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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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LEVEL 3 COMMUNICATIONS, LLC  
Complainant,

DOCKET NO. T-01051B-05-0415  
T-03654A-05-0415

vs.

**QWEST CORPORATION'S  
ANSWER TO LEVEL 3'S  
COMPLAINT TO ENFORCE ITS  
INTERCONNECTION  
AGREEMENT, AND  
COUNTERCLAIMS**

QWEST CORPORATION,  
Respondent.

Respondent Qwest Corporation ("Qwest") hereby responds to and answers the complaint to enforce its interconnection agreement that complainant Level 3 Communications, LLC ("Level 3") filed on or about June 10, 2005, and further, files its counterclaims against Level 3.

INTRODUCTION

Intercarrier Compensation

1. This complaint involves the complex question of intercarrier compensation. There are two general traffic types to which intercarrier compensation applies. Interexchange (toll) traffic is compensated through switched access charges, while local traffic may be compensated either through a "bill and keep" or reciprocal compensation arrangement between local carriers.

2. Local traffic is telecommunications traffic that originates and terminates in a geographically-defined area that is approved by the Commission. These areas are called "local calling areas" or "extended area service" ("EAS") areas. See e.g., A.A.C.

1 R14-2-1102(8); A.A.C. R14-2-1302(9); A.A.C. R14-2-1305; A.A.C. R14-2-1302(19).  
2 These geographically-defined areas allow for an end-user customer's unlimited calling  
3 within these areas for a Commission-approved flat rate.

4 3. With the introduction of competitive local services, the FCC allowed for  
5 intercarrier compensation for the exchange of this local traffic. This provided both  
6 incumbent local exchange carriers ("ILECs") and competitive local exchange carriers  
7 ("CLECs") the opportunity to recover the costs associated with interconnection for the  
8 exchange of local traffic through a per minute charge. "Bill and keep," on the other hand,  
9 allows for each carrier to bill their end-user customer and keep the revenue, therefore  
10 eliminating the need for recording traffic and billing for reciprocal compensation. The  
11 concept behind bill and keep is to recover interconnection costs from the end-user  
12 customers of the telecommunications network to which those end-user customers are  
13 connected. When the traffic that is exchanged between local carriers is in balance, there  
14 is a presumption that each network will incur similar costs.

15 4. Interexchange (toll) traffic is traffic that originates and terminates between  
16 exchanges located in *different local calling areas*/EAS areas. Toll traffic is measured in  
17 minutes of use, and is charged to the end-user customer by the end user customer's  
18 selected interexchange carrier ("IXC"). The IXC must pay originating access charges to  
19 the originating carrier for the use of its network, and terminating access charges to the  
20 terminating carrier for the use of its network to complete the call.

21 5. As described above, the type of traffic, either local or toll, is determined by  
22 the geographic location of the end points of the calls. Based on these physical end points,  
23 the telecommunications industry has developed a method of determining the general  
24 location (i.e., local calling area/EAS area) for intercarrier compensation purposes based  
25 on the telephone numbers of the originating and terminating end users. Telephone  
26 numbers are displayed in the NPA/NXX format (in which the NPA is the area code and  
27 the NXX is the central office code). The central office code is then followed by a four-  
28 digit number which together constitutes the telephone number of the end-user customer's

1 telephone line. Based on this format and the known geographic local calling area/EAS  
2 boundaries, a call may be determined to be either local or long distance.

### 3 The Level 3 Complaint

4 6. This complaint presents an important issue to this Commission. Has the  
5 FCC changed the definition of a long distance call? In other words, when a person places  
6 a long distance call to a computer, or Internet Service Provider (“ISP”) server (“ISP  
7 Server”),<sup>1</sup> may the carrier connecting the call to the computer treat the call according to  
8 the FCC’s *ISP Remand Order* for compensation and access charge purposes?<sup>2</sup> The  
9 answer is clearly no. However, Level 3 claims that a call to an ISP Server, at least when  
10 the ISP Server is used to connect to the Internet, is, according to the *ISP Remand Order*,  
11 to be treated under the process described in that order, *no matter where the ISP Server is*  
12 *physically located*.

13 7. Level 3’s position is that for a call originated from Tucson, the called ISP  
14 Server could be physically located in Phoenix, Los Angeles, or Albuquerque, and all calls  
15 to the ISP Server (and through the ISP Server to the Internet) would be treated for  
16 compensation purposes as a local call whereby as if both the caller and the ISP Server  
17 were physically located in Tucson. This is also referred to as VNXX.<sup>3</sup> This is clearly  
18 not the law, and the FCC for more than 20 years has made it clear that a call to a  
19 computer (including a call to an ISP Server used to provide information or enhanced  
20 services) is to be rated based on the *physical location* of the ISP Server itself, and not the  
21

22 <sup>1</sup> Level 3 has used the term “ISP equipment,” which is functionally the same thing as a computer that  
23 connects to the Internet. The more common term is “ISP Server,” which will be used through the  
24 remainder of this answer.

25 <sup>2</sup> See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications*  
26 *Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order,  
27 16 FCC Rcd 9151, 9163-9181, ¶¶ 23-65, 9186-9190, ¶¶ 77-84 (2001), *remanded sub nom, WorldCom,*  
28 *Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *reh’g en banc denied* (D.C. Cir., Sept. 24, 2002), *cert.*  
*denied*, 538 U.S. 1012 (May 5, 2003).

<sup>3</sup> “Virtual NXX” or “VNXX,” the subject of this case, is a vehicle by which a carrier obtains a telephone  
number for one local calling area and uses that telephone number in another geographic area. Using a  
VNXX scheme thereby makes it appear, based on the *telephone number*, that a call is a local call when, in  
fact, it is an interexchange or toll (long distance) call (often being transported very long distances).

1 location of any further end point with which the ISP Server may communicate, or to  
2 which the computer may direct the call. Level 3's argument is that the FCC somehow  
3 accidentally reversed this consistent precedent, and thus that the FCC has ruled that *all*  
4 calls to an ISP Server are to be treated according to the scheme in the *ISP Remand Order*,  
5 no matter where the ISP Server is physically located.

6 8. This issue is important to Level 3 because, if its position were to be  
7 accepted, Level 3 would be able to reap significant financial advantages at the expense of  
8 Qwest and the public. Not only would customers calling Level 3's ISP customers avoid  
9 paying toll charges for such calls, but also Qwest would be required (after an amendment  
10 to the parties' interconnection agreement) to compensate Level 3 for "terminating" the  
11 calls at the intercarrier compensation rate set forth in the FCC's *ISP Remand Order*  
12 (\$0.0007 per minute) for "ISP-bound traffic."

13 9. Level 3's position is directly contrary to FCC precedent, which requires  
14 that a computer (such as an ISP Server) be treated exactly the same as other end-user  
15 customers in determining whether a call to the computer is treated as a toll call or a local  
16 call. In other words, a call originated from one local calling area to an ISP Server  
17 physically located in another local calling area is treated as a toll call. This is the basis  
18 for the so-called "ESP Exemption," which requires exactly that.

19 10. The federal ESP Exemption prevents a local exchange carrier from  
20 charging switched access charges for a call made to a local computer on the basis that the  
21 computer ultimately directs the call to an end point (e.g., another computer) or to another  
22 station located in another state. This is part of the same rule that held that calls to or from  
23 local Private Branch Exchanges ("PBXs") would not be required to pay switched access  
24 charges, even if the calls were connected to another line and ultimately transferred to a  
25 distant location. The ESP Exemption never said, explicitly or implicitly, that calls to or  
26 from computers (or PBXs) were "local calls," no matter where the computers (or PBXs)  
27 were physically located. Level 3, however, argues that the FCC, without analysis or even  
28 intent, has accidentally changed the entire landscape of access charges, and thus issued a

1 blanket exemption for all calls to and from all computers, no matter where physically  
2 located (as long as they ultimately send the call to the Internet). Level 3's position that  
3 the FCC has made such a major policy shift is completely unsupported. Further, any  
4 suggestion that based on the *ISP Remand Order*, the FCC intended for VNXX calls to  
5 ISPs to be "local" is tantamount to claiming that the FCC has claimed regulatory  
6 authority over that part of intrastate long distance, and thus intended that 1+ calls to ISPs  
7 be deemed "local," which would be completely without merit. This Commission retains  
8 regulatory authority over intrastate calling; the FCC's *ISP Remand Order* did nothing to  
9 change that.

10 11. Level 3 also ignores applicable Arizona administrative rules and definitions  
11 and this Commission's recent ruling in the AT&T/Qwest arbitration proceeding (Docket  
12 Nos. T-02428A-03-0553 and T-01051B-03-0553) dealing with the definition of a "local"  
13 call. In that arbitration, the Commission ruled that the definition of local exchange  
14 service would remain as traffic that originates and terminates within the *same*  
15 Commission-determined local calling area.<sup>4</sup> Thus, the Commission rejected AT&T's  
16 request for a definition "based upon the NPA-NXX of the calling and called parties"  
17 (instead of the physical location of the parties (i.e., Virtual NXX (or VNXX)). Therefore,  
18 a CLEC's VNXX offerings that do not provide for toll payments, or an appropriate  
19 substitute, or that seek reciprocal compensation or any other intercarrier compensation,  
20 are improper.

21 12. Level 3 also ignores the plain language of the parties' interconnection  
22 agreement ("ICA") regarding the types of traffic that the parties have agreed to exchange.

23 \_\_\_\_\_  
24 <sup>4</sup> Level 3's interconnection agreement has a very similar definition of "Exchange Service" as that which is  
25 in the AT&T agreement. Specifically, the definition in the AT&T agreement (§ 4.0) is as follows:  
26 "'Exchange Service' or 'Extended Area Service (EAS)/Local Traffic' means traffic that is *originated and*  
27 *terminated within the same Local Calling Area as determined for Qwest by the Commission.*" (Emphasis  
28 added.) The definition in Level 3's agreement (§ 4.22) is as follows: "'Exchange Service' or 'Extended  
Area Service (EAS)/Local Traffic' means traffic that is *originated and terminated within the local calling*  
*area which has been defined by the Commission and documented in applicable tariffs.*" (Emphasis  
added.)

1 A true and correct copy of relevant portions of the Level 3/Qwest ICA is attached hereto  
2 as Exhibit A to this Answer and Counterclaims. The traffic types that the parties have  
3 agreed to exchange over the local interconnection trunks and through the ICA Single  
4 Point of Presence (“SPOP”) amendment are very specifically delineated in the ICA. As  
5 is discussed below, the traffic for which Qwest disputes payment does not match the  
6 traffic types that the parties agreed to exchange under the ICA. Due to Level 3’s  
7 purposeful misuse and improper assignment of telephone numbers, the traffic that Level  
8 3 expects Qwest to exchange does not match any of the specifically-defined traffic types,  
9 and therefore is not traffic that the parties have agreed to exchange under the ICA. The  
10 solution to this dispute is quite simple. If Level 3 assigns telephone numbers based on  
11 the actual physical location of the ISP Server, then the traffic will be properly routed  
12 consistent with the definitions in the ICA.

13 13. Indeed, Level 3’s misassignment of telephone numbers is not consistent  
14 with the telecommunications industry’s numbering resource guidelines. For example, the  
15 Alliance for Telecommunications Industry Solutions (ATIS) Central Office Code (NXX)  
16 Assignment Guidelines (COCAG) (section 2.14) assumes “from a wireline perspective  
17 that CO [central office] codes/blocks allocated to a wireline service provider are to be  
18 utilized to provide service to a customer’s premise *physically located* in the same rate  
19 center that the CO codes/blocks are assigned.” (Emphasis added.) Although exceptions  
20 exist, such as for tariffed services like foreign exchange services, VNXX is not such an  
21 exception. In addition, section 4.2.2(6) of the COCAG provides that “[t]he numbers  
22 assigned to the facilities identified must serve subscribers in the *geographic area*  
23 *corresponding with the rate center requested.*” (Emphasis added.) Finally, “geographic  
24 NPAs” are the “NPAs which correspond to discrete geographic areas within the NANP  
25 [North American Numbering Plan],” while “non-geographic NPAs” are “NPAs that do  
26 not correspond to discrete geographic areas, but which are instead assigned for services  
27 with attributes, functionalities, or requirements that transcend specific geographic  
28 boundaries,” “the common examples [of which] are NPAs in the N00 format, e.g., 800.”

1 COCAG, § 13.0 (definition of “NPA,” at p. 48). A true and correct copy of relevant  
2 portions of the Alliance for Telecommunications Industry Solutions (ATIS) Central  
3 Office Code (NXX) Assignment Guidelines (COCAG) is attached hereto as Exhibit B to  
4 this Answer and Counterclaims.

5 14. The solution to this dispute is quite simple. If Level 3 assigns telephone  
6 numbers based on the actual physical location of the ISP Server, then the traffic will be  
7 properly routed consistent with the definitions in the ICA.

8 15. Thus, this case raises an important issue from a policy and financial  
9 perspective. Ultimately, this Commission should rule in favor of Qwest and thus  
10 determine that Level 3 is not entitled to unilaterally change the ICA. The Commission  
11 should further rule (as a matter of federal law, state law and sound public policy) that  
12 Level 3 is not entitled to fundamentally shift the toll compensation structure in this state.

### 13 STATEMENT OF PERTINENT FACTS

#### 14 Background of Dispute

15 16. This dispute arises because Level 3 has engaged in a practice of providing a  
16 service to its ISP customers which enables the ISP’s customers who are physically  
17 located in a particular local calling area to dial a “local” telephone number to reach the  
18 ISP even though the ISP is actually physically located in a different local calling area, or  
19 possibly even a different state. Level 3 does this by assigning telephone numbers to  
20 Level 3’s ISP customers based on where the call originates, thus allowing the calls to  
21 terminate in a different local calling area. Level 3 then knowingly misuses Qwest’s  
22 Local Interconnection Service (“LIS”) so that Qwest will believe it is obligated to route  
23 and transport calls to Level 3 disguised as “local” calls (or, as Level 3 would try to define  
24 them, “ISP-Bound” calls) when, in fact, the calls should be treated as *toll* calls. While  
25 Level 3 seeks this treatment of ISP calls, other carriers seek the same treatment of  
26 intercity calls not destined for the Internet. For example, some carriers’ VNXX calls  
27 might be destined for an inbound telemarketing center, a “help desk,” or a voice  
28 messaging system.

1           17. This practice has widespread and significant implications for the entire  
2 access compensation system established in Arizona and elsewhere. Level 3 seeks to  
3 benefit not once, but twice. Level 3 not only wants to allow its ISP customer and the  
4 ISP's customers to avoid paying toll charges for long distance calls, but it also seeks to  
5 force ILECs like Qwest to pay Level 3 for the privilege of routing and transporting toll  
6 calls for Level 3. Such an approach would lead to severe financial repercussions for the  
7 industry, would erode the financial support that originating access provides to local rates,  
8 and would further distort the compensation scheme (including universal service funding)  
9 underlying the public switched telephone network.

10           18. Level 3's practices raise a wide variety of policy issues. Those issues are  
11 being addressed and litigated before the FCC and the courts. Nonetheless, while those  
12 proceedings are pending, Level 3 seeks to sidestep them by charging Qwest without  
13 satisfying the change of law process provided for in the ICA. Level 3's effort is not  
14 supported by state law, federal law or the parties' ICA; and thus the Commission should  
15 order that Level 3 cease such practices while the issues are sorted out. Because of the  
16 status of the law, Qwest has refused to pay Level 3's improper and inaccurate intercarrier  
17 compensation bills for VNXX traffic.

18           19. Thus, the primary issue raised here is whether or not a call destined for the  
19 ISP Server should be subject to the FCC's *ISP Remand Order* rate of \$0.0007 per minute,  
20 regardless of the physical location of the person placing the call compared to the physical  
21 location of the ISP Server. The FCC has addressed this issue. This Commission has also  
22 recently issued a decision regarding the definition of a local call. All of this precedent  
23 dictates that Level 3 is wrong.

24           **Treatment of Calls Destined for ISPs**

25           **Federal Authority**

26           20. The FCC has a long history of determining the appropriate compensation  
27 treatment of traffic destined for "enhanced service providers" or "ESPs" (i.e., providers  
28 of communications that modify content). In 1983, the FCC issued an order creating the

1 so-called "ESP Exemption."<sup>5</sup> The ESP Exemption was not really an exemption, but  
2 rather a decision, based on a number of policy considerations, that enhanced service  
3 providers were entitled to connect their points of presence through tariffed local retail  
4 services (rather than through tariffed feature group access services that interexchange  
5 carriers were required to purchase), even though the facilities were really being used for  
6 services classified as interstate.<sup>6</sup> The FCC assigned the same status to private  
7 telecommunications networks or systems (e.g., PBX systems) that accessed local  
8 exchange systems for connecting interstate calls.<sup>7</sup> In other words, the FCC treated the  
9 point of presence of an enhanced service provider as if that point of presence were the  
10 location of a retail customer.

11 21. The FCC applied the same approach under the 1996 Telecommunications  
12 Act when it addressed traffic routed to the Internet. The FCC determined that ISPs, the  
13 heirs to the old "enhanced service provider" designation, were entitled to the same  
14 treatment for compensation purposes. Thus, when an ISP is served by a CLEC, the same  
15 analysis applies under section 251(g) of the Act. The ISP Server is treated as an end-user  
16 location for purposes of compensation, but the call does not terminate at this location.  
17 The ISP may purchase services from its telecommunications provider for the purpose of  
18 getting its incoming calls to the ISP Server. Compensation between the ISP's provider  
19 (Level 3) and the LEC (Qwest) that serves the customer that originated the call is based

20  
21  
22 <sup>5</sup> See *In the Matter of MTS and WATS Market Structure*, Third Report and Order, 93 FCC 2d 241, 254-  
23 255, ¶ 9 and fn. 15, 320, ¶ 269 (1983); *modified on recon.*, 97 FCC 2d 682 (1984) ("*First Order on*  
24 *Reconsideration*"), *further modified on recon.*, 97 FCC 2d 834 (1984) ("*Order on Further*  
*Reconsideration*"), *aff'd in principal part and remanded in part sub nom.*, *NARUC v. FCC*, 737 F.2d  
1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

25 <sup>6</sup> See, e.g., *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange*  
26 *Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, First Report and  
27 Order, 12 FCC Rcd 15982, 16131-34, ¶¶ 341-48 (1997); *see also, generally, In the Matter of Amendments*  
of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Order, 3 FCC Rcd 2631  
(1988).

28 <sup>7</sup> See *In the Matter of WATS-Related and Other Amendments of Part 69 of the Commission's Rules*,  
Memorandum Opinion and Order, 2 FCC Rcd 7424, 7425, ¶¶ 13-15 (1987).

