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BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman

WILLIAM A. MUNDELL
Commissioner

MARC SPITZER
Commissioner

MIKE GLEASON
Commissioner

KRISTIN K. MAYES
Commissioner

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In the Matter of Level 3 Communications,)
LLC's Petition for Arbitration Pursuant to)
Section 252(b) of the Communications Act of)
1934, as amended by the Telecommunications)
Act of 1996, and the Applicable State Laws for)
Rates, Terms, and Conditions of)
Interconnection with Qwest Corporation)

Docket Nos. T-01051B-05-0350
T-03654A-05-0350

NOTICE OF FILING REBUTTAL TESTIMONY

Level 3 Communications, LLC ("Level 3") hereby files the attached rebuttal testimony of Rogier R. Ducloo and Timothy J. Gates dated August 15, 2005, in the above referenced matter.

RESPECTFULLY SUBMITTED this 15th day of August, 2005.

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ARIZONA CORPORATION COMMISSION

DOCKET NOS. T-03654A-05-0415; T-01051B-05-0415

IN THE MATTER OF LEVEL 3 COMMUNICATIONS, LLC'S PETITION FOR
ARBITRATION PURSUANT TO SECTION 252(b) OF THE
COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE
TELECOMMUNICATIONS ACT OF 1996, AND THE APPLICABLE STATE
LAWS FOR RATES, TERMS, AND CONDITIONS OF INTERCONNECTION
WITH QWEST CORPORATION

**REBUTTAL TESTIMONY OF ROGIER R. DUCLOO
ON BEHALF OF LEVEL 3 COMMUNICATIONS, LLC**

August 15, 2005

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1 **REBUTTAL TESTIMONY OF ROGIER R. DUCLOO**
2 **ON BEHALF OF LEVEL 3 COMMUNICATIONS, LLC**

3 **I. Introduction**

4 **Q. PLEASE STATE YOUR NAME, POSITION, EMPLOYER, AND**
5 **BUSINESS ADDRESS.**

6 A. My name is Rogier R. Ducloo. I am a Director with Level 3 Communications,
7 LLC. My business address is 1025 Eldorado Blvd, Colorado, 8021. I am filing
8 this testimony on behalf of Level 3 Communications, LLC of Broomfield, CO.

9 **Q. ARE YOU THE SAME ROGIER DUCLOO WHO FILED DIRECT**
10 **TESTIMONY IN THIS CASE ON JULY 15, 2005?**

11 A. Yes, I am.

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

13 A. I am testifying in reply to the testimony of Qwest witnesses Mr. Brotherson, Mr.
14 Easton, and Mr. Linse. They make statements in their testimony that are
15 inaccurate and confusing, and they do not always represent the Level 3 position
16 correctly. I would like to clarify some of the issues they address.

17 **Q. HOW HAVE YOU ORGANIZED YOUR TESTIMONY?**

1 A. I demonstrate below that Qwest's objections to Single Point per LATA are
2 without merit; that Level 3's contract language addresses their concerns with
3 exchanging differently rated traffic over a single interconnection network; and
4 address several additional points made by their witnesses.

5 **II. ISSUE 1: Single Point of Interconnection Per LATA**

6 **Q. MR. LINSE STATES THAT THE REAL ISSUE IN THIS ARBITRATION**
7 **IS "WHETHER QWEST SHOULD BE REQUIRED TO PROVIDE**
8 **INTERCONNECTION WHERE IT IS NOT TECHNICALLY FEASIBLE**
9 **OR TO PROVISION/BUILD TRANSPORT FACILITIES WITHOUT**
10 **COMPENSATION FOR THE BUILDING OF SUCH TRANSPORT**
11 **FACILITIES." IS THAT THE REAL ISSUE?**

12 A. No. Mr. Linse's statement assumes that Qwest is entitled to compensation for
13 originating traffic on Qwest's side of the POI. This is contrary to federal law.
14 Secondly, Mr. Linse mixes issues of technical feasibility and compensation. The
15 two are not linked. The rule is quite simple: no carrier may charge an
16 interconnecting LEC for originating telecommunications traffic on its side of the
17 POI. Accordingly, Qwest's contract language throughout Section 7 which
18 requires interconnecting facilities-based LECs mirror its retail local calling area

1 distinctions should be rejected.- which it also purports to measure somehow by
2 the “physical presence” of the end user - for purposes of intercarrier architecture
3 and compensation requirements not only violate the letter and intent of the Act,
4 they simply shift enormous benefit to Qwest without any corresponding benefit to
5 the public interest. As Mr. Gates demonstrates, Qwest’s proposals on POI and
6 trunking result in a deadweight economic loss.

7 **Q: YOU SAY THAT QWEST’S CONTINUED RELIANCE UPON RETAIL**
8 **LOCAL CALLING AREA DISTINCTIONS AS DETERMINED BY THE**
9 **“PHYSICAL PRESENCE” OF THE END USER FOR PURPOSES OF**
10 **INTERCARRIER ARCHITECTURE AND COMPENSATION**
11 **REQUIREMENTS ONLY BENEFIT QWEST WITHOUT ANY**
12 **CORRESPONDING BENEFIT TO THE PUBLIC INTEREST. PLEASE**
13 **EXPLAIN.**

14 **A.** Mr. Linse combines several concepts to come up with this assertion. Each must
15 be examined individually in order to understand the relation of these parts to the
16 assertion he makes. Let’s start with Single POI. Mr. Linse claims that Qwest
17 should be required to provide interconnection where it is not technically feasible.
18 (Linse Direct p. 3) But a few lines later on the same page, Mr. Linse claims that

1 “the real issue here is one of Level 3 not wanting to compensate Qwest for the use
2 of its network.” So it appears that Mr. Linse actually equates technical feasibility
3 with economic cost. This is a judgment that the FCC, Congress and the federal
4 courts have already made. The single POI rule says what it says: each carrier
5 bears the costs of originating and transporting its traffic to the POI. Mr. Gates
6 provides a discussion on the economics underlying the wisdom of a single POI per
7 LATA rule in his testimony.

8 **Q. SETTING ASIDE THAT MR. LINSE’S POSITIONS ARE CONTRARY TO**
9 **THE SINGLE POI RULE, ARE THERE ANY OTHER**
10 **INCONSISTENCIES IN THIS PART OF HIS TESTIMONY?**

11 **A.** Yes. When one thinks a little deeper about Mr. Linse’s claim that Level 3
12 doesn’t want to pay Qwest for use of Qwest’s network, two things are apparent.
13 First, he claims that Level 3 is making use of Qwest’s network when a Qwest
14 customer calls Level 3. From a business perspective, that’s a convenient theory,
15 but it doesn’t pass the straight face test. I’d love to charge my competitors for
16 my costs when customers on my networks call customers on their network. But
17 that’s not how interconnection works. When a Qwest customer calls a Level 3
18 customer that customer makes a call that utilizes Qwest’s network until that call

1 reaches the POI where Level 3 places it on Level 3's facilities and, if it is a
2 modem call, places it on the worldwide web to any point, including the New
3 York Times web page, wherever that may "physically reside". By the same
4 token, when the Qwest end user calls the Arizona Business Gazette, the call rides
5 on the Qwest network until it either terminates to the end office serving the
6 Arizona Business Gazette (assuming that the Arizona Business Gazette is also
7 Qwest's customer) or to the carrier who serves the Arizona Business Gazette. In
8 the latter example, Qwest would hand off the call to a fellow carrier at the Single
9 POI. That carrier would carry the call over its own facilities and terminate it to
10 the Arizona Business Gazette. In both examples Qwest's responsibilities ended
11 at the POI. The difference with the second example is that the call terminated to
12 a brick and mortar building "physically located" in the Phoenix local calling
13 area. So it seems like a "local" call. In the previous example, it terminated into
14 the vastness of the Internet. As to the previous example, there is an intuitive
15 appeal to the idea that such a call is somehow "interexchange" because relative
16 to the Arizona Business Gazette, the New York Times web page is somewhere
17 else. That's part of the challenge of the Internet – distance (and time) do not
18 matter on an IP network. Accordingly IP-based carriers (including Qwest or its

1 affiliates who offer these services – I really can't tell from their webpage which it
2 is) do not charge their end user customers "long distance" charges, nor is the
3 service offered as a "long distance" service. So from a retail perspective, the
4 service is no different than a call to the Arizona Business Gazette. From a
5 network perspective it is no different either. It is always a locally dialed call that
6 is handed off at the POI. The call makes no use of the access network. If one
7 accepts Qwest's reasoning, prior to the 1996 Act, Qwest was not allowed to
8 provide an "interexchange" service that crossed LATA boundaries. Rather
9 Qwest would have handed that call off to an "interexchange carrier" that charged
10 minute-sensitive rates for such carriage and received "originating access" which
11 included the subsidy given to ILECs who were precluded from offering such
12 services at that time. Along comes competition, however, and now another LEC
13 can pick up that locally dialed call and take it anywhere. While a call
14 terminating to the Internet is "interstate" for purposes of jurisdiction, the FCC
15 has stated that the call is not an "interexchange" call in the traditional sense of
16 someone pre-selecting an IXC and paying that IXC to utilize the access network
17 to carry a call. The truth of the matter is that as much as Qwest would like to
18 make calls to the Internet appear as traditional "interexchange" calls, they aren't.

1 There are no exchanges on the Internet. These are locally dialed calls handed off
2 at the POI. Level 3 does the work and receives no additional compensation from
3 Qwest's customer for providing such service.

4 Second, his claims that Level 3 will not pay Qwest for using Qwest's
5 network is not true at all relative to what really happens when calls are
6 exchanged. Let me explain. When a Level 3 end user calls an end user connected
7 to Qwest's network, Level 3 would pay Qwest the costs of terminating that call.
8 For VoIP traffic that would be seven one hundredths of a penny per minute,
9 which is consistent with what the FCC stated in the ISP-Remand Order: that the
10 costs of terminating an ISP-bound or voice call were the same. Since the costs are
11 the same on Qwest's side of the network regardless of whether Qwest brings the
12 call to Level 3 at the POI or accepts a call from Level 3 at the POI, symmetrical
13 intercarrier compensation rates make sense. Moreover, to the extent the calls are
14 "IP-in the middle", or traditional interexchange calls that Level 3 would terminate
15 to Qwest over this same network, Level 3 would pay Qwest the same subsidy
16 laden rates Qwest would receive were these calls handed off over the duplicative
17 Feature Group D ("FGD") network Qwest would have Level 3 establish. So
18 either way, Qwest is paid for its use of the network.

1 **Q. ARE MR. LINSE'S CLAIMS CONTRADICTED BY QWEST'S**
2 **DISCOVERY RESPONSES?**

3 **A.** Yes. Qwest admits in response to Level 3 RFA 47 that the location of the POI
4 does not determine whether Qwest has an obligation to pay reciprocal
5 compensation. (Ducloo Exh. RRD-18). Interestingly Qwest qualifies this answer
6 by stating that "under Qwest's language the physical location of the called and
7 calling parties determine the nature of the compensation" but as I've stated above,
8 from a network perspective there is no difference in costs because all calls are
9 handed off between the two carriers at the POI and the FCC has already affirmed
10 as much in the ISP-Remand Order. In its response to Level 3 Request No. 48,
11 Qwest admits that its obligations to pay reciprocal compensation do not vary
12 based upon the location of Level 3's switch. Again Qwest explains away its
13 contract proposals by importing concepts of retail regulation by claiming that the
14 location of the calling and called parties have something to do with its costs. This
15 is true only as a matter of how Qwest words its contract; it bears no relationship to
16 what actually occurs on the network. (Ducloo Exh. RRD-19).

17 **Q. MR. LINSE CLAIMS AT PAGE 6 OF HIS TESTIMONY THAT THE**
18 **SINGLE POI IS NOT THE FINANICAL DEMARCATION POINT.**

1 **A.** I am not entirely certain of the genesis of Mr. Linse's claim. Just to be clear, he
2 states the following:

3 As Mr. Easton's testimony explains, the POI is not the financial
4 demarcation point between Level 3 and Qwest. Level 3 also incorrectly
5 defines its POI as a point that is physically located on Qwest's network. In
6 addition Level 3's proposed language is inconsistent and attempts to
7 extend Qwest's interconnection responsibility to any point on the Qwest
8 network to a point not even within Qwest's serving territory. (Linse
9 Direct, Arizona, page 6, lines 4-8) [sic]

10 Mr. Linse's statement above is packed with several overlapping concepts best
11 examined individually.

12 First, he states that the single point of interconnection per LATA is not the
13 "financial demarcation point between Level 3 and Qwest." He provides no
14 authority for this proposition other than his opinion. I would note that the single
15 POI per LATA rule would have little meaning if it did not require originating
16 carriers to haul traffic to the single POI in the LATA at their own expense. Mr.
17 Gates explains the economic reasons that led the FCC and multiple federal district
18 and federal circuit courts to affirm this rule.

19 Second, Mr. Linse states that Level 3 incorrectly defines the POI as a
20 point that is physically located on Qwest's network. This raises factual questions
21 about how parties interconnect and some legal questions that I'm sure Level 3's
22 lawyers find interesting. I'll deal with the facts and only point to what might be a

1 legal explanation for Mr. Linse's statement. The single POI is an interface
2 between the Qwest network and the Level 3 network. At the physical, network
3 level, Level 3 typically brings fiber optic strands to the single POI, which is
4 usually located within a Qwest tandem office. There the strands terminate to fiber
5 optic termination equipment, which connect to add / drop multiplexers and other
6 equipment that allow Level 3's network to communicate directly with Qwest's
7 network. Qwest, for its part, typically connects DS-1 or DS-3 copper coaxial and
8 other cabling to Level 3's facilities in collocation space Level 3 purchases from
9 Qwest. While there may be other arrangements, none that Level 3 uses are so
10 atypical as to raise the question of whether Level 3 has connected "on" or
11 "within" Qwest's network. It really depends upon how you look at it, but
12 common sense tells me that Qwest's distinction is largely semantic: Level 3's
13 single POI is equally a point **on** the Qwest network as it is **within** the Qwest
14 network.

15 Another possible explanation for Mr. Linse's statement that Level 3 had
16 incorrectly defined its POI as "on" Qwest's network might be a point that Mr.
17 Gates has provided regarding the concept of relative use of facilities (RUF).
18 Backing up just slightly, RUF is the concept that applies to entrance facilities that

1 Level 3 might purchase from Qwest which are dedicated to the exclusive use of
2 the two carriers. So, if Mr. Linse bases his claim upon a world view that
3 (incorrectly) sees RUF as an exception to the single POI rule, his statement might
4 have a basis. As Mr. Gates explains at page 46 of his direct testimony, RUF arises
5 from and applies only to entrance facilities dedicated to the transmission of traffic
6 *between* an ILEC's network and the CLEC's network. In other words, where a
7 CLEC obtained an entrance facility from the ILEC to connect to the CLEC's
8 switch, the effect of this rule (which remains embodied in 47 CFR § 51.709(b))
9 was to reduce the ILEC's charges for the entrance facility based on what
10 proportion of the traffic going over it was ILEC-originated, as opposed to CLEC-
11 originated. As Mr. Gates indicates, the FCC's *Triennial Review Remand Order*,
12 however, relieved ILECs from obligations to provide entrance facilities — at least
13 not at TELRIC-based rates — for these purposes. But even here, Mr. Linse's
14 claim about “on” or “within” doesn't follow because the FCC's determination
15 suggests therefore, that interconnection must occur "on" the ILEC's network and
16 not “within” it as one can no longer unbundle entrance facility elements “within”
17 the ILEC network. This seems logical. Therefore, Level 3 is not responsible for
18 the costs “within” Qwest's network.

