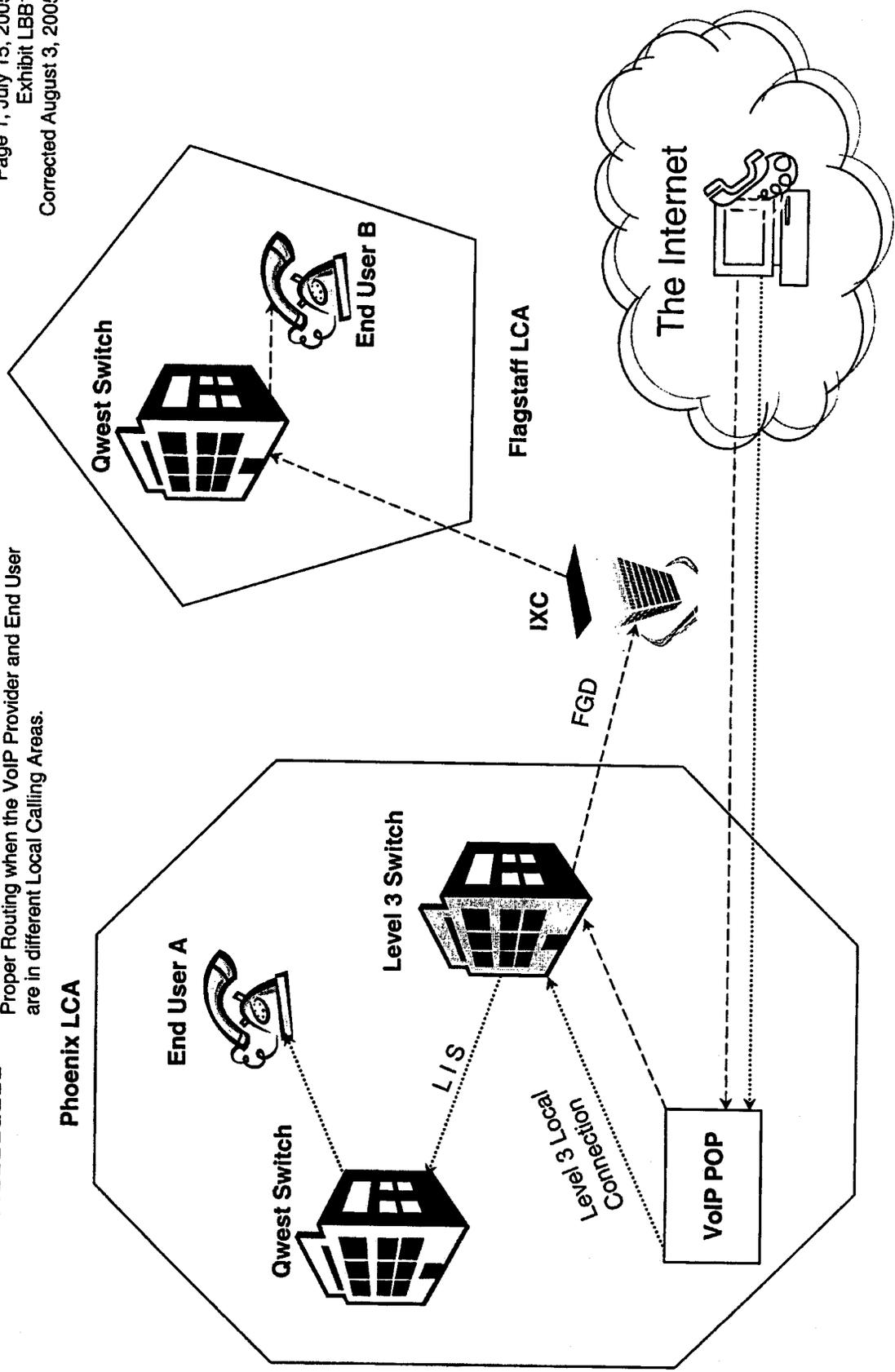
²⁵ *ISP Remand Order, ¶ 79.*

Proper Routing of Valid VoIP Calls

Arizona Corporation Commission
Docket No. T-03654A-05-0350, T-01051B-05-0350
Qwest Corporation
Direct Testimony of Larry B. Brotherson
Page 1, July 15, 2005
Exhibit LBB1
Corrected August 3, 2005

..... Proper Routing when the VoIP Provider and End User are in the same Local Calling Areas.

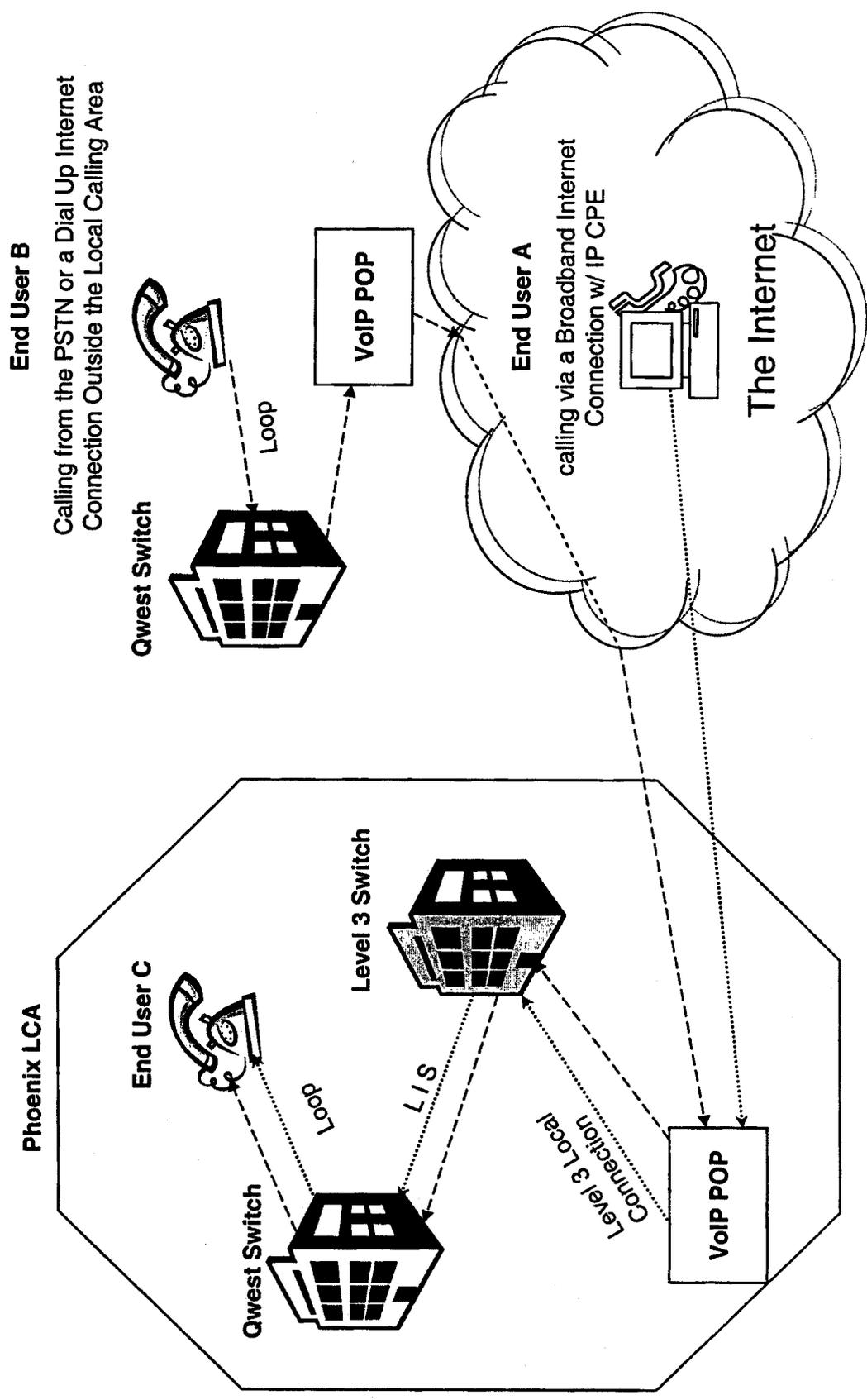
----- Proper Routing when the VoIP Provider and End User are in different Local Calling Areas.



Examples of VoIP Calls

----- Valid VoIP Call

- - - - - NOT a valid VoIP Call

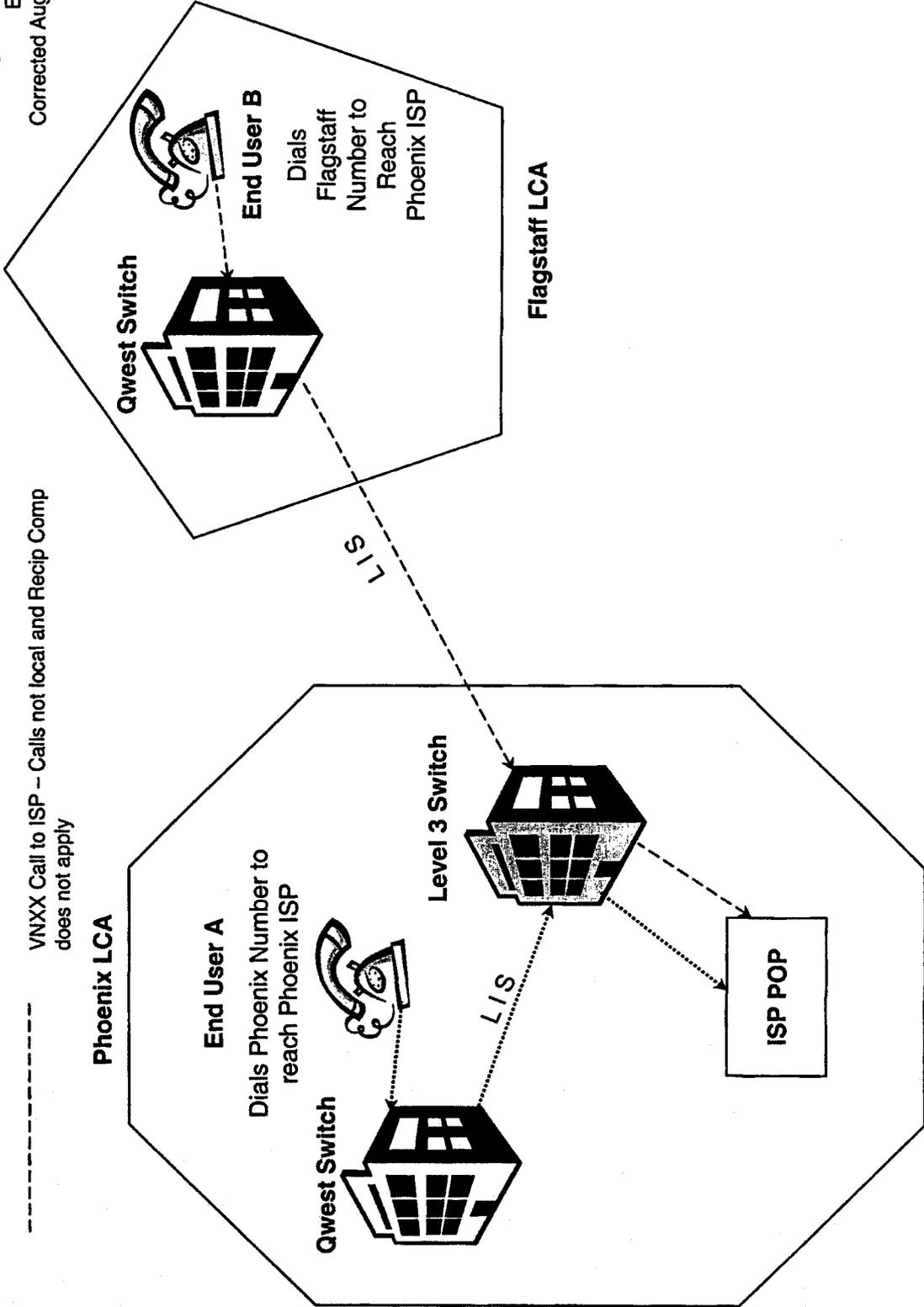


VNXX Routing

Arizona Corporation Commission
 Docket No. T-03654A-05-0350, T-01051B-05-0350
 Qwest Corporation
 Direct Testimony of Larry B. Brotherson
 Page 1, July 15, 2005
 Exhibit LBB3
 Corrected August 3, 2005

..... Local Call to ISP – Qwest Pays Recip Comp

----- VNXX Call to ISP -- Calls not local and Recip Comp does not apply



**COMPLETE
CORRECTED COPY**

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
MARC SPITZER
Commissioner
WILLIAM A. MUNDELL
Commissioner
MIKE GLEASON
Commissioner
KRISTIN MAYES
Commissioner

**IN THE MATTER OF THE PETITION)
OF LEVEL 3 COMMUNICATIONS, LLC)
FOR ARBITRATION OF AN)
INTERCONNECTION AGREEMENT)
WITH QWEST CORPORATION)
PURSUANT TO SECTION 252 (b) OF)
THE TELECOMMUNICATIONS ACT)
OF 1996)**

Docket No. T-03654A-05-0350

T-01051B-05-0350

DIRECT TESTIMONY OF LARRY B. BROTHERRSON

ON BEHALF OF

QWEST CORPORATION

(Disputed Issue Nos. 1a, 3, 4, 10, 11, 12, 14, 15, 16, 19)

**JULY 15, 2005
CORRECTED AUGUST 3, 2005**

CONTENTS

I	IDENTIFICATION OF WITNESS.....	1
II.	PURPOSE OF TESTIMONY.....	2
III.	EXECUTIVE OVERVIEW.....	5
IV.	ISSUE 16: DEFINITION OF VOIP.....	7
V.	ISSUE 1A: SECTION 7.1.1.1 OPERATION AUDITS.....	32
VI.	ISSUE 1A: SECTION 7.1.1.2 CERTIFICATION.....	37
VII.	ISSUE 3: VNXX TRAFFIC.....	40
VIII.	ISSUE 4: COMPENSATION FOR VOICE AND VOIP TRAFFIC.....	60
IX.	ISSUE 19: ISP BOUND 3:1 RATIO, SECTION 7.3.6.2.....	62
X.	ISSUE 10: DEFINITION OF INTERCONNECTION.....	66
XI.	ISSUE 11: DEFINITION OF INTEREXCHANGE CARRIER.....	67
XII.	ISSUE 12: DEFINITION OF INTRALATA TOLL TRAFFIC.....	70
XIII.	ISSUE 9: DEFINITION OF EXCHANGE ACCESS.....	71
XIV.	ISSUE 14: DEFINITION OF EXCHANGE SERVICE.....	71
XV.	ISSUE 15: DEFINITION OF TELEPHONE TOLL SERVICE.....	72

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST.

A. My name is Larry B. Brotherson. I am employed by Qwest Corporation (Qwest) as a Director Wholesale Advocacy in the Wholesale Markets organization. My business address is 1801 California Street, Room 2350, Denver, Colorado, 80202.

Q. PLEASE DESCRIBE YOUR EMPLOYMENT BACKGROUND.

A. Since joining Northwestern Bell Telephone Company in 1979, I have held several positions within Northwestern Bell, U S WEST Communications, and Qwest. Most of my responsibilities and assignments have been within the Law Department. Over the past 20 years, I have been a state regulatory attorney in Iowa, a general litigation attorney, and a commercial attorney supporting several organizations within Qwest. My responsibilities have included advising the company on legal issues, drafting contracts, and addressing legal issues that arise in connection with specific products. With the passage of the Telecommunications Act of 1996 (the Telecom Act), I took on responsibility for providing legal advice and support for Qwest's Interconnection Group. In that role, I was directly involved in working with competitive local exchange carriers (CLECs). I negotiated interconnection agreements with CLECs that implemented various sections of the Act, including the Act's reciprocal compensation provisions. In 1999, I assumed my current duties as director of wholesale advocacy. My current responsibilities include coordinating

1 the witnesses for all interconnection arbitrations and for hearings involving disputes
2 over interconnection issues. Additionally, I work with various groups within the
3 Wholesale Markets organization of Qwest to develop testimony addressing issues
4 associated with interconnection services.

5
6 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

7 A. I received a Bachelor of Arts degree from Creighton University in 1970 and a Juris
8 Doctor degree from Creighton in 1973.