1 on the geographic location of the two ends of the call.<sup>8</sup>

2 22. In late 2003, Level 3 brought a petition before the FCC that requested  
3 forbearance from the FCC's ESP Exemption and its application to calls bound for the  
4 Internet.<sup>9</sup> While that petition was pending, the FCC issued its Notice of Further  
5 Proposed Rulemaking in its *Intercarrier Compensation* docket to consider these issues as  
6 a part of an overall examination of intercarrier compensation.<sup>10</sup> Level 3 later withdrew  
7 its petition. Nevertheless, as of today, the applicable law has not changed. The ISP's  
8 Server should be considered a retail location for the purposes of appropriate number  
9 assignment and determining intercarrier compensation.<sup>11</sup>

10 23. Level 3 ignores this regulatory history by attempting to charge Qwest at the  
11 *ISP Remand Order* \$0.0007 per minute rate for terminating such VNXX traffic. Level 3  
12 has argued in other jurisdictions that the FCC's *ISP Remand Order* and a recent FCC  
13 decision related to a forbearance petition by Core Communications fundamentally change  
14 this analysis.<sup>12</sup> Level 3 argues that *all* traffic destined for the Internet must be treated as  
15 subject to the FCC *ISP Remand Order* \$0.0007 per minute rate, regardless of whether  
16 such traffic originated from next door, across the state, or even across the country. Its  
17 position is simply wrong, and is in violation of the FCC's rules (i.e., the FCC ESP  
18 Exemption rule), and essentially has the effect of asserting that the FCC somehow

19 <sup>8</sup> See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications*  
20 *Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order,  
21 16 FCC Rcd 9151, 9163-81 ¶¶ 23-65, 9186-90, ¶¶ 77-84 (2001), *remanded sub nom. WorldCom, Inc. v.*  
22 *FCC*, 288 F.3d 429 (D.C. Cir. 2002), *reh'g, en banc, denied* (D.C. Cir. Sept. 24, 2002), *cert. denied*, 538  
23 U.S. 1012 (May 5, 2003).

24 <sup>9</sup> *In the Matter of Petition of Level 3 Communications LLC for Forbearance under 47 U.S.C. Section*  
25 *160(c)*, WC Docket No. 03-266; *In the Matter of IP-Enabled Services*, WC Docket No. 04-36.

26 <sup>10</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed  
27 Rulemaking, 20 FCC Rcd 4685 (rel. Mar. 3, 2005) ("Further Notice").

28 <sup>11</sup> For a more detailed analysis of these legal issues, see the *Ex Parte* that Qwest filed with the FCC on  
March 11, 2005 in Level 3's forbearance petition proceeding, which is attached as Exhibit C to this  
Answer and Counterclaim.

<sup>12</sup> See *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*").

1 intended to preempt states on the regulation of intrastate traffic.

2 24. In fact, if Level 3 delivered traffic to its ISP customer's server physically  
3 located in the *same local calling area* as where the call originated, Level 3 would be  
4 correct that under existing rules, the call would be treated as subject to the *ISP Remand*  
5 *Order* \$0.0007 per minute rate.<sup>13</sup> However, Level 3's ISP customer's equipment is *not*  
6 physically located in the same local calling area as the individual and business customers  
7 that call Level 3's ISP customers. Thus, Level 3 seeks to collect compensation to which  
8 it is not entitled.

9 25. Level 3's approach ignores long-standing FCC precedent, as well as the  
10 guidance of a recent Commission decision on these issues. In describing ISP-bound  
11 traffic in the background section of the order, the FCC states that "*an ISP's end-user*  
12 *customers typically access the Internet through an ISP Server located in the same local*  
13 *calling area,*" and that the end users pay the local exchange carrier for connections to the  
14 "local ISP." *ISP Remand Order*, ¶ 10. The FCC defines ISPs as "one set of enhanced  
15 service providers." *Id.*, ¶ 11. (Emphasis added.) The FCC specifically identified the  
16 issue that it was addressing as "whether reciprocal compensation obligations apply to the  
17 delivery of calls from *one LEC's end-user customer to an ISP in the same local calling*  
18 *area* that is served by a competing LEC." *Id.*, ¶ 13. (Emphasis added.) Thus, in  
19 examining ISP traffic, the *ISP Remand Order* did not address the situation where a CLEC  
20 customer's ISP server is physically located *outside* of the local calling area of both its  
21 assigned telephone number(s) and the originating caller. In fact, asserting that the *ISP*  
22 *Remand Order* somehow intended to address this scenario is an implicit claim of FCC  
23 preemption of a portion of the intrastate market, an argument for which there is no basis.

24 26. Similarly, the *Core Forbearance Order* addressed the application of the  
25 *ISP Remand Order*. It addressed whether certain provisions in the *ISP Remand Order*  
26 should continue to apply to CLECs serving ISPs. Because the *ISP Remand Order* did not  
27

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28 <sup>13</sup> Such a change would still require an ICA amendment.

1 address the treatment of calls from one local calling area to an ISP with equipment in  
2 *another* local calling area, the *Core Forbearance Order* did not address the issue either.

3 27. Qwest's position of the FCC's actions gains support from the appeal of the  
4 *ISP Remand Order*. *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *reh'g en*  
5 *banc denied* (D.C. Cir., Sept. 24, 2002), *cert. denied*, 538 U.S. 1012 (May 5, 2003). In  
6 *WorldCom*, the court unequivocally stated that the FCC's *ISP Remand Order* addressed  
7 calls made to ISPs physically located *within* the *same* local calling area as the originating  
8 caller. *WorldCom*, 288 F.3d at 430. Thus, there is a lack of support for the interpretation  
9 that Level 3 advocates that the FCC, in the *ISP Remand Order*, somehow summarily  
10 changed the long history of determining the appropriate treatment of traffic destined for  
11 enhanced service providers.

#### 12 State Authority

13 28. The Commission has provided strong guidance on this issue in that it  
14 recently addressed a dispute about how to define a "local call." Specifically, in the  
15 AT&T/Qwest arbitration, Qwest and AT&T disputed the appropriate definition of a local  
16 call under Arizona law. The Commission agreed with Qwest's position that a "local call"  
17 is one "that is originated and terminated within the same local calling area as determined  
18 for Qwest by the Commission." The Commission rejected AT&T's proposal to define a  
19 local call by reference to "the calling and called NPA/NXXs" (i.e., VNXX). *See* Opinion  
20 and Order, Decision No. 66888, Docket Nos. T-02428A-03-0553 and T-01051B-03-0553  
21 (April 6, 2004), p. 13.

22 29. In that arbitration, the Commission found that Qwest's proposed definition  
23 of "Exchange Service" comported with existing Arizona law and rules and thus should be  
24 adopted, while AT&T's proposed definition "represent[ed] a *departure from the*  
25 *establishment of local calling areas* and may have an *unintended affect* beyond the issues  
26 discussed and be *subject to abuse*." Decision No. 66888, p. 13. (Emphasis added.) Said  
27 the Commission: "We do not believe that it would be good public policy to alter long-

28

1 standing rules or practice without broader industry and public participation. *Id.*<sup>14</sup>

2 30. Moreover, the pertinent rules and definitions in the Arizona Administrative  
3 Code that are at issue here are as follows:

4  
5 'Central Office Code' means the first three digits of a seven-  
6 digit telephone number. Central office codes are assigned to  
7 telecommunications providers by the central office code  
8 administrator in accordance with the industry's central office  
9 assignment guidelines.

10 (A.A.C. R14-2-1302(4).)<sup>15</sup>

11 'Extended Area Service' or 'EAS' means local (toll-free)  
12 calling provided between local exchange carrier exchanges  
13 (service areas).

14 (A.A.C. R14-2-1302(9).)

15 'Local Exchange Service.' Telecommunications service that  
16 provides a local dial tone, access line, and local usage *within*  
17 *an exchange or local calling area.*

18 (A.A.C. R14-2-1102(8).)

19 'Local and Toll Rating Centers.'

20 The incumbent LEC's local calling areas and existing EAS  
21 boundaries will be utilized for the purpose of classifying  
22 traffic as local, EAS, or toll for purposes of intercompany  
23 compensation.

24 All LECs will use central office codes with rate centers  
25 matching the incumbent LEC's rate centers.

26 (A.A.C. R14-2-1305.)

27 'Rate Center' means specific *geographic locations* from  
28 which airline mileage measurements are determined for the  
purposes of *rating local, Extended Area Service (EAS), and*  
*toll traffic.*

(A.A.C. R14-2-1302(19).)

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14 As stated *infra* (fn. 4), Level 3's interconnection agreement has a very similar definition of "Exchange Service" as that which is in the AT&T agreement.

15 See paragraph 13 for a discussion of the telecommunications industry's central office assignment guidelines.

1 'Reciprocal Compensation' means the arrangement by which  
2 local exchange carriers compensate each other for *like*  
3 *services* used in the *termination of local calls* between the  
4 customers of the two carriers.

5 (A.A.C. R14-2-1302(20).)

6 'Toll service.' Service between stations in *different exchange*  
7 *areas* for which a long distance charge is applicable.

8 A.A.C. R14-2-501(23). (Emphasis added throughout.)

9 The same analysis applies in this case. For example, section 4.22 of the Level 3  
10 ICA provides: "'Exchange Service' or 'Extended Area Service (EAS)/Local Traffic'  
11 means traffic that is originated and terminated *within the local calling area* which has  
12 been defined by the Commission and documented in applicable tariffs." (Emphasis  
13 added.)

14 31. Although Level 3 will undoubtedly attempt to distinguish this precedent  
15 (such as, for example, by arguing that the traffic at issue is bound for the Internet, and  
16 thus that it is somehow exempt from these Arizona definitions), the fact is that Arizona  
17 law makes no such distinction. Nor has the FCC made such a distinction. If VNXX  
18 traffic is allowed to flow between carriers, it should not be treated as "local" traffic under  
19 the parties' ICA.

### 20 **Treatment of ISP Traffic under the ICA**

21 32. Further still, Level 3's conduct violates the parties' ICA. The ISP  
22 Amendment that Level 3 and Qwest executed and that Level 3 refers to in its complaint  
23 describes "ISP-Bound traffic" "as that term is used in the FCC ISP Order" [the FCC's  
24 "Order on Remand and Report and Order in CC Docket 99-68 (Intercarrier Compensation  
25 for ISP-Bound Traffic)"] (i.e., the ISP Remand Order). A true and correct copy of the  
26 ISP Amendment to the Level 3/Qwest ICA is attached hereto as Exhibit D to this Answer  
27 and Counterclaims. (See Ex. D, § 2, and second Recital.)<sup>16</sup> As discussed above, the ISP

28 <sup>16</sup> The parties entered into the ISP Amendment on October 29, 2002 and November 1, 2002 and it was  
filed with the Commission on February 13, 2003. The amendment became effective by operation of law  
on February 13, 2003. Decision No. 65700, Docket No. T-01051B-02-0854.

1 *Remand Order* did not accidentally include traffic destined for an ISP Server physically  
2 located in a different local calling area than the originating caller as part of the “ISP-  
3 Bound traffic” addressed in the order. Thus, the traffic is not “ISP-Bound” as discussed  
4 or defined in the ISP Amendment.

5 33. Level 3, however, seeks to sweep aside these definitions by assuming that  
6 traffic destined for the Internet automatically falls within the definition of “ISP-bound  
7 traffic,” regardless of where the traffic physically originates and terminates. Indeed,  
8 Level 3 ignores the FCC history of defining traffic destined for an ISP as traffic that  
9 travels solely *within* a local calling area prior to being delivered to the ISP Server. Level  
10 3 also ignores long-standing industry practice of treating calls dialed as 1+ calls to the  
11 Internet as being toll calls. Level 3 then hides this practice by improperly assigning local  
12 numbers (through its VNXX schemes).

13 **VNXX Traffic over LIS Trunks**

14 34. Level 3 has argued that the parties have agreed to exchange VNXX traffic  
15 over LIS trunks. Qwest disagrees. Section 7.2 of the parties’ ICA specifically delineates  
16 the types of traffic that are to be exchanged under the ICA. (*See Ex. A, § 7.2.*) With  
17 respect to the traffic and disputes at issue in this matter, there are three relevant types of  
18 traffic which are appropriately exchanged under the agreement and under the parties’  
19 SPOP amendment to the ICA: (1) EAS/Local Exchange Service (EAS/Local) traffic, (2)  
20 IntraLATA Toll Exchange Access (IntraLATA Toll) traffic and (3) Jointly Provided  
21 Switched Access traffic. A true and correct copy of the SPOP Amendment to the Level  
22 3/Qwest ICA is attached hereto as Exhibit E to this Answer and Counterclaims. (*See e.g.,*  
23 *Ex. E, Attachment 1, § 1.1*)<sup>17</sup>

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27 <sup>17</sup> The parties entered into the SPOP Amendment in June 2002 and it was filed with the Commission on  
28 July 29, 2002. The amendment became effective by operation of law on October 26, 2002. *See*  
Administrative Closure No. 65391, Docket No. T-01051B-02-0572 and T-03654A-02-0572  
(consolidated).

1           35.    The ICA (Ex. A) defines those categories of traffic as follows:

2                   ‘Exchange Service’ or ‘Extended Area Service (EAS)/Local  
3                   Traffic’ means traffic that is originated and terminated *within*  
4                   *the local calling area* which has been defined by the  
5                   Commission and documented in applicable tariffs.

6                   (Ex. A, § 4.22 (emphasis added).)

7                   ‘Exchange Access (IntraLATA Toll)’ is defined in  
8                   accordance with the Act and Qwest’s current intraLATA toll  
9                   serving areas, as determined by Qwest’s state and interstate  
10                   tariffs and excludes toll provided using Switched Access  
11                   purchased by an IXC.

12                   (*Id.*, § 4.30.)

13                   ‘Meet-Point Billing’ or ‘MPB’ or ‘Jointly Provided Switched  
14                   Access’ refers to an arrangement whereby two LECs  
15                   (including a LEC and CLEC) jointly provide Switched  
16                   Access Service with each LEC (or CLEC) receiving an  
17                   appropriate share of the revenues from the IXC as defined by  
18                   their effective access Tariffs.

19                   (*Id.*, § 4.39.)

20           36.    As stated, the term “ISP-bound traffic” is defined by the ISP Amendment  
21                   (Ex. D, § 2) “as that term is used in the FCC ISP [Remand] Order.” As already discussed  
22                   above, Level 3’s contention that the traffic at issue is entitled to treatment and  
23                   compensation according to the *ISP Remand Order* is incorrect and not an appropriate  
24                   reading of that order, and conflicts with the Commission definition of local traffic in  
25                   Docket Nos. T-02428A-03-0553 and T-01051B-03-0553.

26           37.    It is possible that Level 3 may claim, as some other carriers have attempted  
27                   to claim, that this traffic is “Exchange Service” traffic, commonly referred to as  
28                   “EAS/Local traffic.” This traffic is defined in section 4.22 of the ICA as “traffic that is  
                  originated and terminated *within the local calling area* which has been defined by the  
                  Commission and documented in applicable tariffs.” (Ex. A, § 4.22 (emphasis added).)  
                  Even a cursory examination of the traffic at issue, however, shows that it does not meet  
                  this definition. Level 3 does not deny that it forces Qwest to exchange traffic that is not  
                  terminated at the ISP Server in the same local calling area as the originating caller  
                  (identical to VNXX traffic); but Level 3 has nevertheless claimed that it is “ISP-bound”

1 traffic. Thus, there should be no contention as to whether the VNXX traffic at issue is  
2 “Exchange Service” traffic.

3 38. A traffic type that *may superficially appear* to functionally apply to the  
4 VNXX traffic at issue is under the definition of “Exchange Access” traffic, which is  
5 defined in section 4.30 of Level 3’s ICA as being “in accordance with the Act and  
6 Qwest’s current intraLATA toll serving areas, as determined by Qwest’s state and  
7 interstate tariffs and excludes toll provided using Switched Access purchased by an  
8 IXC.” (Ex. A, § 4.30.) While this may appear functionally appropriate, upon closer  
9 examination the traffic does not meet this definition either.

10 39. As a threshold matter, only Level 3 knows the exact location of the end-  
11 user ISP Server or modem bank for this traffic. Thus, Qwest cannot completely  
12 determine for any given call whether the call is destined for a location within the local  
13 calling area or in a different local calling area. Qwest only knows how far it carried the  
14 call before handoff to the interconnected carrier, where that carrier’s serving switch is  
15 located, and whether traffic is one-way or two-way. In addition, even for that traffic  
16 which may functionally appear to match the definition, Level 3’s purposeful misuse and  
17 misassignment of telephone numbers makes it difficult to track such traffic. Level 3  
18 clearly does not intend for the traffic to be treated as “Exchange Access” traffic under the  
19 ICA, as evidenced by its misuse of telephone numbers. Thus, it is apparent this definition  
20 does not match the traffic either.

21 40. Finally, the last possible traffic type, “Jointly Provided Switched Access”  
22 (also known as “Meet-Point Billing”) does not match up at all to the VNXX traffic at  
23 issue. (Ex. A, § 4.39.) This is so because no IXC is involved, as only Level 3 and Qwest  
24 are involved in the carriage of the traffic, which is contrary to the definition of the traffic  
25 in section 4.39 of the ICA.

26 41. Therefore, in reviewing the ICA’s plain language and the VNXX traffic  
27 that Level 3 causes Qwest to exchange, none of the traffic types that the parties  
28 specifically agreed to exchange match this VNXX traffic. Since Level 3 can easily

1 remedy the situation by properly assigning telephone numbers based on the actual  
2 location of its end-user customers, it is incumbent upon Level 3 to ensure that the  
3 exchange of traffic under the ICA follows the terms and conditions of that agreement. In  
4 the end, Level 3 is simply attempting to exchange traffic that the parties never agreed to  
5 exchange under the terms of the ICA.

#### 6 **RESPONSE TO ALLEGATIONS IN THE COMPLAINT**

7 42. Unless specifically admitted in this section, Qwest denies each and every  
8 allegation in the complaint. Qwest's factual assertions and legal argument contained in  
9 the preceding sections of this Answer are incorporated into and should be considered a  
10 part of these responses to the individual allegations of the complaint.

#### 11 **PARTIES**

12 43. Qwest neither admits nor denies the allegations in paragraphs 1 through 3  
13 of the Complaint regarding Level 3's business, its operations in Arizona or its contact  
14 information. For example, Qwest does not know the extent to which Level 3 has been  
15 authorized by the Commission to provide service in Arizona.

#### 16 **JURISDICTION**

17 44. Qwest admits the allegations in paragraph 4 regarding Qwest's business  
18 and its operations in Arizona.

19 45. Qwest admits the allegations in paragraph 5 that this Commission has the  
20 authority to enforce Qwest's ICA with Level 3. Qwest denies, however, that the  
21 Commission has jurisdiction to award equitable or monetary relief to the extent that  
22 Level 3's Complaint seeks such relief. Qwest further denies that the ICA supports the  
23 relief that Level 3 is seeking.

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1 constitute statements of fact, Qwest admits that Level 3 has invoiced Qwest for  
2 intercarrier compensation for what Level 3 deems "ISP-bound traffic," and that Level 3  
3 has done so under claims that such invoices are due under the *Core Forbearance Order*,  
4 and further admits that Qwest's position is that only calls originated and terminated  
5 within the same local calling area are compensable calls. Qwest denies, however, that  
6 Qwest has in effect refused to comply with the *Core Forbearance Order*.