1 **Q. DOES THE LEVEL 3 LANGUAGE PROPOSE THAT THERE IS NO**
2 **DEMARICATION POINT BETWEEN THE NETWORKS AS MR. LINSE**
3 **SUGGESTS?**

4 A. Absolutely not. It is physically impossible not to have a demarcation point. Any
5 fiber, coaxial cable, copper twisted pair or other means of connectivity must have
6 a termination block or termination point. The demarcation point is always a
7 location of that type and is always clear. Control and maintenance on one side of
8 that point will be Qwest's responsibility and on the other side Level 3's
9 responsibility. Physically, it can't be any other way.

10 Moreover, according to agreed upon terms within the contract there is no
11 way that Level 3's contract provisions (presumably Level 3 Section 7.1.1)
12 "extend Qwest's interconnection responsibility to any point on the Qwest network
13 to a point not even within Qwest's serving territory." Setting aside the clarity of
14 the single POI per LATA rule, and the physical impossibility of what Mr. Linse
15 appears to suggest, the contract itself contains several references to demarcation
16 point. The first refers to a demarcation point as the boundary line between
17 Qwest's network and any other networks including a CLEC's network
18 ("Demarcation Point' means the point where Qwest owned or controlled

1 facilities cease, and CLEC, End User Customer, premises owner or landlord
2 ownership or control of facilities begin.”). The second reference is within the
3 definition of POI (“Point of Interface’, “Point of Interconnection,” or “POI” is a
4 demarcation between the networks of two (2) LECs (including a LEC and CLEC).
5 The POI is that point where the exchange of traffic takes place.”). Moreover, the
6 POI is often accomplished by using meet points. As Mr. Gates explained in his
7 direct testimony the FCC has relieved ILECs of the obligation to unbundle
8 entrance facilities. Accordingly, if a carrier wants to interconnect with Qwest,
9 then that carrier must interconnect “on” Qwest’s network, which means it pays
10 the full freight to get to the POI for its traffic and to pick up Qwest’s traffic. In
11 that regard, the concepts of meet point and POI merge. Interestingly, the agreed
12 upon definition of Meet Point (“Meet Point’ is a point of Interconnection
13 between two networks, designated by two Telecommunications Carriers, at which
14 one Carrier's responsibility for service begins and the other Carrier's responsibility
15 ends.”) again confirms that the POI would be the financial, legal and technical
16 boundary between the two parties’ networks. Taken together and examined
17 against the background, common usage and practice within the
18 telecommunications industry these definitions make very clear that financial, legal

1 and technical responsibility for each company's network ends at the POI. So Mr.
2 Linse's claims that Level 3's contract provisions require Qwest to extend its
3 interconnection obligations to anywhere, including outside of Qwest's serving
4 territory make no sense.

5 **Q. NEVERTHELESS MR. LINSE IMPLIES AT PAGES 9 AND 10 OF HIS**
6 **TESTIMONY THAT THE LEVEL 3 LANGUAGE MAY OBLIGATE**
7 **QWEST TO EXCHANGE TRAFFIC WHERE IT IS NOT TECHNICALLY**
8 **FEASIBLE TO DO SO. IS THIS TRUE?**

9 A. No. Mr. Linse is mainly concerned with the potential routing of long distance
10 traffic over Qwest's Local Only Tandem switches. He appears concerned that
11 Level 3 might route jointly provisioned switched access traffic over the
12 interconnection trunks. This is incorrect. Not only do the parties already have in
13 place jointly provisioned trunk groups that provide for routing of switched access
14 traffic to and from third party long distance carriers, they have also agreed to
15 language in Section 7.5.1 of the Agreement that keeps these arrangements in
16 place. So any suggestion of misrouting is not only technically not possible as
17 these trunks are in place, the contract already deals with the issue.

1 To the extent Mr. Linse is concerned that “switched access” traffic will be
2 routed to local only tandems, there are two responses. The first is technical:
3 whether a call is destined for an NPA-NXX that subtends the “local only” tandem.
4 If so, then it makes no difference whether the call is later characterized for billing
5 purposes as “switched access”, “VoIP”, “ISP-bound”, or “interexchange” or
6 whatever. That’s a rating issue, which is entirely separate from and occurs
7 subsequent to the routing of the call. Again, to the extent that the call must route
8 to another carrier or route to another end office, Level 3’s proposals address those
9 situations. Moreover, where the occasional exception comes up, Level 3 is a
10 practical company and has worked with Qwest and every other ILEC including
11 SBC, Verizon and BellSouth, to solve issues like these in practical ways for all
12 parties concerned.

13 As to the question of rating, Qwest has a legal theory through which it
14 attempts to base characterization of the nature of traffic based upon Qwest’s
15 network architecture. Whatever appeal that may have to the logic of how things
16 appear from solely a circuit-switched incumbent’s perspective, their
17 determinations are legal claims, not technical network issues. Let me provide an
18 example to make this clearer. Take a call made by a Level 3 or Qwest VoIP

1 customer. The call originates in IP format. Neither company's network knows or
2 can know the "physical location" of the end user. The call originates somewhere
3 on the Internet over some sort of broadband – whether DSL, WiFi, cable Modem
4 or other technology. A traditional NPA-NXX number is associated with the
5 device that the customer making the call uses because telephones on circuit
6 switched networks cannot make calls to IP addresses. A call is placed to another
7 NPA-NXX, but this call is headed toward a circuit switched landline customer.
8 Once Level 3 hands that call off at the single POI per LATA (or via an additional
9 POI that Level 3, for network control and other reasons, has established within the
10 LATA), such traffic could route to a "local only" tandem with no difficulty so
11 long as the terminating NPA-NXX was associated with an end office that
12 subtended that tandem. As to the network, there is no logic to Qwest's distinction
13 because calls are routed to and from NPA-NXX according to the routing
14 instructions contained in the local exchange routing guide (LERG). So it really
15 doesn't matter as a technical matter whether, when, or how the FCC classifies this
16 traffic (unless, of course, in the highly unlikely event that the FCC includes
17 specific routing instructions in its rules). Accordingly, Level 3's language
18 accommodates this by focusing on the technical routing issues and proposes, as a

1 policy matter, that the compensation for information services mirror existing
2 compensation for information service. So one is an issue of making the networks
3 work, the other is an issue of who gets paid how much for exchanging traffic.

4 **Q. MR. LINSE MAKES A POINT THAT QWEST MUST BUILD**
5 **FACILITIES TO THE LEVEL 3 POI. IS THAT CORRECT?**

6 A. No. Federal law is clear: competitive carriers may establish a single point of
7 interconnection per LATA. Qwest's view of SPOI actually mixes concepts of
8 retail regulation with interconnection between LECs to require that Level 3
9 assume costs of transport within Qwest's network (where Level 3 has no control
10 over such costs). As a facilities-based competitor of Qwest, Level 3 has
11 constructed a nationwide (and international) network. In order to connect its
12 network to Qwest's network, Level 3 constructed, leased or purchased
13 transmission facilities and equipment that reaches into the Qwest network at POIs
14 Level 3 has established. Qwest customers benefit from Level 3 building these
15 facilities in many ways, not the least of which is obtaining access to one of the
16 world's largest Internet backbone.

1 **Q. MR. LINSE STATES THAT LEVEL 3 LANGUAGE FOR PARAGRAPH**
2 **7.1.2 “METHODS OF INTERCONNECTION” IS INAPPROPRIATE.**
3 **WOULD YOU AGREE?**

4 A. No, I would not. He states that the Level 3 language mischaracterizes the
5 methods of interconnection with the methods of establishing a POI. Since the
6 establishment of a POI is essential for several of the methods of interconnection,
7 any language that talks about methods of interconnection will logically need to
8 talk about methods of establishing a POI. In point of fact, the Qwest language
9 talks about the POI as well.

10 **Q. ARE THERE PROBLEMS WITH THE QWEST CONTRACT**
11 **LANGUAGE FOR PARAGRAPH 7.1.2?**

12 A. Yes. The Qwest language does not specifically allow interconnection through a
13 POI established at a third party collocation site. It is relatively common for
14 CLECs to share a collocation site. Level 3 establishes POIs in third party
15 collocation sites in a number of states and may need to do so in new locations in
16 the future. Language in 7.1.2 should allow for this circumstance.

1 **II. ISSUE 2: Combining Different Traffic Types on Interconnection Trunks**

2 **Q. WHAT IS LEVEL 3'S POSITION ON THIS ISSUE?**

3 A. Level 3 and Qwest are perfectly capable of exchanging locally dialed traffic as
4 well as all forms of traffic (including traditional circuit switch "interexchange" or
5 "switched access" traffic) over Level 3's existing and extensive interconnection
6 network. Qwest's requirement for Feature Group D ("FGD") trunks is
7 unnecessary and duplicative.

8 **Q. WHAT IS QWEST'S POSITION?**

9 A. Qwest asserts that Level 3 must order and provision FGD trunks to each POI as
10 well as separate interconnection trunk groups for local and intraLATA traffic
11 based solely upon billing concerns. Qwest further claims that establishing a
12 duplicative FGD network for purposes of exchanging "switched access" or
13 "interexchange" or "FGD" would be just as efficient for Level 3 as it would be to
14 use Level 3's existing and extensive interconnection network to exchange all such
15 traffic today.

16 **Q. WHY ARE MR. LINSE'S CLAIMS THAT LEVEL 3 MUST ESTABLISH**
17 **FGD TRUNKING INCORRECT?**

1 A. There is no issue as to whether traffic subject to different rating schemes can be
2 exchanged over a single network. Though Qwest refuses to admit this in Arizona
3 (Level 3's Motion to Compel is pending), Qwest admitted this in other states
4 (such as Iowa) and I would expect the same answer in Arizona (Ducloo Exh. 20).
5 Mr. Linse readily concedes as much at page 28 of his testimony when he states
6 that Qwest can route local traffic over the same trunks as Qwest currently routes
7 "switched access" or "interexchange" or "FGD" traffic today. The converse is
8 equally as true. Thus, regardless of whether a small amount of "locally" rated
9 traffic rides over FGD trunks (as with AT&T and others) or a small amount of
10 "switched access" or "long distance" traffic rides over interconnection trunks (as
11 Level 3 has accomplished with Verizon, SBC, and BellSouth) the billing concerns
12 are the same: either way there is a concern that the CLEC terminating traffic to the
13 ILEC or the ILEC terminating the traffic to the CLEC will over-report the lower
14 rated traffic. Or looked at from the perspective that Qwest addresses, the party
15 receiving the traffic will be concerned about ensuring that the traffic subject to the
16 highest compensation rates will be reported at the most "accurate" levels.

17 All telecommunications traffic, regardless of what compensation billing
18 systems later apply to it -- whether those systems "mechanically" record the traffic

1 or whether the parties sample traffic streams and apply billing factors – can be
2 exchanged over Level 3’s existing, well-engineered network today without the
3 need for any additional billing systems or personnel. Rather, as the parties today
4 routinely exchange billing information and factors related to intraLATA toll, ISP-
5 bound and other forms of traffic that occasionally appear on these trunks, there
6 would not be any additional cost to Qwest for the parties to do the same and
7 include “interstate” circuit switched (*i.e.* IP in the middle) and VoIP traffic within
8 that calculation. Moreover, Qwest has no systems in place today, nor could it
9 reasonably develop systems capable of determining the actual physical location of
10 any end user. Thus, FGD trunks are irrelevant to rating any call. There is no
11 certainty that the end users are physically located in the rate center associated
12 with the switch associated with the calling and called NPA-NXX codes.
13 Accordingly, Mr. Linse’s objections to Level 3’s Section 7.2.2.9.3.1 are
14 unfounded.

15 **Q. WHAT IS THE PROBLEM WITH ORDERING FGD TRUNK GROUPS**
16 **TO EACH POI?**

17 A. Almost all of Level 3’s traffic is locally dialed traffic. In other words, Level 3
18 picks up and delivers all traffic to POIs located within the LATAs in which the

1 traffic originates from Qwest's customers or in which Level 3 brings it for
2 termination to Qwest customers. Level 3 offers no retail interexchange services.
3 Accordingly, end users have no reason to dial 1+ to reach Level 3's services.
4 Thus, Level 3 has, and will have, very little traffic that utilizes traditional "access"
5 networks such that any separate trunking, much less FGD trunks, which merely
6 provide additional call recording functionalities, are necessary. So, it makes no
7 sense for Level 3 to order separate FGD trunks for a small amount of access
8 traffic. To the extent that 1+ dialed traffic must be exchanged with third party
9 "interexchange carriers" Level 3 and Qwest have "meet point" trunk groups in
10 place that provide that functionality.

11 **Q. WHY DOES LEVEL 3 WANT TO PUT ALL OF THE TRAFFIC ON**
12 **INTERCONNECTION TRUNKS RATHER THAN FGD TRUNKS AS**
13 **QWEST IS PROPOSING?**

14 A. Setting aside the sheer lack of necessity of establishing a duplicative network
15 solely to address Qwest's illusory billing concerns, Qwest claims that its tariffs
16 require that Level 3 utilize these trunks. Under those tariffs, Qwest would
17 essentially impose retail rates on a co-carrier. In today's world, there is no
18 justification for forcing retail rates upon a facilities-based co-carrier's exchange of

1 traffic within a LATA. That traffic is, can be and should be exchanged over
2 interconnection trunks. Even assuming that Qwest's insistence upon Feature
3 Group D trunks were rational, and assuming that billing concerns for these
4 charges could not be addressed as Level 3 has addressed them with Verizon,
5 BellSouth and SBC in interconnection agreements approved by thirty-six (36)
6 state commissions, and assuming that the entire reason for distinguishing between
7 "access" traffic and "local" traffic evaporated with the approval of 271 authority
8 for every major ILEC, there is simply no technical reason for doing so.

9 **Q. WHAT IS QWEST'S OBJECTION TO THE USE OF**
10 **INTERCONNECTION TRUNKS FOR ALL TRAFFIC TYPES?**

11 A. Qwest's objections boil down to an issue of access billing. Qwest is afraid that
12 they won't receive their fair due for access charges on long distance calls.
13 Historically they have billed access charges on FGD trunks. What they are
14 proposing is for all traffic to go down FGD trunks so they can individually bill for
15 the small number of access calls that go to and from Level 3. These FGD trunks
16 would also unnecessarily tie up additional trunk ports on access and end office
17 switches throughout Qwest's network. These circuits are sold in increments far
18 beyond Level 3's existing needs, which results in additional unnecessary costs.

1 Moreover, requiring FGD trunks would require additional time and delay
2 provisioning and testing these trunks, which would significantly (and
3 unnecessarily) delay Level 3' ability to offer many of its VoIP services.