9
10 **II. PURPOSE OF TESTIMONY**

11 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

12 A. This arbitration docket will address numerous disputed paragraphs to be
13 incorporated into the interconnection agreement between the parties. The purpose
14 of my testimony is to support the adoption of Qwest's proposed language relating to
15 several of the specific issues that Qwest and Level 3 have not been able to reach
16 agreement on. Specifically, I will explain Qwest's positions, and the policies
17 underlying these positions.

18
19 Although there are many sub-issues, there are three major areas of dispute between
20 Level 3 and Qwest.

21 First, Level 3 and Qwest disagree on a variety of issues related to VoIP (Voice
22 over Internet Protocol), including the definition of VoIP; whether (assuming
23 traffic is properly categorized as VoIP traffic) interexchange calls between
24 local calling areas ("LCAs") are exempt from access charges if the call is

1 ultimately from a VoIP provider; how and under what circumstances access
2 charges or reciprocal compensation apply to VoIP traffic; the proper routing of
3 VOIP traffic, and other issues.
4

5 Second, Level 3 and Qwest disagree on the treatment of and compensation for
6 VNXX traffic (traffic that does not originate and terminate in the same LCA,
7 even though the telephone numbers of the called and calling parties would
8 lead the calling party to believe the call was a local call).
9

10 Finally, Level 3 and Qwest disagree on the proper type of and responsibility
11 for the trunks carrying toll traffic and how Qwest should be compensated for
12 the use of its network.
13

14 My testimony will address the first two issues relating to VoIP and VNXX. Mr.
15 Easton will address Level 3's reluctance to place toll traffic on Feature Group D
16 ("FGD") trunks and pay Qwest for the use of its network. Mr. Linse will address
17 network issues related to all three areas.
18

19 **Q. HOW HAVE YOU ORGANIZED YOUR TESTIMONY?**
20

21 A. During the negotiation period, Qwest provided Level 3 with a matrix similar in
22 format to others it has used in many other arbitrations with CLECs. The matrix
23 showed Qwest's proposed language, and then incorporated Level 3's proposed
24 additions in a strikethrough format. Because the Qwest proposed matrix also
25 followed the contract numbering order, issues dealing with paragraph 5.2 would be
26 addressed before issues dealing with paragraph 6.4 or 7.1. Level 3 objected to this

1 format and proposed its own matrix and format. In an effort to advance the
2 negotiations, Qwest agreed to the use of Level 3's matrix format. Unfortunately,
3 the structure that Level 3 uses in its matrix format is difficult to follow.

4
5 Level 3 groups contract paragraphs into what it has characterized as "Tier 1" issues
6 and "Tier 2" issues. In Level 3's words, Tier 2 issues are "derived" from Tier 1
7 issues. Therefore, the language sections in Level 3's matrix do not flow in the order
8 of the disputed issues in the contract; instead they follow the order in the tier
9 structure. Level 3 is, of course, free to use the format it prefers; however, in order
10 for me to respond to Level 3's issues in an orderly sequence, it is necessary to
11 address the competing language in a different order so that necessary pre-requisite
12 issues are dealt with first. For example, the Level 3 matrix shows the first issue
13 dealing with VOIP as language in contract sections 7.1.1.1 and 7.1.1.2, which deal
14 with operational audits and certification. Before discussing audits of VoIP, it is
15 obviously necessary to understand what VOIP is, how the FCC describes VoIP, and
16 what disagreements exist between the parties as to the requirements for a call to
17 qualify as VOIP. Therefore, my testimony will start by addressing Issue 16: the
18 definition of VOIP. Only after the Commission understands what each party claims
19 are the proper elements of VoIP, will other VoIP issues be meaningful, such as the
20 issue of the necessity of certification that VoIP traffic complies with the FCC
21 definition of VoIP. My testimony will address each disputed paragraph in the
22 agreement related to VoIP and VNXX even though I address the contract sections in
23 a different order from Level 3's matrix. My testimony will describe the parties'
24 positions for each disputed paragraph and demonstrate why Qwest's language is the

1 appropriate language and should be adopted by the Commission.
2

3 **III. EXECUTIVE OVERVIEW**

4 **Q. PLEASE PROVIDE A GENERAL SUMMARY OF THE ISSUES YOU**
5 **ADDRESS IN YOUR TESTIMONY.**

6 **A.** Although I address a variety of sub-issues, my testimony addresses two major issues
7 that are critical to the interconnection agreement: (1) Voice over Internet Protocol
8 (“VoIP”) issues and (2) Virtual NXX (“VNXX”) issues.

9 **VoIP Issues:**

- 10
- 11 ● The first issue I address is the proper definition of VoIP. True VoIP calls are
12 calls initiated through the use of IP-compatible equipment over a broadband
13 connection. Calls initiated over typical CPE on the public switched telephone
14 network (“PSTN”) are not VoIP calls. Through my exhibits, I illustrate valid
15 VoIP calls and describe other calls that Level 3 improperly claims are VoIP.
16
 - 17 ● I point out that VOIP is treated as an information service under FCC rules,
18 which means that the “ESP exemption” applies to VoIP calls under certain
19 circumstances. Under the exemption, the location of the ESP POP (also
20 referred to as the “VoIP provider POP”), rather than the VOIP customer, is
21 treated as the end user customer for purposes of determining whether a call is
22 local or interexchange. Level 3’s position is based on an erroneously broad
23 reading of the “ESP exemption.” Contrary to Level 3’s position, there is no FCC
24 rule or policy that “exempts” information service providers or calls from the
25 normal rules governing classification of calls as local or interexchange—the rule
26 simply moves the customer premises for analysis purposes from the actual VoIP
27 customer’s premises to the location of the ESP POP.
28
 - 29 ● I comment on a variety of specific language submitted by Qwest and Level 3
30 related to VoIP issues and demonstrate that Level 3’s proposed language would
31 treat all VoIP calls as though they were local. I demonstrate that this is merely a
32 convenient fiction to avoid appropriate intercarrier compensation. When a
33 Qwest end user customer originates a call destined for a remote VoIP POP (that
34 is, a POP located outside of the local calling area (“LCA”) of the originating

1 caller), that call must be treated as an interexchange call for all purposes.
2 Likewise, when Qwest receives a call from a remote VoIP POP for termination
3 in a different LCA that call should also be treated as an interexchange call for all
4 purposes.
5

- 6 • By essentially pretending that VoIP calls from one LCA to another LCA are
7 local calls, Level 3 seeks special treatment for calls that, from the perspective of
8 the PSTN, are no different than other interexchange calls. Level 3's proposals, if
9 adopted, would dramatically undermine existing intercarrier compensation and
10 subject carriers to disparate treatment and would create a windfall for Level 3 at
11 the expense of Qwest's customers.
12
- 13 • Qwest's proposed language treats VoIP calls consistently with current
14 intercarrier compensation plans. Local VoIP calls should be treated like other
15 local calls, including making them subject to reciprocal compensation, while
16 VoIP calls that are interexchange in nature should be subject to appropriate state
17 and federal access tariffs.
18

19 VNXX Issues

- 20
- 21 • I first define VNXX, which is the inappropriate use by CLECs of local
22 telephone numbers that CLECs are able to obtain for calls that are actually
23 terminated to customers (usually ISPs) located in different LCAs than the party
24 making the call.
25
- 26 • I demonstrate that the proper means of determining whether a call is local or
27 interexchange is based on the physical locations of the parties to the call and
28 not, as Level 3 proposes, based on the telephone numbers. Level 3's proposal
29 would result in calls that are interexchange in nature being treated as though
30 they were local calls.
31
- 32 • Level 3's language acknowledges that with VNXX traffic the called and calling
33 parties are in different LCAs. Nevertheless, Level 3 would require treating the
34 call as local and the payment of reciprocal compensation on all VNXX traffic.
35 By, in effect, treating such traffic as local in nature, Level 3 creates a convenient
36 fiction that dramatically changes the distinction between local and
37 interexchange calls. Thus, Qwest would be required to transport large amounts
38 of traffic from distant towns to Level 3 for free, and then be required to pay
39 intercarrier compensation to terminate the traffic. Yet all of this traffic is
40 generated by customers who, for the most part, are calling into ISP customers of
41 Level 3. Such a result would be unfair and inconsistent with current law

1 including a recent decision of the Commission.
2

- 3 • I describe Qwest's FX service and point out the critical distinctions between FX
4 and VNXX traffic: a Qwest FX customer (1) actually buys a local connection in
5 each of the LCAs it wants local access to at tariffed local exchange rates and (2)
6 bears the full financial responsibility at tariffed rates to transport that traffic
7 from each LCA back to the LCA where the call is answered. Under VNXX, the
8 CLEC does neither.
9

10
11 **Other Issues**
12

- 13 • I address numerous other issues, most of them definitional in nature, that relate
14 to the VNXX and VoIP issues. In most cases, the Level 3 language is designed
15 to provide special treatment to its VoIP and VNXX traffic, while Qwest's
16 language, which has been adopted in many other interconnection agreements
17 and is consistent with SGAT language approved by the Commission, is
18 designed to treat Level 3's traffic in a manner consistent with how the
19 Commission has determined how local and interexchange traffic should be
20 handled with other carriers.
21

22 **IV. DISPUTED ISSUE 16: DEFINITION OF VOIP**
23

24 **Q. BEFORE DEALING WITH THE DEFINITIONAL DISPUTES RELATING**
25 **TO VOIP, PLEASE PROVIDE A BRIEF GENERIC DISCRPTION OF**
26 **VOIP.**

27 A. I will begin by describing the manner in which voice communications have taken
28 place on the public switched telephone network (PSTN) for decades. The PSTN is
29 a circuit based, switched network that employs an analog protocol called Time-
30 Division Multiplexing ("TDM") to transmit voice messages. When one customer
31 calls another customer under these circumstances, an actual circuit must be
32 established between the two callers that remains in place for the duration of the call.
33 Thus, when such a call is made, each party's loop is used for the duration of the call

1 as are the switches and other facilities through which the call is routed. Such calls,
2 because of the physical circuit that must be connected from end to end, are often
3 referred to as "circuit-switched."
4

5 Both physically and conceptually, VoIP is different. Rather than being based on an
6 actual physical circuit, VoIP is based on digital packets that are created in a digital
7 format known as Internet Protocol or "IP." Thus, a VoIP call must be initiated by
8 an end user customer in IP through the use of IP compatible equipment,¹ which
9 converts the conversation into multiple digital IP packets of information (each of
10 which represents a small digitized portion of the voice call between the parties).
11 Instead of passing over a single circuit, each packet is capable of independently
12 traveling a different route than other packets. Once the packets are created by the
13 IP-compatible customer premises equipment ("CPE"), they are individually
14 forwarded onto the Internet by routers. As noted, because no specific circuit must
15 be established, a traditional circuit switch is not necessary to establish a circuit and

¹ The FCC, in its recent VoIP 911 order, described IP Compatible equipment:

"The term "IP-compatible CPE" refers to end-user equipment that processes, receives, or transmits IP packets. Users may in some cases attach conventional analog telephones to certain IP-compatible CPE in order to use an interconnected VoIP service. For example, IP-compatible CPE includes, but is not limited to, (1) terminal adapters, which contain an IP digital signal processing unit that performs digital-to-audio and audio-to-digital conversion and have a standard telephone jack connection for connecting to a conventional analog telephone; (2) a native IP telephone; or (3) a personal computer with a microphone and speakers, and software to perform the conversion (softphone).

First Report and Order and Notice of Proposed Rulemaking, *In the Matters of IP-Enabled Services E911 Requirements for IP-Enabled Service Providers*, FCC 05-116, ¶ 24, n. 77 (June 3, 2005) (citations omitted) ("*FCC VoIP 911 Order*").

1 the packets do not necessarily follow the same path (this is one of the reasons the
2 Internet is often depicted as a cloud rather than a physical connection from one
3 point to another).
4

5 Thus, the first distinguishing characteristic of VoIP is that it must be initiated at the
6 end user customer's premises in IP using IP-compatible CPE. The second
7 characteristic is that the VoIP call must be initiated over a broadband connection
8 such as cable modem or DSL that does not pass through the PSTN local switch.
9

10 There are two types of VoIP calls that meet these two defining characteristics of
11 VoIP. One of the types is irrelevant to this case, while the other type of VoIP call is
12 at the very center of the VoIP issues before the Commission in this docket.
13

14 The first type of VoIP call takes place between two VoIP customers, both served by
15 a broadband connection. The call is, of course, initiated in IP over a broadband
16 connection. When the called party is also a VoIP customer on a broadband
17 connection, the call is never converted into TDM (the language of the circuit-
18 switched PSTN). Instead, the packets are transported over the Internet directly to
19 the called party, where the called party's IP compatible equipment reassembles the
20 packets in the proper order so they become a voice conversation again. The
21 breakdown into IP packets, the transmission of the individual packets, and the
22 reassembly of the IP packets into voice sounds all take place on the Internet or a
23 private IP network. If, as in the foregoing example, a call goes from one IP capable
24 piece of equipment to another IP capable piece of equipment, over broadband
25 connections through transmission IP packets, the call is completed without ever

1 touching the circuit switched PSTN. Thus, this type of call is a VoIP call, but it
2 does not interconnect with the PSTN in any manner. Because such calls originate
3 and terminate in IP format, they are often referred to as "IP-IP calls." They occur
4 entirely over the Internet, are not exchanged between carriers, and there are
5 therefore no intercarrier compensation or other interconnection issues that result
6 from IP-IP traffic. Such calls are therefore completely irrelevant to the issues in this
7 case.

8
9 The second type of VoIP is central to the VoIP issues in this docket. This is a call
10 that is initiated through IP-compatible CPE over a broadband connection, but the
11 called party is not a VoIP customer. Instead, the called party is a typical customer
12 served on the PSTN by a loop attached to a circuit switch and whose CPE is not
13 IP-compatible. In this situation, the exchange of traffic is completely different than
14 in the first type of call. In order to complete the call, the IP packets created by the
15 equipment of the calling party must, at some point (a function of the VoIP
16 provider's equipment) be converted into a TDM voice format, transferred to the
17 PSTN on a connection that will route through circuit switches to the end office
18 serving the customer, and finally sent over the loop to the customer. This type of
19 call, which is often referred to as an "IP-TDM call" because it was originated in IP
20 format and terminated to the PSTN in TDM format, is a VoIP call because it meets
21 the criteria of originating in IP format using IP-compatible CPE over a broadband
22 connection. It is terminated, however, using local switching and loops. This type
23 of call creates intercarrier compensation and other issues that must be dealt with in
24 this docket.
25

1 There is a third type of call that, while it is not a VoIP call, is an issue here because
2 of the manner in which Level 3 has defined VoIP traffic. In this type of call, the call
3 is originated in TDM format, but the carrier (most likely for network efficiency
4 reasons) decides to transport the call from two points in IP before reconverting it
5 into TDM for delivery. Although this call was in IP format for part of the
6 transmission, it both originates and terminates in TDM. Such calls are often
7 referred to as "TDM-IP-TDM calls" or as "IP in the middle" calls. Because such
8 calls do not meet the criteria for VoIP described above, they are not VoIP.

9
10 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 16.**
11

12 A. Issue 16 focuses on the appropriate definition of VoIP in the context of the second
13 type of call described above, traffic originating from a VoIP customer in IP that is
14 terminated over the PSTN in TDM. It is this type of traffic that raises issues in this
15 docket. The first type (IP-IP), because it never enters the PSTN, is not addressed by
16 the interconnection agreement.

17
18 **Q. WITH THAT BACKGROUND, PLEASE DESCRIBE THE ISSUES THAT
19 ARE RAISED BY THE COMPETING VOIP DEFINITIONS.**
20

21 A. The ultimate issues relate to intercarrier compensation. Qwest's definition centers
22 on two basic issues related to VoIP:

- 23 1) What requirements must be met to permit a VoIP provider to terminate
24 calls using a local exchange product for its connection rather than a Switched
25 Access (Feature Group D) connection?

1 2) Assuming a VoIP provider is qualified to purchase a connection out of the
2 local exchange tariffs, how are calls that terminate within and outside the local
3 calling area ("LCA") in which the VoIP provider is physically located
4 handled?

5
6 **Q. WHY DOES THE QWEST DEFINITION REQUIRE THAT A VOIP CALL**
7 **ORIGINATE IN IP OVER A BROADBAND FACILITY USING IP**
8 **EQUIPMENT IN ORDER TO BE ENTITLED TO TERMINATION**
9 **THROUGH A LOCAL NETWORK CONNECTION?**

10
11 **A.** The first reason is simply that this definition appears to be consistent with the way
12 the FCC has thus far defined VoIP.