7 51. With respect to the allegations in Paragraphs 17 through 20 of the  
8 Complaint, Qwest admits that Level 3 wrote a letter to Steve Hansen on January 17,  
9 2005. Qwest denies, however, that the letter addressed the *Core Forbearance Order*, but  
10 rather, Qwest states that Level 3's letter addressed VNXX language in the ICA. Qwest  
11 further admits that Level 3 sent a proposed amendment on March 31, 2005 that related to  
12 the *Core Forbearance Order* (although it did not send it to the correct Qwest  
13 representative as the ICA requires). Qwest further states that it participated in those  
14 negotiations in good faith and that it proposed language consistent with its interpretation  
15 of that order. (*See Ex. F.*)

16 52. With respect to the allegations in Paragraph 21 of the Complaint, Qwest  
17 denies Level 3's characterization regarding Qwest's actions and positions, and further,  
18 Qwest states that the parties have a different interpretation of the *Core Forbearance*  
19 *Order* and regarding the issue whether Level 3 is entitled to compensation for VNXX-  
20 based traffic originating in one local calling area and terminating to an ISP physically  
21 located in a different local calling area.

22 53. Qwest states that the averments in Paragraph 22 of the Complaint constitute  
23 conclusions of law, and as such do not contain allegations which Qwest must admit or  
24 deny. To the extent that the remaining averments constitute statements of fact, Qwest  
25 denies the allegations in Paragraph 22 of the Complaint. Further, Qwest states that to  
26 interpret paragraph 44 of the *ISP Remand Order* as Level 3 does would logically result in  
27 an interpretation that the FCC intended to reverse the long history of determining the  
28 appropriate treatment of traffic bound for enhanced service providers. Such an

1 interpretation would then result in the FCC violating the Administrative Procedures Act  
2 in promulgating the *ISP Remand Order*. Qwest does not interpret the FCC to be  
3 promulgating rules in contravention of the Administrative Procedures Act, nor did the  
4 court in the *WorldCom* decision when it examined the FCC's decision. Qwest further  
5 states that the FCC also makes it very clear that its *ISP Remand Order* did not alter any of  
6 this history in the footnote to the very sentence in paragraph 44 that Level 3 seeks to use  
7 as support for its position. *See ISP Remand Order*, fn. 81. As the discussion in the  
8 introduction explains, Level 3's analysis of the FCC's decision is simply wrong. ISP-  
9 bound traffic, as the FCC applies it, is limited to local traffic. Furthermore, this  
10 Commission's decisions in the AT&T arbitration did not modify this precedent.

11         54. With respect to the allegations in Paragraph 23 of the Complaint, Qwest  
12 denies that this Commission has already rejected Qwest's "physical location" argument  
13 in the Commission's 2001 Opinion and Order in the parties' arbitration, or that this  
14 Commission found that all calls bound to ISPs (no matter where they originated and  
15 where they terminated) are to be treated as local calls for purposes of reciprocal  
16 compensation. Indeed, that decision (Decision No. 63550), which was issued before the  
17 *ISP Remand Order*, did not address the issue here (namely, whether "ISP-bound traffic"  
18 as defined in the FCC's subsequent *ISP Remand Order* must originate and terminate  
19 within the same local calling area in order to receive the ISP Remand Order \$0.0007 per  
20 minute rate). Moreover, even in that case, Level 3 had "contend[ed] that [such calls to  
21 ISPs] are routed over the same interconnected *local* network just like any other call, and  
22 [that] they are calls that Qwest itself treats as *local* for retail purposes." Decision No.  
23 63550, Docket Nos. T-03654A-00-0082, T-01051B-00-0082 (April 10, 2001), p. 3.  
24 (Emphasis added.) In contrast, the VNXX calls at issue here are toll calls because they  
25 originate and terminate in *different local calling areas*, and Qwest does *not* treat such  
26 calls as "local for retail purposes."

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**RESPONSE TO SUMMARY OF DISPUTED ISSUES**

55. With respect to the allegations in Paragraphs 24 through 29 of the Complaint, Qwest does not dispute that Level 3 makes such claims, but Qwest denies the allegations contained therein.

**RESPONSE TO LEVEL 3'S COUNTS**

56. Qwest denies the allegations in Count I (Paragraphs 30 through 47) of the Complaint, except that it admits it sent traffic to Level 3, that Level 3 has improperly attempted to bill Qwest, and that Qwest has refused to pay such bills, thus invoking the ICA dispute resolution procedures.

57. Qwest denies the allegations in Count II (Paragraphs 37 through 42) of the Complaint, although it admits it has an obligation to negotiate amendments to ICAs, and avers that it has fully complied with that obligation.

**COUNTERCLAIMS**

58. Qwest brings these Counterclaims against Level 3 as a result of Level 3's violation of federal law, violations of state law, and breach of the terms and conditions of the parties' interconnection agreement. This Counterclaim consists of five counts, as follows:

**COUNT 1 (Violation of Federal Law)**

59. Qwest has set forth the applicable federal law regarding calls made to the Internet.

60. Level 3's knowing misassignment of local telephone numbers and NPA/NXXs in local calling areas other than the local calling area where its customer's ISP Server is physically located, its misuse of such telephone numbering resources, and its subsequent attempts to bill Qwest the *ISP Remand Order* rate for such VNXX traffic, are violations of federal law. Qwest further alleges that Level 3's improper assignment of local telephone numbers assigned to its ISP customers not located within the local calling area assigned for that number is deliberately designed to prevent Qwest from distinguishing between traffic bound for Level 3 that should be appropriately treated as

1 ISP-bound traffic. The Commission should order Level 3 to cease assigning NPA/NXXs  
2 in local calling areas other than the local calling area where its customer's ISP Server is  
3 physically located, and cease charging Qwest for such traffic, and further, should require  
4 that Level 3 properly assign telephone numbers based on the actual physical location of  
5 its end-user or ISP customer.

6 **COUNT 2 (Violation of State Law)**

7 61. Qwest has set forth the applicable state law regarding the definition of a  
8 local call and the proper compensation for calls made to the Internet using VNXX  
9 schemes, including the Commission's recent order in Docket Nos. T-02428A-03-0553  
10 and T-01051B-03-0553.

11 62. Level 3's knowing misassignment of local telephone numbers and  
12 NPA/NXXs in local calling areas other than the local calling area where its customer's  
13 ISP Server is physically located, its misuse of such telephone numbering resources, and  
14 its subsequent attempts to bill Qwest the *ISP Remand Order* rate for such VNXX traffic,  
15 are violations of Arizona law. The Commission should order Level 3 to cease assigning  
16 NPA/NXXs in local calling areas other than the local calling area where its customer's  
17 ISP Server is physically located, and cease charging Qwest for such traffic, and further,  
18 should require that Level 3 properly assign telephone numbers based on the actual  
19 physical location of its end-user or ISP customer.

20 **COUNT 3 (Violation of the Change in Law Provisions of the ICA)**

21 63. Level 3 has sent or will bill Qwest approximately \$2,591,855.31 from  
22 December 2004 (based on November 2004 MOUs) through May 2005, based on the  
23 FCC's *Core Forbearance Order* decision. Of this amount, Qwest believes that about  
24 \$914,247.20 is from VNXX traffic.

25 64. The parties have not reached agreement on an ICA amendment pursuant to  
26 the *Core Forbearance Order*. Specifically, Qwest has proposed an amendment to  
27 comply with the order, but Level 3 has rejected it. (*See Ex. F.*)

28



1 (also known as Meet-Point Billing) and (3) Exchange Service EAS/Local Traffic. (See  
2 ¶ 35; see also Ex. E, Attachment A, § 1.1.)

3 70. As stated, the term “ISP-bound traffic” is defined by the ISP Amendment  
4 (Ex. D, § 2) “as that term is used in the FCC ISP [Remand] Order.” VNXX traffic, even  
5 if it is destined for an ISP, does not fit in any of these categories.

6 71. Accordingly, Level 3 is violating its ICA by attempting to obligate Qwest  
7 to send non-local ISP traffic over LIS trunks. The Commission should order Level 3 to  
8 discontinue the practice of misassigning the telephone numbers and cease routing VNXX  
9 traffic over LIS trunks to Qwest, and further, should invalidate Level 3’s bills to Qwest.

10 **RELIEF REQUESTED**

11 WHEREFORE, Qwest respectfully requests the Commission provide the  
12 following relief:

13 A. Deny all of the relief requested by Level 3 in its complaint;

14 B. Issue an order (1) prohibiting Level 3 from assigning NPA/NXXs in local  
15 calling areas other than the local calling area where the ISP Server is physically located,  
16 (2) requiring that Level 3 cease its misuse of such telephone numbering resources, and  
17 (3) requiring that Level 3 properly assign telephone numbers based on the actual physical  
18 location of its customer’s ISP Server;

19 C. Issue an order that the parties’ ICA does not require any compensation for  
20 Level 3’s VNXX traffic;

21 D. Direct Level 3 to follow the change of law procedures contained in its  
22 interconnection agreement with Qwest to implement the *Core Forbearance Order*;

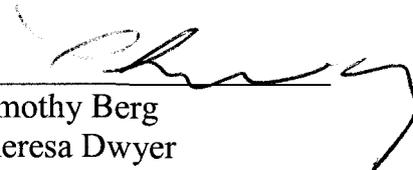
23 E. Invalidate all Level 3 bills to Qwest seeking or charging reciprocal  
24 compensation or the *ISP Remand Order* rate of \$0.0007 per minute for any of the VNXX  
25 traffic described above;

26 F. Issue an order declaring that Qwest is not required to route VNXX traffic to  
27 Level 3 through the use of LIS facilities; and

28 G. Any and all other equitable relief that the Commission deems appropriate.

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RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of July, 2005.

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# EXHIBIT

A

**AGREEMENT  
FOR INTERCONNECTION, UNBUNDLED NETWORK ELEMENTS, ANCILLARY  
SERVICES, AND RESALE OF TELECOMMUNICATIONS**

**BETWEEN**

**QWEST CORPORATION**

**AND**

**LEVEL 3 COMMUNICATIONS, LLC**

**IN THE STATE OF ARIZONA**

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4.21 "Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Bellcore document that defines industry standards for exchange message records.

4.22 "Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the local calling area which has been defined by the Commission and documented in applicable tariffs.

4.23 "Facility Complete Date" or "FCD" means the date all pre-service tests are performed, including stress tests.

4.24 "Firm Order Confirmation Date" or "FOC" means the notice Qwest provides to Level 3 to confirm that Level 3 Local Service Order (LSR) or Access Service Request ("ASR") has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the provisioning of the service requested.

4.25 "Integrated Digital Loop Carrier" means a subscriber loop carrier system, which integrates multiple voice channels within the switch on a DS1 level signal.

4.26 "Interconnect & Resale Resource Guide" is a Qwest document that provides information needed to request services available under this Agreement. It is available on Qwest's Web site: <http://www.uswest.com/carrier/guides/interconnect/index.html>.

4.27 "Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, Exchange Access and Jointly Provided Switched Access traffic.

4.28 "Interexchange Carrier" (IXC) means a carrier that provides interLATA or IntraLATA Toll services.

4.29 "ISP Bound Traffic" means traffic that occurs when a customer of an Internet Service Provider (ISP), an end-user making an Internet call, seeks to connect with the ISP that is providing the end-user with access to the Internet. Assuming the use of a dial-up connection, the end-user connects to its ISP using the public switched telephone network. The same switch is used to originate ISP calls as is used to originate local and long distance calls.

4.30 "Exchange Access (IntraLATA Toll)" is defined in accordance with the Act and Qwest's current intraLATA toll serving areas, as determined by Qwest's state and interstate tariffs and excludes toll provided using Switched Access purchased by an IXC.

4.31 "Local Exchange Carrier" (LEC) means any carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a carrier insofar as such carrier is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

4.32 "Local Interconnection Service (LIS) Entrance Facility" is a DS1, DS3 or OCn facility that extends from Level 3's switch location or Point of Interconnection (POI) to the Qwest

Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Qwest Serving Wire Center.

4.33 "Local Interconnection Service (LIS)" is a terminating, trunk-side service provided between the POI of Level 3's network and Qwest's network for the purpose of completing calls from Level 3's end user customers to Qwest's end user customers. Exchange Service (EAS/Local) calls begin and end within a Local Calling Area or Extended Area Service (EAS) area which has been defined by the Commission. Trunking connections for these local calls may exist between Level 3 and Qwest's End Offices or Local Tandem, or as otherwise provided in Section 7. Exchange Access (IntraLATA and Toll) or Jointly Provided Switched Access calls may be completed with trunking connections either to the access tandem or to the end office.

4.34 "Local Loop Transmission" or "Loop" or "Unbundled Loop" means the entire transmission path which extends from the network interface device or demarcation point at an end user's premises to the Main Distribution Frame or other designated frame or panel in a Party's Wire Center which serves the end user.

4.35 "Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

4.36 "Main Distribution Frame" or "MDF" means a Qwest distribution frame (e.g., COSMIC frame) used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.

4.37 "MECAB" refers to the Multiple Exchange Carrier Access Billing (MECAB) document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), that functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an Access Service.

4.38 "MECOD" refers to the Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), that functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The MECOD document establishes recommended guidelines for processing orders for Access Service.

4.39 "Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

4.40 "Mid-Span Meet" is a Point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

4.41 "North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number

appropriate interconnection rates are approved in a cost docket. Once the appropriate rates are approved, these rates will be applied upon the effective date of the cost docket. If Level 3 chooses to order OCn level entrance facilities, these facilities will only be used to support LIS Trunk groups, including EAS/Local Trunk groups and intraLATA toll Trunk groups. Qwest reserves the right to audit the use of these facilities pursuant to Section 18 of this Agreement.

7.1.2.2 Collocation. Interconnection may be accomplished through the Collocation arrangements offered by Qwest. The terms and conditions under which Collocation will be available are described in Section 8 of this Agreement. When interconnection is provided through the Collocation provisions of Section 8 of this Agreement, the Expanded Interconnection Channel Termination rate elements, as described in Exhibit A will apply.

7.1.2.3 Mid-Span Meet POI. A Mid-Span Meet POI is a negotiated Point of Interface, limited to the Interconnection of facilities between one Party's switch and the other Party's switch. The actual physical Point of Interface and facilities used will be subject to negotiations between the Parties. Each Party will be responsible for its portion of the build to the Mid-Span Meet POI. A Mid-Span Meet POI shall not be used by Level 3 to access unbundled network elements.

7.1.2.4 Qwest agrees to arrange local interconnection trunk diversity to the same extent it does so in the traditional local network.

## **7.2 Exchange of Traffic**

### **7.2.1 Description**

7.2.1.1 This Section 7.2 addresses the exchange of traffic between Level 3's network and Qwest's network. Where either Party acts as an IntraLATA Toll provider, each Party shall bill the other the appropriate Switched Access charges pursuant to its respective Tariff. Each Party will provide the other notice of tariff filings made with the Commission that will affect switched access rates charged to the other Party. In cases where a Party makes such a tariff filing, the Commission's tariff protest rules will govern disputes concerning those rates. However, where a Party does not maintain access tariffs, that Party must still provide notice of a change in switched access rates to the other Party and, if such change is disputed, it will be resolved under the dispute resolution clause of the Agreement. Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective Tariffs or contractual offerings for such third party terminations. Unless otherwise agreed to by the Parties, via an amendment to this Agreement, the Parties will directly exchange traffic between their respective networks without the use of third party transit providers.

7.2.1.2 The traffic types to be exchanged under this Agreement include:

7.2.1.2.1 EAS/Local Exchange Service (EAS/Local) traffic as defined in this Agreement.

7.2.1.2.2 IntraLATA Toll Exchange Access (IntraLATA Toll) traffic as defined in this Agreement.

7.2.1.2.3 Jointly Provided Switched Access traffic is defined in Section 7.5.1.

7.2.1.2.4 Transit traffic is any traffic that originates from one Telecommunications Carrier's network, transits another Telecommunications Carrier's network, and terminates to yet another Telecommunications Carrier's network. For purposes of the Agreement, transit traffic does not include traffic carried by interexchange carriers. That traffic is defined as Jointly Provided Switched Access. Transit service is provided by Qwest, as a local and access tandem provider, to Level 3 to enable the completion of calls originated by or terminated to another Telecommunications Carrier (such as another CLEC, an ILEC, or a wireless carrier), which is connected to Qwest's local or access tandems. To the extent that Level 3's switch functions as a local or access tandem switch, as defined in this Agreement, Level 3 may also provide transit service to Qwest.

7.2.1.2.5 Traffic having special billing or trunking requirements includes, but is not limited to, the following:

- a) Directory Assistance;
- b) 911/E911;
- c) Operator busy line interrupt and verify; and
- d) Toll free services.

## 7.2.2 Terms and Conditions

### 7.2.2.1 Transport and Termination of Exchange Service (EAS/Local) Traffic

7.2.2.1.1 Exchange Service (EAS/Local) traffic will be terminated as Local Interconnection Service (LIS).

7.2.2.1.2 As negotiated between the Parties, the transport of Exchange Service (EAS/Local) traffic may occur in several ways:

7.2.2.1.2.1 Two-way trunk groups may be established. However, if either Party elects to provision its own one-way trunks for delivery of Exchange Service (EAS/Local) traffic to be terminated on the other Party's network, the other Party must also provision its own one-way trunks.

7.2.2.1.2.2 The Parties may purchase transport services from each other or from a third party. Such transport provides a transmission path for the LIS trunk to deliver the originating Party's Exchange Service EAS/Local Traffic to the terminating Party's end office or tandem for call termination. Transport may be purchased from Qwest or CLEC as tandem routed (i.e., tandem switching, tandem transmission and direct trunked transport) or direct routed (i.e., direct trunked transport). This Section is not intended to expand either Party's obligation under Section 251(a) of the Act.

### **Section 13.0 - ACCESS TO TELEPHONE NUMBERS**

13.1 Nothing in this Agreement shall be construed in any manner to limit or otherwise adversely impact either Party's right to request an assignment of any NANP number resources including, but not limited to, central office (NXX) codes pursuant to the Central Office Code Assignment Guidelines published by the Industry Numbering Committee ("INC") as INC 95-0407-008 (formerly ICCF 93-0729-010). The latest version of the Guidelines will be considered the current standard.

13.2 Both Parties agree to comply with Industry guidelines and Commission rules, including those sections requiring the accurate reporting of data to the Central Office Code Administrator.

13.3 It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the Local Exchange Routing Guide (LERG) to recognize and route traffic to the other Party's assigned NXX codes. Neither Party shall impose any fees or charges whatsoever on the other Party for such activities. The Parties will cooperate to establish procedures to ensure the timely activation of NXX assignments in their respective networks.

13.4 Each Party is responsible for administering NXX codes assigned to it. Each Party is responsible for updating the LERG data for NXX codes assigned to its switches. Each Party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide through an authorized LERG input agent, all required information regarding its network for maintaining the LERG in a timely manner.

13.5 Each Party shall be responsible for notifying its end users of any changes in numbering or dialing arrangements to include changes such as the introduction of new NPAs or new NXX codes.