4 **Q. WHAT IS LEVEL 3'S SOLUTION TO THE BILLING ISSUE THAT**
5 **QWEST RAISES?**

6 A. Level 3 is proposing that the companies use Percent Local Use (PLU) and Percent
7 Interstate Use (PIU) to separately bill long distance traffic. PLU and PIU factors
8 would be created based on periodic traffic studies. This method allows each
9 company to bill the other for access charges in a fair and equitable manner. As I
10 have said before, Level 3 expects to have only a small amount of access traffic
11 anyway, and with access rates at historic lows, it isn't worth the effort to record
12 minute by minute usage for each and every call and bill separately for those calls.

13 **Q. IS LEVEL 3 USING THIS METHODOLOGY WITH OTHER ILECS?**

14 A. Yes, Level 3 is combining all traffic on interconnection trunks in the SBC,
15 BellSouth and Verizon territories. We are using the PLU/PIU method of billing
16 in the 36 states comprising these Bell operating regions with problems no more
17 severe or any different than the sorts of verification that occurs daily between
18 carriers exchanging not only vast amounts of traffic, but vast amounts of billing

1 information about that traffic. If anything, Level 3's billing factors tend to reduce
2 the costs of billing by virtue of the fact that reliable sampling and application of
3 factors, as proposed by Level 3, actually requires far less effort than billing each
4 and every call. It is unreasonable for Qwest to refuse this efficient and equitable
5 solution.

6 **Q. QWEST RAISES AN ISSUE OF BILLING JOINTLY PROVIDED**
7 **SWITCHED ACCESS CALLS IF THE PLU/PIU METHODOLOGY IS**
8 **ADOPTED. HOW DOES LEVEL 3 PROPOSE TO HANDLE THIS**
9 **ISSUE?**

10 A. Both Mr. Linse and Mr. Easton raise this issue in their testimony (pages 32 and 30
11 respectively). They both claim that traffic cannot be combined on interconnection
12 trunks because billing records cannot be created for third parties for jointly
13 provided switched access. However, Level 3 has already agreed to provision
14 separate Meet Point Trunks to handle jointly provided switched access traffic
15 according to the terms mutually agreeable to Qwest in the most current round of
16 interconnection negotiations leading up to this arbitration. Accordingly, any
17 claims even remotely related to problems about such billing (or routing) are
18 unfounded.

1 **Q. ARE MEET POINT TRUNKS COMMONLY USED FOR JOINTLY**
2 **PROVIDED SWITCHED ACCESS TRAFFIC?**

3 A. Yes. Since Level 3 does not have connectivity to all IXC's, Qwest is required to
4 provide access to those IXCs through its tandem switches. Special trunks, called
5 Meet Point Trunks, are typically provisioned to handle this traffic. The
6 appropriate billing records can be created for traffic on the Meet Point Trunks.

7 **Q. HAS LEVEL 3 AGREED TO PROVISION MEET POINT TRUNKS AT**
8 **QWEST TANDEM SWITCHES?**

9 A. Yes. Level 3 has agreed to provision Meet Point Trunks at Qwest tandem
10 switches where Level 3 has traffic to the area served by the tandem switches.
11 These trunks are in addition to interconnection trunks.

12 **Q. WILL MEET POINT TRUNKING HANDLE THE PROBLEM RAISED BY**
13 **MR. LINSE AND MR. EASTON?**

14 A. Yes. Since Level 3 has agreed to establish Meet Point Trunks, the issue raised by
15 the Qwest witnesses regarding jointly provided switched access is not an issue for
16 the interconnection trunks. All remaining traffic can be carried on the
17 Interconnection Trunks and billed using PLU/PIU factors.

1 **Q. IS THIS THE WAY THAT JOINTLY PROVIDED SWITCHED ACCESS**
2 **TRAFFIC IS HANDLED IN THE SBC, VERIZON AND BELLSOUTH**
3 **REGIONS?**

4 A. Yes it is.

5 **Q. IS THERE A RELATED ISSUE WITH SS7 CALL SET UP MESSAGES?**

6 A. Yes, there is. Qwest and Level 3 need to exchange SS7 messages in the course of
7 interconnection and the exchange of traffic. Qwest would like to require
8 unnecessary, duplicative links between the two SS7 networks. Level 3 would like
9 to use the same SS7 links for both local and toll messages.

10 **Q. WHAT IS LEVEL 3'S POSITION ON THIS ISSUE?**

11 A. This issue is similar to the previous issue on combining both local and InterLATA
12 switched access traffic on single trunk groups. Level 3 is proposing to use SS7
13 Quad Links for both local and toll traffic. This is an efficient use of scarce
14 resources for both the links (which are already provisioned in a redundant manner
15 for reliability) and ports on the Signaling Transfer Points (STPs). Level 3
16 proposes using the same PLU and PIU calculations discussed above for
17 calculation of charges for SS7 messages.

1 **Q. WHAT IS QWEST'S POSITION ON THIS ISSUE?**

2 A. Qwest is proposing that Qwest and Level 3 put in separate, duplicative SS7 quad
3 links (one set for local traffic and one set for toll traffic) between their SS7
4 networks. Qwest does not want Level 3 to use existing SS7 quad links for both
5 local and toll traffic.

6 **Q. DOES THIS ISSUE HAVE ANYTHING TO DO WITH SS7 AS AN**
7 **UNBUNDLED NETWORK ELEMENT?**

8 A. No. Level 3 does not use Qwest SS7 as a UNE and does not desire to do so. The
9 dispute concerns how to interconnect the Qwest SS7 network with a future, as yet
10 to be constructed, Level 3 SS7 network. This is purely an interconnection issue
11 and does not involve UNEs. The exchange of SS7 traffic is essential for
12 interconnection and should be done efficiently and economically.

13 **Q. WHAT IS THE SS7 NETWORK AND WHAT ARE SS7 QUAD LINKS?**

14 A. The SS7 network is the part of the PSTN that allows switches and databases to
15 communicate with each other. Its main function is for call set up, but it is also
16 used for database look up such as required by 800 service. SS7 quad links are the
17 data links that connect two SS7 networks. Without these links, neither Qwest nor
18 Level 3 could complete calls to the other company's network. Figure 1 (Attached

1 here to as Exhibit RRD-21, p.1) shows a set of Quad Links connecting Level 3
2 Signaling Transfer Points (STPs) and Qwest STPs with the associated
3 Interconnection Trunk Groups. Figure 2 (Attached here to as Exhibit RRD-21,
4 p.2) shows the SS7 Quad links and the associated signaling and transport paths for
5 “Local” traffic over Interconnection Trunk Groups. Figure 3 (Attached here to as
6 Exhibit RRD-21, p.3) shows Quad Links and the associated signaling and
7 transport paths for IntraLATA Toll traffic. Figure 4 (Attached here to as Exhibit
8 RRD-21, p. 4) shows Quad Links and the associated signaling and transport paths
9 for InterLATA Toll traffic.

10 **Q. WHAT EFFICIENCIES WOULD BE OBTAINED BY COMBINING**
11 **LOCAL AND TOLL SS7 MESSAGES ON ONE SET OF QUAD LINKS?**

12 A. Using the same quad links for both local and toll call set up messages will save
13 both Qwest and Level 3 transmission links and ports on their SS7 switches. Since
14 transmission links and SS7 ports are provisioned in a redundant manner for
15 additional reliability, the Qwest proposal will waste a significant number of
16 transmission links and ports on both networks, doubling the links and ports that
17 are needed. Figure 5 (Attached here to as Exhibit RRD-21, p. 5) shows the Level
18 3 Configuration that requires only one set of Quad Links between the companies.

1 Figure 6 (Attached here to as Exhibit RRD-21, p. 6) shows the Qwest proposal
2 that would require a duplicate set of Quad links, wasting network resources.

3 **Q. IS IT POSSIBLE FOR QWEST TO IMPLEMENT THE SHARING OF**
4 **LINKS BETWEEN LOCAL AND TOLL TRAFFIC?**

5 A. Yes. Qwest does not need to distinguish between messages relating to local calls
6 and messages relating to toll traffic. There is a simpler way to handle the billing
7 issues for these messages. The same PLU and PIU factors that are used to
8 correctly bill access charges for the actual calls can be used to charge for SS7
9 messages. The data traffic flowing between the two SS7 networks mirrors the
10 actual call traffic flowing between the two networks as the SS7 messages are
11 setting up and managing the calls. The PLU and PIU for the one can be used to
12 accurately calculate billing for the other. Qwest can simply calculate the charges
13 based on total messages and then factor the bill down using the PLU and PIU. If,
14 hypothetically, the bill from Qwest to Level 3 for SS7 messages was \$20,000 for
15 one month and the PLU is 65%, then the actual bill would be \$7,000. The
16 calculations are simple and eliminate the concerns expressed by Mr. Linse.

17 **Q. IF THE COMMISSION DECIDES THAT LOCAL AND TOLL**
18 **MESSAGES CAN SHARE COMMON QUAD LINKS, SHOULD ACCESS**

1 **CHARGES APPLY TO ALL OF THE MESSAGES AS QWEST**
2 **SUGGESTS?**

3 A. No, that would be patently unfair to Level 3, especially since Qwest customers
4 originate most of the local calls. Local calls should remain on a bill and keep
5 basis. Only messages for toll traffic should be assessed access rates. The method
6 I describe above will provide for the correct compensation without the difficulties
7 of billing each message as Qwest would propose.

8 **Q. WHAT DOES Qwest SAY ABOUT THE USE OF SS7 QUAD LINKS FOR**
9 **LOCAL AND IP TRAFFIC?**

10 A. Qwest in other states has made the very troubling statement that SS7 quad links
11 that are used for local traffic cannot be used for IP traffic. Nowhere in the
12 network today are SS7 messages segregated into IP messages and non-IP
13 messages. To segment these messages would require the proliferation of SS7
14 Quad links throughout the industry. A ruling in favor of this Qwest proposal
15 could disrupt call flow among many companies, forcing whole network
16 architectures to change.

17 **Q. WHAT SHOULD THIS COMMISSION DO WITH RESPECT TO THIS**
18 **SS7 ISSUE?**

1 A. The Commission should rule in favor of Level 3's language, which presents an
2 efficient and fair way of managing the SS7 network, saving transmission links
3 and SS7 switch ports in both the Level 3 and the Qwest networks.

4

5 **III. Additional Interconnection Trunking Issues Raised by Qwest**

6 **Q. QWEST WITNESSES STATE IN THEIR TESTIMONY THAT QWEST**
7 **SHOULD NOT BE REQUIRED TO PAY FOR INTERCONNECTION**
8 **COSTS WITHIN THE QWEST NETWORK. IS THIS AN EQUITABLE**
9 **VIEW OF INTERCONNECTION?**

10 A. No. Nine years after the Act, Qwest is still trying to treat interconnection as a
11 new form of access. After divestiture, Qwest was allowed to collect access
12 revenue from all of the IXCs, which made sense at the time as its ILEC
13 predecessor was not allowed to sell retail interexchange (for which IXCs charged
14 per minute of use charges) services outside of LATA boundaries. That has
15 changed, and now Qwest competes nationwide for the provision of service
16 packages on a nationwide basis. Mr. Gates examines some of these service
17 offerings in his testimony.

1 Despite the passage of the Act, enormous change in telecommunications
2 markets, advent of IP technologies that remove the necessity of most traditional
3 regulatory distinctions, Qwest still wants to treat its competitors as if they were
4 interexchange carriers. While I can understand Qwest's motives – what carrier
5 would not want to reverse compensation flows and receive 50 to 100 times what
6 its competitor currently charges for the termination of vast amounts of traffic
7 within each LATA - this is not the way interconnection was set up by the Act, the
8 FCC or, I believe, by the Commission.

9 **Q. WHICH PARTY PAYS FOR INTERCONNECTION TRUNKING?**

10 A. As Mr. Gates points out and as Level 3 will prove in its briefs, the FCC, federal
11 district courts, and federal circuit courts nationwide have repeatedly confirmed
12 that each party is responsible for its costs of originating traffic to the single point
13 of interconnection per LATA. In a sense, as Mr. Gates explains, in both his direct
14 and his rebuttal testimony, the Act, for purpose of intercarrier compensation and
15 to ensure that ILEC retail offerings were not used to constrain competition,
16 established the LATA as a local calling area for interconnection purposes. This
17 means that each party pays its own costs of originating traffic to the POI. Where
18 the terminating party is also the presubscribed long distance carrier of the

1 originating ILEC customer, the call is routed via an access tandem to the access
2 network, in which case rules governing the offering of access services would
3 apply. In either case, however, the long established rule, and until the rules
4 change, the party **originating** a call is supposed to compensate the other party for
5 transport and termination applies. This means that with respect to locally dialed
6 traffic handed off at the POI – where the originating customer is not
7 presubscribed to and paying the terminating carrier an additional per minute of
8 use charge for what until after the Telecommunications Act of 1996 was the only
9 way to receive a competitive telecommunications service – and the originating
10 carrier pays the freight to get there. So the party originating traffic pays for
11 transport (trunking) in both networks. While a terminating party pays system is
12 conceivable, it is likely that regulators have stayed away from it for the very
13 simple reason that it would lead to regulatory arbitrage because the originating
14 carrier would have great incentive to shift its costs to the terminating carrier.

15 **Q. WHAT IS QWEST’S POSITION ON CHARGES FOR TRANSPORT AND**
16 **TERMINATION?**

17 A. Qwest’s positions result from reverse engineering sound network principles,
18 sound technical principles, as demonstrated in my direct testimony and herein,

1 and rational economic principles as Mr. Gates demonstrates, into a system that
2 asymmetrically compensates Qwest. When traffic enters the Internet from Qwest
3 customers dialing into Level 3's network, Qwest would have Level 3 assume
4 Qwest's costs of bringing the traffic to the POI and/or receive nothing for
5 terminating this traffic. When traffic leaves Level 3's network – *i.e.* VoIP calls
6 terminating from the single POI to Qwest's network, Qwest would have Level 3
7 pay terminating access charges that exceed FCC reciprocal compensation rates by
8 several orders of magnitude. Qwest's contract proposals consistently result in the
9 competing carrier always paying much more to Qwest – whether Qwest changes
10 the rules of compensation or disguises their cost shifting via requirements that tie
11 intermodal competitors to legacy retail distinctions. While such a system might
12 continue to insulate Qwest from competitive pressures, it is neither mandated by
13 the Act, pro competitive policy, or sound principles for exchange of traffic.

14 **Q. IS THIS THE REASON THAT LEVEL 3 ADDS LANGUAGE TO THE**
15 **CONTRACT IN SEVERAL PLACES IN AN ATTEMPT TO CLARIFY**
16 **THE LIMITATIONS ON THE CHARGES QWEST CAN ASSESS TO**
17 **LEVEL 3 ON THE QWEST SIDE OF THE POI?**

1 A. Yes. Level 3 was careful in its revisions to Qwest's proposed agreement to
2 highlight those areas where Qwest shifts the costs to Level 3 for traffic originating
3 on Qwest's side of the POI. At several places throughout the contract, Level 3
4 has added the following language:

5 Nothing in this agreement shall be construed to require CLEC to pay
6 Qwest for any services or facilities on Qwest's side of the POI in
7 connection with the origination of traffic from Qwest to CLEC; and
8 nothing herein shall be construed to require CLEC to pay for any services
9 or facilities on Qwest's side of the POI in connection with the termination
10 of traffic from CLEC by Qwest, other than reciprocal compensation
11 payments as provided in this Agreement.