13
14 The second reason is far more complicated. It relates to a historic category of
15 providers known as "Enhanced Service Providers" or "ESPs." Under current FCC
16 rules (all of which are subject to being changed when the FCC makes its final
17 decisions on these issues) providers of VoIP are considered to be ESPs. ESPs are
18 entitled to terminate calls through a connection to the PSTN purchased from a local
19 tariff under certain circumstances. But a VoIP provider is considered an ESP only
20 if the call meets the fundamental requirements to qualify as VoIP: the call must
21 originate in IP through the use of IP-compatible CPE over a broadband facility.
22 This is the only type of call that meets the definition of VoIP proposed by Qwest
23 and is thus the only type of traffic that qualifies for the ESP exemption.

24
25 If a call originates as a voice call on the PSTN and is then terminated as a voice call

1 on the PSTN, this is a TDM-IP-TDM or “IP in the middle” call, which is subject to
2 typical intercarrier compensation rules: if it is a local call, it is subject to reciprocal
3 compensation; if it is an interexchange (toll) call it is subject to access charges such
4 as Feature Group D. The FCC ruled in the *AT&T Declaratory Ruling* that this type
5 of call is not a VoIP call even if at some point during the call it was converted to IP
6 because, before delivery, it was reconverted to TDM and delivered over the PSTN.²
7 Since, in this proceeding, we are only addressing the calls that Qwest is being asked
8 to terminate on the PSTN, the termination of each call is in TDM over the PSTN.
9 Thus, if the call is not originated in IP over a broadband facility, it will be both
10 originating and terminating in traditional PSTN format, thus losing its current status
11 as an enhanced or information service call, and access charges will apply.

12
13 **Q. YOU MENTIONED THE ESP EXEMPTION. CAN YOU DESCRIBE IT**
14 **FOR US?**

15 **A.** First, the ESP exemption is relevant to this docket because, under current rules that
16 are the subject of ongoing FCC consideration, true VoIP service qualifies as an
17 “information service.” Thus, VoIP providers served by Level 3 are entitled to
18 receive service pursuant to the ESP exemption, but only in very specific
19 circumstances. All of this ultimately becomes relevant to how VoIP is defined and

² Order, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, 19 FCC Rcd 7457, ¶¶ 12-13 (April 14, 2004) (ruling that AT&T's service was a telecommunications service and is subject to access charges) (“*AT&T Declaratory Ruling*”).

1 to the intercarrier compensation regime that applies under certain circumstances.
2 Thus, it is important for the Commission to understand the fundamentals of the ESP
3 exemption.

4
5 The ESP exemption has a long history with the FCC. It was originally established
6 at the time access charges were established following the Modified Final Judgment
7 (MFJ) that governed the divestiture of the old Bell System. While establishing the
8 access charge regime in use today for all interexchange carriers ("IXCs"), the FCC
9 permitted Enhanced Service Providers ("ESPs") to connect their POP (point of
10 presence) to the local network via local exchange service as opposed to tariffed
11 feature group services that IXCs were (and still are) required to purchase, even
12 though the ESPs used the local exchange facilities for interstate access. The ESP
13 exemption was never really an exemption at all—it was simply a regulatory
14 decision that, for a variety of policy reasons, interstate access by ESPs located
15 within a local calling area ("LCA") would be treated as local for purposes of
16 assessing the correct access charge. Thus, under the exemption, the ESP can order a
17 local service connection to its POP in the same manner as the service can be
18 ordered by other end user customers located within a particular LCA. In other
19 words, under the ESP exemption, the ESP is treated like an end user customer as
20 opposed to an IXC for purposes of obtaining access to a LCA. In that LCA, the
21 ESP can obtain the same business services that any other end user business can
22 obtain on a retail basis. The effect of the exemption, then, is that unlimited calls
23 may be terminated by the ESP within such LCAs and it will be charged typical retail
24 business rates instead of access charges to do so. But that is the extent of the

1 exemption. For example, to the extent the ESP seeks to terminate calls to
2 customers within the LATA but outside that LCA, the exemption does not apply
3 and they will be handed off to the end user customer's (ESP's) Primary
4 Interexchange Carrier ("PIC") choice for delivery to the other LCA. Exhibit LBB 1
5 depicts the two examples. In LBB1, I depict the termination of VoIP calls from the
6 Internet through valid routing. When the VoIP provider and the end user customer
7 are in the same LCA, the ESP (Level 3 in the exhibit) obtains a local connection to
8 the network by purchasing Local Interconnection Service ("LIS") in Phoenix. In
9 this example, the call is handed off by the ESP within the Phoenix LCA for
10 termination to a Qwest end user customer also in the Phoenix LCA via the LIS
11 trunk. The exhibit further shows a call where the ESP is within the Phoenix LCA
12 and the Qwest end user customer is located in the Flagstaff LCA. The call is routed
13 through use of the PICed IXC using FGD trunks for termination to the end user
14 customer. This is explained in more detail in the following section.

15
16 **Q. CAN YOU DESCRIBE THE REQUIREMENT THAT CALLS WITHIN THE**
17 **LCA WHERE THE VOIP PROVIDER PURCHASES A LOCAL**
18 **CONNECTION ARE LOCAL AND CALLS BOUND FOR LOCATIONS**
19 **OUTSIDE THE LCA ARE TOLL?**

20
21 **A.** Yes. Under current rules, a voice call between separate LCAs is a toll call and must
22 be treated as such. This rule applies equally to VoIP. Thus, when a call is
23 originated in IP format on IP-compatible equipment and is handed off to Qwest
24 within a LCA where the ESP is located, but the call is being sent for termination to
25 another LCA, the provider is not entitled to free transport to the terminating LCA

1 under the ESP exemption or on any other basis, nor is it allowed to connect to the
2 terminating LCA as an end user customer under the ESP exemption if it does not
3 have a physical presence in that LCA. Calls of this sort are properly classified as
4 interexchange traffic and must be handed off to an interexchange carrier (IXC),
5 which must connect to Qwest typically via a Feature Group connection. Assuming
6 a call is VoIP, and has been converted from IP protocol to PSTN protocol, the call
7 can be delivered to Qwest over Local Interconnection Service (LIS) trunks if, and
8 only if, the hand off to Qwest is for termination of the call within the same LCA as
9 the VoIP provider's POP. Because the VoIP provider (as an ESP) purchases its
10 connection to the local network as an end user customer, the call will be treated as a
11 local call and no access charges would apply if the call is sent to a party physically
12 located in the same LCA as the VoIP provider's POP. It would also be treated as a
13 local call for purposes of 251(b)(5) reciprocal compensation purposes. If the hand
14 off is for termination at a distant local exchange outside of the LCA where the VoIP
15 POP is located, the call must be delivered to Qwest on FGD for termination to that
16 LCA. The second call example on Exhibit LBB 1 shows a call from a VoIP
17 provider's POP (end user customer) in Phoenix who seeks to complete a call to
18 Flagstaff. In that example the call is handed off to the IXC PICed by the end user
19 customer (or VoIP Provider), and the IXC delivers the call to Flagstaff over Feature
20 Group D. If the VoIP Provider purchases a local connection from its POP to the
21 Qwest local switch in Phoenix, then Qwest's switch will recognize the call to
22 Flagstaff as a toll call and route the call to the appropriate IXC. If the VoIP
23 Provider purchases a local connection from its POP to the Level 3 switch in
24 Phoenix then Level 3's switch is required to route the call to an IXC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Because the ESP is entitled to purchase a local connection in the Phoenix LCA rather than a FGD connection to terminate VoIP traffic in the Phoenix LCA, the calls from the Phoenix VoIP POP to Phoenix residents are treated as local calls. This is true whether the VoIP provider purchases that local connection from Qwest or Level 3. But the ESP exemption does not extend beyond the LCA in which the ESP has a presence. Thus, calls from a VoIP POP in Phoenix to Qwest end user customers in Flagstaff, or, for that matter, to end user customers in New York or Hong Kong, is required to be routed to an IXC for completion. In those cases, the IXC, not the VoIP provider, will pay access charges associated with transporting and terminating the call. The foregoing examples demonstrate the status of the proper application of the FCC ESP exemption and the proper routing and intercarrier compensation for interexchange calls under current rules.

Q. THE FCC HAS DISTINGUISHED VOIP TRAFFIC THAT CONNECTS TO THE PSTN FROM VOIP TRAFFIC THAT IS TRANSPORTED SOLELY OVER THE INTERNET OR A PRIVATE IP NETWORK. IS THE DISTINCTION RELEVANT TO THE DISCUSSION OF VOIP IN AN INTERCONNECTION AGREEMENT?

A. Absolutely. The FCC has been careful to distinguish VoIP traffic that connects to the PSTN from VoIP traffic that is handled entirely by the Internet, specifically using the term "interconnected VoIP services" to describe "those VoIP services that can be used to receive telephone calls that originate on the PSTN and can be used to

1 terminate calls to the PSTN.”³ The FCC singled out Interconnected VoIP services
2 because “consumers expect that VoIP services that are interconnected with the
3 PSTN will function in some ways like a “regular telephone” service.”⁴
4 Interconnected VoIP service was defined “as bearing the following characteristics:
5 (1) the service enables real-time, two-way voice communications; (2) the service
6 requires a broadband connection from the end user customer’s location; (3) the
7 service requires IP-compatible CPE; and (4) the service offering permits users
8 generally to receive calls that originate on the PSTN and to terminate calls to the
9 PSTN.”⁵ The issues between Qwest and Level 3 with regard to VoIP relate
10 specifically to Interconnected VoIP traffic that is terminated or transmitted to the
11 Qwest network (i.e., to the PSTN).
12

13 **Q. WHAT IS THE DIFFERENCE BETWEEN QWEST’S AND LEVEL 3’S**
14 **PROPOSED DEFINITIONS OF VOIP?**

15 A. It is easy to see the distinction between the two company’s positions by looking at
16 the language in dispute. Qwest’s proposed definition of VoIP traffic for the
17 interconnection agreement with Level 3 is shown in the paragraph below. All of
18 Level 3’s proposed changes are in bold face type and the language Level 3 proposes
19 to be deleted is shown as a strikethrough. Where Level 3 seeks to add additional
20 language to the paragraph, the proposal is shown in a bold underlined format.

³ *FCC VoIP 911 Order* ¶ 23.

⁴ *Id.*

⁵ *Id.* ¶ 24.

1
2 “VoIP” (Voice over Internet Protocol) traffic is traffic that originates in
3 Internet Protocol ~~at the premises of the party making the call~~ using IP-
4 Telephone handsets, ~~end user premises~~ Internet Protocol (IP) adapters, CPE-
5 based Internet Protocol Telephone (IPT) Management “plug and play”
6 hardware, IPT application management and monitoring hardware or such
7 similar equipment and is transmitted over a broadband connection to or from
8 the VoIP provider. ~~VoIP is treated as an Information Service, and is~~
9 ~~subject to interconnection and compensation rules and treatment~~
10 ~~accordingly under this Agreement based on treating the VoIP Provider~~
11 ~~Point of Presence (“POP”) as an end user premise for purposes of~~
12 ~~determining the end point for a specific call. Thus, CLEC is permitted to~~
13 ~~utilize LIS trunks to terminate VoIP traffic under this Agreement only~~
14 ~~pursuant to the same rules that apply to traffic from all other end users,~~
15 ~~including the requirement that the VoIP Provider POP must be in the~~
16 ~~same Local Calling Area as the called party~~
17

18 Qwest’s definition is pictorially illustrated in Exhibit LBB2 attached to this
19 document.
20

21 **Q. WHAT IS THE EFFECT OF LEVEL 3’S DELETIONS FROM QWEST’S**
22 **PROPOSED LANGUAGE?**

23 A. By making these deletions, Level 3 is asking the Arizona Commission to
24 dramatically modify the FCC prescribed method of treating ESPs. The FCC made
25 its position very clear in the ESP Exemption order:

26
27 “Under our present rules, enhanced service providers are treated as end users
28 for purposes of applying access charges. See 47 C.F.R. § 69.2(m);
29 *Northwestern Bell Telephone Company Petition for a Declaratory Ruling,*
30 *Memorandum Opinion and Order, 2 FCC Rcd 5986, 5988 at para. 20 (1987),*
31 *appeal docketed, No. 87-1745 (D.C.Cir. Dec. 4, 1987).* Therefore, enhanced
32 service providers generally pay local business rates and interstate subscriber
33 line charges for their switched access connections to local exchange company

1 central offices.”⁶

2
3 The FCC was clear on how an ESP would be treated. Level 3’s language is a direct
4 attempt to avoid the FCC’s ruling. Level 3 seeks to delete Qwest’s language in an
5 explicit attempt to avoid access charges when a call is between two LCAs (i.e.,
6 avoid access charges on calls that are clearly interexchange in nature). The Qwest
7 language that states that the VoIP Provider’s POP will be treated as an end user
8 customer must be incorporated into the agreement because that is precisely the
9 manner in which the ESP exemption operates (under the exemption, the ESP is
10 treated as an end user customer). Thus, Qwest’s language that the VoIP Provider’s
11 POP will be considered as an end user customer for purposes of determining the end
12 points of the call is essential in order to resolve any doubt that if the call is
13 transported to another LCA in the LATA, to another LATA, to another state, or to
14 another country, the call must be delivered to an IXC and the IXC that transports the
15 call will be responsible for access charges. Otherwise, the interconnection
16 agreement will enable Level 3 to provide a service to ESPs (or to itself acting as an

⁶ Order, *In the Matter of Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, ¶ 2, n.8 (1988) (“*ESP Exemption Order*”). See also *id.* ¶ 20, n. 53 (“Thus, the current treatment of enhanced service providers for access charge purposes will continue. At present, enhanced service providers are treated as end users and thus may use local business lines for access for which they pay local business rates and subscriber lines charges. To the extent that they purchase special access lines, they also pay the special access surcharge under the same conditions as those applicable to end users.”).

1 ESP) that gives it access to Qwest's entire network essentially free of charge to
2 terminate IXC traffic.

3
4 As Qwest understands Level 3's proposal (which essentially treats *all* VoIP traffic
5 as though it were local traffic), Qwest would receive reciprocal compensation for
6 terminating such traffic. The reciprocal compensation rate, of course, is
7 dramatically less than FGD rates and was never designed for the termination of
8 interexchange traffic (reciprocal compensation traditionally applies to the
9 termination of local traffic only). Thus, Level 3's proposal would result in a
10 fundamental restructure of intercarrier compensation on traffic that, other than the
11 manner in which it originates, looks precisely the same to the PSTN as any other
12 interexchange traffic. As the Commission reviews this matter, Qwest suggests that
13 it refuse to consider such an elemental change in intercarrier compensation. To the
14 PSTN, there is no difference between a typical interexchange call that terminates on
15 the PSTN (and is therefore subject to appropriate access charges) and a VoIP
16 originated call that, once it is converted into TDM, is placed on the PSTN for
17 termination. Qwest is unaware of any good reason, let alone a compelling reason,
18 to treat these calls in a completely different manner for intercarrier compensation
19 purposes. Level 3's proposal should, therefore, be rejected.