**EXHIBIT**

**B**



**Alliance for  
Telecommunications  
Industry Solutions**

*Sponsor of*



**Industry Numbering  
Committee**

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**CENTRAL OFFICE CODE (NXX)  
ASSIGNMENT GUIDELINES (COCAG)**

These guidelines are being issued as a result of  
the resolution of INC Issue 465.

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## **Preface**

The Industry Numbering Committee (INC) provides a forum for customers and providers in the telecommunications industry to identify, discuss, and resolve national issues that affect numbering. The INC is responsible for identifying and incorporating the necessary changes into this document. All changes to this document shall be made through the INC issue resolution process and adopted by the INC as set forth in the *ATIS Operating Procedures*.

This document is maintained under the direction of ATIS and the INC. It is distributed exclusively by ATIS.

**Note:** This document has been renumbered according to the ATIS document numbering protocol. It was formerly numbered INC 95-0407-008.

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**Appendix A: Example of Pre-Planning Checklist**

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**Appendix C: Procedures for Code Holder/LERG Assignee Exit**

**Appendix D: Timelines**

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**\* Note: Previous Appendices E, G, and H have been deleted.**

### Central Office Code (NXX) Assignment Request and Confirmation Forms

**Part 1 - Request for NXX Code Assignment**

**Part 2 - Routing and Rating Information (Forms 1-8)**

**Part 3 - Administrator’s Response/Confirmation**

**Part 4 - Confirmation of CO Code in Service**

**Part 4 PA - Confirmation of Code In Service (Submitted by the Pooling Administrator)**

**\* Note: Previous Part 2, Forms 3, 4 and 5 have been deleted.**

compliance with these guidelines by code applicants/holders and CO Code Administrator, and 3) ensure the efficient and effective use of numbering resources by code applicants/holders and the efficient management of numbering resources by CO Code Administrator.

- 2.12 An applicant is not required to provide any additional explanation or justification of items that he/she has certified. However, certification alone may not provide the CO Code Administrator(s) with sufficient information upon which to make a decision regarding code assignment, and additional dialog and written documentation may be required. The CO Code Administrator(s) is still obligated to reply within 10 business days. Service providers participating in number pooling shall apply to the PA for all numbering resources; i.e., thousands-blocks and full NXX codes. In addition, SPs participating in number pooling must submit changes or disconnects for pooled NXXs to the PA. Changes or disconnects for non-pooled NXXs in a pooling rate area should be sent to NANPA, unless the PA received the original request for the non-pooled NXX.
- 2.13 State commissions have access to service providers' applications for numbering resources. State commissions should request copies of such applications from the service providers operating within their states, and service providers must comply with state commission requests for copies of numbering resource applications. Carriers that fail to comply with a state commission request for numbering resource application materials shall be denied numbering resources.<sup>10</sup>
- 2.14 It is assumed from a wireline perspective that CO codes/blocks allocated to a wireline service provider are to be utilized to provide service to a customer's premise physically located in the same rate center that the CO codes/blocks are assigned. Exceptions exist, for example tariffed services such as foreign exchange service.

### 3.0 Assignment Principles

The following assignment principles apply to all aspects of the CO code (NXX) Guidelines:

- 3.1 CO codes (NXXs) are assigned to entities for use at a Switching Entity or Point of Interconnection they own or control. Where thousands-block number pooling has been implemented, an entity assigned a CO Code is designated as the "LERG Assignee." An entire NXX code dedicated for a single customer's use may be classified as a non-pooled code at the discretion of the SP. The SP will be considered the CO Code Holder by leaving the pool indicator field blank in Section 1.5 of the CO Code Part 1. In addition, the SP should write "Non-pooled code for dedicated customer" in Section 1.7 of the Part 1.

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<sup>10</sup> FCC 01-362, § 52.15 (g)(5).

2. to request an entire NXX code (i.e., 10,000 numbers) to satisfy the numbering needs for a service provider's single customer. A single customer is defined as one customer requiring 10,000 consecutive telephone numbers from one central office exchange. SPs have the option whether or not to indicate such a code as pooled or non-pooled.
3. to request an NXX code for LRN purposes when an SP is deploying a new switching entity/POI that requires the assignment of an LRN.

#### 4.2 Code Assignment Criteria for Initial Codes

Application to the NANPA for an initial code assignment shall include evidence that the applicant is authorized to provide service in the area for which the code is being requested,<sup>20</sup> and that the applicant is or will be capable of providing service within sixty (60) days of the numbering resources activation date requested.<sup>21</sup>

For an initial code request, a code applicant must provide one form of documentation from both Sections 4.2.1 and 4.2.2 below:

##### 4.2.1 License and/or Certification

Evidence that demonstrates the SP has a license or authority issued by the FCC or a Certificate of Public Convenience and Necessity (CPCN) issued by a State Regulatory Body to provide service in the city and state/rate center/MSA#/RSA# /MTA#/BTA#/national /LATA. The SP may attach a copy of the FCC license or authority or CPCN to the application.

##### 4.2.2 Facilities Readiness

Appropriate evidence that facilities are in place or will be in place to provide service within 60 days of the numbering resources activation date (LERG Routing Guide effective date). Evidence may be provided via a copy of any one of the following document(s)<sup>22</sup> the SP selects:

1. An executed interconnection agreement between a Local Exchange Carrier and the service provider requesting numbering resources. The relevant pages are the cover page, area covered and the signature page from the interconnection agreement.

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<sup>20</sup> FCC 00-104, § 52.15 (g) (2) (i).

<sup>21</sup> FCC 00-104, § 52.15 (g) (2) (ii).

<sup>22</sup> There may be additional or different criteria requested by state regulators. See FCC 00-104 ¶ 98.

2. Service Provider developed business plans to provide service in this area. Relevant excerpts from the Business Plan to include planned coverage area and in service dates.<sup>23</sup>
3. A letter from the SP indicating the scheduled switch installation complete date (month/day/year), including the address location, as well as Point of Interconnection or CLLI.
4. The service order request, pre-planning checklist, or the equivalent to show that facilities for origination or termination for calls being used specifically for the requested code(s) have been requested and are anticipated to be completed prior to the effective date of the code (See Appendix A for an example of a pre-planning checklist showing the identified fields which must be completed).
5. A confirmation letter or letter of intent provided by the entity with which the requesting SP will interconnect. Interconnecting carriers are encouraged, but not required, to provide such letters.
6. The construction schedule including the following information: site identifier, latitude and longitude of the cell site, and its construction start or complete date. The numbers assigned to the facilities identified must serve subscribers in the geographic area corresponding with the rate center requested.
7. A letter from the requesting carrier identifying a code in service in another rate center that already uses the same facilities that will be used to serve the new rate center where the initial code is being requested.

All documentation submitted will be held confidential pursuant to FCC confidentiality rules.<sup>24</sup>

#### 4.3 Code Assignment Criteria for Growth Codes

Assignment of additional code(s) (growth codes) in a rate center will be made by satisfying the criteria in Section 4.3.1, 4.3.2, 4.3.3, or 4.3.4.

The MTE form submitted must demonstrate that all of the numbers assigned to the code holder in the rate center will exhaust within six months. In the MTE calculation, SPs must include every code in the rate center, regardless of NPA.<sup>25</sup> An exception occurs in cases where a rate center is split among multiple NPAs due to a regulatory order by a state commission. Should that occur, the MTE calculation shall be based on

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<sup>23</sup> Provision of business plans may not be sufficient proof of facilities readiness in some serving areas.

<sup>24</sup> 47 CFR, § 52.13 (c) (7)

<sup>25</sup> State commissions may have certain requirements as to the treatment of different types of grandfathered codes.

### 13.0 Glossary

Activation Deadline	Six months from the original effective date returned on the Part 3 and entered on the ACD screen in BIRRDS. A Part 4 should be returned to NANPA by this date.
Active Code	A code assigned by the CO Code Administrator and implemented in the PSTN for specific routing and rating requirements as of the LERG Routing Guide effective date.
Additional NXX Code Assignment for Growth	A code assigned to a rate center subsequent to the assignment of the first code (See Initial Code), for the same purpose as a code that was previously assigned to the same rate center. A "Growth Code" is requested when the line numbers available for assignment in a previously assigned NXX code will not meet expected demand.
Affected Parties	Affected parties are a) those entities that have applied for and/or received central office code (NXX) assignments or reservations within the NPA per Section 4.0 of these Guidelines; b) all interested members of the industry within the affected NPA.
Administrative Numbers	Administrative numbers are numbers used by telecommunications carriers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards. Examples of administrative numbers are: Test numbers, employee/official numbers, Location Routing Numbers, Temporary Local Directory Numbers, soft dial tone numbers and wireless E911 (ESRD/ESRK) numbers. (FCC 00-104, § 52.15 (f) (1) (i))
Administrative Operating Company Number (AOCN)	A four character numeric or alphanumeric that identifies the administrator of one (or more) data record contained in BIRRDS. Numeric/alphanumeric AOCNs are determined by Operating Company Number (OCN) assignment. The AOCN further identifies the entity authorized by the code holder to input and maintain data into BIRRDS.

Newly Acquired Numbers	<p>"<i>Newly acquired numbers</i>" are those that have been activated within the LERG Routing Guide, and thus are available for assignment, within the preceding 90 days of reporting utilization. <i>Newly acquired</i> numbering resources may be excluded from the calculation of utilization level (FCC CFR 52.15(g)(3)(ii)).</p>
North American Numbering Plan Numbering Resource Utilization/Forecasting (NRUF) Report	<p>The NANPA gathers forecast and utilization information to monitor and project exhaust in individual NPAs/area codes as well as in the NANP overall. This semi-annual report includes number utilization information as well as a five-year forecast of demand by year. Pooling carriers report at the thousands-block level per rate center. Non-pooling carriers report at the Central Office Code level per rate center. For more detailed information, see the NRUF Reporting Guidelines.</p>
NPA	<p>Numbering Plan Area, also called area code. An NPA is the 3-digit code that occupies the A, B, and C positions in the 10-digit NANP format that applies throughout the NANP Area. NPAs are of the form N0/1X, where N represents the digits 2-9 and X represents any digit 0-9. After 1/1/95, NPAs will be of the form NXX. In the NANP, NPAs are classified as either geographic or non-geographic.</p> <ul style="list-style-type: none"><li>a) <u>Geographic NPAs</u> are NPAs which correspond to discrete geographic areas within the NANP Area.</li><li>a) <u>Non-geographic NPAs</u> are NPAs that do not correspond to discrete geographic areas, but which are instead assigned for services with attributes, functionalities, or requirements that transcend specific geographic boundaries. The common examples are NPAs in the N00 format, e.g., 800.</li></ul>
NPA Code Relief	<p>NPA code relief refers to an activity that must be performed when an NPA nears exhaust of its 792 NXX capacity. Options for relief are described in Section 6.0 of the NPA Code Relief Planning &amp; Notification Guidelines.</p>
NPA Relief Date	<p>The date by which the NPA is introduced and routing of normal commercial traffic begins.</p>
OCN	<p>An Operating Company Number (OCN) is a four place alphanumeric code that uniquely identifies providers of</p>

**EXHIBIT**

**C**



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**Cronan O'Connell**  
Vice President-Federal Regulatory

*EX PARTE*

Electronic Filing via ECFS

March 11, 2005

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Room TW B-204  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RE: *In the Matter of Petition of Level 3 Communications LLC for  
Forbearance Under 47 U.S.C. Section 160(c) -- WC Docket  
No. 03-266; In the Matter of IP-Enabled Services – WC Docket  
No. 04-36*

Dear Ms. Dortch:

Enclosed with this letter is the *Ex Parte* Presentation of Qwest. Please include this submission in each of the records of the above-captioned proceedings.

In accordance with FCC rule 1.49(f), this *ex parte* submission is being filed electronically *via* the Electronic Comment Filing System pursuant to FCC Rule 1.1206(b)(1).

Sincerely,

/s/ Cronan O'Connell

Enclosure

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Associate General Counsel

## **EX PARTE PRESENTATION**

**DATE:** March 11, 2005

**RE:** *In the Matter of Petition of Level 3 Communications LLC for  
Forbearance Under 47 U.S.C. Section 160(c) -- WC Docket  
No. 03-266; In the Matter of IP-Enabled Services – WC Docket  
No. 04-36*

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The purpose of this presentation is to address several recent *ex parte* filings made by Level 3 Communications LLC (“Level 3”) in support of its Petition for Forbearance from the legal requirement that interstate and intrastate feature group access charges be assessed and paid on certain carrier traffic that makes use of local exchange switching facilities to originate and terminate calls carrying “IP voice” communications. As Qwest has pointed out in the past, all of the legitimate concerns raised by Level 3 are already dealt with effectively by proper application of the so-called “ESP exemption.” Level 3’s Petition would expand the scope of the rules flowing from the ESP exemption into areas where they are unnecessary and would be harmful. Given the language of the new Level 3 *ex parte* presentations, it is now likely that grant of the Petition would also act to dramatically undermine the existing interstate access structure, a disruption that would be particularly egregious today now that the FCC is acting to rationalize the entire structure in a fair and neutral manner. The Level 3 Petition should be denied, and the relief that Level 3 seeks should not be resurrected through some other means (such as “interim rules” effectively granting the Petition).

In this regard, Chairman Powell’s parting comment, as quoted in the telecommunications trade press, that the ILEC and the IP voice communities should “‘find the common ground somewhere in the middle . . . Right now we’re stuck with binary choices’ between high access charges and ‘free’ [IP voice access]”<sup>1</sup> resonates with considerable force with Qwest. By suggesting that the proper treatment of IP voice pending long term resolution of the intercarrier compensation proceeding should be based on a current and consistent application of the ESP exemption, Qwest has in fact proposed exactly the “middle ground” that the Chairman has suggested. This *ex parte* presentation deals with several aspects of the Level 3 Petition that are contrary to law and reason. The solution that Qwest has proposed presents a far superior solution to the issues that Level 3 raises.

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<sup>1</sup> TRDaily, March 8, 2005 (second article entitled “Powell Proud of FCC’s VoIP Approach”).

## I. Introduction.

The Level 3 Forbearance Petition<sup>2</sup> requests that the FCC “forbear” from various provisions of the Act and the FCC’s rules relating to the application of tariffed feature group access charges to carriers handling “Voice-embedded IP traffic that originates or terminates on the PSTN . . .”<sup>3</sup> It has never been exactly clear just what rules Level 3 was seeking forbearance from, or what the regulatory structure it sought would ultimately look like.<sup>4</sup> However, it has been clear from the outset that Level 3 seeks a regulatory structure whereby CLECs who carry IP Voice traffic, either acting as their own ISP or for unaffiliated VoIP providers, are entitled to entirely special treatment outside of the existing regulatory structure. Level 3 has been able to make a facially plausible argument for this position only by misconstruing both the nature of the existing regulatory environment (the ESP exemption that has been in place for over 20 years) and the sweeping and potentially destructive impact which grant of its petition could have on the public interest.

To a large extent Level 3’s position is based on the assumption that, if IP Voice providers are not granted special treatment under today’s access structure not available to any other providers, including providers of all other IP-enabled services, the deployment of IP voice technology and service will be fatally wounded. This is a questionable assumption even if IP voice providers were not currently treated in the same manner as other providers of IP enabled services under the “ESP exemption” and the regulatory structure that is based on that rule.<sup>5</sup> But the ESP exemption does dictate how ISP access (including IP voice access) to the local exchange is handled, and Level 3’s position borders on the ridiculous when the Level 3 Petition is compared to the actual regulatory structure from which Level 3 seeks forbearance. The current rules actually provide Level 3 with all the protection that it (and other providers of IP voice applications, including Qwest Communications Corporation, the long distance affiliate of Qwest Corporation), are entitled to and realistically need. They provide the common ground somewhere in the middle, that the Chairman said was necessary. This is especially true while the FCC develops a long-term intercarrier compensation plan that takes IP voice and other IP-enabled services into account. It is the disjunction between the Level 3 relief and its proclaimed flaws in the existing

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<sup>2</sup> In the Matter of Level 3 Communications LLC’s Petition for Forbearance Under 47 U.S.C. § 160(c) and Section 1.53 of the Commission’s Rules from Enforcement of Section 251 (g), Rule 51.701(b)(i), and Rule 69.5(b), WC Docket No. 03-266, filed Dec. 23, 2003.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> Compare the actual Petition with the Level 3 *ex parte* presentation of December 22, 2004 (claiming that its Petition did not apply to carriers who actually purchased tariffed feature group access services) (“December 22 *ex parte*”).

<sup>5</sup> In fact, any claim that IP Voice providers are languishing is contradicted by all evidence, not the least of which is provided by IP Voice providers themselves. See Ben Charny, Cable Raises its Voice, *c/net news.com*, [http://news.com.com/Cable+raises+its+voice/2100-7352\\_3-5579111.html](http://news.com.com/Cable+raises+its+voice/2100-7352_3-5579111.html), March 3, 2005; Steven Lawson, SPRING Von: VOIP players gear up fast for fast-growing market, *IT World.com Site Network*, [www.itworld.com/Net/3303/050307von/pfindex.html](http://www.itworld.com/Net/3303/050307von/pfindex.html), March 7, 2005.

structure that have made it so difficult to actually determine just what Level 3 is asking for in its Petition and, more significantly, to fully grasp the dangers inherent in a grant of the Petition.

In two recent *ex parte* presentations,<sup>6</sup> Level 3 has elaborated on its position in a manner that highlights both the fatal flaws in the Level 3 position and the problems inherent in any approach to IP voice access issues, even on an interim basis, which is not part of and consistent with a comprehensive approach to the intercarrier compensation regulatory structure. Pending development of an intercarrier compensation structure, clarification and continued application of the existing rules, as embedded in the so-called “ESP exemption,” provides a logical and reasonably fair method of treating all IP-enabled services.<sup>7</sup> Qwest’s position is simple. True IP voice services<sup>8</sup> are “enhanced services<sup>9</sup> under the Commission’s rules. They are customarily used by customers and ISP providers alike in conjunction with a multitude of other IP-enabled services. There is no logical reason to treat IP voice applications any different than other IP-enabled services for purposes of determining the correct access charge or intercarrier compensation mechanism. Namely, for “true IP voice” services when a call originating in IP terminates on the PSTN, the ISP POP<sup>10</sup> is treated as an end user for both access charge application and determination of whether, when multiple LECs are involved, a call is subject to the access charge regime or Section 251(b)(5) of the Act.

Appended hereto as Attachment A is a brief description of the background of the ESP exemption as it applies to IP-enabled services today. This attachment provides the backdrop for the analysis that follows.

**II. Level 3 Now Effectively Concedes That The Relief It Seeks Would Potentially Undercut The Existing Access Charge Structure By Allowing Carriers To Utilize Local Exchange Switching Facilities To Originate And Terminate Interstate Interexchange Telecommunications Outside Of The Carrier Access Charge Structure.**

The legal treatment of an ISP POP as an end-user premise for access charge (and reciprocal compensation) purposes enabled the carrier access charge system to remain intact even while ISPs were able to purchase local access for interstate service. The analysis is simple: end users

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<sup>6</sup> Letter from John T. Nakahata to Marlene H. Dortch, March 2, 2005 (March 2 *ex parte*); Letter from John T. Nakahata to Marlene H. Dortch, February 23, 2005 (February 23 *ex parte*).