12 Qwest claims in its testimony that Level 3 is trying to avoid paying Qwest what is
13 due under the law. While the lawyers can argue over the meaning of the law, one
14 thing is clear: Qwest's interpretations of the flow of payments make sense only if
15 one adopts Qwest's view of the law.

16 **Q. IS THERE ANY TECHNOLOGICAL REASON TO ADOPT QWEST'S**
17 **POSITION THAT LEVEL 3 SHOULD PAY QWEST'S COSTS OF**
18 **ORGINATING AND TRANSPORTING TRAFFIC TO THE POI?**

19 A. Viewed from a network perspective, Qwest's propositions make no sense: there
20 can be no sound technological reason for forcing a network built around the

1 technological reality that transport and switching permit Level 3 (and Qwest
2 where it deploys IP networks) to control vast networks covering enormous
3 geographic areas with a few strategically deployed softswitches and related
4 equipment to vastly increase either the deployment of the equipment or the costs
5 of using that equipment every time it touches circuit switched networks controlled
6 by Incumbent LECs. Accordingly, Level 3's language reflects the very
7 straightforward principle: all traffic is exchanged at the single POI per LATA.
8 Each party bears its costs for getting to that point. Intercarrier compensation
9 payments would flow accordingly.

10 **Q. HAS LEVEL 3 EVER CHARGED QWEST FOR TRANSPORT WITHIN**
11 **THE LEVEL 3 NETWORK?**

12 **A.** No. Level 3 only charges Qwest for termination. By FCC rules, Level 3 could
13 charge Qwest for transport on Qwest originated traffic. Under FCC rules,
14 reciprocal compensation should pay for transport and termination. Level 3 does
15 not charge Qwest for transport, only for termination.

1 **Q. MR. LINSE SEEMS TO BE CONCERNED ABOUT LEVEL 3'S**
2 **LANGUAGE ALLOWING DIRECT CONNECTION TO QWEST**
3 **EQUIPMENT. IS THIS A LEGITIMATE CONCERN?**

4 A. No, it is not. Connection to any type of equipment, whether it is to a switch, a
5 multiplexer, a fiber hub or any other type of equipment, is always accomplished
6 through a connection block on some type of distribution frame. Typically, Level
7 3 comes into a Qwest office with fiber facilities that are either terminated on
8 collocated equipment or to a Qwest fiber panel. The POI or SPOI can be at either
9 of those facilities. The fiber connects to equipment that converts the optical
10 signal to an electrical signal and "demultiplexes" (*i.e.* unpacks the multiple high
11 speed signals into lower speed component increments) to DS3 or DS1 speeds (and
12 signaling parameters). On this side of the Level 3 equipment, Qwest coaxial
13 cables providing operating at those speeds are connected. The POI or SPOI may
14 be a terminal on the multiplexer, either a Qwest demultiplexer or a Level 3
15 demultiplexer. Or the POI or SPOI may be on a terminal block or distribution
16 frame at the DS3 or DS1 level somewhere in the collocation space or somewhere
17 in the Qwest office. Generally, Qwest and Level 3 engineers and technicians
18 decide where the most convenient place is for the actual, physical hand off. Mr.

1 Linse's concern is unfounded. The Level 3 equipment and Level 3's
2 interconnection with Qwest equipment is not some alien invasion that will
3 somehow pollute Qwest's network.

4 **Q. MR. LINSE SUGGESTS ON PAGE 21 OF HIS TESTIMONY THAT**
5 **LEVEL 3 WILL NOT ADD DIRECT TRUNKING WHEN TRAFFIC**
6 **VOLUMES WARRANT. IS THIS CORRECT?**

7 A. No, it is not. Level 3 always operates in a manner consistent with good
8 engineering policy. Level 3 has always added direct trunks when the traffic
9 warrants. Level 3 typically adds direct trunks when traffic volumes reach 512
10 BHCCS. There may, however, be circumstances when traffic should be allowed
11 to increase beyond this point for a period of time. Level 3 may expect a decrease
12 in traffic to a particular end office, for example. Level 3 does not think that the
13 512 BHCCS rule should be applied without any consideration of business and
14 technical realities.

15 **Q. MR. LINSE SPENDS A GOOD BIT OF TIME DEFENDING THE 512**
16 **BHCCS THRESHOLD FOR ADDING DIRECT TRUNKING TO END**

1 **OFFICES. DO YOU HAVE SOME CONCERNS WITH THE 512 BHCCS**
2 **THRESHOLD?**

3 A. Yes, I do. If you do the calculation, the 512 BHCCS threshold has the CLEC
4 adding a direct trunk when the equivalent traffic will fill only 14 of the 24
5 channels in the DS1 that will be established. This represents slightly less than
6 60% utilization of the direct trunk. Qwest becomes very concerned when
7 utilization of any interconnection trunk drops below 50%. So they are having the
8 CLEC establish a direct trunk when the traffic barely reaches 60% and they want
9 to disconnect trunks when the utilization falls below 50%. A very small change
10 in business, like the loss of one customer with 20 phone lines, could cause Level
11 3's business to a particular end office to change by 10%. So the 512 BHCCS rule
12 that Qwest is promoting may be a bit too restrictive. The maximum capacity of a
13 DS1 is 864 BHCCS. A more reasonable threshold would be 75% of this level, or
14 648 BHCCS instead of 512. In some situations where business is known to be
15 quite variable, even higher thresholds should be contemplated. The Level 3
16 Language is more flexible in dealing with the unique situations that may arise.

17 **Q. DOES MR. LINSE ADMIT THAT LEVEL 3 HAS BEEN COOPERATIVE**
18 **WHEN WORKING WITH QWEST ON TRUNKING ISSUES?**

1 A. Yes, he does. Level 3 plans to continue its cooperation in maintaining efficient
2 interconnection with Qwest. The Level 3 language allows for more innovation in
3 doing this.

4 **Q. MR. LINES STATES A CONCERN THAT IF CLECS DO NOT FOLLOW**
5 **THE 512 BHCCS RULE, IT WILL EXHAUST QWEST'S TANDEM**
6 **SWITCHES. IS THIS A REAL ISSUE?**

7 A. No, it is not. Seven years ago, when there were dozens of new CLECs with little
8 engineering experience, this may have been a concern. Today, with far fewer
9 CLECs, all of whom have experienced engineering staffs, there is no need to
10 worry about this issue. CLECs have just as much interest in maintaining an
11 efficient network as Qwest does. It is more expensive to route traffic through the
12 Qwest tandem, and CLECs realize this. There are economic constraints that
13 dictate an efficient network, as well as good engineering practice that everyone
14 understands.

15 **Q. MR. LINSE SEEMS CONCERNED THAT LEVEL 3 HAS REMOVED**
16 **LANGUAGE FROM 7.2.2.9.6 THAT SPECIFIES THE TYPES OF**

1 SWITCHES WHERE TRAFFIC IS TERMINATED. WHY IS LEVEL 3**2 REMOVING THE SPECIFIC SWITCH TYPE?**

3 A. There are two reasons. First, as I have mentioned several times before, the Qwest
4 language is limiting and restrictive. The Level 3 language is permissive and
5 flexible. Second, it is not clear how the Qwest language would be applied to
6 switches that carry multiple traffic types. Qwest does not mention switches that
7 handle both local and toll traffic types. It is also not clear that Level 3 would be
8 allowed to interconnect with new, VoIP switches that Qwest may install in its
9 network. Level 3 should have the ability to interconnect with any switch type,
10 either existing or future switch types. Future switches may be called "edge
11 switches" instead of tandems or end offices, for example. Level 3 should be
12 allowed to interconnect at any technically feasible point on the west network.

13 IV. ISSUE 3: VNXX/FX Traffic

14 **Q. MR. BROTHERRSON CLAIMS THAT VNXX/FX IS COMPLETELY**
15 **DIFFERENT FROM NORMAL FX SERVICE THAT QWEST OFFERS.**
16 **WOULD YOU AGREE FROM A TECHNICAL POINT OF VIEW?**

17 A. No, I would not. VNXX and FX are essentially the same in the modern network
18 where CLECs coexist with Qwest. With both Qwest FX and Level 3 VNXX, the

1 originating party must take their customer traffic to the POI. Mr. Brotherson
2 makes the point that Qwest does this by selling private line service to the FX
3 subscriber. Level 3 provides the same type of transport to its VNXX/FX
4 customers.

5 **Q. HOW ARE THESE VNXX/FX CALLS ROUTED?**

6 A. VNXX/FX calls are routed between the local switches as normal local calls, or as
7 toll calls, depending on whether the NPA-NXX of the VNXX/FX number being
8 called is included in the calling switch's table of "locally dialable" NPA-NXXs.
9 Neither the originating nor terminating switch has any way to know where the end
10 user with the VNXX/FX service is actually located, nor does it matter for proper
11 switching and delivery of the traffic. The switch that hosts the VNXX/FX
12 customer has a circuit coming in that it associates with phone service, providing
13 dial tone and other local services. The switch has no way to know whether the
14 customer loop is 500 yards, 2 miles, or 200 miles long.

15 **Q. HOW ARE THESE VNXX/FX CALLS BILLED?**

16 A. Neither CLEC nor ILEC billing systems, nor the FCC for that matter,
17 distinguishes between "local" ISP-bound traffic and "toll" ISP-bound traffic.
18 Accordingly, carriers bill for ISP-bound traffic based upon billing records
19 collected from the interconnection trunks and other factors that the parties have
20 agreed to use. For example, assume that a person signs up for Qwest's wireline

1 (circuit-switched) telephone service. Assume further that this person decides to
2 access the Internet via a dial-up account (perhaps DSL or cable modem are too
3 expensive or not available). They call a telephone number that routes to Level 3's
4 network. When that person wishes to access the Internet, Qwest's network routes
5 that call to Level 3's POI. As to how these calls might be rated according to
6 traditional (largely pre-Act) methods, the originating and terminating phone
7 numbers are assigned to switches. Those switches also have rate centers
8 associated with them. Rate centers are geographic coordinates that carriers on
9 circuit switched networks have traditionally used to apply distance sensitive
10 charges to calls. In that sense, they are economic boundaries, not network
11 boundaries. Returning to our call flow, if the originating and terminating NPA-
12 NXX appear as "local" to each other when the call record data is later examined,
13 then the originating carrier would rate the call as "local" call and there is no toll
14 charge. It does not matter if the calling or called party is 500 yards, 2 miles, or
15 200 miles from the end office out of which the number is assigned because in
16 every instance the call is handed to Level 3 at the POI where Level 3 then carries
17 this call.

18 **Q. WHAT ARE THE MAIN ISSUES THAT SHOULD BE CONSIDERED**
19 **WHEN DECIDING THE DISPOSITION OF VNXX/FX TRAFFIC?**

1 A. The use of VNXX/FX allows CLECs and their ISP customers to compete with
2 Qwest and the Qwest ISP without duplicating the Qwest network or placing
3 modem banks in every wirecenter. The use of VNXX/FX allows the CLEC and
4 its customers to provide Internet service in small to medium sized communities
5 where competitive ISP service would not otherwise be available.

6 **Q. WILL QWEST'S POSITION ON VNXX/FX HARM THE INTERNET?**

7 A. Yes, it will. Qwest essentially wants to charge access rates for Internet traffic.
8 This will kill competition among ISPs and will lead to higher prices for Internet
9 service. Only ISPs who collocate modem banks at every Qwest office will be
10 able to compete. This is more expensive and will drive up costs.

11 **Q. AT PAGE 50 OF HIS TESTIMONY, MR. BROTHERRSON SAYS THAT A**
12 **VNXX/FX CALL "...IS ROUTED AND TERMINATED AS ANY OTHER**
13 **TOLL CALL." IS THAT A CORRECT STATEMENT?**

14 A. No. The call routing and processing requirements for VNXX/FX and toll services
15 are dramatically different. VNXX/FX calls are routed to the local switch like any
16 other local call. They are then routed to the foreign exchange via some form of
17 transport for termination. Further, the VNXX/FX number is almost always

1 associated with one exchange. However, toll calls such as an 8XX service are
2 routed from the customer premise, through the local central office to the access
3 tandem for additional routing and billing instructions. The call requires a Line
4 Information Database ("LIDB") dip for information on the IXC carrying the call
5 and the true ten digit terminating routing number associated with the 8XX
6 number. Plus, unlike VNXX/FX calls, the 8XX calls could be coming from
7 numerous, even hundreds of exchanges in a large geographic area (i.e. eastern
8 United States), while VNXX/FX service is generally associated with just one
9 foreign exchange. Finally, the ILECs have always booked FX revenues and
10 expenses as local, while they booked 8XX service revenues and expenses as toll.

11 VNXX/FX and 8XX services also impact the ILEC in different ways. VNXX/FX
12 service routes calls just like other local calls. There is no need to take a
13 VNXX/FX call to the access tandem, although depending upon network
14 configuration, a FX call could be routed through a local tandem. I'm not aware of
15 any ILEC claiming that VNXX/FX calls impose additional costs on their network
16 or operations. There is an additional cost associated with 8XX service calls
17 because the toll dialing pattern automatically routes the call to the access tandem.

1 At the tandem there is the additional cost associated with a database dip and
2 number conversion.

3 Level 3's service, which is provided in essentially the same manner as FX service,
4 is therefore clearly distinct from 8XX service. Customers perceive the service as
5 local and the ISPs use the service to acquire a "local presence" for their
6 customers, just like Qwest's customers who purchase FX service. (Indeed, one
7 might wonder why ILECs need to offer FX service when 8XX service is available
8 to consumers? The reason, of course, is consumer demand to which any
9 reasonable carrier wants to respond.) The Level 3 service is dialed and routed on
10 a local, as opposed to a toll basis. Like FX service, the Level 3 service does not
11 require sophisticated database dips or number conversions, and as such, does not
12 impose those additional costs on the ILEC. The Level 3 service is associated with
13 a specific exchange, and not hundreds or thousands of exchanges normally
14 associated with 800 service.

15 **Q. AT PAGE 51 OF HIS TESTMONY, MR. BROTHERSON STATES THAT**
16 **"LEVEL 3 WANTS THE CALL ROUTED OVER THE PSTN, BUT FEELS**
17 **NO RESPONSIBILITY FOR PROVIDING THE TRANSPORT TO THE**
18 **DISTANT LOCATION." IS THAT A CORRECT STATEMENT?**

1 A. No. Level 3 is completely responsible for the termination of the call regardless of
2 the location of the Level 3 subscriber. All Qwest is required to do is to deliver the
3 call to the POI. Mr. Brotherson's statement completely misstates the way these
4 calls are routed. He suggests that Level 3 uses Qwest's "toll network", and that is
5 likewise incorrect. It is Level 3 – not Qwest – that is transporting these calls to
6 their destination.

7 V. **ISSUE 8: Definition of Call Record**

8 Q. **WHAT IS THE ISSUE BETWEEN THE COMPANIES ON CALL**
9 **RECORDS?**

10 A. As Mr. Linse indicates in his testimony under this issue, the companies have
11 differences on the information that should be included in the record of a call.