20
21 For traffic to meet Qwest's VoIP definition, it must originate in IP; otherwise it is
22 simply another call originated in TDM that terminates in TDM. Consistent with the

1 FCC's ruling discussed above and in more detail below, Qwest's definition requires
2 that the call originate in IP using IP CPE and be transmitted over a broadband
3 connection to the VoIP Provider. Unless it meets these requirements it will fail to
4 meet the criteria of the FCC in the AT&T case discussed above, where the FCC
5 rejected AT&T's effort to avoid access charges on calls that originate and terminate
6 in TDM.
7

8 Qwest's definition also identifies VoIP is an "information service," a contention
9 that Level 3 does not appear to challenge. Designating VoIP as an information
10 service in Qwest's definition makes the PSTN portion of the service subject to
11 interconnection and compensation based on treating the VoIP Provider's POP as an
12 end user customer's premises. Therefore, LIS trunks may be used to terminate
13 VoIP traffic based on rules that apply to other end user customers, including the
14 requirement that the VoIP Provider's POP (served by Level 3) where the VOIP
15 traffic is delivered to the public network be physically located in the same LCA as
16 the called party. Other types of VoIP calls can also be delivered to Qwest for
17 termination, of course, but since they do not qualify for the ESP exemption, such
18 traffic should be classified as toll traffic and all existing access rules are applicable
19 to it.
20

21 **Q. WHAT IS THE EFFECT OF LEVEL 3'S FIRST TWO CHANGES?**

22 A. Level 3 attempts to remove the requirement that the call *originate* at the end user
23 premises and to strike the words "end user premises" when referring to "end user
24 customer's premises IP adapters." Origination *at the end user premises* in IP is a
25 critical requirement that must remain in the agreement. The rationale for Level 3's

1 effort to delete this requirement from the definition is far from clear (it certainly did
2 not make it clear in its Petition), but it is an essential piece of the definition of VoIP.
3 First, under the ICA, these calls will terminate on the Qwest local network (the
4 PSTN). As mentioned above, when an end user customer call is originated on the
5 PSTN, routed over PSTN loops to a PSTN switch, and Level 3 terminates the same
6 call on the PSTN, that call does not qualify as an enhanced or information service.
7 It is irrelevant that a VoIP provider may have converted it to IP protocol in the
8 middle for some distance. A call not originating over broadband in IP does not meet
9 the requirements for the FCC ESP exemption. The FCC made this perfectly clear in
10 2004 in its Phone-to-Phone IP exemption decision (the “*AT&T Declaratory*
11 *Order*”), where the FCC determined that a service that begins on the PSTN and
12 ends on the PSTN, even though it may use the Internet for a portion of the transport
13 of that service, offers no net protocol conversion, and is therefore a
14 telecommunications service (as opposed to an information service):

15
16 “The service at issue in AT&T’s petition consists of an interexchange call that
17 is initiated in the same manner as traditional interexchange calls—by an end
18 user who dials 1+ the called number from a regular telephone. When the call
19 reaches AT&T’s network, AT&T converts it from its existing format into an
20 IP format and transports it over AT&T’s Internet backbone. AT&T then
21 converts the call back from the IP format and delivers it to the called party
22 local exchange carrier (LEC) local business lines. We clarify that, under the
23 current rules, the service that AT&T describes is a telecommunications service
24 upon which interstate access charges may be assessed. We emphasize that our
25 decision is limited to the type of service described by AT&T in this
26 proceeding, i.e. an interexchange service that: (1) uses ordinary customer
27 premises equipment (CPE) with no enhanced functionality; (2) originates and
28 terminates over the public switched telephone network (PSTN); and (3)
29 undergoes no net protocol conversion and provides no enhanced functionality

1 to end users due to the providers use of IP technology.”⁷
2

3 Thus, if Level 3 delivers an IP long distance call to Qwest for termination on
4 Qwest’s PSTN and the call did not originate in IP over a broadband connection, the
5 FCC has ruled that such a call is not exempt from access charges. If, however, the
6 call originates in IP (using the appropriate IP equipment) over a broadband
7 connection, and is then converted into traditional TDM protocol for termination on
8 the PSTN to a local telephone number, there has been a *net protocol conversion* and
9 the call qualifies as an enhanced or information service. Since the terminating end,
10 the call being delivered to Qwest for termination is always in TDM protocol, it *must*
11 originate in IP at the originating end user customer premises in order to be exempt.
12 Originating in IP can only occur over a broadband connection. If it both originates
13 and terminates in the PSTN protocol it is not an enhanced or information service
14 under the FCC’s rules. Qwest’s definitional language makes it clear that VoIP:

15
16 “originates in Internet Protocol at the premises of the party making the call
17 using IP-Telephone handsets, end user premises Internet Protocol (IP)
18 adapters, CPE-based Internet Protocol Telephone (IPT) Management “plug
19 and play” hardware, IPT application management and monitoring hardware or
20 such similar equipment and is transmitted over a broadband connection to the
21 VoIP provider.”
22

23 Qwest’s language requiring that the call originate at the end user customer’s
24 premises in broadband is also an absolute necessity if the call is to be treated as an
25 enhanced or information service and thus entitled to the ESP exemption. Any

⁷ AT&T Declaratory Order, ¶ 1.

1 attempt by Level 3 to remove this requirement from the contract will, in effect,
2 modify the ESP exemption and authorize it to do what the FCC said AT&T could
3 not do: take simple calls that originate on the PSTN, deliver them to Qwest in
4 another LCA, terminate the call on the PSTN, and claim the call is exempt from
5 access charges. Thus, Level 3's first two strikethrough proposals must be rejected.
6 The call must originate over broadband in IP to be an enhanced or information
7 services VoIP call.

8
9 Next, Level 3 proposes some perplexing language to the VoIP definition regarding
10 traffic direction, wanting it to read that VoIP may be "transmitted over a broadband
11 connection to or from the VoIP provider". What these additional terms mean is not
12 clear. For example, calls delivered to Qwest from a VoIP provider for termination
13 will go through a Qwest switch and over a loop connected to that switch for
14 termination on the PSTN to a traditional telephone. However, a call **from** the VoIP
15 provider that transits directly to a VoIP end user customer over broadband will not
16 go through a public network switch and thus, the PSTN is not used to complete the
17 call.⁸ As such, Qwest would not be involved in switching the call on the PSTN and
18 Level 3's proposed language is inappropriate. I am unaware of any other situation
19 or scenario in which a call would come *from* the VoIP provider in broadband that
20 would involve Qwest or the PSTN. These first two changes go to the heart of what
21 is a VoIP call. They make clear what type of calls an ESP is entitled to purchase
22 access to the public network from the Qwest (or Level 3) local tariff as an enhanced

⁸ The call may use Qwest facilities, but not for termination; for example, if the end user leases a direct broadband connection to the VoIP provider.

1 service and not through FGD, as prescribed by the FCC. Qwest's language is
2 critical to the definition and accurately limits the ESP exemption to only qualified
3 situations. It must be adopted.
4

5 **Q. WHAT IS THE THIRD CHANGE THAT LEVEL 3 PROPOSES TO THE**
6 **QWEST DEFINITION OF VOIP?**

7 A. Level 3 proposes to strike the entire remaining language from the definition. This
8 language describes how VoIP traffic will be treated under the interconnection
9 agreement as well as establishing the interconnection compensation rules that apply
10 to VoIP traffic. However, while Qwest believes this language is critical and must
11 be incorporated into the interconnection agreement, Qwest is amenable to placing
12 the language in the main section of the agreement. Regardless of where it is placed,
13 Qwest strongly believes language for the treatment of VoIP traffic is necessary to
14 avoid future disputes.
15

16 **Q. HOW DO YOU PROPOSE TO INCLUDE THIS LANGUAGE IN THE**
17 **AGREEMENT?**

18 A. Section 7.2 of the Interconnection Agreement addresses exchange of traffic. A
19 subset of that section, 7.2.2, discusses the terms and conditions for the exchange of
20 traffic. The terms and conditions describing the exchange of VoIP traffic should be
21 located in the next available subsection, 7.2.2.12. I propose the remaining language
22 from the definition of VoIP above be inserted under Section 7.2 as follows:

23
24 7.2.2.12 VoIP Traffic. VoIP traffic as defined in this agreement shall be
25 treated as an Information Service, and is subject to interconnection and

1 compensation rules and treatment accordingly under this Agreement based on
2 treating the VoIP Provider Point of Presence ("POP") is an end user premise
3 for purposes of determining the end points for a specific call.
4

5 7.2.2.12.1 CLEC is permitted to utilize LIS trunks to terminate VoIP
6 traffic under this Agreement only pursuant to the same rules that apply to
7 traffic from all other end users, including the requirement that the VoIP
8 Provider POP must be in the same Local Calling Area as the called
9 party.
10

11 **Q. LEVEL 3 OBJECTS TO THE REQUIREMENT THAT THE VOIP**
12 **PROVIDER POINT OF PRESENCE (POP) BE CONSIDERED AN END**
13 **USER CUSTOMER FOR PURPOSES OF DETERMINING THE END**
14 **POINTS OF A CALL. CAN YOU COMMENT?**
15

16 A. The language requiring that the VoIP POP be considered an end user customer was
17 a portion of the definitions moved into the body of the agreement at 7.2.2.12. Level
18 3's definition deletes that language. The language is critically important due to the
19 ESP Exemption, and must be included somewhere in the agreement. Since both
20 Level 3 and Qwest agree that the traffic that is handed off to the public network
21 from the VoIP POP arrived over the Internet and is an alternative to traditional IXC
22 traffic, the only real question is whether or not the VoIP provider must purchase
23 FGD to terminate its calls. In answer to that question, the FCC has said no. *If the*
24 *VoIP provider is acting as an ESP, it is entitled to purchase its connection out of the*
25 *local exchange tariffs and obtain local service within the LCA where it is physically*
26 *located.* In this respect, the ESP is treated as any other end user customer.
27

28 **Q. BASED UPON THESE FACTS WHAT SHOULD THE COMMISSION DO**

1 **WITH RESPECT TO ISSUE 16, DEFINITION OF VOIP?**

2 A. For all the reasons stated above, the Commission should adopt Qwest's proposed
3 definition of VoIP that includes the requirement that the call must originate at the
4 premises of the party making the call, through the use of IP-compatible CPE, over a
5 broadband circuit in IP to avoid the scenario of calls that both originate and
6 terminate as PSTN calls. Further, consistent with the proper criteria for VoIP and
7 with the FCC's ESP Exemption, neither PSTN to PSTN calls are VoIP and are not
8 entitled to the ESP exemption under FCC decisions. Qwest's proposed language
9 for Sections 7.2.2.12 and 7.2.2.12.1, make clear that VoIP traffic *as defined in this*
10 *agreement* will be treated as an information service, will be entitled to the ESP
11 exemption, and the VoIP providers POP will be treated as an end user customer's
12 premises for purpose of determining the end points of a call. This will ensure that
13 the intrastate access regime as currently approved by this Commission is not
14 changed at this time. The Commission, therefore, should adopt Qwest's proposed
15 language.

16
17 **Q. PLEASE SUMMARIZE QWEST'S BASIC POSITIONS ON VOIP.**

18
19 A. The first issue is the proper definition of VoIP. Consistent with FCC decisions,
20 there are two key essential features that must be present for a VoIP call: (1) the call
21 must originate on IP-compatible CPE (both Qwest's and Level 3's language
22 provides greater detail on the proper description of such CPE) and (2) it must also
23 originate on a broadband connection, such as DSL, cable modem, or other
24 equivalent high-speed connection to the Internet. If these two criteria are not met,

1 then the call cannot be deemed to be VoIP.

2
3 In the context of that definition, three types of calls must be considered: (1) calls
4 that meet the criteria for VoIP traffic that are terminated to another VoIP customer
5 who likewise has IP-compatible CPE and served over a broadband connection
6 (commonly referred to as IP-IP traffic); (2) calls that meet the criteria for VoIP
7 traffic, but which are terminated to a customer served on the PSTN on a telephone
8 line to a customer that uses traditional telephone CPE (commonly known as
9 IP-TDM traffic); and (3) traffic that originates in TDM but which is converted to IP
10 at some point and then converted back to TDM for delivery to the called party
11 (commonly known as "TDM-IP-TDM" or "IP in the middle" traffic).

12
13 **Q. PLEASE ADDRESS EACH TYPE OF TRAFFIC AND DESCRIBE**
14 **QWEST'S POSITION AS TO THE PROPER TREATMENT OF EACH**
15 **UNDER THE INTERCONNECTION AGREEMENT.**

16 A. I will first address IP-IP traffic. This type of traffic clearly meets the criteria for
17 VoIP. However, because both the calling and called parties are VoIP customers
18 served by broadband connections, the call remains in IP, is transported entirely over
19 the Internet, and never enters the PSTN. Thus, it is not relevant to the
20 interconnection agreement at issue in this docket.

21

1 **Q. PLEASE DISCUSS IP-TDM TRAFFIC.**

2 A. From Qwest's perspective, this is the only VoIP traffic at issue in this docket. IP-
3 TDM traffic meets the criteria for VoIP traffic because it is originated with IP-
4 compatible CPE over a broadband connection.

5
6 There is really only one specific implication of the status of IP-TDM traffic as VoIP
7 traffic that distinguishes it from the rules that apply to other traffic. That is the
8 application of the so-called ESP exemption. Both parties agree that, until the FCC
9 definitively rules on the issue, VoIP will be treated as an "information service"
10 under the Act. Thus, under certain circumstances, the provider of true VoIP service
11 is classified as an ESP and, where applicable, qualifies for the exemption. While it
12 is unclear from the Level 3 Petition, Level 3 appears to believe the exemption
13 applies much more broadly than Qwest believes it does. Under the proper
14 application of the exemption, a VoIP provider is treated as an end user customer for
15 purposes of access to a LCA in which the VoIP provider maintains a point of
16 presence ("POP"). Level 3, however, appears to believe that, either through the
17 application of the ESP exemption or for some other undisclosed reason, VoIP
18 providers are entitled to LATA-wide exemption from access charges. Qwest
19 adamantly opposes that position on both legal and policy grounds. Thus, for
20 purposes of termination of IP-TDM traffic in the LCA in which the VoIP provider
21 POP is located, the VoIP provider is allowed to terminate that traffic with Qwest

1 through the same types of retail services available to other business end user
2 customers as opposed to being required to originate and terminate traffic through
3 access charges. But that is the full extent of application of the exemption.

4
5 Thus, for all other applications of intercarrier compensation, the same rules that
6 apply to all other traffic apply to IP-TDM traffic. Rather than determining the
7 application of these rules from the physical location of the VoIP end user customer
8 that actually originates the call, the VoIP provider POP is treated as the end user
9 location. Thus, as explained in the next section, if the VoIP provider POP is
10 physically located in the same LCA as the called party, the call is treated as local,
11 and reciprocal compensation would apply. Likewise, if the VoIP provider POP is in
12 a different LCA from the called party, the call is an interexchange call that should
13 be handed off to the IXC selected by the end user customer, which transports the
14 call to the LCA of the called party, where Qwest terminates it to its end user
15 customer. The IXC would pay the appropriate access charges to terminate the
16 traffic.

17
18 In summary, under Qwest's proposed language, other than for the application of the
19 ESP exemption, IP-TDM traffic should be treated in the same manner as other
20 similar traffic. Level 3 appears to propose that these traditional means of
21 intercarrier compensation be completely scrapped in favor of treating all VoIP as
22 though it were local traffic. Thus far, Level 3 has not offered any compelling legal

1 reason why VoIP should be given special treatment. There is certainly no good
2 policy reason. It is easy to see why Level 3 wants to change the compensation
3 scheme in such a radical manner; it would allow Level 3 or its VoIP provider
4 customers to avoid charges that other identically-situated carriers must pay. Qwest
5 strongly opposes such an approach.
6

7 **Q. PLEASE DISCUSS TDM-IP-TDM (IP IN THE MIDDLE) TRAFFIC.**

8 A. While Level 3 also appears to seek special treatment for this traffic, it should not be.
9 Because this traffic originates in TDM, it does not meet the criteria for VoIP traffic.
10 Therefore, as the FCC clearly ruled in the AT&T decision, this traffic is not VoIP, is
11 not an information service (and thus does not qualify for the ESP exemption), and
12 therefore is not exempt from access charges that apply to other carriers in identical
13 circumstances. Thus, Qwest's language treats this type of traffic no different than
14 any other TDM originated traffic for intercarrier compensation purposes. The
15 Commission should reject Level 3's efforts to remove this traffic from existing
16 intercarrier compensation rules and should adopt Qwest's language.

17 **V. DISPUTED ISSUE 1A: SECTION 7.1.1.1 OPERATION AUDITS**

18 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 1A ?**

19 A. This dispute first highlights the reason that I am addressing the issues in a different
20 order than that presented by Level 3. In its petition and matrix, Level 3 lists issue
21 1A as the first of its Tier 1 issues. This single issue number, 1A, has three Qwest

1 proposed paragraphs, and six Level 3 proposed paragraphs even though in some
2 instances, they have the same number; for example 7.1.1.1, the two paragraphs are
3 totally unrelated and deal with totally different issues. My testimony in this section
4 will deal with two of the Qwest proposed paragraphs, 7.1.1.1 Verification audits,
5 and 7.1.1.2 VoIP certification. Although this is listed as the first issue on Level 3's
6 matrix, an understanding of the parties disagreement over what VoIP is, which I
7 discussed above in issue 16, is necessary to understand the dispute about the
8 language of 7.1.1.1. The third Qwest proposed paragraph in issue 1A is 7.1.1,
9 which deals with points of interconnection. Mr. Easton's and Mr. Linse's will
10 address that in their testimony along with the six Level 3 proposed paragraphs in
11 issue 1A.