<sup>7</sup> True IP voice services are voice applications originating in the Internet protocol over a broadband connection.

<sup>8</sup> See Reply Comments of Qwest Communications International Inc., WC Docket No. 04-36, filed July 14, 2004 at 5.

<sup>9</sup> See 47 C.F.R. § 64.702(a).

<sup>10</sup> POP is short for “point of presence.” In the context of an ISP or an interexchange carrier, the term POP is used to designate the location of the place or places where an ISP or IXC receives traffic from or delivers traffic to a local exchange carrier. In the case of a CLEC, that point is customarily referred to as a “point of interconnection.”

are entitled to purchase retail local access services to interconnect with local exchanges for services within a properly designated local calling area, while carriers are not (and must purchase feature group services for such access).<sup>11</sup> Because an ISP POP is treated as an end user premise for access charge purposes, when an ISP POP is connected to a local exchange, it may do so through the purchase of the same retail (business) services as are available to other end users, and thereby receive the same access to a local calling area as an end user receives. If the ISP makes or receives a call from another end user within the same LATA but within a different local calling area, the call is deemed to be an interexchange call and proper toll charges are assessed. The same analysis applies when interconnection by an ISP to a local exchange is through another carrier even when that carrier is interconnected via a single point of interconnection within the LATA: if the call is from an end user NOT in the same local calling area as the ISP POP, it would be rated as a toll call,<sup>12</sup> and the call treated under the access charge rules (as jointly provided access generally)<sup>13</sup> rather than under the reciprocal compensation rules that dictate the exchange of non-toll traffic.<sup>14</sup>

The ESP exemption does not exempt a carrier transporting ISP traffic from payment of a tariffed rate for services that it orders to originate or terminate that traffic, nor does it permit a carrier to purchase local service when terminating a call from or originating a call to an ISP POP in a different local calling area. It simply permits the ISP to purchase local services as if it were an end user -- something that a carrier cannot do. It similarly permits a CLEC to treat local ISP traffic (*i.e.*, traffic where the ISP POP is located within the same local calling area as the called or calling party) as subject to the compensation provisions of Section 251(b)(5) rather than the access charge structure (*i.e.*, jointly provided switched access).

Level 3 has been somewhat evasive on this critical issue -- whether its Petition includes a request for a ruling that a carrier carrying an intraLATA toll call to or from an ISP POP in a different local calling area would be "exempt" from the access structure. In December, Level 3 came very close to agreeing, at least with regard to traffic originating on the PSTN, that, even if its forbearance petition were to be granted, the POPs of IP-enabled service providers would nevertheless be rated as end user premises and carriers transporting ISP calls to or from an ISP POP in another local calling area would have that call rated as an interexchange call. Most significantly, Level 3 seemed to indicate in its December *ex parte* that the originating end of a 1+ call destined to an IP Voice provider would be subject to the tariffed rate for access:

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<sup>11</sup> Feature group access customarily covers an entire LATA, not just a local calling area.

<sup>12</sup> We note here that the phrase "toll" and "interexchange" are used interchangeably in this paper. Common usage often refers to interLATA calls as "interexchange calls" and intraLATA toll calls as "toll calls." For purposes of our analysis, the terms are identical. The provision in 47 U.S.C. Section 153(48) that "telephone toll service" includes a "separate charge not included in contracts with subscribers for exchange service" is not relevant to the issues raised in the Level 3 Petition.

<sup>13</sup> In the case of jointly provided access, each carrier bills the customer -- in this case the ISP.

<sup>14</sup> See *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, FCC 05-33, *Further Notice of Proposed Rulemaking*, CC Docket No. 01-92 ¶¶ 141-43 ("*Inter-carrier Compensation FNPRM*").

Level 3 is not seeking forbearance from the applicability of originating interstate and intrastate access charges with respect to traffic that reaches Level 3 or any other carrier serving a VoIP provider via the calling party's pre-subscribed or dial-around interexchange carrier ("IXC"). When such "1+" traffic or "10-XXX" traffic is exchanged between the originating LEC and the intermediary IXC (such as for an intraLATA toll call placed to a VoIP number), originating access charges would continue to apply as between the originating LEC and the IXC[.]<sup>15</sup>

In its March 2 *ex parte*, Level 3 withdrew from this position, and now claims that a carrier carrying an IP voice call could claim that a call was local for access charge and reciprocal compensation purposes solely on the basis that the call was "VoIP traffic," without regard to the actual location of the ISP POP, the configuration of the traffic, or rating of the NPA/NXXs. And Level 3 now also includes interexchange carriers within the ambit of those brought within the reciprocal compensation structure of the rules:

If the Commission were to grant forbearance, any telecommunications carrier -- including but not limited to CLECs -- would be able to exchange traffic with LECs pursuant to interconnection agreements under which reciprocal compensation would govern the exchange of VoIP traffic. Section 251(b)(5) is not limited to traffic exchanges between LECs or LECs and CMRS carriers. Nor is Level 3's Petition -- rather, it expressly applies to Level 3 and "*any other telecommunications carrier* handling [IP-enabled services] traffic that originates or terminates on the PSTN."<sup>16</sup>

This, of course, puts Level 3 back in its original position -- that IP voice traffic should simply be "exempted" from paying the proper rate for access no matter what services a carrier carrying traffic for an IP voice provider purchases or is required to purchase from an ILEC or CLEC. This would apparently include allowing a carrier interconnecting with an ILEC in a manner governed by the rules regarding access and jointly provided switched access to treat even 1+ dialed access traffic as local. It is not a responsible position. It is on its face also quite opposed to Level 3's December 22 position.

But the difficulty is not so much that Level 3 has been unable to articulate its position with consistency. Rather, the problem is that the current broad and destructive sweep of the Level 3 Petition is the natural consequence that would result from any effort to "exempt" IP-enabled services from access charges instead of keeping them in harmony with the structure growing from the ESP exemption. The complexity of the undertaking suggested by Level 3 is breathtaking and doomed to failure -- at least if failure is defined as bringing about results that have no relationship to those that were intended. For all of its flaws, the ESP exemption is at

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<sup>15</sup> See December 22 *ex parte* at ¶ 2.

<sup>16</sup> March 2 *ex parte* at 6 [italics and brackets in original; footnote omitted]. It is possible to read the Level 3 *ex parte* as limited to terminating traffic, but, even if Level 3 meant to bring only terminating IXC access traffic into the sphere of reciprocal compensation, the fact that it could not say so plainly emphasizes the serious problems that would be raised by a grant of its Petition.

least comprehensible. Creating an “exemption” from access charges, no matter how styled, is bound to go far beyond any legitimate application of the already extensive rights enjoyed by IP-enabled services providers and carriers to which they connect. This is particularly true in the case of the Level 3 Petition, because it appears to apply to calls that are not “true VoIP” -- that is, calls that originate on the PSTN, using 1+, 10XXX and even VNXX calls, and are terminated to a VoIP customer.

An example of the application of how the ESP exemption works with regard to traffic originating and terminating on the PSTN can be seen in Attachment B.<sup>17</sup> In Attachment B-1, an IP voice customer in Denver, CO calls a PSTN customer in Washington, DC. The call travels over the Internet and other facilities to the ISP POP located within the local calling area of the called customer. As the ISP POP is treated as an end user premise for access purposes, the connection between the ISP POP and the end user is treated as a local call whenever the two are located in the same local calling area, whether the call is routed directly to the called party by local connection to the terminating ILEC, or through a CLEC. If the ISP POP were located in a different local calling area than the called party, the call between those two locations would not be treated as local.

In Attachment B-2, a PSTN end user in Denver calls an IP voice customer in DC by dialing the standard 1+ dialing code. This call travels from the customer in Denver to a long distance carrier, which then carries the call to Washington, DC where the number resides.<sup>18</sup> The LEC in Denver charges the IXC for originating access, and the two LECs in DC charge the IXC for terminating access. The IXC then normally recovers its costs from the end user in Denver. In other words, the call is treated like any other call from a PSTN end user in Denver to the IP voice provider’s ISP POP.

If the Level 3 arguments are accepted, this call, which today is a normal long distance call subject to assessment of carrier access charges, could be converted to a different compensation scheme based solely on the fact that it terminates to an ISP POP for further delivery to an IP voice customer. The network components have not changed, the carriers involved have not changed, the services passing over the network have not changed, and the location of the ISP POP (end user) has not changed, and the dialing pattern has not changed. In fact, given the technological reality of 1+ dialing, it appears that the IXC would have been required to order FGD from the originating LEC in Denver and from the terminating LEC in DC in order for the originating and terminating parts of the call to be routed properly. While this scenario would not arise under the December 22 *ex parte*, it seems inescapable under the March 2 *ex parte*. Under these circumstances Level 3’s Petition would create a special class of long distance carriers that

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<sup>17</sup> Attachment B-1, appended hereto, and entitled “True-VoIP-Originated Call to PSTN End User; Attachment B-2, appended hereto, and entitled “PSTN-originated Call to VoIP End User in Different Local Calling Area (LCA).”

<sup>18</sup> We recognize that the number of an IP voice customer may not be in the same area code as the location of the customer. However, in such an event an ISP facility would be required in the geographic location to which the number is assigned, and the same analysis would apply to delivery of the call to that location. The routing shown on Attachment B-2 would also not be possible if the IP voice customer’s number were assigned to a different area code.

were “exempt” from payment of proper switched access charges based solely on the content (*i.e.*, IP voice content) of the messages that they were carrying. There is simply neither justification nor reason to allow this scenario to develop.

### **III. Level 3 Misstates The Current Treatment Of Local Calls Under Existing Rules.**

In its February 23 *ex parte*, Level 3 distorts the manner in which compensation for local and non-local traffic is currently calculated and assessed among carriers, the apparent import of which is to claim that the existing rules do not adequately protect providers of IP-enabled services from arbitrary assessment of unwarranted charges for access. The ESP exemption, properly interpreted, provides a reasonable way to treat IP-enabled services, including IP voice applications, while final intercarrier compensation rules are developed. But it must be properly interpreted and uniformly applied.

Level 3 starts with the proposition that the differentiation between local calls and non-local calls for purposes of access and reciprocal compensation currently specified in the Commission’s rules is “absurd.”<sup>19</sup> Level 3’s support for this claim is the fact that, under the current rules, a call between two parties in the same local calling area is a local call, and a call between two parties in different local calling areas is an interexchange or toll call. But local calls and interexchange calls are always evaluated based on the end points of the call, and it is absurd not to continue to do so in the context of the ESP exemption. It is just that, in the case of an ISP call, for access charge purposes, the ISP POP is one of the call’s two end points, and must be evaluated as such. If a local call traverses a CLEC switch, the location of the CLEC switch (assuming that it is in the same LATA as the ILEC) does not determine whether the call is local, and calls within a LATA are treated either as access (*i.e.*, they are interexchange or toll calls) or reciprocal compensation based on the location of the end points.<sup>20</sup> This is exactly the same whether the end users are traditional end users or ISP POPs. This principle is neither complicated nor absurd.

Level 3 next compounds this error by claiming that treating IP voice providers as end users violates the rights of CLECs to demand interconnection with an ILEC at a single point of interface within a LATA.<sup>21</sup> The problem with Level 3’s position here is that Level 3 totally misconstrues the right of a CLEC to a single point of interconnection, and the cases it relies on stand for exactly the opposite proposition than that for which they are cited by Level 3. Level 3 contends that it has a right to interconnect at a single point of interface within a LATA (which Qwest does not contest under the current rules). But rather than recognizing that this single point of interface does not transform interexchange calls between end users into local calls, Level 3 argues that the right to a single point of interconnection now should be dramatically expanded to require treatment of all traffic within a LATA as local traffic. This is simply not true. Under all of Qwest’s interconnection agreements, when toll traffic is exchanged between two LECs, it is exchanged on an access basis, not a reciprocal compensation basis. Toll traffic is measured based on the locations of the two end points of the call.

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<sup>19</sup> February 23 *ex parte* at 2-3.

<sup>20</sup> *See id.* at Exhibit A.

<sup>21</sup> *Id.* at 3-5.

Attachment C, appended hereto, demonstrates how this scenario is played out in real life based on Qwest's actual network configurations and Qwest's actual interconnection agreements. Attachment C-1 shows a local call when the ISP POP is in the same local calling area as the other party to the call, compared to the same result (in Attachment C-3) when a traditional called party or PBX is in the same local calling area. Attachment C-2 and Attachment C-4 show the converse—with an ISP POP, a PBX or a traditional end user in a local calling area that is different from the local calling area of the other party. The treatment is identical, and clearly consistent with the right of a CLEC to a single point of interconnection within a LATA. Level 3's support for the proposition that relying on state designated local calling areas to determine the status of a call between two end points is unlawful is predicated on the decision of the Fourth Circuit Court of Appeals in *MCIMetro Transmission Services Inc. v. BellSouth Telecommunications, Inc.*<sup>22</sup> Level 3 contends that this case, in which an effort by BellSouth to charge a CLEC for the cost of delivering traffic to the CLEC's single point of interconnection was rebuffed by the Court based on the existing rules of the Commission,<sup>23</sup> somehow implicates the definitions of local and toll traffic in terms of determining whether the reciprocal compensation or the jointly provided switched access rules apply. It appears that Level 3 contends that these decisions somehow grant to ISPs (rather than CLECs) the right to maintain a single POP within a LATA and to use this single POP to avoid toll charges. The right to maintain a single point of interconnection within a LATA is a right reserved to carriers. In fact, the proper application of the ESP exemption to ISP POPs does not implicate the right of a CLEC to a single point of interconnection within a LATA at all, and Level 3 has simply misconstrued a CLEC's interconnection rights and improperly sought to apply them to an ISP.

The *MCIMetro* decision does not hold to the contrary. That case dealt with whether an ILEC could, under the FCC's current rules, charge a CLEC to deliver traffic to a remote CLEC single point of interconnection. The case actually focused on calls where both end points were within a single local calling area, but the CLEC switch was in a different local calling area, and had nothing to do with the principle for which Level 3 cites the case.<sup>24</sup> This point was emphasized even more strongly in the D.C. Circuit case of *Mountain Communications, Inc. v. FCC*,<sup>25</sup> in which the Court repeatedly noted that the calls in question, while delivered to a CLEC single point of interconnection in a local calling area other than the location of the originating caller, were ultimately between end points in "the same local calling area." Whether an ILEC can charge a CLEC for delivering traffic to a remote CLEC single point of interconnection is a very

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<sup>22</sup> *MCIMetro Access Transmission Services, Inc. v. BellSouth Telecommunications, Inc.*, 352 F.3d 872 (4<sup>th</sup> Cir. 2003).

<sup>23</sup> The Commission is currently studying under what circumstances an ILEC may lawfully charge a CLEC for delivery of traffic to a remote single point of interconnection, especially when the single point of interconnection is located in another calling area. *Inter-carrier Compensation FNPRM ¶¶ 91-7*.

<sup>24</sup> See *MCIMetro*, 352 F.3d at 877, describing the calls at issue in the case as being between "neighbors."

<sup>25</sup> *Mountain Communications, Inc. v. FCC*, 355 F.3d 644, 646, 647 (D.C. Cir. 2004).

important issue. But it has nothing to do with whether a call between two end points in two different local calling areas is a local call or a toll (interexchange) call.

There is no reason in law or logic why these principles should apply any differently when one of the end points of a call is an ISP POP (designated as an end user under the ESP exemption) than is the case when both end points are more traditional end users.

#### **IV. Conclusion.**

It is true, as Chairman Powell has noted, that the issues raised by access charges as applied to IP-enabled services, including IP voice applications, are often polarized and are always controversial. But the Level 3 Petition serves to create controversy where there is no need for it. While Qwest completely agrees that it is vital that the Commission act promptly and decisively to devise a comprehensive intercarrier compensation regime that includes the IP-enabled services discussed by Level 3, it is not necessary, and indeed would be affirmatively harmful, to take action along the lines requested by Level 3. There is neither need nor reason for a special status for IP voice applications that is different from that afforded to other IP-enabled services through the ESP exemption. In fact, granting such a status to providers of IP voice services (even assuming that this could be accomplished without dragging the entirety of other IP-enabled services with them) would dramatically undercut the existing access structure and undermine the Commission's ultimate efforts to rationalize the access infrastructure in the intercarrier compensation docket.

The Level 3 Petition should be denied, and the temptation to grant some of Level 3's relief through "interim rules" should be resisted. On the other hand, the Commission should eliminate any uncertainty as to the proper application of the ESP exemption in the context of IP-enabled services through an appropriate clarifying order.

## ATTACHMENT A

### The ESP Exemption

#### I. BACKGROUND

The Commission has been wrestling with the issue of how providers of "enhanced services" should pay for interstate use of local exchange switching facilities and services since the very beginning of the access charge regime.<sup>1</sup> The "interim" solution to enhanced services access was the so-called "ESP exemption," whereby enhanced service providers were entitled to connect their "POPs" to local exchanges via local exchange services (as opposed to the tariffed feature group services that carriers were required to purchase), even though they used the local exchange facilities for interstate access.<sup>2</sup> The ESP exemption was never really an "exemption" at all -- it was simply a regulatory decision that, for a variety of policy reasons, interstate access by ESPs located within the local calling area of a customer would be treated as local for the purpose of assessing the correct access charge, at least if local service were ordered. The same status was accorded to private networks that accessed local exchanges for interstate origination and termination of interstate calls -- these private networks were likewise treated as end users for access charge purposes based on the location of the PBX or other terminating device (including Centrex) through which the traffic was delivered into a local exchange.<sup>3</sup> In both cases, interstate cost recovery was designed to be achieved through assessment of a special access surcharge on ILEC interstate special access lines used by ESPs or "leaky PBXs".<sup>4</sup>

This "local" designation of an ESP POP carried over into the telecommunications environment established in the 1996 Telecommunications Act. Information service providers (ISPs), the heirs of the old enhanced service provider moniker, are entitled to have their ISP POPs treated as end-user premises under the ESP exemption. Thus, ISPs can order local service to ISP POPs in the same manner as such service can be ordered to other end user premises. When the ISP is served by a CLEC and matters of reciprocal compensation under Section 251(b)(5) of the Act arise, the

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<sup>1</sup> See *In the Matter of MTS and WATS Market Structure, Third Report and Order*, 93 FCC 2d 241, 254-55 ¶ 39 and n.15, 320 ¶ 269 (1983); *modified on recon.*, 97 FCC 2d 682 (1984) ("*First Order on Reconsideration*"), *further modified on recon.*, 97 FCC 2d 834 (1984) ("*Order on Further Reconsideration*"), *aff'd in principal part and remanded in part sub nom., NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

<sup>2</sup> See, e.g., *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, First Report and Order*, 12 FCC Rcd 15982, 16131-34 ¶¶ 341-48 (1997); see, also, generally, *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Order*, 3 FCC Rcd 2631 (1988).