12 Q. **WHAT IS THE REASON THAT LEVEL 3 NEEDS ADDITIONAL**
13 **INFORMATION IN THE CALL RECORD?**

14 A. There are situations where Level 3 does not know the identification of the carrier
15 originating a call. Without the information that Level 3 is requesting, Level 3
16 does not know what party to bill for the call. Level 3 needs the information it is

1 requesting for proper billing. Qwest should respect this request and provide the
2 information.

3 **Q. MR. LINSE MAKES A POINT OF SAYING THAT THE INFORMATION**
4 **LEVEL 3 IS REQUESTING IS NOT ALWAYS AVAILABLE AND IS NOT**
5 **REQUIRED BY CURRENT INDUSTRY STANDARDS. IS THIS TRUE?**

6 A. Mr. Linse is incorrect in some of his statements. While the information Level 3 is
7 requesting in the call record is not available 100% of the time, it is available most
8 of the time. There are no industry standards on the information that must be
9 provided. Telecommunications carriers, however, frequently tailor such
10 guidelines to the practical realities of their operating environments. With the
11 advent of new carriers and different types of call routing, the identification of
12 originating carriers has become more difficult. The information Level 3 is
13 requesting is an attempt to solve these problems.

14 **Q. WILL THE QWEST LANGUAGE RESULT IN INCORRECT BILLING**
15 **OF CALLS?**

16 A. Yes, it will. As I stated above, the information Level 3 is requesting is necessary
17 on an increasing number of calls for proper billing of the correct carrier to occur.

1 Qwest needs to realize these needs and accommodate them so that proper billing
2 can go forward.

3 **Q. WILL OTHER CARRIERS NEED THIS INFORMATION IN THE**
4 **FUTURE?**

5 A. Absolutely. Qwest is being short sighted on this issue.

6 **Q. DOES THE QWEST LANGUAGE ON THIS ISSUE ADDRESS ALL OF**
7 **LEVEL 3'S CONCERNS AS MR. LINSE SUGGESTS?**

8 A. No it does not. Level 3 is making a specific request for language that will address
9 new industry billing problems. These problems should be addressed here and
10 now, between these companies, and not wait years before the industry advisory
11 bodies decide on changes to the guidelines. Level 3's language should be
12 adopted.

13 **VI. ISSUE 20: Signaling Parameters**

14 **Q. WHAT IS THE MAIN ISSUE ON SIGNALING PARAMETERS?**

15 A. Level 3 is proposing a new signaling parameter that Qwest and Level 3 could use
16 to track VoIP traffic. Level 3 believes that there will be a need in the near future

1 to track VoIP traffic and to treat it differently than normal, PSTN traffic, with
2 respect to reciprocal compensation.

3 **Q. MR. LINSE RAISES NUMEROUS OBJECTIONS TO LEVEL 3'S**
4 **PROPOSAL. DO YOU FIND HIS ARGUMENTS PERSUASIVE?**

5 A. No, I don't. The SS7 protocol has many optional fields and many fields in use
6 with unassigned codes. It is quite appropriate for two companies to decide on the
7 use of an optional field or the use of an unassigned code in an existing field.
8 Level 3 is proposing to use the Call Record Information (CRI) field to track VoIP
9 traffic. This is a perfectly reasonable proposal and could easily be adopted by the
10 industry as a guideline once Qwest and Level 3 begin using it.

11 **Q. WHY SHOULD THIS BE DECIDED NOW, RATHER THAN WAITING**
12 **FOR AN INDUSTRY STANDARD OR GUIDELINE?**

13 A. It is our expectation that the FCC will rule in the near future on the disposition of
14 VoIP traffic. When the FCC does rule, it would be very good for the companies
15 to have experience with a methodology of tracking the amount of VoIP traffic to
16 and from their respective networks for proper billing. The use of CRI is a good,
17 efficient way to communicate to each other when a call is VoIP based.

1 **Q. WOULD THE USE OF A CRI CODE FOR THIS PURPOSE BE A**
2 **COLOSSAL UNDERTAKING AS MR. LINSE SUGGESTS?**

3 A. No. It would be fairly easy. The companies could decide on the use of a non-
4 assigned CRI code and then program that code into their SS7 networks. The
5 selection could be done very quickly. Programming a new code in the SS7
6 equipment is not that difficult since CRI codes are added by the industry
7 periodically and must be programmed once they are added.

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

9 A. Yes

EXHIBIT RRD 18

Arizona
Docket No. T-01051B-05-0350 and
T-03654A-05-0350
L3C 01-047

INTERVENOR: Level 3 Communications, LLC

REQUEST NO: 047

Please admit that the location of the POI between Qwest and Level 3 in Arizona does not determine whether Qwest has an obligation to pay reciprocal compensation to Level 3 for Level 3's transport of Qwest's traffic. If your answer is anything other than an unqualified admission, please describe in detail your qualification or denial, and provide any information or evidence which supports your qualification or denial.

RESPONSE:

Qwest objects to this request on the basis that it calls for a legal conclusion and is therefore not an appropriate subject for discovery.

Without waiving the foregoing objections, Qwest provides the following response:

Admit. Under Qwest's proposed language, the physical location of the called and calling parties determine the nature of compensation.

RRD-18

EXHIBIT RRD 19

Arizona
Docket No. T-01051B-05-0350 and
T-03654A-05-0350
L3C 01-048

INTERVENOR: Level 3 Communications, LLC

REQUEST NO: 048

Please admit that the location of Level 3's switch in Arizona does not determine whether Qwest has an obligation to pay reciprocal compensation to Level 3 for Level 3's transport of Qwest's traffic. If your answer is anything other than an unqualified admission, please describe in detail your qualification or denial, and provide any information or evidence which supports your qualification or denial.

RESPONSE:

Qwest objects to this request on the basis that it calls for a legal conclusion and is therefore not an appropriate subject for discovery.

Without waiving the foregoing objection, Qwest provides the following response:

Admit. Under Qwest's proposed language, the physical location of the called and calling parties determine the nature of compensation.

RRD-19

EXHIBIT RRD 20

State Of Iowa

Level 3 Communications, LLC

DATA REQUEST

DATE: 07/25/2005

DOCKET NO: ARB-05-4

REQUEST NO: 02 - 138

WITNESS: Easton, Bill

REQUEST:

At page 27 of his testimony, Mr. Easton states, "Qwest has no obligation to permit Level 3 to commingle switched access traffic with other types of traffic on the interconnection trunks created under the Agreement." Please admit the following: There is no technical reason that would prohibit Qwest from combining all types of traffic, as suggested by Level 3, on the interconnection trunks. If your response is anything less than an unqualified admission, identify: (a) each fact upon which you base your response; (b) each person having knowledge of those facts; and, (c) each document that supports your response.

RESPONSE:

From a network perspective, there is no technical reason that would prohibit Qwest from combining all types of traffic on interconnection trunks. From a billing perspective, however, Qwest is unable to appropriately bill for switched access traffic carried on interconnection trunks. See Easton Direct Testimony, pages 24-32.