12
13 **Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR 7.1.1.1?**

14 **A.** Qwest's proposal for section 7.1.1.1 of the interconnection agreement states:

15
16 7.1.1.1. CLEC agrees to allow Qwest to conduct operational verification
17 audits of those network elements controlled by CLEC and to work
18 cooperatively with Qwest to conduct an operational verification audit of any
19 other provider that CLEC used to originate, route and transport VoIP traffic
20 that is delivered to Qwest, as well as to make available any supporting
21 documentation and records in order to ensure CLEC's compliance with the
22 obligations set forth in the VoIP definition and elsewhere in this Agreement.
23 Qwest shall have the right to redefine this traffic as Switched Access in the
24 event of an "operational verification audit failure". An "operational
25 verification audit failure" is defined as: (a) Qwest's inability to conduct a
26 post-provisioning operational verification audit due to insufficient cooperation
27 by CLEC or CLEC's other providers, or (b) a determination by Qwest in a
28 post-provisioning operational verification audit that the CLEC or CLEC's end
29 users are not originating in a manner consistent with the obligations set forth
30 in the VoIP definition and elsewhere in this Agreement.
31

1 **Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.1.1.1?**

2 A. This is somewhat confusing. Apparently because Level 3 does not believe there
3 should be any provision in the contract for audits to assure the traffic is VoIP, Level
4 3 offers no changes to Qwest's proposed language and simply wants it stricken.
5 Since Level 3 presumably believes the Qwest language will be stricken, Level 3
6 went ahead and used the 'available' number 7.1.1.1 to introduce an unrelated issue
7 dealing with single point of interconnection (SPOI). My testimony will address the
8 Qwest proposed 7.1.1.1 dealing with verification audits of VoIP traffic and which
9 will require Commission resolution and a decision on the situations in which
10 Qwest's 7.1.1.1 is acceptable. Mr. Easton's testimony will address the SPOI issue.
11 In addressing the dispute with Level 3 over the SPOI, he will address the second
12 proposed paragraph numbered 7.1.1.1 (Level 3's SPOI language).

13

14 **Q. WHAT IS THE DISPUTE WITH REGARD TO QWEST'S PROPOSED**
15 **PARAGRAPH 7.1.1.1?**

16

17 A. Level 3 seeks to strike Qwest language which is necessary so that Qwest can verify
18 that the traffic that Level 3 identifies as VoIP traffic is valid VoIP traffic entitled to
19 the ESP exemption. Determining whether the traffic is proper VoIP traffic has
20 implications for a determination of whether it is local or interexchange for the
21 application of the appropriate intercarrier compensation regime. Thus, the proper
22 classification of traffic impacts the compensation obligations of both Qwest and
23 Level 3. Only traffic that qualifies as an Enhanced or Information Service is
24 entitled to the FCC's ESP exemption. Only VoIP traffic that originates on
25 broadband in IP can be terminated on the PSTN in TDM protocol under the ESP

1 Exemption. Thus, verification is critical.

2
3 First, the Qwest proposed language gives Qwest the right to do a verification audit
4 to assure that the VoIP traffic being delivered to Qwest for termination complies
5 with the definition and obligations of VoIP in this agreement. As discussed above,
6 the definition of VoIP is strongly disputed. Second, the contract makes clear that
7 when traffic does not qualify for the ESP exemption, an exemption that alleviates
8 the requirement to purchase switched access connections to the local network, that
9 Qwest has the right to redefine the non-qualifying traffic as Switched Access. If the
10 traffic does not qualify for the ESP exemption, then the only other connection to the
11 PSTN available is a Feature Group connection such as FGD.

12
13 **Q. WHAT IS THE FUNDAMENTAL DISPUTE RELATED TO THIS**
14 **LANGUAGE?**

15
16 **A.** Qwest and Level 3 are not in agreement regarding intercarrier compensation for
17 VoIP traffic that does not originate and terminate at physical locations within the
18 same LCAs. The VoIP compensation issue will be discussed in more detail in Issue
19 3B of my testimony regarding compensation for ISP Traffic. Level 3 apparently
20 does not agree that Qwest has the right to recognize VoIP traffic as Switched
21 Access in the event of an "operational verification audit failure," because Level 3
22 takes the position that Switched Access rates should never apply to VoIP traffic, no
23 matter where it originates or terminates.

24
25 **Q. DOES QWEST BELIEVE THAT OPERATIONAL AUDITS ARE**

1 **NECESSARY?**

2 A. Absolutely. Qwest believes that audits are necessary to verify the jurisdiction of a
3 call by ensuring that a VoIP call is properly classified for billing purposes according
4 to the location of the originating and terminating points of the PSTN portions of the
5 call. Qwest also believes that audits are necessary to ensure that calls that are
6 classified as VoIP are properly identified as VoIP calls in compliance with the
7 FCC's definition of VoIP, which is the basis of Qwest's proposed definition of
8 VoIP. Again, as discussed above, Level 3's definition of VoIP does not conform to
9 the definition provided by the FCC.

10

11 **Q. DOES LEVEL 3 OFFER ANY OTHER SOLUTION THAT WOULD**
12 **ENABLE QWEST TO IDENTIFY VOIP TRAFFIC?**

13 A. No. While Level 3 does not address audits for VoIP traffic, it does state in its
14 Petition that approval of Level 3's proposed definition of "call record" would allow
15 the Parties to identify and account for the exchange of such traffic in a relatively
16 easy process. I can only assume that Level 3 believes such call records are
17 sufficient verification. As Mr. Linse addresses in his testimony, there is no
18 technical way to identify VoIP today, and reliance on an optional parameter input by
19 Level 3 is not a solution. Qwest has also found with CLECs in the past, through
20 sampling, that even though some call records indicate a local call, the call in fact
21 has been a toll call, and the records did not indicate that access charges were
22 applicable.

23

24 **Q. HAVE THE PARTIES AGREED TO AUDIT PROVISIONS ELSEWHERE**

1 **IN THIS CONTRACT?**

2 A. Yes. As a matter of fact, an entire section, Section 18, of the agreement is devoted
3 to the procedures for auditing “books, records, and other documents used in
4 providing services under this Agreement.”⁹ In addition to the provisions of Section
5 18, the parties have agreed to audit provisions for safety audits,¹⁰ service eligibility
6 audits for high capacity combination or commingled facilities,¹¹ Qwest’s loop
7 information,¹² and a comprehensive audit of Qwest’s use of CLEC’s Directory
8 Assistance Listings.¹³

9

10 **Q. HAS LEVEL 3 PROPOSED OTHER AUDIT PROVISIONS?**

11 A. Yes. In Level 3’s proposed Section 7.3.9, which is covered under Disputed Issue
12 18, Level 3 includes proposed section 7.3.9.5.1 for auditing of company factors. As
13 a matter of principle, and as evidenced by the provisions the parties have agreed to,
14 Qwest does not oppose the inclusion of audit provisions, and the audit provision
15 included in disputed issue 18 is not the reason that Qwest opposes Level 3’s
16 proposed language, as Mr. Easton will explain. It is apparent from Level 3’s
17 proposal and from the agreed upon language elsewhere in this contract Level 3 does
18 not oppose audits in general. But for reasons yet to be explained, Level 3 opposes

⁹ See Section 18.1.1 of the agreed to language in the proposed contract.

¹⁰ See Section 8.2.3.10 of the agreed to language in the proposed contract.

¹¹ See Section 9.1.1.10.5 et seq. of the agreed to language in the proposed contract.

¹² See Section 9.2.2.8 of the agreed to language in the proposed contract.

¹³ See Section 10.5.2.10.1 of the agreed to language in the proposed contract.

1 the audit provision proposed by Qwest in section 7.1.1.1 dealing with the
2 origination and routing of VoIP calls.

3

4 **Q. SHOULD THE COMMISSION ADOPT QWEST'S LANGUAGE FOR**
5 **SECTION 7.1.1.1?**

6 A. Yes. To ensure fair and accurate billing for VoIP traffic, the commission should
7 approve Qwest's proposed language for Section 7.1.1.1.

8

9 **VI. DISPUTED ISSUE 1A: SECTION 7.1.1.2 CERTIFICATION**

10 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO 7.1.1.2**
11 **VOIP CERTIFICATION.**

12 A. The disagreement identified in section 7.1.1.2 is similar to 7.1.1.1. Level 3's
13 Petition is silent on Level 3's opposition to proposed section 7.1.1.2. Qwest's
14 proposed 7.1.1.2 addresses VoIP certification consistent with the VoIP
15 configurations as defined in the agreement. Instead of addressing Qwest's proposed
16 language, Level 3 remains silent on the VoIP certification process and proposes an
17 entirely new section 7.1.1.2 relating to SPOI.

18

19 **Q. WHAT IS QWEST'S LANGUAGE PROPOSAL THAT RELATES TO THIS**
20 **ISSUE?**

21 A. Qwest's proposal for section 7.1.1.2 of the interconnection agreement states:

22

23 7.1.1.2 Prior to using Local Interconnection Service trunks to terminate VoIP
24 traffic, CLEC certifies that the (a) types of equipment VoIP end users will use
25 are consistent with the origination of VoIP as defined in this Agreement; and

1 (b) types of configurations that VoIP end users will use to originate calls using
2 IP technology are consistent with the VoIP configuration as defined in this
3 Agreement
4

5 **Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.1.1.2?**

6 A. As was the case with section 7.1.1.1, this gets a bit confusing. Apparently Level 3
7 opposes any provision in the contract for certification of VoIP traffic. Therefore,
8 Level 3 offers no changes to Qwest's proposed language and instead seeks to
9 eliminate it completely. Since Level 3 presumably assumes the Qwest language
10 will be stricken, Level 3 has used the 'available' number 7.1.1.2 to introduce
11 additional language dealing with single point of interconnection (SPOI). My
12 testimony will address the Qwest proposed 7.1.1.2 dealing with certification of
13 VoIP traffic and which will require Commission resolution one way or the other.
14 Mr. Easton will address the SPOI issue in his testimony.
15

16 **Q. DOES QWEST BELIEVE THAT CERTIFICATION IS NECESSARY?**

17 A. Yes. As discussed above, Qwest and Level 3 have a fundamental disagreement
18 regarding what qualifies as a VoIP call. Level 3 should be willing (and the
19 Commission should require Level 3) to certify that VoIP traffic that it sends to
20 Qwest meets the definition established by the FCC.
21

22 **Q. HAVE THE PARTIES AGREED TO CERTIFICATION LANGUAGE**
23 **ELSEWHERE IN THIS CONTRACT?**

24 A. Yes. There are many certification provisions included in the agreed upon language
25 in this contract. For example, numerous provisions are included in Section 12
26 requiring Level 3 to certify that its OSS can properly communicate with and submit

1 orders to Qwest's OSS. In addition, Level 3 must certify that it is entitled to certain
2 high capacity loops or transport UNEs per the Triennial Review Remand Order;¹⁴
3 Level 3 must certify that it meets service eligibility criteria for high capacity EELs;¹⁵
4 both parties must certify their service management systems;¹⁶ and Qwest must
5 certify Right of Way ("ROW") agreements to Level 3.¹⁷ Clearly, both parties have
6 agreed to certification obligations elsewhere in this agreement.

7
8 **Q. SHOULD THE COMMISSION ADOPT QWEST'S PROPOSED**
9 **LANGUAGE FOR SECTION 7.1.1.2?**

10 **A.** Yes. The Commission should adopt Qwest's proposed language for section 7.1.1.2.

11
12 **VII. DISPUTED ISSUE 3 VNXX TRAFFIC**

13
14 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 3.**

15
16 **A.** Level 3 listed three separate issues under Issue 3 denominated as Issues 3a, 3b, and
17 3c. Issue 3a concerns section 7.3.6.2 of the agreement and involves intercarrier
18 compensation for calls not physically originating and terminating within the same
19 LCA. Issue 3b relates to section IV of the agreement's definition of Virtual NXX
20 or "VNXX traffic." Finally, Issue 3c addresses whether intercarrier compensation is

¹⁴ See Section 9.1.1.4 of the agreed to language in the proposed contract.

¹⁵ See Section 9.1.1.10 et. seq. of the agreed to language in the proposed contract.

¹⁶ See Section 10.2.3 et. seq. of the agreed to language in the proposed contract.

¹⁷ See Section 10.8.2.26 et. seq. of the agreed to language in the proposed contract.

1 required on VNXX traffic in section 7.3.6.1.

2
3 **Q. WHAT IS THE DISPUTE REGARDING ISSUE 3B AND THE DEFINITION**
4 **OF VNXX?**

5 A. Issue 3b involves the definition of VNXX traffic. Although not in the order
6 presented in the Level 3 Petition and matrix, a discussion of the definition of
7 VNXX traffic is necessary in order to understand the core principles of the disputed
8 issues. Understanding the VNXX concept and the types of traffic that should be
9 classified as VNXX is crucial to an understanding of the parties' differences over
10 VNXX issues. An understanding of the definitional differences between the parties
11 is a necessary prerequisite to the later discussion of compensation for local traffic.

12
13 **Q. WHAT IS VNXX TRAFFIC?**

14 A. In short, VNXX is an arrangement that provides the functionality of toll or 8XX
15 service, but at no extra charge. An NXX code, commonly referred to as a prefix, is
16 the second set of three digits of a ten-digit telephone number (NPA-NXX-XXXX).
17 These three digits (NXX) are assigned to and indicate a specific central office from
18 which a particular customer is physically served. In other words, in the number
19 (602) 255-XXXX, the "255" prefix is assigned to a specific central office in the
20 (602) area code and thus identifies the general geographic area in which the
21 customer is located. A "virtual" NXX, or VNXX undercuts that concept because it
22 results in a carrier-assigned NXX associated with a particular central office, but
23 where the carrier has no customers physically located. Instead, these telephone
24 numbers are assigned to a customer physically located outside the LCA of the

1 central office associated with the particular NXX. With VNXX, the physical
2 location of the CLEC customer is in most cases in a LCA that would require a toll
3 call from the LCA with which the telephone number is associated. This scheme
4 requires the assignment of a "virtual" NXX. The NXX is labeled "virtual" because
5 it is an assigned number that tells callers that it is in the *calling party's* LCA, rather
6 than the *called party's* LCA. In other words, a call to the "virtual" NXX does not
7 result in a local call within the LCA that the VNXX number appears to be assigned;
8 but in reality the call is terminated in a different LCA, and perhaps even in a
9 different state. Exhibit LBB3 attached hereto demonstrates visually how VNXX
10 circumvents the proper numbering plan.

11
12 VNXX has become an issue because CLECs, like Level 3 in Arizona, obtain local
13 numbers from the North American Numbering Plan Administrator ("NANPA") in
14 various parts of a state that are actually assigned to its customers (*i.e.*, ISPs) with no
15 physical presence whatsoever in the LCA with which the local numbers are
16 associated; thus, the traffic directed to those numbers is, instead of being routed to
17 customer in the same LCA as the calling party, routed to one of the points of
18 interconnection ("POIs") of the CLEC and is then terminated with the CLEC's ISP
19 customer at a physical location in another LCA or even in another state.

20
21 **Q. IS THE VNXX ISSUE CONNECTED TO THE SINGLE POINT OF**
22 **INTERCONNECTION (SPOI) ISSUE?**

23 **A.** Yes. In the early 2000s CLECs argued that they should be entitled to serve a LATA
24 from a single switch rather than placing switches in numerous LCAs in order to

1 offer local service. Qwest agreed and has offered such a form of interconnection
2 (SPOI) for several years. If a CLEC provides local service from a single switch
3 within a LATA, it is entitled (because it is a CLEC) to be assigned NXXs for LCAs
4 both near and far from the switch. The manner in which those NXXs are used is a
5 critical matter. If a CLEC is assigned an NXX and it has constructed or leases loops
6 to retail subscribers located within the LCA of the NXX, that is consistent with the
7 intended use of the assigned NXX (i.e., to allow the CLEC to provide local
8 exchange service to customers located within that LCA). But if a CLEC is assigned
9 an NXX from a distant LCA and it creates a primary line of business that creates a
10 deliberate misimpression that, from a carrier-to-carrier perspective, toll free calling
11 is really conventional local calling, then that is an unintended and inappropriate use
12 of the assigned NXX.