<sup>3</sup> See *In the Matter of WATS-Related and Other Amendments of Part 69 of the Commission's Rules, Memorandum Opinion and Order*, 2 FCC Rcd 7424, 7425 ¶¶ 13-15 (1987).

<sup>4</sup> See *First Order on Reconsideration*, 97 FCC 2d at 714-15 ¶ 82, 743 ¶ 151; *Order on Further Reconsideration*, 97 FCC 2d at 867-78 ¶¶ 107-39.

ESP exemption analysis carries over into the current realm under Section 251(g) of the Act. Subject to modification by the FCC and the interim ISP reciprocal compensation rules,<sup>5</sup> the end-user designation of an ISP POP also allows for reasoned analysis of the rights and obligations of local exchange carriers when exchanging ISP traffic with each other. In such an event the ISP POP is treated as an end user for analytical purposes. Based on the location of the ISP POP, whatever mechanism is used to treat calls between traditional end users (reciprocal compensation, tariffed access, *i.e.*, jointly provided switched access paid by the ISP to both carriers, or some other approach) is applied to this traffic and used by the respective carriers to recover the costs incurred in exchanging the ISP traffic.

The key of course is that an ISP POP is not the same thing as an IXC POP or a CLEC point of interface, because neither an IXC POP nor a CLEC point of interface is treated as an end user for access purposes and neither is entitled to purchase retail services reserved for end users (although CLECs may purchase local services for resale under Section 251(c)(4) of the Act). There must always be an ISP POP in the case of an IP-enabled service, even if that POP is collocated at the same premise with an IXC POP or a CLEC point of interface. When reciprocal compensation is paid by one carrier to another for delivering a call between two end points in a specific local calling area, compensation under Section 251(b)(5) of the Act, as clarified by the interim rules regarding ISP reciprocal compensation, is likewise paid when the end-user premise is an ISP POP. When the call to an end user is interexchange in nature (for calls within a LATA, this is designated as “toll” traffic whether or not a separate toll charge is actually assessed), it is delivered via jointly provided switched access. Jointly-provided switched access is the compensation vehicle when two LECs combine to provide access to an interexchange carrier, and is the proper compensation mechanism whenever the ISP POP is located in a calling area other than the one in which the LEC’s customer is located. The LECs do not bill each other—they bill the IXC. This is important because it is well agreed that, when two LECs collaborate to complete a toll call (*i.e.*, any call between two local calling areas, whether a toll charge is assessed to the end user or not), the reciprocal compensation rules do not apply and instead the call is billed under access principles. In the case of a call where the LEC is often also the toll carrier (a common scenario in the case of intraLATA toll calls), access charges are assessed based on the toll carriage (*i.e.*, which carrier actually provides the toll service to the end user).

Because “true IP voice” service (a voice application originating in Internet Protocol over a broadband line) is an information service, IP voice providers and carriers carrying their traffic operate under the ESP exemption. Thus, while an IP-voice provider can, of course, purchase feature group services to originate or terminate calls to and from their ISP POPs, they are entitled to purchase local service under the ESP exemption, and calls to and from IP-voice providers are treated in the same fashion as calls to other ISP POPs under the principles stated in this memorandum.

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<sup>5</sup> See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, 16 FCC Rcd 9151, 9163-81 ¶¶ 23-65, 9186-90 ¶¶ 77-84 (2001), *remanded sub nom. WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *reh’g, en banc, denied* (D.C. Cir. Sept. 24, 2002), *cert. denied*, 538 U.S. 1012 (May 5, 2003).

The appropriate rules can be summarized as follows:

- All IP-enabled traffic, including true VoIP traffic, is currently treated as an information service under the Commission's rules. The principles that guide the pricing of interconnection to a local exchange by a VoIP provider are derived from the ESP exemption.
- The ESP exemption is something of a misnomer. It is not an exemption from the payment of access. Rather it is a regulatory structure that treats ISP POPs as if they were end-user premises for the purpose of assessing access charges. Because of this status, ISPs are entitled to purchase exchange access from ILECs out of ILEC end-user tariffs under the same terms and conditions as other end users. Any special access services they purchase from an ILEC to connect their ISP POPs to an IXC or other carriers of traffic are subject to the "special access surcharge" rules.<sup>6</sup>
- In addition, when an ISP POP is served by a CLEC, the CLEC is entitled to treat that ISP POP as an end-user premise for purposes of determining whether the rules regarding reciprocal compensation (47 U.S.C. § 251(b)(5)) or access (jointly provided switched access) apply. The compensation levels for ISP traffic are treated under the interim rules respecting ISP reciprocal compensation.
- Under these circumstances, unlike the LATA-wide access available through ILEC tariffed switched access services, an end user generally has LATA-wide access only through the purchase of toll service. If an ISP POP is located in a local calling area that is within the same LATA as a terminating caller, but which requires a toll call between the ISP POP and the terminating caller, the ISP POP is still treated as an end user and the proper toll charges to the ISP are assessed. Access charges are then assessed to the toll carrier.
- This is consistent with the right of a CLEC to establish a single point of interconnection within a LATA. The existence of such a single point of interconnection does not affect the basic differentiation between local and toll (intra and interexchange) calls. An ISP POP is entitled to "LATA-wide termination," but the rates are different than the LATA-wide termination provided pursuant to ILEC access tariffs. Specifically, an ISP POP's connections within a LATA are governed by the same rules that govern other end users.<sup>7</sup>
- It is vital to remember that, whenever an ISP orders service from an ILEC access tariff, it must pay the tariffed rate for the service that it ordered. There is a prevalent misconception to the effect that the ESP exemption permits an ISP to order a tariffed feature group service and not pay for it. This is totally wrong. The ESP exemption permits an ISP to order local service under circumstances where a carrier does not have

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<sup>6</sup> 47 C.F.R. § 69.115.

<sup>7</sup> The right of a purchaser of interstate switched access to "LATA wide termination" is of course irrelevant to this analysis. No one doubts the ability of an ISP to purchase access service pursuant to the ILEC feature group services so long as it pays the proper tariffed rate for service.

the same right to order local service. The ESP exemption does not allow an ISP to pay a non-tariffed rate for a tariffed service that it has ordered, and the ISP choosing to order FGD service, for example, must pay the tariffed rate for service. In fact, as an ISP is treated as an end user, the ISP must pay the tariffed rate for services it orders from ILECs -- it has no right to bargain for any different rate.<sup>8</sup>

- When IP voice traffic is delivered to an ILEC, either directly from the ISP POP or through a CLEC, these principles apply. The ISP POP is treated like any other end-user premise. If the IP voice provider is purchasing access service directly from an ILEC, it may do so as an end user subject to the normal rules regarding local and toll service. If the IP-voice provider purchases service from a CLEC and the IP-voice traffic is exchanged with an ILEC, whether the access rules or the intercarrier compensation rules apply depends entirely on the location of the IP voice provider's ISP POP.

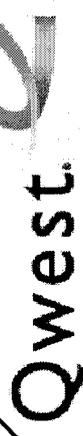
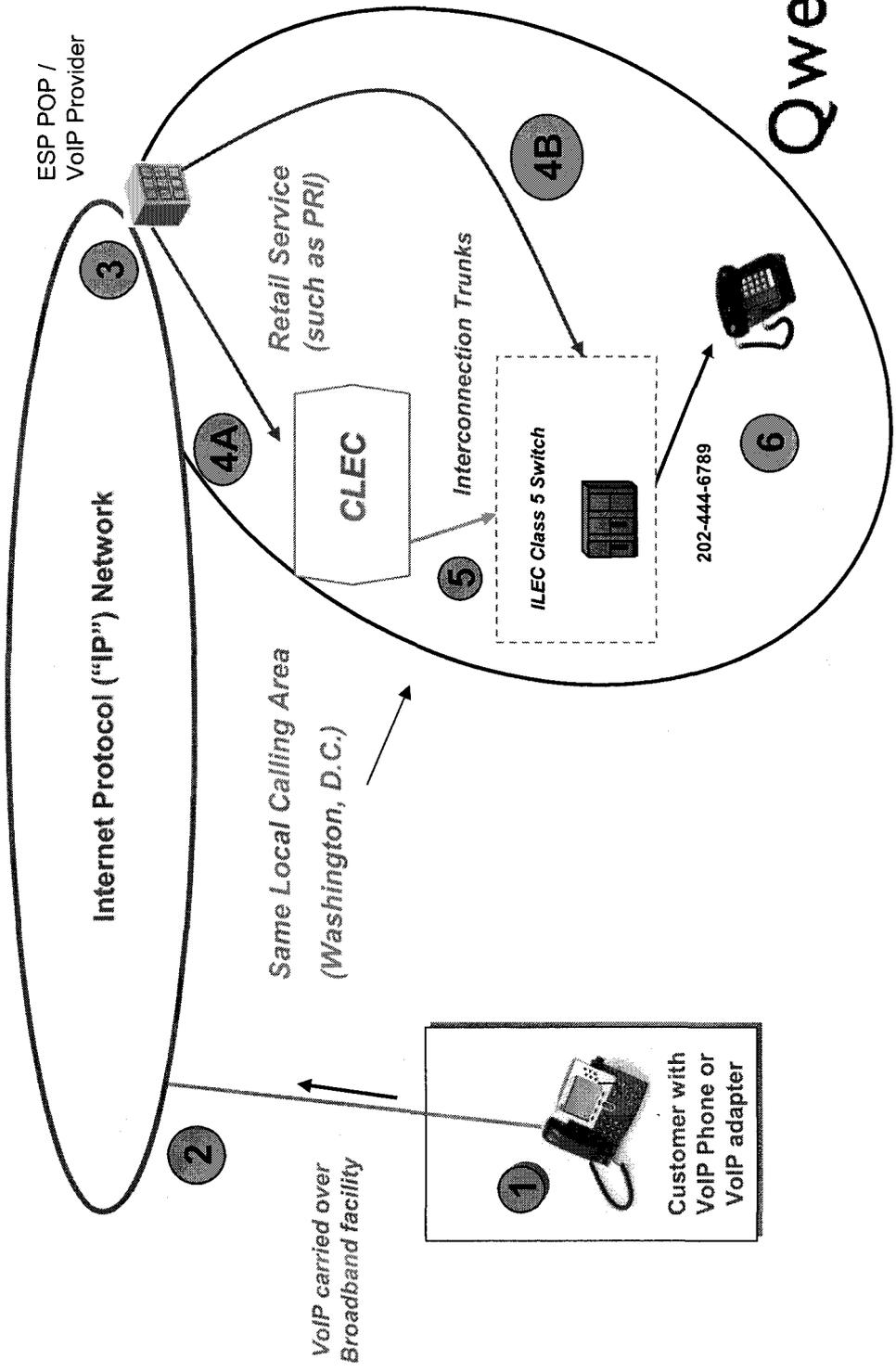
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<sup>8</sup> Unlike carriers, end users generally do not have the statutory ability to contract with dominant carriers for tariffed services at other than the tariffed rates. *See American Broadcasting Companies, Inc. v. FCC*, 643 F.2d 818, 822-24 (D.C. Cir. 1980).

# True-VoIP-Originated Call to PSTN End User Attachment B-1

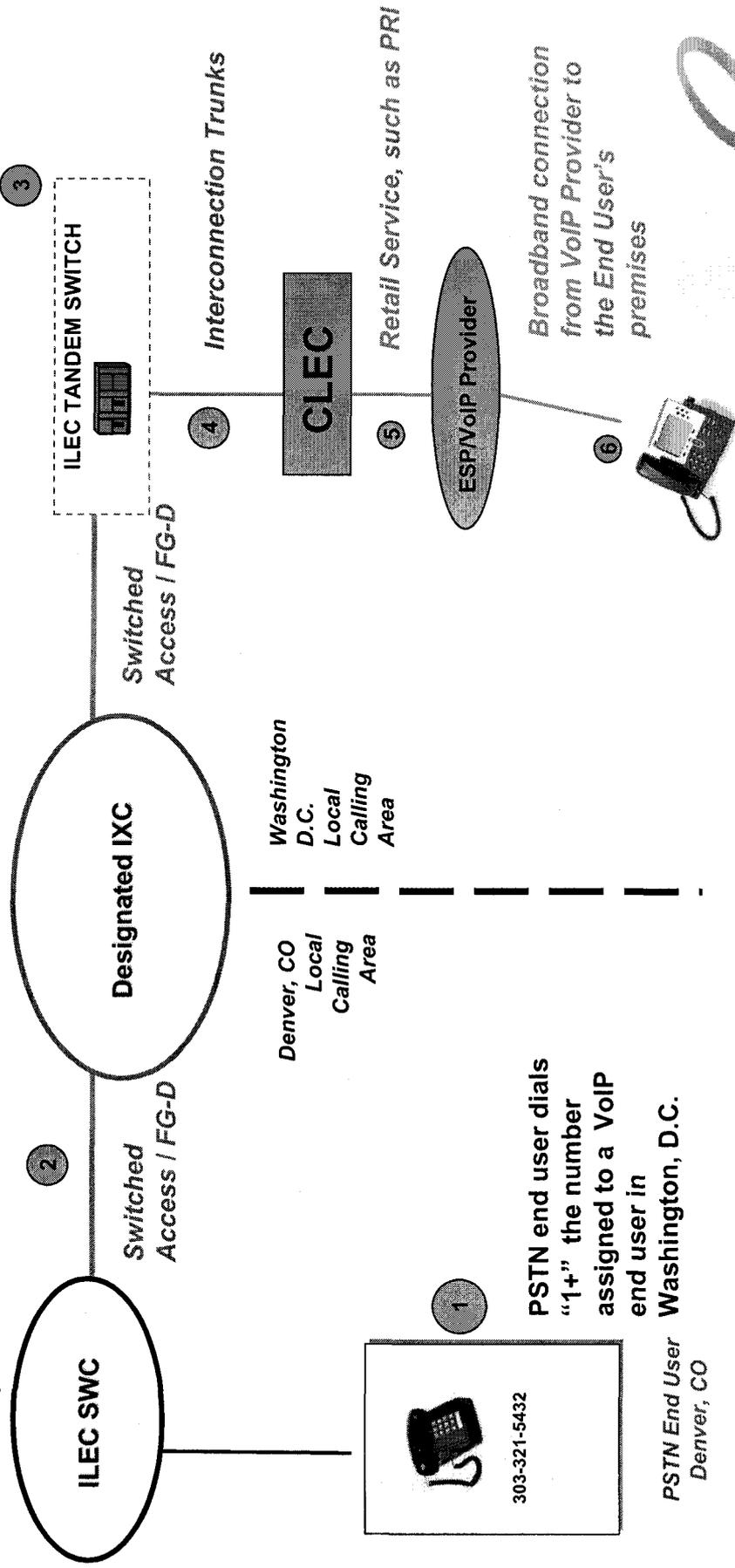
## ESP POP and Terminating End User in the Same LCA

1. VoIP Phone or VoIP Adapter at Customer Premises
2. Call initiated in IP over a Broadband Connection (e.g. IP over DSL, T1, or Cable modem)
3. Call is routed via the Internet Protocol Network to an Enhanced Service Provider/VoIP Provider's POP located in the same Local Calling Area as the terminating PSTN end user
4. ESP/VoIP Provider purchases Retail Service (PRIs) to connect to CLEC (4A) or alternatively purchases PRIs to connect to the ILEC (4B).
5. CLEC passes traffic to ILEC via Interconnection Trunks. Reciprocal Compensation applies
6. ILEC terminates call to end user.



# PSTN-originated Call to VoIP End User in Different Local Calling Area (LCA)

1. End user in Denver dials a "1+" call to an end user in Washington, D.C. Call is transported in TDM. The originating end user has purchased a telecom service from the originating ILEC
2. Call routes from ILEC SWC to designated IXC. Switched access / FG-D charges apply.
3. IXC carries call from Denver to Washington, D.C. and hands the call off to Washington, D.C.-based ILEC. Jointly provided switched access charges apply
4. The ILEC sends traffic via its tandem to the CLEC switch. Jointly provided switched access charges apply.
5. CLEC sends the call to the ESP/VoIP Provider via a Retail Service (such as PRI) offered via contract or tariff.
6. ESP/VoIP provider converts the call to IP and terminates the call to its VoIP end user customer via a broadband connection.

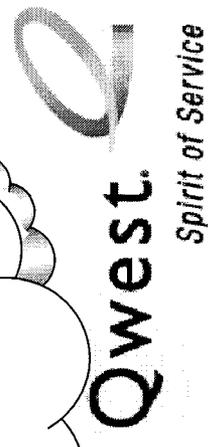
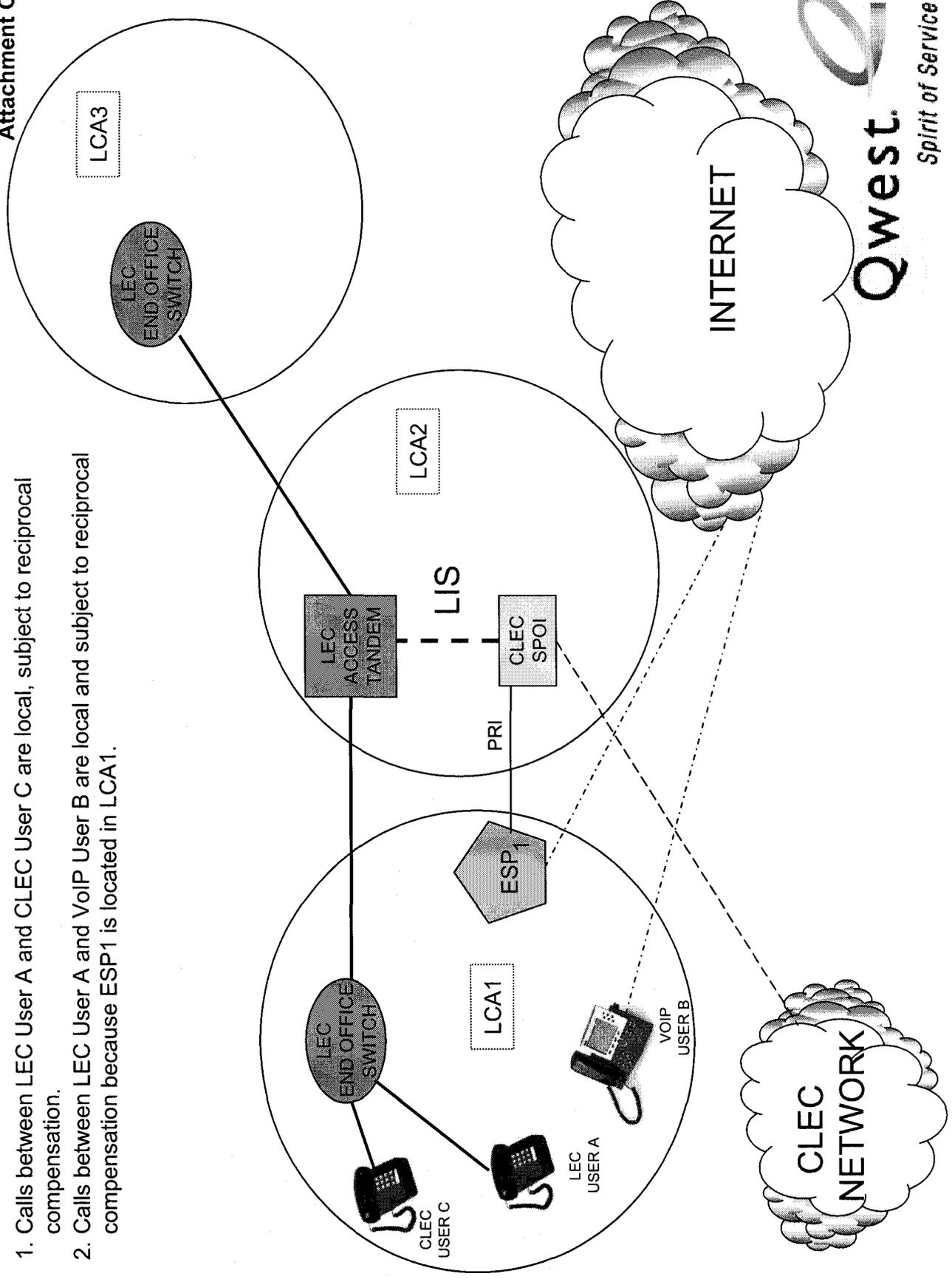