RRD-20

EXHIBIT RRD 21

SS7 Quad Links

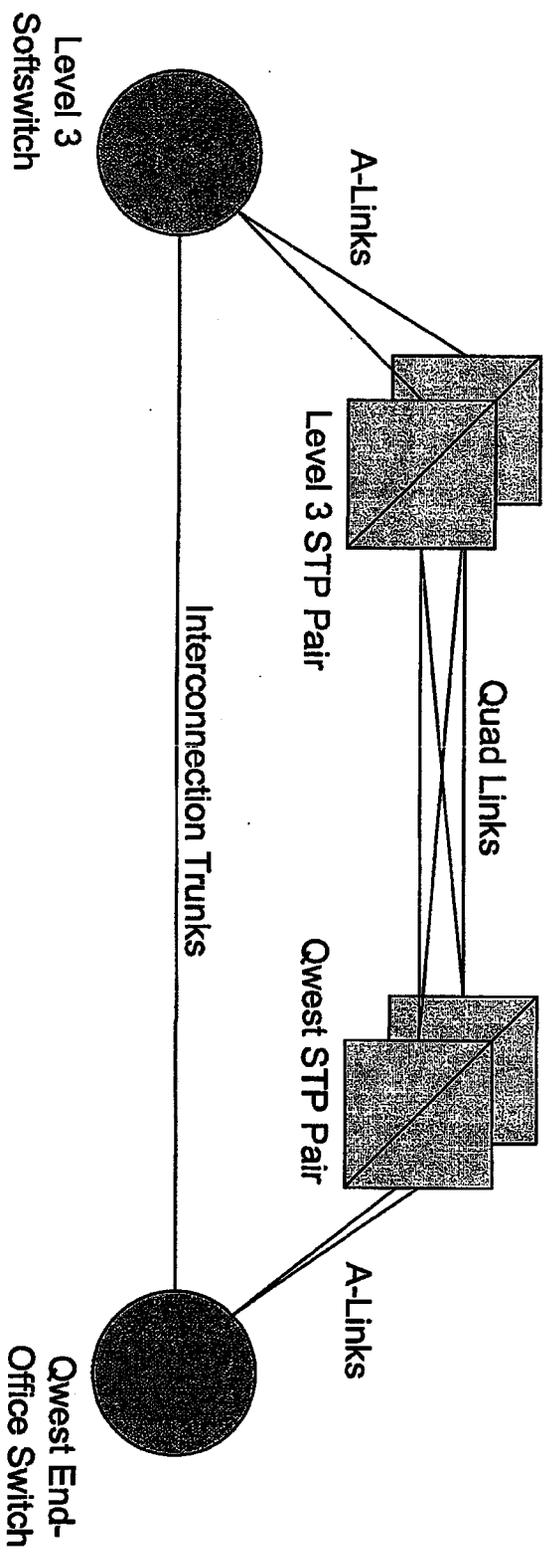


Figure 1

SS7 Signaling for local traffic

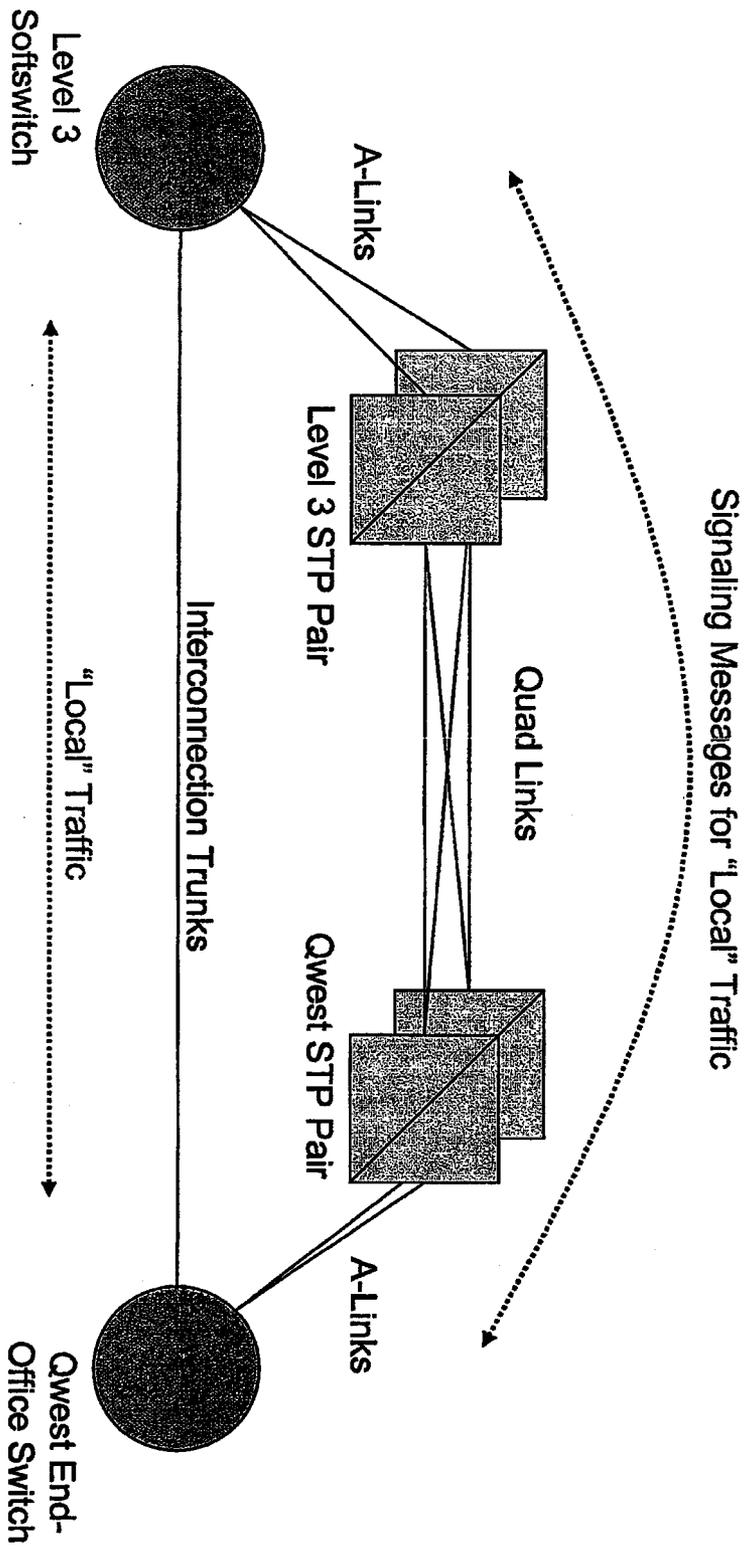


Figure 2

SS7 Signaling for IntralATA toll traffic

Signaling messages for "IntralATA Toll" Traffic

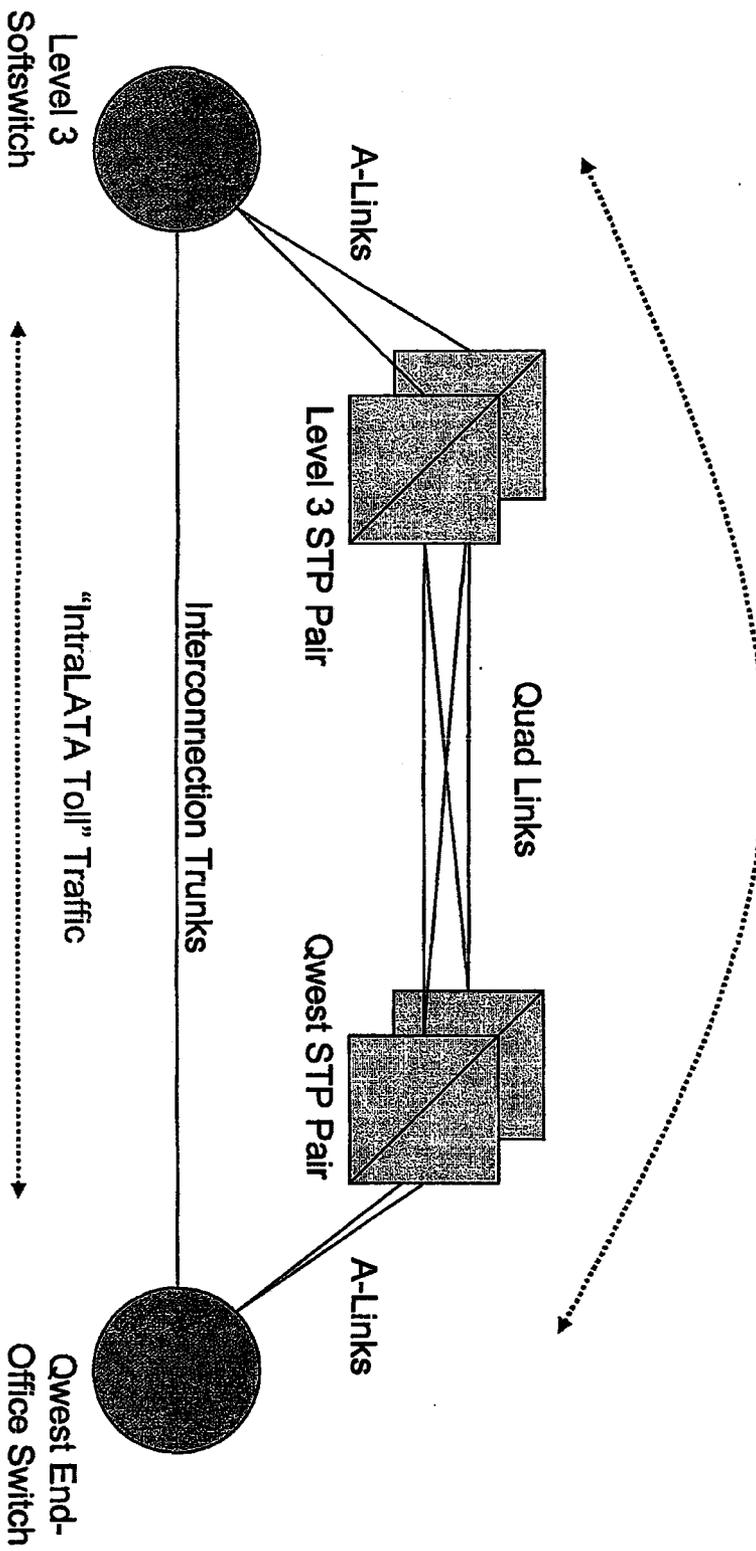


Figure 3

SS7 Signaling for InterLATA traffic

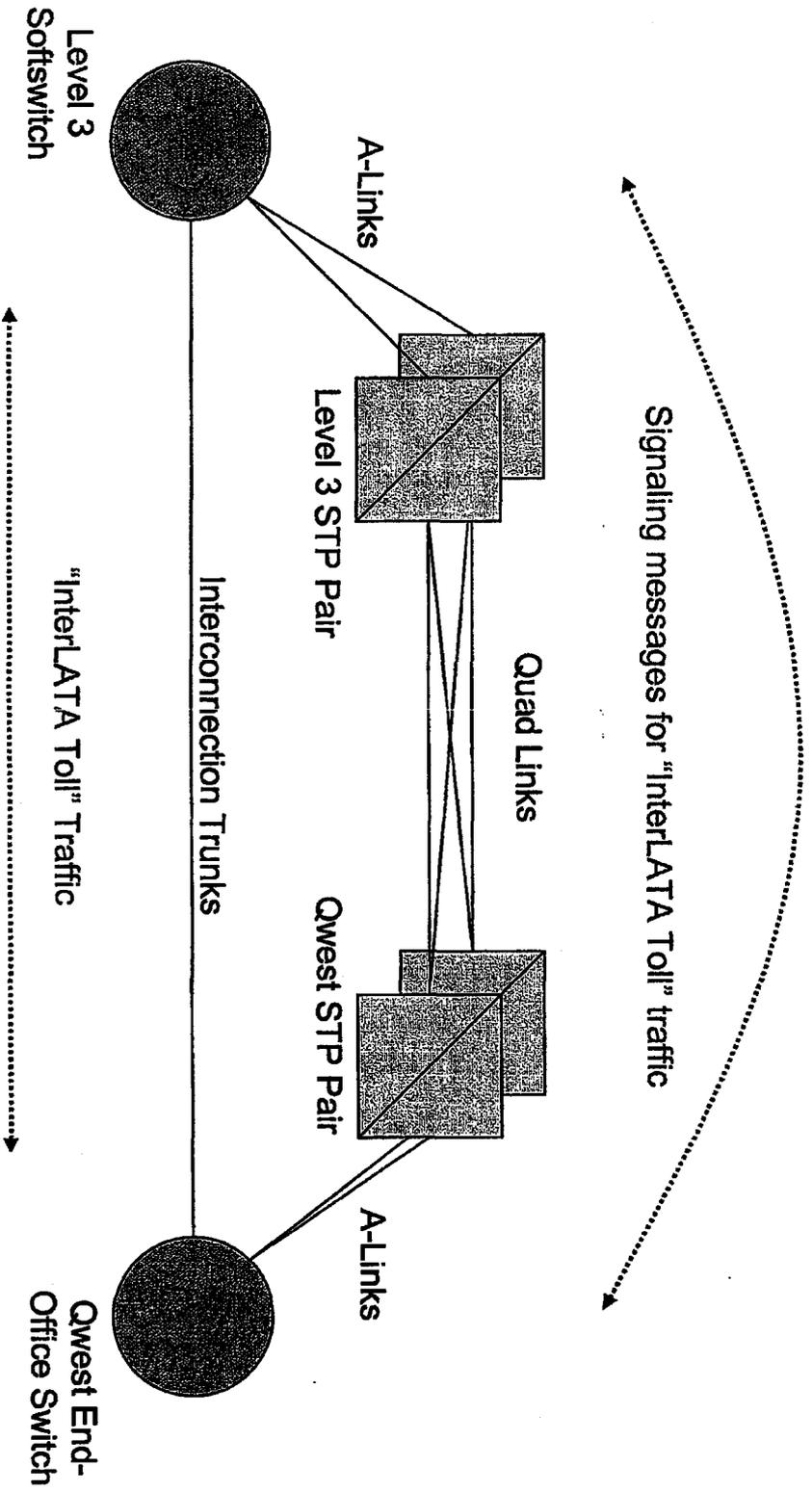


Figure 4

Level 3 Configuration

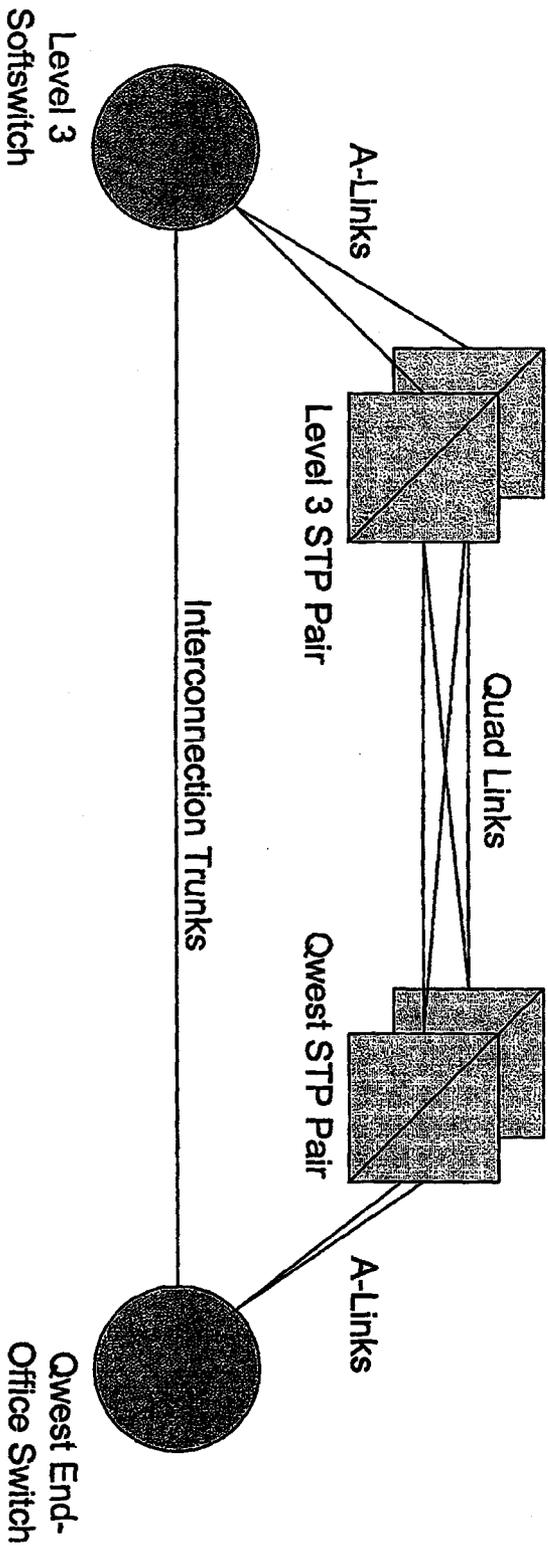


Figure 5

QWEST Configuration

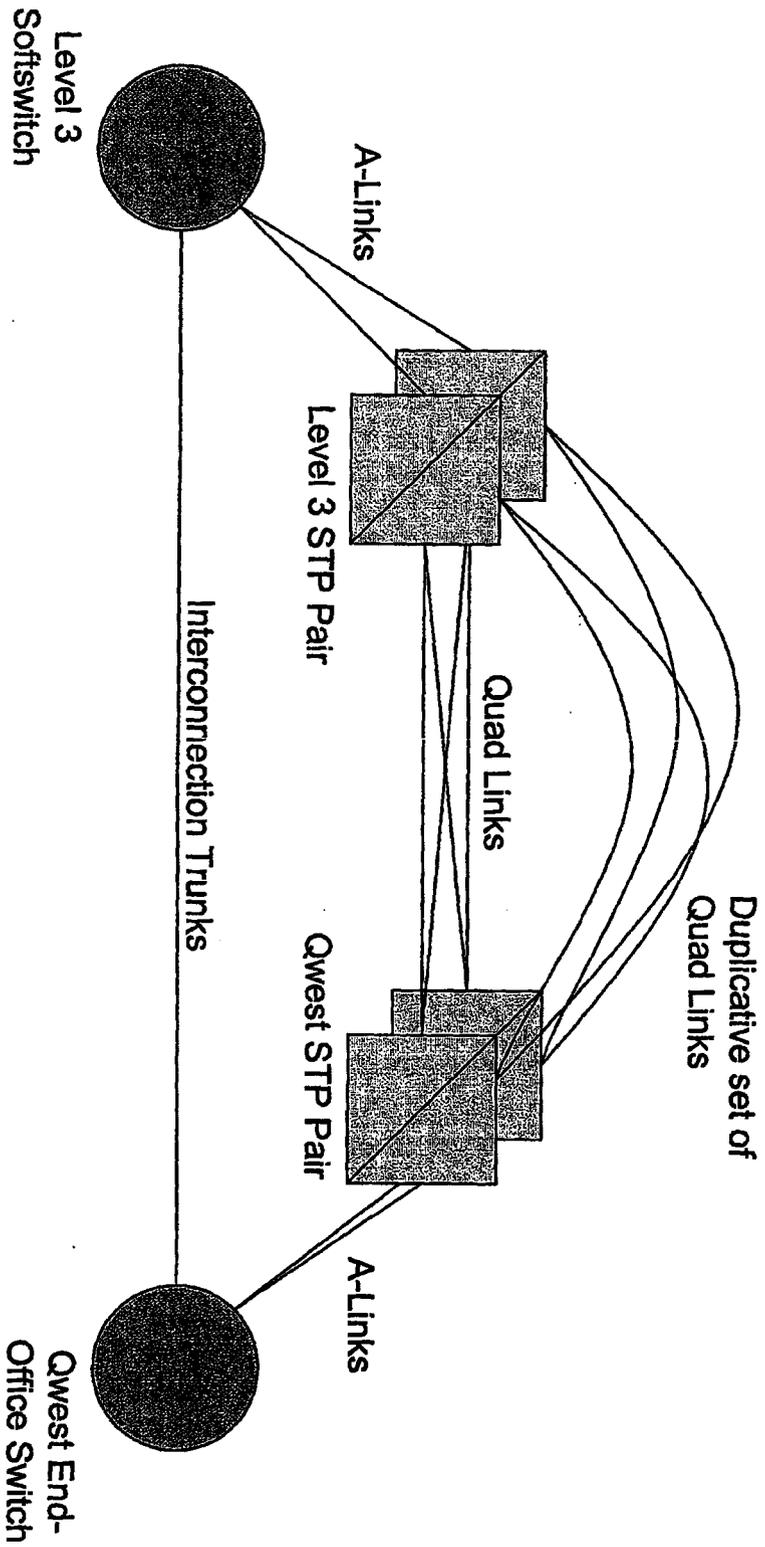


Figure 6

ARIZONA CORPORATION COMMISSION

DOCKET NOS. T-03654A-05-0415; T-01051B-05-0415

IN THE MATTER OF LEVEL 3 COMMUNICATIONS, LLC'S PETITION FOR
ARBITRATION PURSUANT TO SECTION 252(b) OF THE COMMUNICATIONS
ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF
1996, AND THE APPLICABLE STATE LAWS FOR RATES, TERMS, AND
CONDITIONS OF INTERCONNECTION WITH QWEST CORPORATION

**REBUTTAL TESTIMONY OF TIMOTHY J GATES
ON BEHALF OF LEVEL 3 COMMUNICATIONS, LLC**

August 15, 2005

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1 **INTRODUCTION**

2
3 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.**

4 A. My name is Timothy J Gates. My business address is QSI Consulting, 819
5 Huntington Drive, Highlands Ranch, Colorado 80126.

6 **Q. ARE YOU THE SAME TIMOTHY J GATES WHO FILED DIRECT**
7 **TESTIMONY ON BEHALF OF LEVEL3 IN THIS PROCEEDING?**

8 A. Yes, I am.

9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

10 A. The purpose of my testimony is to respond to the testimony of Qwest witnesses
11 William R. Easton, Larry B. Brotherson and Philip Linse

12 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

13 A. My testimony is organized by issue and by Qwest witness being rebutted.

14

15 **DISPUTED ISSUE 1: COSTS OF INTERCONNECTION**

16 **Q. PLEASE PROVIDE SOME CONTEXT FOR YOUR REBUTTAL**
17 **TESTIMONY.**

18 A. Level 3 and Qwest disagree on the network architecture for interconnection. The
19 parties also disagree on who is responsible for the costs on each side of the POI.
20 What Level 3 is requesting, however, is the same architecture that is in place in at
21 least 36 other states. Level 3's proposed language was acceptable to SBC, Verizon
22 and BellSouth. As such, Qwest's unwillingness to accept Level 3's contact language

1 has nothing to do with technology or an unreasonable request from Level 3. Instead,
2 Qwest simply refuses to agree to arrangements that the industry has put in place all
3 around the country. Qwest's language and positions should be rejected because they
4 have no basis in engineering, economics or public policy. Level 3's language and
5 positions should be adopted because they are workable and fair.