13
14 **Q. WHAT IS QWEST'S PROPOSAL FOR ISSUE 3B, DEFINITION FOR**
15 **VNXX TRAFFIC?**

16 A. Qwest proposes the following definition of VNXX Traffic:

17
18 "VNXX Traffic" is all traffic originated by the Qwest End User Customer that
19 is not terminated to CLEC's End User Customer physically located within the
20 same Qwest Local Calling Area (as approved by the state Commission) as the
21 originating caller, regardless of the NPA-NXX dialed and, specifically,
22 regardless of whether CLEC's End User Customer is assigned an NPA-NXX
23 associated with a rate center in which the Qwest End User Customer is
24 physically located.
25

26 **Q. WHAT IS LEVEL 3'S PROPOSAL FOR ISSUE 3B, DEFINITION FOR**
27 **VNXX TRAFFIC?**

28 A. Level 3's proposes 3 paragraphs for the definition of VNXX traffic:

1
2 VNXX Traffic shall include the following:
3

4 **ISP-bound VNXX traffic** is telecommunications over which the FCC has
5 exercised exclusive jurisdiction under Section 201 of the Act and to which
6 traffic a compensation rate of \$0.0007 / MOU applies. ISP-bound VNXX
7 traffic uses geographically independent telephone numbers (“GITN”), and thus
8 the telephone numbers associated with the calling and called parties may or
9 may not bear NPA-NXX codes associated with the physical location of either
10 party. This traffic typically originates on the PSTN and terminates to the
11 Internet via an Internet Service Provider (“ISP”).
12

13 **VoIP VNXX** traffic is telecommunications over which the FCC has exercised
14 exclusive jurisdiction under Section 201 of the Act and to which traffic a
15 compensation rate of \$0.0007 / MOU applies. VoIP VNXX traffic uses
16 geographically independent telephone numbers (“GITN”), and thus the
17 telephone numbers associated with the calling and called parties may or may
18 not bear NPA-NXX codes associated with the physical location of either party.
19 Because VoIP VNXX traffic originates on the Internet, the physical location
20 of the calling and called parties can change at any time. For example, VoIP
21 VNXX traffic presents billing situations where the (i) caller and called parties
22 are physically located in the same ILEC retail (for purposes of offering circuit
23 switched “local telephone service”) local calling area and the NPA-NXX
24 codes associated with each party are associated with different ILEC LCAs; (ii)
25 caller and called parties are physically located in the same ILEC retail (for
26 purposes of offering circuit switched “local telephone service”) local calling
27 area and the NPA-NXX codes associated with each party are associated with
28 the same ILEC LCAs; (iii) caller and called parties are physically located in
29 the different ILEC retail (for purposes of offering circuit switched “local
30 telephone service”) local calling area and the NPA-NXX codes associated
31 with each party are associated with same ILEC LCAs; and (iv) caller and called
32 parties are physically located in the different ILEC retail (for purposes of
33 offering circuit switched “local telephone service”) local calling area and the
34 NPA-NXX codes associated with each party are associated with different
35 ILEC LCAs. Examples of VoIP VNXX traffic include the Qwest “One Flex”
36 service and Level 3’s (3)VoIP Enhanced Local service.
37

38 **Circuit Switched VNXX traffic** is traditional “telecommunications services”
39 associated with legacy circuit switched telecommunications providers, most of
40 which built their networks under monopoly regulatory structures that evolved
41 around the turn of the last century. Under this scenario, costs are apportioned

1 according to the belief that bandwidth is scarce and transport expensive. The
2 ILEC offers to a customer the ability to obtain a "local" service (as defined in
3 the ILEC's retail tariff) by paying for dedicated transport between the physical
4 location of the customer and the physical location of the NPA-NXX. Thus,
5 this term entirely describes a service offered by ILECs, but which cannot be
6 offered by IP-based competitors as such networks do not dedicate facilities on
7 an end-to-end basis.

8
9 **Q. WHAT IS THE BASIC DIFFERENCE BETWEEN THE TWO**
10 **COMPANIES' DEFINITIONS OF VNXX?**

11 A. Both sides agree that a VNXX call originates in one LCA and terminates in another.
12 In addition, both Level 3 and Qwest agree that, with VNXX, the physical location
13 of the end user customer who is being called bears no relationship to the local
14 number that is assigned to the call. For example, Qwest's definition defines VNXX
15 traffic as "traffic...that is not terminated to CLEC's End User Customer physically
16 located within the same Qwest LCA as the originating caller, regardless of the
17 NPA-NXX dialed." Level 3's definition states that "VNXX traffic uses
18 geographically independent telephone numbers ("GITN"), and thus the telephone
19 numbers associated with the calling and called parties may or may not bear NPA-
20 NXX codes associated with the physical location of either party."
21

22 What the parties do not agree on is the means of compensation or appropriate
23 trunking for VNXX traffic. For instance, Level 3 adds "compensation" language
24 into the definition on the assumption that reciprocal compensation applies to VNXX
25 traffic, attempting to set the compensation rate¹⁸ for a call originating in one LCA

¹⁸ If the Commission were to adopt Level 3's proposed definition, it would then mandate reciprocal compensation payments at the local ISP rate of \$.0007 and would completely eliminate the concept of a toll call with regard to this traffic.

1 and terminating in a different one. Thus, as noted above, under Level 3's proposal,
2 instead of Qwest recovering the cost of delivering the traffic, Qwest would pay
3 Level 3 a compensation rate to terminate the traffic. In other words, Level 3
4 proposes a fundamental change in intercarrier compensation for VNXX traffic.

5
6 Level 3's language is improper for several reasons. First, because this section is for
7 defining *what* VNXX traffic is and not its rates, and second, and of critical
8 importance, Level 3's proposed definition of VNXX would convert toll calls to
9 local calls, and change the Commission's defined LCAs. For example, Level 3's
10 language would enable a customer physically located in the Phoenix LCA to have a
11 Flagstaff telephone number, so that calls to and from that person by local
12 subscribers in Flagstaff would be treated as local calls even though they are routed
13 over the PSTN to Phoenix just like other toll calls. This is improper because,
14 among other reasons, Level 3 wants to shift all of the costs of this arrangement to
15 Qwest.

16
17 **Q. LEVEL 3'S DEFINITION CONTAINS THREE CATEGORIES OF VNXX**
18 **TRAFFIC. DO YOU AGREE WITH "CATEGORIES" IN REGARD TO**
19 **VNXX CALLS?**

20 **A.** No. The ISP and VoIP paragraphs of Level 3's definition are essentially the same
21 for both categories. For example, both sections state that "VNXX traffic uses
22 geographically independent telephone numbers...not associated with the physical
23 location of either party..." In the VoIP section above, I stated that it appears that
24 Level 3 wants to treat all VoIP traffic as if it were local and it is through this

1 definition that it attempts to do so. Both the ISP and VoIP sections attempt to
2 impose “the compensation rate of \$0.0007/MOU” on this interexchange traffic.
3 The only actual difference between the paragraphs is the claim that an ISP VNXX
4 call originates on the PSTN and terminates to an ISP while VoIP VNXX calls
5 originate on the Internet and terminate to an end customer on the PSTN. These
6 comments, however, do not change the actual definition of what constitutes VNXX
7 traffic. The categories (ISP or VoIP) are irrelevant to establishing the VNXX
8 definition which deals with the geographic location of customers and NXX
9 numbers.

10
11 Level 3’s third category is both unnecessary and out of place in this section.
12 Labeled “Circuit Switched VNXX traffic,” the alleged definition contains only
13 Level 3’s biased legal opinion regarding “traditional ‘telecommunications
14 services.’” The language does not add any substance to the definition of VNXX
15 traffic and is obviously extraneous to the subject matter of this section of the
16 contract.

17
18 On the whole, Level 3 is attempting to create distinctions where none exist in order
19 to avoid the existing intercarrier compensation mechanisms—in effect to avoid
20 costs that other carriers pay and replace them with revenues. All three proposed
21 categories of VNXX are based on the termination of a call being physically located
22 in a different LCA. The labeled distinctions are irrelevant to the definition of
23 VNXX and only confuse the language and the underlying issues.

24
25 **Q. HAS THIS COMMISSION ADDRESSED THE SUBJECT OF VNXX**

1 **TRAFFIC PREVIOUSLY?**
2

3 A. Yes. In the recent AT&T arbitration this Commission addressed the issue of
4 VNXX traffic. The issue arose with in the context of the definition of Exchange
5 Service i.e. local service. In that case AT&T argued that the nature and
6 compensation of a call should be based on the NPA-NXX of the calling and called
7 parties, and not the physical location of the parties. Qwest's language on the other
8 hand said that local traffic was traffic that originated and terminated in the same
9 local calling area as determined by the Commission. After reviewing the arguments
10 for both sides the Commission found the "Qwest's definition of Exchange Service
11 comports with existing law and rules and should be adopted."¹⁹
12

13 **Q. IF A VNXX CALL IS PLACED TO AN ISP OR TO A PSTN END USER**
14 **CUSTOMER AS A VOIP TERMINATION, DOES THE CALL**
15 **CLASSIFICATION CHANGE TO A LOCAL CALL?**

16 A. The type of business of an end user customer does not affect whether a call is local
17 or not. If an end user customer is located in Flagstaff (whose ISP's modems and
18 routers are physically located in Phoenix, but whose number is a Flagstaff NPA
19 NXX) logs onto the Internet, the call to the ISP telephone number is not a local call
20 because it originates in Flagstaff and terminates in Phoenix.²⁰ It makes no
21 difference if the call is to an ISP, a hardware store, or a restaurant in Phoenix,

¹⁹ Opinion and Order, *In the Matter of the Petition of AT&T Communications of the Mountain States, Inc. and TCG Phoenix, for Arbitration with Qwest Corporation, Inc. Pursuant to 47 U.S.C. Section 252(b)*, Docket Nos. T-02428A-03-0553 and T-01051B-03-0553, at 13 (Ariz. Corp. Comm'n, April 6, 2004).

²⁰ Flagstaff is in a different LCA than Phoenix.

1 because it is a call that originates in Flagstaff and terminates in Phoenix. The
2 location of the calling and called parties determines the nature of the call, not the
3 business type. A toll call is a toll call. Level 3's avoidance of that fact is
4 demonstrated by its creation of VNXX categories. ISP, VoIP or circuit based
5 VNXX calls do not change a toll call into a local call. This language does not
6 belong in the contract anywhere, including in the definition of VNXX.

7

8 **Q. IF ISP TRAFFIC AND VOICE TRAFFIC ARE TREATED THE SAME FOR**
9 **THE VNXX DEFINITION, HOW IS A CALL DETERMINED TO BE**
10 **LOCAL OR TOLL?**

11 A. In regard to defining VNXX traffic, ISP traffic should be treated no differently than
12 voice traffic. In determining if a call is local or toll, the location of the origination
13 and termination is the decisive factor: calls that physically originate and terminate
14 within the same LCA are rated as local calls. The ESP POP is the point of
15 termination (for an ISP) and origination (for terminating VoIP). Calls routed to a
16 point of interface for termination **outside** of the originating LCA are interexchange
17 calls. VNXX services that terminate traffic to an ISP whose Internet equipment
18 (e.g., modems, servers, and routers) is not located within the same LCA as the
19 originating LCA are simply interexchange toll calls and must remain subject to the
20 access charge provisions that govern interexchange toll traffic. In the case of VoIP
21 calls, where a VoIP Provider's point of presence is in one LCA, say Phoenix, and
22 the VoIP Provider's CLEC, for example Level 3, wants to deliver a call on behalf of
23 its end user customer (the VoIP Provider) to an end user customer in Flagstaff,
24 Level 3 should hand that call to an "intraLATA" toll provider for termination.

1 Level 3's definitional language attempts to say this is a toll call or not depending on
2 to whom the call is placed. Again, a toll call is a toll call. Qwest's definition of
3 VNXX traffic is clear, concise, and accurate, while Level 3's definition
4 unnecessarily complicates the issue. Qwest's language should be adopted.

5
6 **Q. IN ITS PETITION LEVEL 3 REFERS TO ITS VNXX PRODUCT AS AN**
7 **"FX LIKE" PRODUCT. IS VNXX LIKE FOREIGN EXCHANGE (FX)**
8 **SERVICE?**
9

10 A. No. Level 3's VNXX product uses the PSTN to route and terminate calls to end
11 user customers connected to the PSTN in another LCA. In all respects, except the
12 number assignment, the call is routed and terminated as any other toll call. Qwest's
13 FX product, on the other hand, delivers the FX calls within the LCA where the
14 number is actually associated. In other words, a Qwest FX customer actually
15 purchases a local service connection in the LCA associated with the telephone
16 number. That local service connection is purchased by the FX customer out of the
17 local exchange tariffs that apply to that LCA. The calls are then transported on
18 what is, in effect, the end user customer's private network (private line) to another
19 location. In other words, after purchasing the local connection in the LCA, the FX
20 customer bears full financial responsibility to transport it to the location where the
21 call is actually answered. It does this at tariffed rates. Qwest, and other telephone
22 companies, have been selling such private line services to PBX owners and other
23 customers for decades. Calls are delivered to the customer's PBX and any call
24 delivery behind the PBX is, for purposes of transport to the customer's actual
25 location, carried on the owner's private network. Qwest and other telephone

1 companies delivered the call to the PBX location. Private transport beyond that is
2 the business of and financial responsibility of the PBX owner.

3
4 Level 3's approach is fundamentally distinct from FX service. Under FX, the
5 customer who desires a presence in another LCA is fully responsible to transport the
6 traffic to the location where it wants the call answered. Under level 3's proposal,
7 Level 3 wants the call routed over the PSTN, but feels no responsibility for
8 providing the transport to the distant location. In calling its product an FX-like
9 product, Level 3 attempts to confuse this critical distinction. Calls over the public
10 switched network between communities that use the toll network are toll calls no
11 matter how the numbers are assigned. Calls delivered to end user customers within
12 a LCA and transported over private networks are more than a mere technical
13 distinction. It is consistent with the way Commissions have been distinguishing
14 between toll and local calls since access charges were established.

15
16 **ISSUE 3A RECIPROCAL COMPENSATION FOR VNXX**

17
18 **Q. PLEASE DESCRIBE ISSUE 3A AND WHAT THE PARTIES DISPUTE IN**
19 **THIS ISSUE.**

20 **A.** Now that the distinction between a local call and VNXX has been established, Issue
21 3a can be addressed. Qwest's position is clear. VNXX calls are not local calls
22 subject to reciprocal compensation payments under 251(b)(5). Qwest's proposed
23 language makes clear that Qwest will not treat VNXX calls as local and will not pay
24 local reciprocal compensation on such VNXX traffic. Level 3 attempts to cast this
25 issue as to whether Qwest may exclude ISP traffic from compensation due under the

1 FCC's *ISP Remand Order* through contract terms that identify geographic
2 designations based on LCAs. A call from a customer in Phoenix to a customer
3 located in Miami, Florida is a toll call, irregardless of the telephone number dialed.
4 The fact that the customer at the other end of that toll call is an ISP does not
5 magically change the call into a local call. And a VNXX call to an ISP physically
6 located in Phoenix, but with a Flagstaff NPA NXX, placed by an end user customer
7 in Flagstaff is not a local call either. However, Qwest also makes clear that Qwest
8 *will* pay reciprocal compensation, a charge for terminating local traffic, on traffic
9 that actually originates and terminates at physical locations within the same LCA, as
10 established by the Commission. Qwest also makes clear that calls that originate and
11 terminate at locations in different LCAs are not local calls and not entitled to
12 reciprocal compensation. The "VNXX" number is not and should not be
13 determinative. And, of course, as stated earlier, if the VNXX call is an ISP call, no
14 reciprocal compensation is due, just as it would not be due on a typical voice call.
15 The fact that the call is ISP grants it no special status, legal or otherwise.

16
17 **Q. WHAT IS QWEST'S LANGUAGE PROPOSAL FOR ISSUE 3A, SECTION**
18 **7.3.6.3?**

19 A. Qwest's proposal for Section 7.3.6.3 of the interconnection agreement states:

20
21 7.3.6.3 Qwest will not pay reciprocal compensation on VNXX traffic.