Spirit of Service

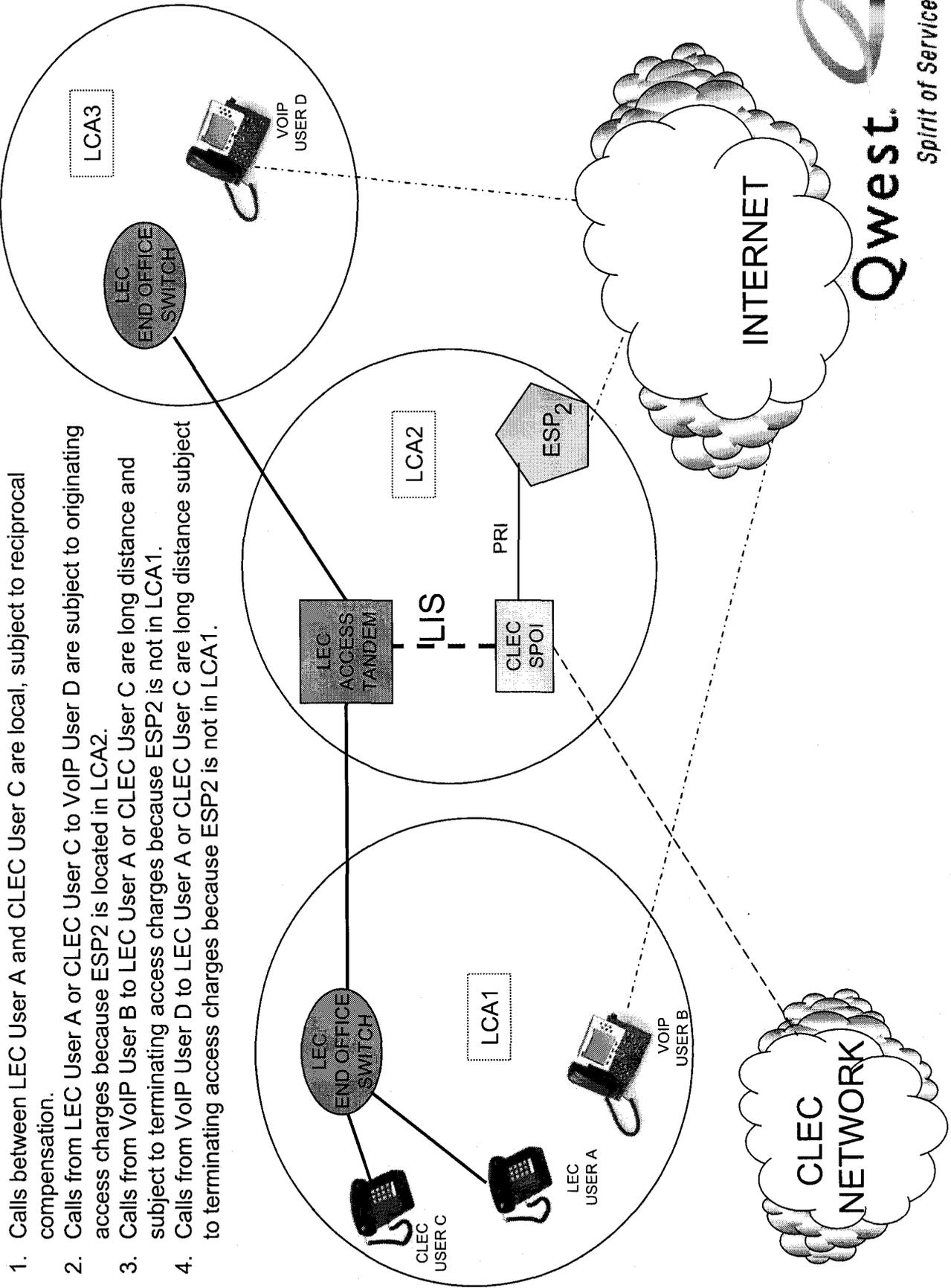
VoIP End User:  
202-444-6789  
Washington, D.C.

**Attachment C-1**

1. Calls between LEC User A and CLEC User C are local, subject to reciprocal compensation.
2. Calls between LEC User A and VoIP User B are local and subject to reciprocal compensation because ESP1 is located in LCA1.

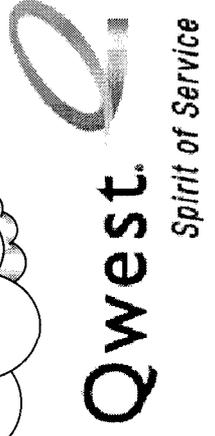
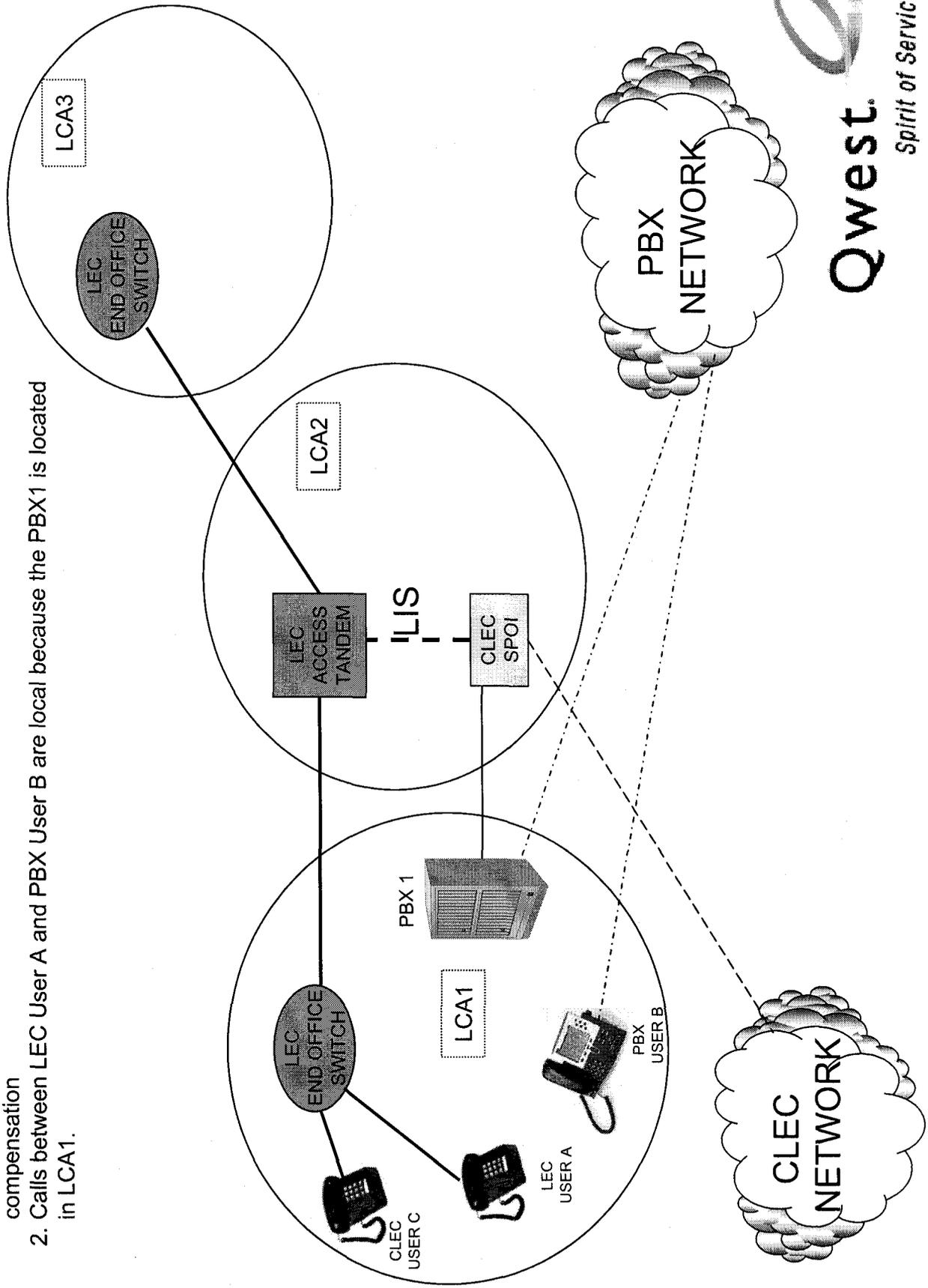


**Attachment C-2**



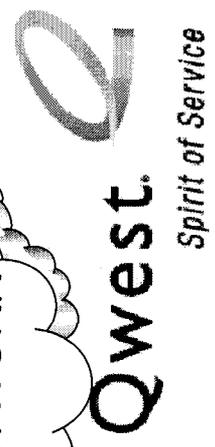
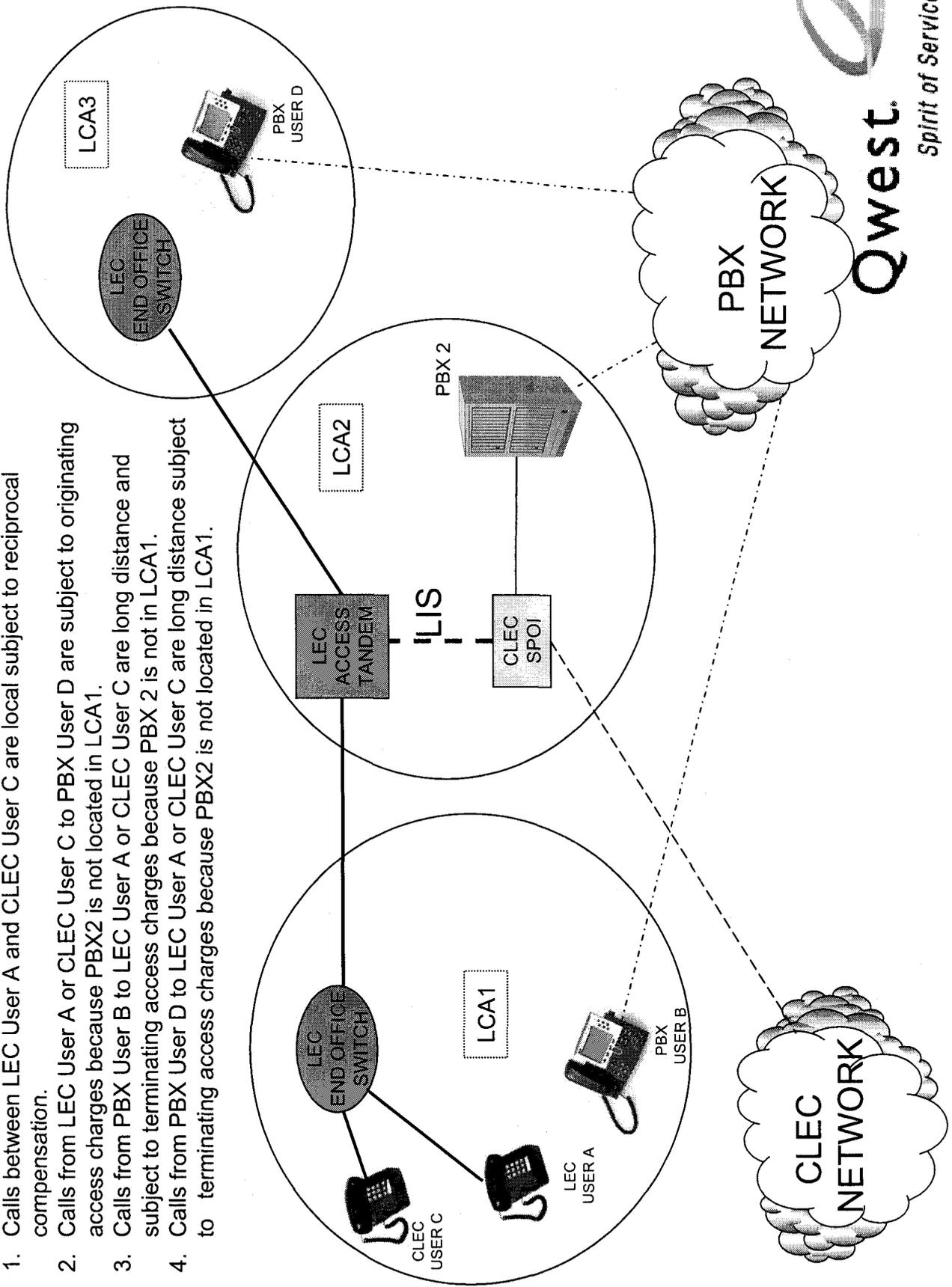
Attachment C-3

1. Calls between LEC User A and CLEC User C are local, subject to reciprocal compensation
2. Calls between LEC User A and PBX User B are local because the PBX1 is located in LCA1.



**Attachment C-4**

1. Calls between LEC User A and CLEC User C are local subject to reciprocal compensation.
2. Calls from LEC User A or CLEC User C to PBX User D are subject to originating access charges because PBX2 is not located in LCA1.
3. Calls from PBX User B to LEC User A or CLEC User C are long distance and subject to terminating access charges because PBX 2 is not in LCA1.
4. Calls from PBX User D to LEC User A or CLEC User C are long distance subject to terminating access charges because PBX2 is not located in LCA1.



# **EXHIBIT**

**D**

**Internet Service Provider ("ISP") Bound Traffic Amendment  
to the Interconnection Agreement between  
Qwest Corporation and  
Level 3 Communications, LLC  
for the State of Arizona**

This is an Amendment ("Amendment") to the Interconnection Agreement between Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., a Colorado corporation, and Level 3 Communications, LLC ("Level 3"). Level 3 and Qwest shall be known jointly as the "Parties".

**RECITALS**

WHEREAS, Level 3 and Qwest entered into an Interconnection Agreement ("Agreement") which was approved by the Arizona Corporation Commission ("Commission") on January 31, 2002; and

WHEREAS, the FCC issued an Order on Remand and Report and Order in CC Docket 99-68 (Intercarrier Compensation for ISP-Bound Traffic); and

WHEREAS, the Parties wish to amend the Agreement to reflect the aforementioned Order under the terms and conditions contained herein; and

WHEREAS, the Parties wish to amend the Agreement to add a Change of Law provision.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the language as follows in lieu of existing contract language:

**1. Definitions**

For purposes of this Amendment the following definitions apply:

1.1 "Bill and Keep" is as defined in the FCC's Order on Remand and Report and Order in CC Docket 99-68 (Intercarrier Compensation for ISP-Bound Traffic).

**2. Exchange Service (EAS/Local) Traffic**

The Parties agree to exchange all EAS/Local (§251(b)(5)) and ISP-bound traffic (as that term is used in the FCC ISP Order) at the FCC ordered rate, pursuant to the FCC ISP Order. The FCC ordered rate for ISP-bound traffic will apply to EAS/Local and ISP-bound traffic in lieu of End Office call termination and Tandem Switched Transport. See Section 3 below for FCC-ordered rates.

**3. ISP-Bound Traffic**

3.1 The Parties shall exchange ISP-bound traffic pursuant to the compensation mechanism set forth in the FCC ISP Order.

3.2 For States where the Parties were exchanging traffic pursuant to interconnection agreements prior to April 18, 2001, compensation for traffic exchanged under this Amendment shall be as set forth in the following paragraphs.

3.2.1 Identification of ISP-Bound traffic -- Qwest will presume traffic delivered to Level 3 that exceeds a 3:1 ratio of terminating (Qwest to Level 3) to originating (Level 3 to Qwest) traffic is ISP-bound traffic. Either Party may rebut this presumption by demonstrating to the state Commission that the traffic above this ratio is in fact EAS/Local (§251(b)(5)) Traffic delivered to non-ISP customers, which is subject instead to the compensation mechanisms set forth in Section 2 above. The same identification procedures and presumption shall apply for Level 3 traffic delivered to Qwest in terminating traffic as well.

3.2.2 Growth Ceilings for ISP-Bound Traffic -- Intercarrier compensation for ISP-bound traffic originated by one Party and terminated by the other Party will be subject to a growth ceiling, as defined below. The originating carrier shall not be required to pay intercarrier compensation to the terminating carrier for ISP-bound MOUs exceeding this growth ceiling.

3.2.2.1 For 2001, each Party will pay the other Party compensation for ISP-bound minutes up to the growth ceiling. The growth ceiling is equal to, on an annualized basis, the number of ISP-bound minutes for which the terminating Party was entitled to compensation, pursuant to the Agreement, from the originating Party during first calendar quarter 2001, plus a ten percent (10%) growth factor.

3.2.2.2 For 2002, Level 3 may receive compensation, pursuant to the Agreement, for ISP bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation under the Agreement in 2001, plus another ten percent (10%) growth factor.

3.2.2.3 In 2003, Level 3 may receive compensation, pursuant to the Agreement, for ISP bound minutes up to a ceiling equal to the 2002 ceiling applicable to the Agreement.

3.2.3 Rate Caps – Intercarrier compensation for ISP-bound traffic exchanged between Qwest and Level 3 will be billed as follows:

3.2.3.1 \$.0015 per MOU for six (6) months from June 14, 2001 through December 13, 2001.

3.2.3.2 \$.001 per MOU for eighteen (18) months from December 14, 2001 through June 13, 2003.

3.2.3.3 \$.0007 per MOU from June 14, 2003 until thirty six (36) months after the effective date of the FCC ISP Order or until further FCC action on intercarrier compensation, whichever is later.

3.2.4 The above rate schedule is taken from the FCC ISP Order. Each rate listed above is lower than State-approved rates for reciprocal compensation of EAS/Local (§251(b)(5)) traffic in the current Agreement as of the date of execution. Should State-

approved EAS/Local (§251(b)(5)) traffic rates drop below the above rates during the term of this Amendment, such rates will apply to ISP-bound traffic as well going forward from the effective date of the new reciprocal compensation rates for EAS/Local (§251(b)(5)) traffic.

3.2.4.1 To the extent the Commission has ordered Qwest to exchange ISP-bound traffic at rates below the rate caps contained in Section 3.2.3 or on a Bill and Keep basis, the rate caps shall have no effect.