6 **Issue IA Interconnection Responsibilities**

7 **Q. PLEASE ADDRESS THE DIRECT TESTIMONY OF MR. WILLIAM R.**
8 **EASTON.**

9 A. At various points in Mr. Easton's testimony he states that "Qwest is allowed to
10 recover costs that are just and reasonable and based on the cost of providing
11 interconnection." (See, for example, Direct of Easton at 5) This statement is part of
12 Qwest's position on Issue 1: Costs of Interconnection. As Mr. Easton correctly
13 points out, "There is presently no dispute as to where the interconnection occurs or
14 how many points of interconnection there will be." (Direct of Easton at 3) The
15 dispute relates primarily to who pays for interconnection costs on each side of the
16 POI.

17 **Q. CAN QWEST CHARGE LEVEL 3 FOR COSTS OF GETTING QWEST**
18 **ORIGINATED TRAFFIC TO THE POI FOR EXCHANGE WITH LEVEL 3?**

19 A. No. The financial responsibilities for interconnection for the exchange of traffic
20 should be borne solely by each carrier on its side of the POI. Carriers should not be
21 allowed to shift their costs of transporting traffic originating on their networks to their

1 competitors. In other words, sound economics dictate that each carrier should be
2 responsible for the costs of delivering its traffic to interconnecting carriers for
3 termination at a single point of interconnection per LATA. Several Federal Circuit
4 Courts of Appeal have specifically affirmed this. For example, as the Fourth Circuit
5 stated in a dispute between SBC and MCI on this very point,

6 In sum, we are left with an unambiguous rule, the legality of which
7 is unchallenged, that prohibits the charge that SBC seeks to impose.
8 Rule 703(b) is unequivocal in prohibiting LECs from levying
9 charges for traffic originating on their own networks, and, by its own
10 terms, admits of no exceptions. Although we find some surface
11 appeal in SBC's suggestion that the charge here is not reciprocal
12 compensation, but rather the permissible shifting of costs attending
13 interconnection, the FCC, as noted above, has endorsed cost-shifting
14 related to interconnection only as it relates to the one-time costs of
15 physical linkage, and in doing so, expressly declined the invitation to
16 extend the definition of "interconnection" to include the transport
17 and termination of traffic.¹

18 These decisions flow from the simple technical reality that interconnection simply
19 means linking up networks. It is also consistent with the accepted economic
20 expedient of cost-causation. Cost shifting is unnecessary, uneconomic and anti-
21 competitive. This point is recognized by the FCC and by the federal circuit courts of
22 appeal that have addressed the issue in the context of interconnection agreements, to
23 wit: each carrier pays its own costs of exchanging traffic.

24 **Q. AT PAGE SIX OF MR. EASTON'S DIRECT, HE STATES, "IT MAKES**
25 **SENSE THAT THE COST CAUSER COMPENSATE QWEST FOR**
26 **INTERCONNECTION AND TRANSPORT COSTS. IF THE COST CAUSER**

¹ *MCImetro Access Transmission Services, Inc. v. SBC Telecommunications, Inc.*, No. 03-1238 2003 US App. LEXIS 25782, *24-5 (4th Cir. Dec 18, 2003).

1 **(LEVEL 3) DOES NOT PAY, THEN QWEST END USERS WOULD HAVE**
2 **TO BEAR THE COST.” PLEASE COMMENT.**

3 A. First of all, Mr. Easton is completely wrong to suggest that Level 3 is the cost causer.
4 Never in the history of telecommunications regulation has a regulator determined that
5 the terminating party is the cost causer. If Mr. Easton’s upside down view of
6 regulatory law and economics were accepted, Qwest would never pay a thing for calls
7 its customers make to customers connected to other networks. Mr. Easton’s
8 suggestion that Level 3 is the cost causer because Level 3 seeks interconnection, and
9 as such must pay for Qwest’s costs on its side of the POI, is completely wrong.

10 **Q. THE CALLS THAT QWEST ROUTES TO LEVEL 3’S POI ARE**
11 **ORIGINATED BY QWEST CUSTOMERS, CORRECT?**

12 A. Yes. These are calls originated by Qwest’s local subscribers. Again, since it is the
13 Qwest subscriber who originates the call, that subscriber is the cost causer, not Level
14 3. The Qwest customer pays Qwest for local service and that customer has the ability
15 to dial an unlimited amount of local calls. One such call might be to an ISP who
16 purchases local service from Level 3. Qwest is compensated by its customers for
17 originating the call and getting the call to the POI. On the other side of the POI,
18 Level 3 is responsible for terminating that call for Qwest to wherever Level 3’s
19 customer may be. Naturally, Qwest should compensate Level 3 for terminating the
20 call.

1 **Q. MR. EASTON STATES AT PAGE SIX OF HIS DIRECT THAT “QWEST’S**
2 **END USERS SHOULD NOT HAVE TO BEAR THE BURDEN OF PAYING**
3 **FOR LEVEL 3’S ISP SERVICE.” DO YOU AGREE?**

4 A. Yes. Qwest end users do not pay for “Level 3’s ISP service” and would not pay for
5 any aspect of Level 3 service under the Level 3 proposal. First of all, Level 3 is not
6 providing ISP service; it is providing local connectivity for an ISP so that Qwest’s
7 customers can dial-up the ISP on a local basis. Second, Qwest’s proposal would deny
8 Level 3 any compensation for terminating calls originated by Qwest customers. As
9 such, Qwest would get a free ride on Level 3’s network for terminating these calls.
10 Finally, in a complete reversal of sound principles of economics, FCC Rules and
11 common carrier regulation generally, Qwest wants to impose access charges on the
12 terminating carrier for calls originated by Qwest’s customers.

13 Unlike traditional “interexchange services” Qwest’s customers are not Level
14 3’s customers for purposes of providing an interexchange telecommunications
15 service. To the extent a Qwest customer places a locally dialed call that Qwest is
16 statutorily required to hand off to Level 3 at the POI, Level 3 imposes no additional
17 per minute of use charges for these calls. Accordingly, under no regulatory authority
18 – save Qwest’s self-serving attempt to create access charges where none could
19 logically exist – may one carrier charge an interconnecting carrier switched access
20 charges for calls that are not made to an IXC, and do not involve additional per
21 minute of use charges. There is no economic relationship between the Qwest
22 customer and Level 3 for the provision of an interexchange service, and the call is

1 locally dialed and handed off between the parties at the POI. Moreover, it is
2 interesting to note that prior to the FCC's *ISP-Remand Order* the vast majority of
3 state commissions examining ISP-bound traffic determined that it was local. Thus
4 Qwest's cost shifting is an entirely transparent grab at intercarrier compensation; it is
5 prima facie anticompetitive and certainly not consistent with the principle of cost
6 causation.

7 **Q. SO QWEST'S PROPOSAL WOULD NOT COMPENSATE LEVEL 3 FOR**
8 **TERMINATING THE CALLS ORIGINATED BY QWEST CUSTOMERS AND**
9 **ALSO CHARGE LEVEL 3 ORGINATING ACCESS FOR THOSE CALLS?**

10 **A.** Yes. Qwest would be compensated by its own customers for the local service, but
11 would charge Level 3 originating switched access charges for the same locally dialed
12 calls.

13 **Q. DOES QWEST AT LEAST AGREE TO PAY LEVEL 3 FOR TERMINATING**
14 **CALLS ORIGINATED BY ITS CUSTOMERS?**

15 **A.** No. As such, Level 3 would pay Qwest for calls originated by Qwest customers and
16 receive no compensation for terminating Qwest originated traffic. This is completely
17 unfair.

18 **Q. DO LOCAL RATES COVER THE COST OF CARRYING THIS TRAFFIC**
19 **TO THE POI OR DESIGNATED TRANSIT POINT?**

20 **A.** Yes, but this does not refer just to Qwest's basic local rates. Local rates and revenues
21 include not only the basic local rate, but other revenues from subscriber line charges,
22 vertical services (*i.e.*, call waiting, call forwarding, anonymous call rejection and

1 other star code features), universal service surcharges, extended area service charges
2 and the subsidies remaining in Qwest's access charges for intraLATA and interLATA
3 toll. Average local revenues tend to be \$40 to \$50 per line per month.

4 **Q. IF LEVEL 3 PAID QWEST TO TRANSPORT QWEST'S ORIGINATED**
5 **TRAFFIC TO THE STATUTORILY REQUIRED SINGLE POI, WOULD**
6 **QWEST BE DOUBLE RECOVERING ITS COSTS?**

7 **A.** Yes. Qwest would be paid twice for the local traffic – once by its local subscribers
8 and again through access charges paid by Level 3. Another benefit to Qwest would
9 be that Level 3 would be denied compensation for terminating the calls handed off at
10 the POI. Any reasonable person would recognize Qwest's proposal as being
11 fundamentally unfair.

12 **Q. DO QWEST'S LOCAL RATES (BASIC RATES, VERTICAL SERVICES,**
13 **ETC.) COMPENSATE QWEST FOR ITS CUSTOMERS' USE OF THE**
14 **LOCAL TELEPHONE NETWORK?**

15 **A.** Yes.

16 **Q. IS QWEST DEREGULATED IN ARIZONA?**

17 **A.** Qwest, the Commission and the industry are in negotiations to settle the pending price
18 cap litigation.² When that proceeding is settled, however, Qwest will have significant
19 pricing flexibility. Qwest will enjoy significant market freedom including market
20 regulation of its FX and ISP services, including its PRI, DID and other services that

² Docket Nos. T-01051B-03-0454, T-00000D-00-0672.

1 compete with Level 3's DID offering.³ Under these circumstances it is inconceivable
2 for Qwest to argue against Level 3's proposed interconnection and reciprocal
3 compensation terms. Further, the suggestion that Qwest customers will have to pay
4 higher rates if Level 3 does not pay access charges for Qwest originated local traffic
5 is laughable. Qwest's proposal would result in double recovery of its costs and
6 impose unwarranted costs on Qwest's competitor, while denying Level 3 any
7 compensation for terminating Qwest traffic.

8 **Q. ARE THERE OTHER ORDERS THAT SUPPORT YOUR POSITION ON**
9 **WHICH PROVIDER IS RESPONSIBLE FOR GETTING ILEC ORIGINATED**
10 **TRAFFIC TO THE POI?**

11 **A.** Yes. I am sure there are many, but I will provide an example. In the FCC's Order in
12 the Kansas/Oklahoma 271 proceeding, the FCC again referred to its rules for the
13 proposition that an ILEC may not charge CLECs for traffic that originates on the
14 ILEC network. Specifically, that order states:

15 235. Finally, we caution SWBT from taking what appears to be an
16 expansive and out of context interpretation of findings we made in our
17 *SWBT Texas Order* concerning its obligation to deliver traffic to a
18 competitive LEC's point of interconnection. (Note 695) In our *SWBT*
19 *Texas Order*, we cited to SWBT's interconnection agreement with
20 MCI-WorldCom to support the proposition that SWBT provided
21 carriers the option of a single point of interconnection. (Note 696) We
22 did not, however, consider the issue of how that choice of
23 interconnection would affect inter-carrier compensation arrangements.
24 Nor did our decision to allow a single point of interconnection change
25 an incumbent LEC's reciprocal compensation obligations under our
26 current rules. (Note 697) For example, these rules preclude an

³ Qwest has yet to respond to Level 3 Request No. 5 but in Iowa and other states Qwest admits that it offers PRI and DID services to customers, including ISPs.

1 incumbent LEC from charging carriers for local traffic that originates
2 on the incumbent LEC's network. (Note 698) These rules also require
3 that an incumbent LEC compensate the other carrier for transport
4 (Note 699) and termination (Note 700) for local traffic that originates
5 on the network facilities of such other carrier. (Note 701)⁴
6

7 Note 698 in the above quote is a specific reference to Rule 51.703(b). It is clear, from
8 this and other rulings, that the originating carrier may not charge a terminating carrier
9 for the cost of transport, or for the facilities used to transport that traffic to the POI.
10 By extension, it is clear that simply because a POI might be outside a local calling
11 area, Qwest has no right to charge Level 3 for the cost of transport, or for the facilities
12 used to transport the traffic from the local calling area to the POI.

13 **Q. IF THE TRAFFIC WERE ALL ISP-BOUND, WOULD THAT CHANGE**
14 **QWEST'S INTERCONNECTION OBLIGATIONS?**

15 A. No. Regardless of the type of traffic Qwest's customers originate, the rates that
16 Qwest charges those customers compensate Qwest for delivering the traffic to the
17 POI.

18 **Single POI**

19 **Q. THUS FAR YOU HAVE DISCUSSED THE PROPOSALS OF QWEST AND**
20 **LEVEL 3 FOR COST RESPONSIBILITY ASSOCIATED WITH GETTING**

⁴ *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, FEDERAL COMMUNICATIONS COMMISSION, 16 FCC Rcd 6237; 2001 FCC LEXIS 1202; 23 Comm. Reg. (P & F) 299, **RELEASE-NUMBER:** FCC 01-29, January 22, 2001 Released; * Adopted January 19, 2001. (footnotes omitted)

1 **THE TRAFFIC TO THE POI. HOW MANY POIS MUST LEVEL 3**
2 **ESTABLISH IN EACH LATA?**

3 **A.** CLECs are only required to have a single POI in each LATA where they offer
4 service. I discussed this at some length in my direct testimony. An example of the
5 rulings on this important issue is found In SBC's Texas 271 proceeding, wherein the
6 FCC stated in pertinent part,

7 Section 251, and our implementing rules, require an incumbent LEC to
8 allow a competitive LEC to interconnect at any technically feasible
9 point. *This means that a competitive LEC has the option to*
10 *interconnect at only one technically feasible point in each LATA.*⁵
11 (emphasis added)

12
13 A similar finding was made in the Virginia WorldCom proceeding wherein that order
14 reads in pertinent part,

15 Under the Commission's rules, competitive LECs may request
16 interconnection at any technically feasible point. *This includes the*
17 *right to request a single point of interconnection in a LATA.*⁶
18 (emphasis added)

19
20 There is nothing in the Act or in the FCC orders that support Qwest's position that it
21 may charge CLECs more for interconnection (through additional transport or
22 facilities charges) if they choose to have only one POI per LATA. Indeed, the Act
23 and FCC orders (such as the one cited above) conclude just the opposite.

24 **Q. DOES QWEST AGREE THAT ONLY A SINGLE POI IS REQUIRED?**

⁵ Texas SBC 271 Proceeding; CC Docket No. 00-65; Released June 30, 2000; at ¶ 78.

⁶ FCC Memorandum Opinion and Order, CC Docket Nos. 00-218, 00-249, 00-251; Released:
July 17, 2002; at ¶52.

1 A. Not really. While Qwest claims to support the idea, their contract language belies
2 their true intent because it entirely subverts the economic effect of a single POI.
3 Qwest would have Level 3 pay access from every Qwest “local” calling area.
4 Viewed in the light of the law, policy and economics behind this very simple rule,
5 Qwest’s language must be rejected.

6 **Q. WHAT IS LEVEL 3’S PROPOSAL WITH RESPECT TO SINGLE POI**
7 **LANGUAGE IN THE AGREEMENT?**

8 A. Level 3’s proposed language is as follows:

9 7.1.1 This Section describes the Interconnection of Qwest's network
10 and CLEC's network for the purpose of exchanging Telecommunications
11 Including Telephone Exchange Service and Exchange Access traffic. Qwest
12 will provide Interconnection at any Technically Feasible point within its
13 network.