22
23 **Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.3.6.3?**

24 A. Level 3's counter-proposal for Section 7.3.6.3 is set forth:

25

1 7.3.6.3 If CLEC designates different rating and routing points such that
2 traffic that originates in one rate center terminates to a routing point
3 designated by CLEC in a rate center that is not local to the calling party even
4 though the called NXX is local to the calling party, such traffic ("Virtual
5 Foreign Exchange" traffic) shall be rated in reference to the rate centers
6 associated with the NXX prefixes of the calling and called parties' numbers,
7 and treated as 251(b)(5) traffic for purposes of compensation.
8

9 **Q. LEVEL 3 STATES THAT QWEST IS PROPOSING TO EXCLUDE ISP**
10 **TRAFFIC FROM COMPENSATION DUE IT UNDER THE FCC'S ISP**
11 **REMAND ORDER. DO YOU AGREE?**

12 A. No. First, Qwest agrees that, under the *ISP Remand Order* and until addressed more
13 definitively by the FCC, reciprocal compensation is due on ISP calls that originate
14 and terminate to locations within a LCA. However, the FCC has not ruled that all
15 ISP traffic is subject to intercarrier compensation. Level 3's fundamental argument
16 is that the *ISP Remand Order*, read in combination with the *Core Forbearance*
17 *Order*,²¹ requires that intercarrier compensation must be paid on *all* ISP traffic,
18 including VNXX ISP traffic.²² Level 3 argues that traffic bound for an ISP located
19 in Phoenix is subject to intercarrier compensation, regardless of whether it
20 originated across town in the LCA, from the other end of the state, or from across
21 the country. However, there is nothing in the *ISP Remand Order* or *Core*
22 *Forbearance Order* that requires that state commissions adopt ICA language that
23 allows intercarrier compensation for VNXX ISP traffic. These orders relate only to
24 local ISP traffic, where the ISP is physically located in the same LCA as the

²¹ Order, *Petition of Core Communications for Forbearance Under 47 USC § 160(c) from the Application of the ISP Remand Order*, Order FCC 04-241 WC Docket No. 03-171 (rel. October 18, 2004) ("*Core Forbearance Order*").

²² Level 3 Petition ¶¶ 56-66.

1 customer placing the call. Qwest addresses its legal position on this issue in its
2 Response to Level 3's Petition and will do in more detail in its briefs in this case.

3
4 **Q. DOES LEVEL 3 ALSO CONFUSE THE ISSUE OF ISP TRAFFIC WITH**
5 **VNXX ISSUES?**

6 A. Yes. VNXX is not just a phenomenon associated with ISP calls, although it is in
7 that context that VNXX issues often arise. A VNXX call can be to an ISP such as
8 AOL located in another town or to a voice customer such as the local hardware
9 store in that other town. VNXX arrangements can exist for both ISP and voice
10 traffic. The issue of VNXX traffic (whether ISP or other types of traffic) has been
11 addressed to some degree by the FCC and has been extensively litigated before
12 many state commissions. The majority of state commissions have ruled that traffic,
13 whether voice traffic or ISP that does not physically originate and terminate in the
14 same LCA is not subject to reciprocal compensation under existing interconnection
15 agreements. Here, however, the issue is not the interpretation of an existing
16 interconnection agreement, but what the language of a new agreement should
17 provide. In this case, Level 3 is asking the Commission to require local reciprocal
18 compensation for non-local calls, deviating from the policy that reciprocal
19 compensation is recoverable only for the termination of "local" traffic (as defined
20 by state commission tariffs). In that regard, language from the *ISP Remand Order*
21 is instructive:

22
23 Congress preserved the pre-Act regulatory treatment of all the access services
24 enumerated under Section 251(g). These services thus remain subject to
25 Commission jurisdiction under Section 201 (or, to the extent they are

1 intrastate services, they remain subject to the jurisdiction of state
2 commissions), whether those obligations implicate pricing policies as in
3 *Comptel* or reciprocal compensation. *This analysis properly applies to the*
4 *access services that incumbent LECs provide (either individually or jointly*
5 *with other local carriers) to connect subscribers with ISPs for Internet-bound*
6 *traffic.*²³
7

8 The FCC was focused upon problems unique to the compensation mechanism that
9 applied to traffic where the ISP was located in the same LCA. Level 3 attempts to
10 inject language that “ISP-bound” VNXX traffic is subject to ISP compensation, and
11 argues that the FCC changed the access charge structure and issued an exemption
12 for “all” calls sent to the Internet, regardless of where the call originates and
13 terminates. While the FCC has opened a docket to scrutinize these issues as a part
14 of an overall examination of intercarrier compensation,²⁴ the applicable law has not
15 changed. Until the FCC takes further action in its intercarrier compensation docket,
16 expanding reciprocal compensation to include calls from across the state or country
17 must not be permitted.
18

19 **Q. LEVEL 3 ARGUES THAT THERE IS A COST DIFFERENCE IN**
20 **TERMINATING ISP AND NON ISP CALLS. PLEASE RESPOND.**

21 A. Level 3 argues that its cost to terminate an ISP call is not different than the cost to
22 terminate a non ISP call. Qwest has never suggested that there is a cost difference
23 to Level 3 and, whether there is or is not a difference, the question is completely
24 irrelevant. The question before the Commission is not the cost of termination, but

²³ *ISP Remand Order ¶ 39* (emphasis added, footnote omitted).

²⁴ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610 (2001) (“*Intercarrier Compensation NPRM*”).

1 whether a CLEC, by serving ISPs, may gather traffic from multiple LCAs at no cost
2 to itself (remember that Level 3 also claims it should pay no costs on Qwest's side
3 of the POI) and then be able to charge Qwest for terminating *all* of that traffic,
4 whether it is local or not. As many other state commissions that have addressed the
5 issue have concluded and as the FCC clearly concluded in the *ISP Remand Order*,
6 requiring reciprocal compensation on ISP traffic leads to uneconomic arbitrage and
7 windfall revenues.

8
9 **Q. WHY SHOULD QWEST'S LANGUAGE BE ADOPTED?**

10 A. Reciprocal compensation as used in the Act is the charge to terminate "local"
11 traffic. Under Qwest's definition, VNXX traffic (the issue discussed in 3b above) is
12 traffic that originates and terminates at physical locations that *are not* within the
13 same LCA. Even Level 3's definition of VNXX recognized that the call would
14 originate in one LCA and terminate in another LCA. While acknowledging the true
15 nature of VNXX calls, Level 3's proposal attempts to produce a major change in
16 compensation policy by requesting that the Commission nevertheless eliminate
17 access charges on such traffic and require the payment of compensation for
18 terminating the traffic. Such a dramatic change in policy should not be approved by
19 the Commission.

20
21 **Q. WHY DOES QWEST BELIEVE ITS LANGUAGE SHOULD BE ADOPTED?**

22 A. Carriers seeking to receive reciprocal compensation on VNXX services are
23 attempting to redefine existing tariffed services and Commission-established local
24 boundaries and categorize them in a unique way in an attempt to collect reciprocal

1 compensation and avoid access charges. These VNXX numbers, and the facilities
2 that would be used to connect to locations where such calls would be terminated,
3 are interexchange in nature and are therefore not subject to reciprocal
4 compensation. By attempting to fool the systems with a local number, the call
5 detail itself would not indicate that any compensation associated with this
6 interexchange or toll call should be made. The assignment of telephone numbers in
7 the VNXX manner should not result in inter-exchange calls between two
8 communities not in the same LCA to masquerade as local calls.

9
10 **Q. WHAT IS THE APPROPRIATE COMPENSATION MECHANISM FOR**
11 **THESE TYPES OF CALLS?**

12 A. The costs of carrying VNXX calls between different LCAs should not be borne by
13 end user customers of the local exchange where the call originated. The VNXX
14 service providers, and the ultimate cost-causer, the ISP whose customers generate
15 the traffic via dial-up Internet connections, should bear the financial responsibility
16 for such traffic. After all, it is the CLEC and its ISP customers who generate the
17 traffic. The telecommunications carrier who wishes to deliver this interexchange
18 traffic elsewhere must bear the financial responsibility of the interexchange
19 transport to the ISP. The appropriate compensation mechanism for VNXX services
20 is that the VNXX service provider that is transporting traffic between LCAs should
21 pay the appropriate charges to transport calls between the LCAs. Such calls should
22 not be considered local calls.

23
24 **ISSUE 3C: RECIPROCAL COMPENSATION FOR ISP TRAFFIC**

1 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES IN ISSUE 3C?**

2 A. In Issue 3b the definition of VNXX traffic was discussed. Issue 3a dealt with Level
3 3's claim that VNXX traffic should be subject to reciprocal compensation. There
4 was no distinction made by Level 3 between a voice call and an ISP call; Level 3's
5 language tries to include VNXX in the category of calls entitled to reciprocal
6 compensation. Qwest's proposed language made clear that VNXX traffic was not
7 local traffic subject to reciprocal compensation. Now in Issue 3c the language
8 addresses the payment of reciprocal compensation for ISP traffic generally.
9

10 **Q. WHAT IS QWEST'S LANGUAGE PROPOSAL FOR ISSUE 3C, SECTION**
11 **7.3.6.1, INTERCARRIER COMPENSATION FOR ISP BOUND TRAFFIC?**

12 A. Qwest proposal for the definition of Section 7.3.6.1 is as follows:
13

14 7.3.6.1 Subject to the terms of this Section, intercarrier compensation for
15 ISP-bound traffic exchanged between Qwest and CLEC (where the end users
16 are physically located within the same Local Calling Area) will be billed as
17 follows, without limitation as to the number of MOU ("minutes of use") or
18 whether the MOU are generated in "new markets" as that term has been
19 defined by the FCC:

20 \$.0007 per MOU or the state ordered rate, whichever is lower.
21

22 **Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR ISSUE 3C, SECTION**
23 **7.3.6.1, INTERCARRIER COMPENSATION FOR VNXX TRAFFIC?**

24 A. Level 3's counter-proposal for the definition of Section 7.3.6.1 is as follows:
25

26 7.3.6.1 Intercarrier compensation for ISP-bound traffic Section 251(b)(5)
27 traffic, and VoIP traffic exchanged between Qwest and CLEC will be billed
28 and paid without limitation as to the number of MOU ("minutes of use") or
29 whether the MOU are generated in "new markets" as that term has been
30 defined by the FCC in the ISP Remand Order at a rate of \$.0007 per MOU.

1

2 **Q WHY DOES QUEST OBJECT TO LEVEL 3'S PROPOSED LANGUAGE IN**
3 **7.3.6.1?**

4 A. Qwest's major objection to Level 3's language stems from the fact that Level 3 has
5 inserted additional types of traffic into the paragraph for which it wants to receive
6 reciprocal compensation at the rate of \$.0007. The two additional types of traffic
7 are the imprecise reference to "section 251(b)(5) traffic" as well as "VoIP traffic."
8 As I explain below, by proposing this definition, Level 3 is attempting, in effect, to
9 obtain a decision from the Arizona Commission that access rates do not apply to
10 any Level 3 traffic in Arizona.

11

12 **Q. HOW IS LEVEL 3 ATTEMPTING TO ELIMINATE ACCESS CHARGES**
13 **IN ARIZONA?**

14 A. In a very roundabout, but very clever way. Level 3 proposes language saying the
15 rate of \$.0007 shall apply to "251(b)(5) traffic." To find out what this means, one
16 must go to the definitions section of Level 3's proposed agreement to see how it
17 defines "251(b)(5) traffic." It does this in its definition of the term
18 "telecommunications," which, under Level 3's definition, "includes, but is not
19 limited to *Section 251(b)(5) Traffic, which is defined as Telephone Exchange*
20 *Service, Exchange Access Service, Information Service, and Telephone Toll Service*
21 *(including but not limited to IntraLATA and InterLATA Toll) traffic and is also*
22 *defined to include ISP-Bound traffic, VoIP traffic."* Thus, while including "ISP-
23 bound traffic and VoIP," Level 3 also includes toll traffic in section 251(b)(5)
24 traffic. As far as I know, it is unprecedented for a CLEC to claim that toll traffic is

1 subject to reciprocal compensation. The effect of all of this is that, under Level 3's
2 language, toll would be subject to reciprocal compensation and no longer subject to
3 terminating access charges. I address this in more detail in 'Issue X Definition of
4 Interconnection.' Level 3 apparently believes that access charges should not apply
5 to its traffic, even for calls outside the LCA. Thus it has attempted in several places
6 to insert language into the agreement that would completely exempt Level 3 from
7 those charges. These are not just minor tweaks to contract language that are of little
8 consequence; rather, it represents a dramatic change in intercarrier compensation
9 from the mechanisms that govern the relationships between carriers.
10

11 **VIII. DISPUTED ISSUE 4: COMPENSATION FOR VOICE AND VoIP**
12 **TRAFFIC**

13 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 4.**

14 A. At its core, this is also a dispute over VNXX calls. Qwest agrees to pay reciprocal
15 compensation on local VoIP calls where the end user customers are physically
16 located in the same LCA, but not if they are located in different LCAs. While the
17 disputed language in section 7.3.6 dealt with ISP traffic, the language in dispute in
18 this issue, section 7.3.4, deals with the exchange of local voice and VoIP traffic. In
19 this issue, section 7.3.4 deals with the exchange of local voice and VoIP traffic.
20 Again, VNXX is the central issue because Level 3 proposes in its language that the
21 compensation for local voice and VoIP calls also apply as long as the NXX codes
22 are associated with the same LCA, with no requirement that the end user customers
23 actually be physically located within the same LCA. The Level 3 language simply
24 attempts to have the Commission amend its access rules and impose reciprocal

1 compensation for VNXX calls that are from outside the LCA.
2

3 **Q. WHAT IS QWEST'S LANGUAGE PROPOSAL FOR SECTION 7.3.4.1?**

4 A. Qwest's proposal for Section 7.3.4.1 is set forth below:

5
6 7.3.4.1 Intercarrier compensation for Exchange Service (EAS/Local) and
7 VoIP traffic exchanged between CLEC and Qwest (where the end users are
8 physically located within the same Local Calling Area) will be billed at
9 \$.00097.
10

11 7.3.4.2 The Parties will not pay reciprocal compensation on traffic,
12 including traffic that a Party may claim is ISP-Bound Traffic, when the traffic
13 does not originate and terminate within the same Qwest local calling area (as
14 approved by the state Commission), regardless of the calling and called NPA-
15 NXXs and, specifically regardless of whether an End User Customer is
16 assigned an NPA-NXX associated with a rate center different from the rate
17 center where the customer is physically located (a/k/a "VNXX Traffic").
18 Qwest's agreement to the terms in this paragraph is without waiver or
19 prejudice to Qwest's position that it has never agreed to exchange VNXX
20 Traffic with CLEC.
21

22 **Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.3.4.1?**

23 A. Level 3's proposal for Section 7.3.4.1 is set forth:

24
25 7.3.4.1 Subject to the terms of this Section, intercarrier compensation for
26 Section 251(b)(5) Traffic where originating and terminating NPA-NXX codes
27 correspond to rate centers located within Qwest defined local calling areas
28 (including ISP-bound and VoIP Traffic) exchanged between Qwest and CLEC
29 will be billed as follows, without limitation as to the number of MOU
30 ("minutes of use") or whether the MOU are generated in "new markets" as
31 that term has been defined by the FCC: \$.0007 per MOU.
32

33 **Q. IS THERE ALSO A DISPUTE ABOUT THE RATE THAT IS PAID?**

34 A. Yes. The Qwest proposed rate in my testimony reflects the rate of \$.00097

1 established by the Commission for voice traffic. The FCC did nothing to take away
2 the state commissions' right to set the voice rate for reciprocal compensation. Level
3 3 thinks a different rate, \$.0007, should apply and not the rate established by the
4 Arizona Commission. In addition, Level 3 again tries to insert 251(b)(5) language,
5 which, based on the discussion above, includes toll. Level 3 also attempts to
6 include any VNXX calls by tying the traffic to the NPA-NXX, and not to the towns
7 where the customers reside.

8
9 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE**
10 **OVER THE LEVEL 3 LANGUAGE?**

11 A. I will not repeat the arguments on this issue. I addressed them in the VNXX
12 definition section, as well as the compensation for ISP issue. In both instances,
13 Level 3 sought to expand the definition of 251(b)(5) traffic to include calls from
14 outside the LCA if the terminating party had an assigned NXX associated with the
15 local exchange of the calling party. Level 3 is attempting through its language in
16 7.3.4.1 to do the same thing for voice and VoIP calls. Qwest's language makes
17 clear that VNXX traffic, including voice and VoIP VNXX traffic, is not local and is
18 not subject to reciprocal compensation rules for local traffic. Level 3's attempt to
19 change the FCC's orders and redefine 251(b)(5) to include toll is also addressed in
20 Issues 10 and 19.

21
22 **IX. DISPUTED ISSUE 19: ISP BOUND 3:1 RATIO, Section 7.3.6.2**
23

24 **Q. WHAT IS THE DISPUTED LANGUAGE FOR SECTION 7.3.6.2?**

1 A. Section 7.3.6.2 states:

2 7.3.6.2 Identification of ISP-Bound Traffic – ~~unless the Commission has~~
3 ~~previously ruled that Qwest’s method for tracking ISP-Bound Traffic is~~
4 ~~sufficient,~~ Qwest will presume traffic delivered to CLEC that exceeds a 3:1
5 ratio of terminating (Qwest to CLEC) to originating (CLEC to Qwest) traffic
6 is ISP- Bound traffic. Either party may rebut this presumption by
7 demonstrating the factual ratio to the state Commission. Traffic exchanged
8 that is not ISP-Bound Traffic will be considered to be Section 251(b) (5)
9 traffic.