3.2.5 For States where the Parties were not exchanging traffic pursuant to interconnection agreements prior to April 18, 2001, Sections 3.2, and 3.2.2 through 3.2.3.3 shall not apply. Instead, all ISP-bound traffic shall be exchanged without intercarrier compensation being payable by the originating Party to the terminating Party in connection with the terminating minutes of use. This provision includes Level 3's expansion into a State in which it had not exchanged traffic with Qwest under an interconnection agreement prior to April 18, 2001.

#### **4. Effective Date**

This Amendment shall be deemed effective upon approval by the Commission; however, Qwest will adopt the rate-affecting provisions for both ISP bound traffic and (§251(b)(5)) of the Order as of June 14, 2001, the effective date of the Order.

#### **5. Change of Law**

The provisions in the Agreement and this Amendment are based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the Existing Rules). To the extent that the Existing Rules are changed, vacated, dismissed, stayed or modified, then the Agreement and all Amendments and all contracts adopting all or part of the Agreement shall be amended to reflect such modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the modification or change of the Existing Rules, it shall be resolved in accordance with the Dispute Resolution provision of the Agreement. It is expressly understood that the Agreement and all Amendments will be corrected to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by the Agreement and its Amendments. This Section shall be considered part of the rates, terms and conditions of each Interconnection, service and network element arrangement contained in the Agreement and its Amendments, and this Section shall be considered legitimately related to the purchase of each Interconnection, service and network element arrangement contained in the Agreement and its Amendments.

#### **6. Amendments; Waivers**

The provisions of this Amendment, including the provisions of this sentence, may not be interpreted, amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**7. Entire Agreement**

This Amendment (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Amendment and supersedes any prior understandings, agreements, amendments or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of this Amendment.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**Level 3 Communications, LLC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Qwest Corporation**

\_\_\_\_\_  
Signature

L. T. Christensen  
\_\_\_\_\_  
Name Printed/Typed

Director – Business Policy  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# **EXHIBIT**

**E**

**Single Point of Presence (SPOP) Amendment  
To the Interconnection Agreement  
Between  
Level 3 Communications, LLC  
And Qwest Corporation  
For the State of Arizona**

This Amendment ("Amendment") is made and entered into by and between Level 3 Communications, LLC ("CLEC") and Qwest Corporation ("Qwest").

WHEREAS, CLEC and Qwest entered into an Interconnection Agreement ("the Agreement") for service in the state of Arizona that was approved by the Arizona Corporation Commission ("Commission") on January 31, 2002, as referenced in Docket Nos. T-03654A-00-0882, T-01051B-00-0882, Decision No. 64397; and

WHEREAS, CLEC and Qwest desire to amend the Agreement by adding the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Amendment Terms.**

This Amendment is made in order to add terms, and conditions for Single Point of Presence ("SPOP") in the LATA as set forth in Attachment 1 and Exhibit A attached hereto and incorporated herein.

Neither Party shall lose any of its rights from the original contract by entering into this Amendment for SPOP.

**2. Effective Date.**

This Amendment shall be deemed effective upon approval by the Commission; however, the Parties may agree to implement the provisions of this Amendment upon execution. To accommodate this need, CLEC must generate, if necessary, an updated Customer Questionnaire. In addition to the Questionnaire, all system updates will need to be completed by Qwest. CLEC will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met.

**3. Further Amendments.**

Except as modified herein, the provisions of the Agreement shall remain in full force and effect. Neither the Agreement nor this Amendment may be further amended or altered except by written instrument executed by an authorized representative of both Parties. This Amendment shall constitute the entire Agreement between the

Parties, and supersedes all previous agreements and amendments entered into between the Parties with respect to the subject matter of this Amendment.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**Level 3 Communications, LLC**

**Qwest Corporation**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name Printed/Typed

L. T. Christensen  
\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Title

Director – Business Policy  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Attachment 1

Single Point of Presence (SPOP) in the LATA is a Local Interconnection Service (LIS) Interconnection trunking option that allows CLEC to establish one physical point of presence in the LATA in Qwest's territory. Qwest and CLEC may then exchange traffic at the SPOP utilizing trunking as described following.

- 1.1 By utilizing SPOP in the LATA, CLEC can deliver both Exchange Access (IntraLATA Toll Non-IXC) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic and Exchange Service EAS/Local traffic at Qwest's Access Tandem Switches. CLEC can also utilize Qwest's behind the tandem infrastructure to terminate traffic to specific end offices. The SPOP is defined as the CLEC's physical point of presence.
- 1.2 SPOP in the LATA includes an Entrance Facility (EF), Expanded Interconnect Channel Termination (EICT), or Mid Span Meet POI and Direct Trunked Transport (DTT) options available at both a DS1 and DS3 capacity.
- 1.3 Where there is a Qwest local tandem serving an end office that CLEC intends to terminate traffic, the following conditions apply:

1.3.1 CLEC may interconnect for the exchange of local/EAS traffic at either the Qwest access tandem or the Qwest local tandem, at the CLEC's option. When CLEC is interconnected at the access tandem and where there would be a DS1's worth of local traffic (512 CCS so long as not 512 busy hour CCS) between CLEC's switch and a Qwest end office subtending the Qwest access tandem, CLEC will order a direct trunk group to that Qwest end office. CLEC may request a waiver of this provision from the Commission upon a showing that such compliance will impose a material adverse economic or operations impact, during the pendency of which Qwest shall maintain the status quo.

1.3.1.1 Qwest will allow interconnection for the exchange of local traffic at Qwest's access tandem without requiring interconnection at the local tandem, at least in those circumstances when traffic volumes do not justify direct connection to the local tandem; and regardless of whether capacity at the access tandem is exhausted or forecasted to exhaust unless Qwest agrees to provide interconnection facilities to the local tandems or end offices served by the access tandem at the same cost to the CLEC as interconnection at the access tandem.

1.3.1.2 When a CLEC has an NXX that subtends a local tandem, but the anticipated traffic to and from the NXX is less than 1 DS1s (512 CCS) worth of traffic, the CLEC may choose to use the access tandem for local traffic in the circumstances described above in 1.3.1. The CLEC will be required to submit an electronic letter on CLEC letterhead to Qwest stating at which local tandems they will not interconnect. This letter should include, the local tandem CLLI(s) and the CLEC specific NPA-NXXs for the local tandems. In addition, CLEC will provide a revised electronic letter to Qwest of any changes in the network configuration or addition/deletions of NPA-NXXs of the aforementioned local tandems.

1.3.2 Connections to a Qwest local tandem may be two-way or one-way trunks.

These trunks will carry Exchange Service EAS/Local traffic only.

1.3.3 A separate trunk group to the Qwest access tandem is necessary for the exchange of non-local Exchange Access (IntraLATA Toll Non-IXC) traffic and jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic.

1.4 Where there is no Qwest local tandem serving a Qwest end office, CLEC may choose from one of the following options:

1.4.1 A two-way CLEC LIS trunk group to the Qwest access tandem for CLEC traffic terminating to, originating from, or passing through the Qwest network that combines Exchange Service EAS/ Local, Exchange Access (IntraLATA Toll Non-IXC) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic.

1.4.2 A two-way CLEC LIS trunk group to the Qwest access tandem for CLEC Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic terminating to and originating from the IXC Feature Group (FG) A/B/D network through the Qwest network and an additional two-way trunk group to the Qwest access tandem for the combined Exchange Service EAS/ Local and Exchange Access (IntraLATA Toll Non-IXC) traffic terminating to, originating from, and transiting the Qwest network.

1.4.2.1 If the CLEC uses two way trunking, Qwest will send all Exchange Service EAS/Local, Exchange Access (IntraLATA Toll Non-IXC) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic delivered to the Qwest access tandem on the same combined trunk.

1.4.3 A one-way terminating CLEC LIS trunk group to the Qwest access tandem for CLEC traffic destined to or through the Qwest network that combines Exchange Service EAS/Local, Exchange Access (Intra LATA Toll Non-IXC) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic.

1.4.4 CLEC may utilize a one-way LIS trunk group to the Qwest access tandem for Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic terminating to the IXC FG A/B/D network through the Qwest network, and an additional one-way trunk group to the Qwest access tandem for the combined Exchange Service EAS/ Local, Exchange Access (IntraLATA Toll Non-IXC) traffic terminating to, originating from, and transiting the Qwest network.

1.4.4.1 If CLEC orders either of the above one-way trunk options, Qwest will return the traffic via one combined Exchange Service EAS/ Local, and Exchange Access (IntraLATA Toll Non-IXC) trunk group.

1.4.5 To the extent Qwest combines Exchange Service (EAS/Local), Exchange Access (IntraLATA Toll carried solely by Local Exchange Carriers), and Jointly Provided Switched Access (InterLATA and IntraLATA calls exchanged with a third-party IXC) traffic on a single LIS trunk group, Qwest, at CLEC's request, will declare a percent local use factor (PLU). Such PLU(s) will be verifiable with either call summary records utilizing Calling Party Number information for jurisdictionalization or call detail samples. CLEC should apportion per minute of use (MOU) charges appropriately.

- 1.5 CLEC must have SS7 functionality to use SPOP in the LATA.
- 1.6 Qwest assumes CLEC will be originating traffic destined for end users served by each Qwest access tandem in the LATA, therefore, CLEC must order LIS trunking to each Qwest access tandem in the LATA to accommodate routing of this traffic. Additionally, when there is more than one Qwest access tandem within the LATA boundary, the CLEC must order LIS trunking to each Qwest access tandem that serves its end-user customers' traffic to avoid call blocking. Alternatively, should the CLEC accept the conditions as outlined in the SPOP Waiver (Exhibit A), trunking will not be required to each Qwest access tandem in a multi-access tandem LATA. The CLEC needs trunking to each local tandem where they have a customer base if not utilizing the option of interconnecting at the access tandem for local as described in 1.3.1. The 512 CCS rule and other direct trunking requirements will apply for direct trunking to Qwest end offices.
- 1.7 If Direct Trunked Transport is greater than 50 miles in length, and existing facilities are not available in either Party's network, and the Parties cannot agree as to which Party will provide the facility, the Parties will construct facilities to a mid-point of the span.
- 1.8 CLEC will provide notification to all Co-Providers in the local calling areas of CLEC's change in routing when the CLEC chooses to route its traffic in accordance with Qwest's SPOP interconnection trunking.
- 1.9 Ordering
  - 1.9.1 SPOP in a LATA will be ordered based upon the standard ordering process for the type of facility chosen. See the Qwest Interconnection and Resale Resource Guide for further ordering information.
  - 1.9.2 CLEC will issue ASRs to disconnect/new connect existing access tandem trunk groups to convert them to SPOP trunk groups.
  - 1.9.3 In addition, the ASR ordering SPOP trunks will include SPOP Remarks "Single POP in LATA " and the SPEC Field must carry "SPOLATA ."

**EXHIBIT A**  
**SINGLE POINT OF PRESENCE WAIVER**

Qwest will waive the requirement for CLEC to connect to each Qwest Access Tandem in the LATA with this waiver amendment.

CLEC certifies that it will not originate any traffic destined for subtending offices of Qwest's Access Tandems for which CLEC seeks a waiver. Or, if CLEC does originate such traffic, that CLEC will route such traffic to a Non-Qwest network. In addition, CLEC certifies that it has no end users in the serving area of the Qwest Access Tandem for which CLEC seeks a waiver.

CLEC will send an electronic letter to Qwest indicating the Qwest access tandems subject to this waiver at the time of ordering trunks required to implement SPOP in the LATA. In addition, CLEC will provide a revised electronic letter to Qwest advising of any changes in the network configuration of the aforementioned access tandems. Should CLEC desire to begin serving end users in the serving area of a Qwest access tandem currently under this waiver, CLEC must first establish trunking to the Qwest access tandem. Additionally, should CLEC desire to originate traffic destined to a Qwest end office subtending a Qwest access tandem currently under this waiver, CLEC must first establish trunking to the Qwest access tandem.

Under this waiver any CLEC originated traffic destined for an end office subtending a Qwest tandem under this waiver will be billed separately, by Qwest to CLEC, via a manual bill.

Misrouted usage under this waiver will be billed, a penalty of \$.21 per MOU.

Additionally, a manual handling fee of \$100 or 10% of total billing, whichever is greater, will be charged for each such manual bill rendered.

Late Payment charges will apply as outlined in the existing Interconnection Agreement currently in effect between the Parties.

Should this traffic occur, the Parties agree to meet within forty-five (45) days of Qwest's identification of such misrouted traffic to discuss methods for avoiding future misrouting on that trunk group or groups. CLEC will then have thirty (30) days from the date of meeting to correct such misrouting on that trunk group or groups. If further misrouting occurs or continues after that date on the same trunk group or groups as the original misrouting identified, the Parties agree to meet again within thirty (30) days of Qwest's identification of such misrouted traffic to discuss methods for avoiding future misrouting on that trunk group or groups. CLEC will then have thirty (30) days from the date of meeting to correct such misrouting. If further misrouting occurs or continues after that date on the same trunk group or groups, Qwest will consider this waiver null and void and all requirements in Attachment 1 or in the existing Interconnection Agreement currently in effect between the Parties will be reinstated. If the parties disagree about whether the traffic identified by Qwest was actually misrouted, the Parties agree to avail themselves of the dispute resolution provision of their interconnection agreement. Nothing in this provision affects or alters in any way CLEC's obligation to pay the rates, the manual handling fee, and the late payment charges specified above for misrouted traffic.

# **EXHIBIT**

# **F**

## **VOLPE, CLAIRE**

---

**From:** Duarte, Alex [Alex.Duarte@qwest.com]  
**Sent:** Tuesday, July 05, 2005 11:33 AM  
**To:** VOLPE, CLAIRE  
**Subject:** Level 3 - ISP-Bound Traffic Reciprocal Compensation Amendment

**From:** Hromyk, Luba  
**Sent:** Friday, April 08, 2005 3:02 PM  
**To:** 'andrea.gavalis@level3.com'  
**Cc:** Donahue, Nancy; Nodland, Jeff  
**Subject:** Level 3 - ISP-Bound Traffic Reciprocal Compensation Amendment

At the request of Nancy Donahue, attached for your review is Qwest's template ISP-Bound Traffic Reciprocal Compensation amendment to implement the Core Forbearance Petition. If this meets with your approval, I will prepare the Amendments for signature. Please note that state specific language will be incorporated, where appropriate, when preparing the Amendments for execution.

Best regards,

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<<L3 ISP-Bound Recip Comp Amend 4-8-05.doc>>

**ISP-Bound Traffic Reciprocal Compensation Amendment  
to the Interconnection Agreement between  
Qwest Corporation and  
Level 3 Communications, LLC  
for the State of STATE**

This is an Amendment ("Amendment") to incorporate recent decisions concerning ISP-bound reciprocal compensation into the Interconnection Agreement between Qwest Corporation ("Qwest"), a Colorado corporation and Level 3 Communications, LLC ("CLEC"). CLEC and Qwest shall be known jointly as the ("Parties").

**RECITALS**

WHEREAS, CLEC and Qwest entered into an Interconnection Agreement (such Interconnection Agreement, as amended to date, being referred to herein as the "Agreement") for services in the state of [STATE] which was approved by the [STATE] Commission ("Commission"); and

WHEREAS, the FCC released Order FCC 04-241 on October 18, 2004, in *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. 160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171, effective October 8, 2004 ("Core Forbearance Petition"), which modified the terms under which the Parties must compensate each other for termination of internet service provider bound traffic ("ISP-bound traffic"); and

WHEREAS, the Parties wish to amend the Agreement to comply with the Core Forbearance Petition and hereby agree to do so under the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**I. Amendment Terms**

To the extent further applicable, the Agreement is hereby amended to incorporate the Core Forbearance Petition by changing or adding terms and conditions related to compensation for termination of ISP-bound traffic as set forth in Attachment 1 to this Amendment, attached hereto and incorporated herein by this reference.

**II. Limitations**

Nothing in this Amendment shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Core Forbearance Petition, nor rules, regulations, interpretations,

and appeals thereof, including but not limited to state rules, regulations, and laws as they may be issued or promulgated regarding the same. Nothing in this Amendment shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect the Core Forbearance Petition or concerning whether the Core Forbearance Petition should be changed, vacated, dismissed, stayed or modified.

**III. Conflicts**

In the event of a conflict between this Amendment and the terms and conditions of the Agreement, this Amendment shall control, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement shall not be interpreted as, or deemed a grounds for finding, a conflict for purposes of this Section III.

**IV. Effective Date**

This Amendment shall be deemed effective upon approval by the Commission except where the change of law provision in CLEC's Interconnection Agreement specifies a different effective date.

**V. Further Amendments**

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**VI. Entire Agreement**

The Agreement as amended (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of the Agreement as amended and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of the Agreement as amended.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**Level 3 Communications, LLC**

**Qwest Corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed/Typed

L.T. Christensen  
\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Title

Director – Interconnection Agreements  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## ATTACHMENT 1

### 1. Compensation for ISP-Bound Traffic

1.1 Subject to the terms of this Section, intercarrier compensation for ISP-bound traffic exchanged between Qwest and CLEC will be billed as follows, without limitation as to the number of MOU ("minutes of use") or whether the MOU are generated in "new markets" as that term has been defined by the FCC:

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

1.2 Identification of ISP-Bound traffic -- Qwest will presume traffic delivered to CLEC that exceeds a 3:1 ratio of terminating (Qwest to CLEC) to originating (CLEC to Qwest) traffic is ISP-bound traffic. Either Party may rebut this presumption by demonstrating the factual ratio to the state Commission. Traffic exchanged that is not ISP bound traffic will be considered to be section 251(b)(5) traffic. The provisions in this amendment apply regardless of how the ISP-bound traffic is determined.

1.3 Qwest will not pay reciprocal compensation on traffic, including ISP-bound traffic, originated by the Qwest end user customer that is not terminated to the CLEC's end user customer physically located within the same Qwest local calling area (as approved by the state Commission) as the originating caller, regardless of the NPA-NXX dialed and, specifically, regardless of whether the CLEC's end user customer is assigned an NPA-NXX associated with a rate center in which the Qwest customer is physically located (a/k/a "VNXX Traffic"). Qwest's agreement to the terms in this paragraph is without waiver or prejudice to Qwest's position that it has never agreed to exchange VNXX Traffic with CLEC.

1.4 For the purpose of Relative Use Factor (RUF) calculation, if and where applicable to facilities charges within the Agreement, CLEC is responsible for all ISP-bound traffic originated by the Qwest end user customer and all traffic, including ISP-bound, that is not terminated to the CLEC's end user customer physically located within the same Qwest local calling area (as approved by the state Commission) as the originating caller, regardless of the NPA-NXX dialed and, specifically, regardless of whether the CLEC's end user customer is assigned an NPA-NXX associated with a rate center in which the Qwest customer is physically located (a/k/a "VNXX Traffic"). Qwest's agreement to the terms in this paragraph is without waiver or prejudice to Qwest's position that it has never agreed to exchange VNXX Traffic with CLEC.