10
11 Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO THE
12 LANGUAGE IN SECTION 7.3.6.2.
13

14 A. There are two issues in regard to Section 7.3.6.2. In the first instance Level 3 seeks
15 to strike language dealing with the situation where a State Commission has
16 previously ruled on what is an appropriate method of tracking ISP-bound Traffic. I
17 show this disputed language in ~~strike-through text~~. The second issue deals with
18 Level 3’s attempt to insert additional language in the section dealing with 3:1 that
19 will presume all traffic exchanged between Qwest and Level 3 that is not ISP-bound
20 traffic is 251(b)(5) traffic. I show this proposed Level 3 change in underlined text.
21 I will address each of these issues separately.

22
23 Q. WHY DID QWEST INCLUDE THE LANGUAGE IN THE FIRST PART OF
24 SECTION 7.3.6.2 THAT LEVEL 3 WANTS STRIKEN?

25 A. The language at issue, “*unless the Commission has previously ruled that Qwest’s*

1 *method for tracking ISP-Bound Traffic is sufficient*” is language proposed by Qwest
2 for all states. Qwest’s proposed language simply provides that *if* a Commission has
3 previously ruled that Qwest’s method of identifying actual ISP-bound traffic is
4 sufficient, then that method of identifying actual local and ISP minutes should be
5 employed instead of the presumption formula. The FCC gave this right to both
6 parties as part of the decision in the ISP Remand Order establishing the 3:1 ratio.

7
8 “A carrier may rebut the presumption, for example, by demonstrating to the
9 appropriate state commission that traffic above the 3:1 ratio is in fact local
10 traffic delivered to non-ISP customers. In that case, the state commission will
11 order payment of the state-approved or state-arbitrated reciprocal compensation
12 rates for that traffic. Conversely, if a carrier can demonstrate to the state
13 commission that traffic it delivers to another carrier is ISP-bound traffic, even
14 though it does not exceed the 3:1 ratio, the state commission will relieve the
15 originating carrier of reciprocal compensation payments for that traffic, which
16 is subject instead to the compensation regime set forth in this Order”.²⁵
17

18 Qwest has brought this issue up elsewhere and has successfully rebutted the 3:1
19 presumption. In Arizona, because Qwest has not yet brought this matter before the
20 Commission, the Commission has not yet ruled on Qwest’s method of identifying
21 ISP traffic. Because Level 3 does not object to the language “Either party may rebut
22 this presumption by demonstrating the factual ratio to the state Commission”,
23 Qwest has no objection to the language ~~‘unless the Commission has previously~~
24 ~~ruled that Qwest’s method for tracking ISP-Bound Traffic is sufficient,’~~ being
25 struck.
26

27 **Q. WHY DOES QWEST OBJECT TO LEVEL 3’S INSERTION OF**

²⁵ *ISP Remand Order*, ¶ 79.

1 **LANGUAGE AT THE END OF SECTION 7.3.6.2?**
2

3 A. This is simply another manifestation of Level 3's roundabout effort to reclassify all
4 of its traffic and eliminate access charges. By making what at first blush is a
5 seemingly harmless insertion ("Traffic exchanged that is not ISP-Bound Traffic
6 will be considered to be Section 251(b) (5) traffic,"), Level 3 is in fact attempting
7 to classify *all* traffic exchanged between the two companies as local traffic subject
8 to reciprocal compensation. As I discussed previously, this sentence must be read
9 side by side with Level 3's definition of 251(b)(5) traffic, in which Level 3 attempts
10 to even include toll traffic. Level 3's language would have the effect of eliminating
11 the interstate and intrastate access structures established by the FCC and Arizona
12 Commission and should be rejected as inconsistent with both the law and good
13 policy. The FCC made clear that all traffic is not subject to 251(b)(5):

14
15 "We conclude that a reasonable reading of the statute is that Congress
16 intended to exclude the traffic listed in subsection (g) from the reciprocal
17 compensation requirements of subsection (b)(5). Thus, the statute does not
18 mandate reciprocal compensation for "exchange access, information access,
19 and exchange services for such access" provided to IXCs and information
20 service providers."²⁶

21
22 **Q. HOW SHOULD THE COMMISSION RULE ON ISSUE 19?**

23 A. The Commission should rule that Level 3's attempt to change existing law on what
24 is included in section 251(b)(5) traffic should be denied. Thus, the Level 3
25 proposed language at the end of 7.3.6.2 should be rejected.

²⁶ *ISP Remand Order* ¶ 34.

1

2

X. DISPUTED ISSUE 10: DEFINITION OF INTERCONNECTION

3

4 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 10.**

5 A. Level 3 mischaracterizes this issue as Qwest's attempt to exclude traffic from being
6 exchanged. That is not the issue at all. In fact, this is simply another version of
7 Level 3's inappropriate effort to reclassify all traffic to its benefit. Level 3 purports
8 to be offering a definition of interconnection, but it is really attempting to insert into
9 the agreement an incredibly broad definition of section 251(b)(5) traffic:
10 *"Telecommunications includes, but is not limited to Section 251(b)(5) Traffic,*
11 *which is defined as Telephone Exchange Service, Exchange Access Service,*
12 *Information Service, and Telephone Toll Service (including but not limited to*
13 *IntraLATA and InterLATA Toll) traffic and is also defined to include ISP-*
14 *Bound traffic, VoIP traffic."* This language is a clear misstatement of the FCC's
15 position. Level 3 is seeking to expand the definition of 251(b)(5) traffic to include,
16 among other things, intraLATA and interLATA toll calls. In fact, the FCC has
17 clearly and unequivocally stated that section 251(b)(5) does NOT include the
18 services Level 3 is attempting to add in its definition of "interconnection":

19

20 "We conclude that a reasonable reading of the statute is that Congress
21 intended to exclude the traffic listed in subsection (g) from the reciprocal
22 compensation requirements of subsection (b)(5). Thus, the statute does not
23 mandate reciprocal compensation for "exchange access, information access,
24 and exchange services for such access" provided to IXCs and information
25 service providers. Because we interpret subsection (g) as a carve-out
26 provision, the focus of our inquiry is on the universe of traffic that falls within
27 subsection (g) and not the universe of traffic that falls within subsection

1 (b)(5).²⁷

2 Level 3 is attempting, through a definitional sleight of hand, to convince the
3 Arizona Commission to overturn this portion of the FCC's decision in the *ISP*
4 *Remand Order* and to fundamentally change the intercarrier compensation
5 mechanisms that have governed carrier-to-carrier relationships for years. The
6 Commission should reject Level 3's definition of "interconnection" and its attempt
7 to obtain an interconnection definition that would include toll, access, and
8 information services in section 251(b)(5) traffic.

9
10 **XI. DISPUTED ISSUE 11: DEFINITION OF INTEREXCHANGE**
11 **CARRIER**
12

13 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 11.**
14

15 A. This issue relates to whether the Interconnection Agreement should contain the
16 definition of "Interexchange Carrier" as proposed by Qwest or use Level 3's
17 definition.
18

19 **Q. WHAT IS QWEST'S LANGUAGE PROPOSAL FOR THIS DEFINITION?**

20 A. Qwest's definition for "Interexchange Carrier" is as follows:

21 "Interexchange Carrier" or "IXC" means a Carrier that provides *InterLATA or*
22 *IntraLATA Toll services.*

23 **Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR THE DEFINITION**
24 **OF AN INTEREXCHANGE CARRIER?**

²⁷*Id.*

1 A. Level 3's proposal for the definition of "Interexchange Carrier" is set forth:
2 "Interexchange Carrier" or "IXC" means a Carrier that provides *Telephone*
3 *Toll Service*.
4

5 **Q. WHY DOES QWEST BELIEVE THAT ITS DEFINITION IS ACCURATE?**
6

7 A. I will state first that this is not an area of disagreement that is significant or will
8 have a profound effect on the implementation of the interconnection agreement,
9 except as discussed below. Qwest's proposed definition of "Interexchange Carrier"
10 is the current, standard language included in interconnection agreements with
11 CLECs and has been approved by every Commission in Qwest's region. An
12 interexchange carrier is an access customer that typically purchases Feature Group
13 D access trunks from Qwest to originate and terminate "interLATA and
14 intraLATA" toll calls. The terms "InterLATA and IntraLATA" have been widely
15 used and understood within the telecommunications industry. The Communications
16 Act of 1934 (as amended) contains a definition for "interLATA service"²⁸ and
17 references the term "interLATA" throughout the Act. State commissions also
18 reference intraLATA and interLATA services and refer to "toll" services ordered by
19 an IXC.
20

21 **Q. WHY WOULD LEVEL 3 OBJECT TO THE USE OF 'INTERLATA AND**

²⁸ 47 U.S.C. § 153(21). (InterLATA service "means telecommunications between a point located in a local access and transport area and a point located outside such area").

1 **“INTRALATA” IN RELATIONSHIP TO AN IXC?**

2 A. During negotiations, Level 3 implied that in order for a toll call to be a toll call, a
3 discrete charge must be imposed. Thus, under this logic, if Level 3 did not charge
4 its customers for VNXX calls, the VNXX calls could not be categorized as toll
5 calls, could not be subject to access charges, and should be subject to reciprocal
6 compensation. Level 3’s effort to inject the “Telephone Toll Service” definition
7 appears to be a back door attempt to inject this issue into the agreement. Although
8 Qwest has little dispute between the two definitions, Qwest takes strong issue with
9 a Level 3 assertion that the “telephone toll service” definition means that VNXX is
10 not toll and has been validated by the agreement, with all of its attendant
11 implication for access charges and reciprocal compensation. Under what appears to
12 be Level 3’s theory, a carrier that offers toll but does not charge its customers for
13 any reason would thereby exempt itself from FCC or state prescribed access
14 charges. Furthermore, Level 3’s ability as a CLEC to obtain local numbers carries
15 with it the assumption (apparently false in its case) that these numbers will be used
16 to originate and/or terminate local calls. Thus, Qwest has no way to determine in
17 advance whether any particular call is really a toll call that it should be billing as
18 such. Thus, a CLEC like Level 3 that wants to rely on a definition that a toll call
19 can only be a toll call if there is a charge is enabled to create its own self-fulfilling
20 prophecy. The reference to charges is addressed to the end user customers. Toll is
21 a retail product sold to end user customers. The term toll does not address the
22 charges between carriers, exchange access. Whether or not there is a charge to a
23 retail end user customer for the toll call will not impact the tariffed obligation to pay
24 access charges.

1

2

**XII. DISPUTED ISSUE 12: DEFINITION OF "INTRALATA TOLL
TRAFFIC"**

3

4

5

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 12.

6

A. This issue relates to whether the Interconnection Agreement should contain the definition of "IntraLATA Toll" as proposed by Qwest or use Level 3's definition.

7

8

9

Q. WHAT IS QWEST'S PROPOSAL FOR "INTRALATA TOLL"?

10

A. Qwest's proposal for "IntraLATA toll" is as follows:

11

IntraLATA Toll Traffic" describes IntraLATA Traffic outside the Local Calling Area.

12

13

14

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL?

15

A. Level 3's proposal for "IntraLATA toll" is as follows:

16

IntraLATA Toll Traffic" describes IntraLATA Traffic that constitutes Telephone Toll Service.

17

18

Again, the Commission will note that there is little in the way of a substantive

19

difference here. Both definitions accurately describe a type of IntraLATA toll call

20

in different ways. Neither definition will change the impact of the Agreement.

21

However, Level 3's injection of the "Telephone Toll Service" definition again

22

raises the issue of whether Level 3 believes that the inclusion of that definition

23

means that traffic between two exchanges (i.e., interexchange traffic) is exempt

24

from access charges. If so, the companies have a major dispute. The dispute can be

25

avoided by simply adopting Qwest's language, which is clear and has been widely

26

accepted in SGATs and interconnection agreements.

1

2

XIII. DISPUTED ISSUE 9: DEFINITION OF EXCHANGE ACCESS

3

4 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 9.**

5 A. This dispute related to Qwest's proposed definition for "Exchange Access". Qwest
6 agrees with Level 3's proposed definition that "Exchange Access" will have the
7 meaning as set forth in the Act. Where Qwest used the word "Exchange Access"
8 uniquely in Section 7 of the agreement, Qwest simply deleted the words "Exchange
9 Access" and left the remainder of the language "Intralata toll carried solely by Local
10 Exchange Carriers, (LEC IntraLATA toll)". The description of LEC IntraLATA
11 toll was not disputed by Level 3 in Section 7, thus we believe this issue is closed.

12

13

14 **XIV. DISPUTED ISSUE 14: DEFINITION OF EXCHANGE SERVICE**

15

16 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 14.**

17 A. This dispute relates to Level 3's deletion of the term "Exchange Service" as part of
18 its request to include "Telephone Exchange Service" in the agreement. Qwest's
19 definition for "Exchange Service" or "Extended Area Service (EAS)/Local Traffic"
20 means traffic that is originated and terminated within a LCA as determined by the
21 Commission. Qwest cannot nor should the Commission agree to strike "Exchange
22 Service" from the definitions. Exchange Service is used in paragraphs throughout
23 the agreement (most of which Level has not disputed). Qwest objects to the
24 removal of Qwest's definition for "Exchange Service" as it is used repeatedly
25 throughout the agreement and is therefore necessary.

1

2

XV. DISPUTED ISSUE 15: DEFINITION OF 'TELEPHONE TOLL SERVICE'

3

4

5

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 15.

6

A. This issue relates to Level 3's inclusion of a definition for "telephone toll service" and Qwest's position that it is not necessary to include a separate definition for "telephone toll service."

7

8

9

10

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR THE DEFINITION OF TELEPHONE TOLL SERVICE?

11

12

A. Level 3's proposal is as follows:

13

Telephone toll service - the term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

14

15

16

17

18

Q. WHAT IS THE EXISTING DEFINITION FOR SWITCHED ACCESS SERVICE THAT INCLUDES TELEPHONE TOLL SERVICE?

19

20

A. The definition that has been agreed upon by both parties for "Switched Access Service" states that Switched Access is the service that an IXC orders for originating and terminating 'telephone toll service.' Switched Access enables access customers (IXCs) to complete end user customer requests for intrastate or interstate long-distance calls. The terms and conditions for access services are in compliance with the rules and regulations for telephone toll service. The definition reads as

21

22

23

24

25

1 follows:

2

3

4

5

6

7

"Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of *telephone toll service*. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, 8XX access, and 900 access and their successors or similar Switched Access Services.

8

Q. DOES QWEST HAVE A PROBLEM WITH THE DEFINITION OF TOLL SERVICE ITSELF?

9

10

A. No. The definition is from the FCC and is not controversial. What is controversial is Level 3's attempt to avoid access charges on telephone toll elsewhere in the agreement. The real issue regarding this definition is Level 3's attempt to exempt "telephone toll service" from access charges and instead treat this traffic as local, and therefore subject to reciprocal compensation. Level 3 proposes that telephone toll service be included in section 251(b)(5) traffic, traffic that is treated as local, that is subject to reciprocal compensation, and not subject to access charges. As an example, in the definition for "Interconnection" Level 3's language states: "Section 251(b)(5) traffic, which is defined as Telephone Exchange Service, Exchange Access Service, Information Service, and *Telephone Toll Service (including but not limited to intraLATA and interLATA Toll)*." While this is one of the few places where Level 3 spells out that it is making a definitional attempt to include toll with section 251(b)(5), Level 3 then uses the term 251(b)(5) traffic throughout the agreement without mentioning the fact that it has defined it to include toll. This is an inappropriate attempt to redefine categories of traffic in ways that will dramatically change methods of compensation. It should not be accepted by the Commission.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1

2 **Q. DOES QWEST HAVE A PROBLEM WITH THE DEFINITION ITSELF?**

3 A. No. As long as the Commission remains mindful of Level 3's improper use of the
4 term in other paragraphs involved in this arbitration.

5

6 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

7 A. Yes, it does.

INDEX TO EXHIBITS

1
2
3
4
5
6
7
8

DESCRIPTION

Exhibit

ESP ConnectionLBB-1

VoIP RoutingLBB-2

Virtual NXX.....LBB-3