14 7.1.1.1 **Establishment of SPOI:** Qwest agrees to provide CLEC a
15 Single Point of Interconnection (SPOI) in each Local Access Transport Area
16 (LATA) for the exchange of all telecommunications traffic. The SPOI may be
17 established at any mutually agreeable location within the LATA, or, at Level
18 3’s sole option, at any technically feasible point on Qwest’s network.
19 Technically feasible points include but are not limited to Qwest’s end offices,
20 access tandem, and local tandem offices.

21 7.1.1.2 **Cost Responsibility.** Each Party is responsible for
22 constructing, maintaining, and operating all facilities on its side of the SPOI,
23 subject only to the payment of intercarrier compensation in accordance with
24 Applicable Law. In accordance with FCC Rule 51.703(b), neither Party may
25 assess any charges on the other Party for the origination of any
26 telecommunications delivered to the other Party at the SPOI, except for
27 Telephone Toll Service traffic outbound from one Party to the other when the
28 other Party is acting in the capacity of a provider of Telephone Toll Service,
29 to which originating access charges properly apply.

30 7.1.1.3 Facilities included/transmission rates. Each SPOI to be
31 established under the terms of this Attachment shall be deemed to include any
32 and all facilities necessary for the exchange of traffic between Qwest’s and
33 34
35

1 Level 3's respective networks within a LATA. Each Party may use an
2 Entrance Facility (EF), Expanded Interconnect Channel Termination (EICT),
3 or Mid Span Meet Point of Interconnection (POI) and/or Direct Trunked
4 Transport (DTT) at DS1, DS3 , OC3 or higher transmission rates as, in that
5 Party's reasonable judgment, is appropriate in light of the actual and
6 anticipated volume of traffic to be exchanged. If one Party seeks to establish
7 a higher transmission rate facility than the other Party would establish, the
8 other Party shall nonetheless reasonably accommodate the Party's decision to
9 use higher transmission rate facilities.

10
11 7.1.1.4 Each Party Shall Charge Reciprocal Compensation for the
12 Termination of Traffic to be carried. All telecommunications of all types shall
13 be exchanged between the Parties by means of from the physical facilities
14 established at Single Point of Interconnection Per LATA onto its Network
15 Consistent With Section 51.703 of the FCC's Rules:

16
17 7.1.1.4.1 Level 3 may interconnect with Qwest at any technically
18 feasible point on Qwest's network for the exchange of telecommunications
19 traffic. Such technically feasible points include but are not limited to Qwest
20 access tandems or Qwest local tandems. When CLEC is interconnected at the
21 SPOI, separate trunk groups for separate types of traffic may be established in
22 accordance with the terms hereof. No separate physical interconnection
23 facilities, as opposed to separate trunk groups within SPOI facilities, shall be
24 established except upon express mutual agreement of the Parties.
25

26 As you can see from the language above, Level 3 clearly addresses the single POI
27 entitlement and the associated cost responsibility on each side of the POI. Qwest's
28 language, however, completely ignores the single POI issue, and instead discussed
29 trunking on its side of the POI.

30 **Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR THIS SECTION OF**
31 **THE AGREEMENT?**

32 **A.** The Qwest proposal is as follows:

33 7.1.1 This Section describes the Interconnection of Qwest's network and
34 CLEC's network for the purpose of exchanging Exchange Service (EAS/Local
35 traffic), IntraLATA Toll carried solely by local exchange carriers and not by
36 an IXC (IntraLATA LEC toll), ISP-Bound traffic, and Jointly Provided

1 Switched Access (InterLATA and IntraLATA) traffic. Qwest will provide
2 Interconnection at any Technically Feasible point within its network.
3 Interconnection, which Qwest currently names "Local Interconnection
4 Service" (LIS), is provided for the purpose of connecting End Office Switches
5 to End Office Switches or End Office Switches to local or Access Tandem
6 Switches for the exchange of Exchange Service (EAS/Local traffic); or End
7 Office Switches to Access Tandem Switches for the exchange of IntraLATA
8 LEC Toll or Jointly Provided Switched Access traffic. Qwest Tandem Switch
9 to CLEC Tandem Switch connections will be provided where Technically
10 Feasible. New or continued Qwest local Tandem Switch to Qwest Access
11 Tandem Switch and Qwest Access Tandem Switch to Qwest Access Tandem
12 Switch connections are not required where Qwest can demonstrate that such
13 connections present a risk of Switch exhaust and that Qwest does not make
14 similar use of its network to transport the local calls of its own or any
15 Affiliate's End User Customers.
16

17 By requiring Level 3 to pay for facilities on the Qwest side of the POI, Qwest
18 completely eliminates the purpose and benefits of the single POI entitlement. The
19 single POI allows CLECs to enter the market without having to duplicate the ILEC
20 legacy network technology or structure. Of course, this does not preclude the parties
21 from voluntarily agreeing to establish whatever additional POIs they may choose in
22 particular situations.

23 **Q. DOES THE SINGLE POI ENTITLEMENT CHANGE YOUR**
24 **UNDERSTANDING OF THE FCC'S MEANING OF LOCAL CALLING**
25 **AREA?**

26 **A.** Yes. By only requiring a single POI per LATA, the FCC has effectively defined the
27 local calling area for interconnecting CLECs to be a LATA. From a competitive
28 perspective this makes sense because it ensures that the incumbent cannot force upon
29 the competitor costs that would make retail competition impossible. For CMRS
30 providers, the local calling area is an MTA (major trading area) which in some cases

1 is larger than a state. For instance, in Arizona we have three LATAs and three MTAs
2 (MTA 27, MTA 2 and MTA 39) although they are not coterminous. This is not to
3 say that the single POI entitlement has changed the local calling areas established by
4 the Commission, which are set for purposes of retail services - to the extent those
5 services are still regulated. To constrain a competitor to retail service areas
6 prescribed during a period of monopoly regulation of a single technology incumbent
7 when the competitor wishes to offer larger local calling areas ensures that Iowa
8 consumers will continue to pay higher, not lower rates, for the telecommunications
9 services they purchase.

10 **Issue 1D Transport Facilities**

11 **Q. AT PAGE 12 OF HIS TESTIMONY, MR. EASTON STATES THAT LEVEL 3**
12 **"...HAS AN OBLIGATION TO COMPENSATE QWEST FOR PROVIDING**
13 **SERVICES WHICH ALLOW LEVEL 3 TO SERVE ITS ISP END USERS."**
14 **PLEASE COMMENT.**

15 **A.** Mr. Easton is wrong to suggest that Level 3 is responsible for Qwest's network on the
16 Qwest side of the POI. This seems to be a recurring theme throughout Qwest's
17 testimony. It is true that carriers share the cost of interconnection by bringing their
18 originated traffic to the POI. It is not Level 3's responsibility, however, to pay Qwest
19 for getting its originated traffic from Qwest end users to the POI. That is Qwest's
20 responsibility. As the FCC has repeatedly stated and as affirmed by federal courts

1 nationwide Rule 51.703(b) requires that each carrier bear its costs on its side of the
2 POI:

3 (b) A LEC may not assess charges on any other telecommunications
4 carrier for telecommunications traffic that originates on the LEC's
5 network.
6

7 This language is very straight forward. We are talking about traffic that originates on
8 Qwest's network. Qwest may not charge Level 3 for getting this traffic to the POI.

9 **Q. DOES LEVEL 3'S PROPOSED LANGUAGE REFER TO RULES 703(B) AND**
10 **709?**

11 **A.** Yes. Level 3's proposed language is as follows:

12 7.2.2.1.2.2. CLEC may order transport services from Qwest or from a
13 third-party, including a third party that has leased the private line transport
14 service facility from Qwest for purposes of network management and routing
15 of traffic to/from the POI. Such transport provides a transmission path for the
16 LIS trunk to deliver the originating Party's Exchange Service EAS/Local
17 traffic to the terminating Party's End Office Switch or Tandem Switch for call
18 termination. This Section is not intended to alter either Party's obligation
19 under Section 251(a) of the Act or under Section 51.703 or 51.709 of the
20 FCC's Rules.

21 As noted above, Mr. Easton suggests that this language indicates that "Level 3 refuses
22 to acknowledge is that it has an obligation to compensate Qwest for providing the
23 services which allow Level 3 to serve its ISP end users." Mr. Easton further
24 complains about Level 3 language because "Compensation issues do not belong in
25 this section" but Qwest's language specifically refers to the CLEC "purchasing"
26 transport services from Qwest. Qwest's attempts to misconstrue economic principles
27 and sound public policy simply belie their pecuniary motives.

1 Each of Qwest's propositions regarding single POI simply amount to
2 requesting that the Commission protect Qwest from competition by forcing Qwest's
3 competitors to mimic Qwest's network designs and costs. Qwest's positions are
4 especially ironic when considered in light of the fact that the FCC relieved Qwest
5 (and other ILECs) of the obligation to unbundle local switching because of the
6 availability and use of newer more efficient technologies, such as that deployed by
7 Level 3. To wit:

8 As the Commission found in the Triennial Review Order, there has
9 been a significant increase in competitive LEC circuit switch
10 deployment over time, growing approximately 71 percent from 700
11 switches in 1999 to approximately 1,200 switches in 2003.
12 Incumbent LEC data indicate that competitive carriers are serving over
13 3 million mass market lines with those switches. Further, pursuant to
14 our "reasonably efficient competitor" standard, we consider
15 competitive LECs' deployment of newer, more efficient switching
16 technologies, such as packet switches. Incumbent LECs cite evidence
17 that, in the time following the Triennial Review Order, *competitive*
18 *LECs have focused on deploying softswitch technology and packet*
19 *switches. These switches are less expensive than traditional circuit*
20 *switches and are more scalable.* This evidence indicates that
21 competitive LECs are not impaired in the deployment of competitive
22 switches. As discussed below, we also find that competitive LECs are
23 able to use switches, once deployed, to serve the mass market. (206)

24
25 In addition, pursuant to the "reasonably efficient competitor" standard
26 discussed above, we evaluate impairment based on the technology a
27 reasonably efficient competitive LEC would deploy. *Competitive*
28 *LECs can rely on newer, more efficient technology than incumbent*
29 *LECs (whose networks have been deployed over decades), such as*
30 *packet switches. Further, the ability of competitive circuit switches*
31 *to serve wider geographic regions reduces the direct, fixed cost of*
32 *purchasing circuit switching capability and allows competitive*
33 *carriers to create their own switching efficiencies.* (207)

34
35 224. We also conclude that an absence of sufficient collocation space
36 does not hinder competitive LECs' ability to deploy competitive

1 switches to a degree that gives rise to operational impairment. With
2 respect to packet switches, the Commission found in the Triennial
3 Review Order “that any collocation costs and delays incurred by
4 requesting carriers to provide packet switched services do not rise to a
5 level” of demonstrating impairment because such disadvantages “*are*
6 *likely outweighed by [competitive LECs’] advantage in relying solely*
7 *on newer, more efficient technology.*” Similarly, we note that a
8 reasonably efficient competitor does not have to be collocated in every
9 incumbent LEC central office in order to serve customers in that wire
10 center, *reducing* the likelihood that lack of collocation space will truly
11 result in impairment in the absence of unbundled switching.⁷
12 (emphasis added)
13

14 To think that the FCC relieved ILECs of significant unbundling requirements based
15 upon those competitor’s abilities to deploy newer, more efficient technology, only to
16 turn around and require those very same competitors to mimic as an architectural or
17 monetary matter the network architecture of their incumbent competitors strains
18 credulity. There can be no intermodal competition of any sort if the Commission
19 allows this sort of ILEC protectionism.

20 **Q. IS RULE 51.703(B) CONSISTENT WITH ECONOMIC THEORY?**

21 **A.** Yes. This rule is the embodiment of the “cost causer” economic principle – cost
22 causers should pay the cost they impose on society. In this case, when a Qwest
23 subscriber makes a call to a Level 3 customer, Qwest is responsible for the cost of
24 getting that traffic to the POI. As such, the language to “order” transport facilities is
25 correct since there is no requirement to “purchase” facilities for the transport of Qwest
26 originated traffic on the Qwest side of the POI.

⁷ In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers), WC Docket No. 04-313, CC Docket No. 01-338; *Order On Reman.*, ¶¶206, 207, and 224 (Released: February, 4, 2005).

1 **Level 3 Is Not the Cost Causer**

2 **Q. WHY DOES QWEST RAISE THE ISSUE OF “COST CAUSER” WHEN THE**
3 **RULES REQUIRE EACH PARTY TO BEAR ITS COSTS OF ORIGINATING**
4 **AND TRANSPORTING TRAFFIC ON ITS NETWORK TO THE POI?**

5 **A.** It appears that Qwest’s approach is largely characterized by imposing upon Level 3
6 classifications that have more to do with their retail classifications than with the
7 exchange of traffic between interconnecting LECs. In this sense, Qwest uses the term
8 “VNXX” or “FX” to create a false distinction between FX terminated by ILECs and
9 FX provided by incumbent LECS.

10 **Q. SO YOU DISAGREE WITH MR. EASTON’S SUGGESTION THAT LEVEL 3**
11 **IS THE COST CAUSER FOR ALL ISP-BOUND AND VNXX TRAFFIC?**

12 **A.** Absolutely. As I stated earlier, Qwest’s customers – who are subscribers to Qwest’s
13 local service plans – are originating these calls to Level 3 customers. It is their choice
14 to employ the Qwest service to contact a Level 3 customer. Qwest customers are
15 paying Qwest to complete those calls and to get that traffic to Level 3. Level 3 is not
16 the cost causer, and should not have to pay the cost of getting this traffic to the POI.

17 **Q. DO YOU AGREE WITH QWEST’S POSITION ON FX/VNXX TRAFFIC?**

18 **A.** No. Simply because a call may terminate in a different or adjacent exchange does not
19 mean that it should be treated differently than other locally dialed calls. As I noted in
20 my direct testimony, Qwest’s responsibilities and costs are absolutely identical
21 regardless of the location of the Level 3 customer. In each case, a locally dialed call
22 is routed to the POI for termination. All that Qwest does is determine that the dialed

1 telephone number is a Level 3 number and route the call to Level 3 on an appropriate
2 trunk group. What Level 3 does is the same in both cases: it recognizes the incoming
3 traffic as bound for one of its customers and sends the traffic on to that customer.
4 The only difference is whether the ISP's gear receiving the call is at the end of a short
5 circuit (close to Level 3's switch, and thus often not in the calling party's retail local
6 calling area) or a long circuit (far away from Level 3's switch, and thus, possibly, in
7 the calling party's retail local calling area). Regardless of the distance, it is Level 3's
8 responsibility to complete the call. It makes no economic sense whatsoever to make
9 any distinction in Qwest's financial or operational obligations depending on whether
10 Level 3 uses a long or short circuit to connect its customers to its switch.

11 FX/VNXX traffic is simply a competitive response to traditional foreign
12 exchange service which Qwest stated in discovery it has been providing in Iowa since
13 1954.⁸ That functionality is now being used by ISPs to efficiently provision service
14 throughout the United States. Qwest's foreign exchange, Wholesale Dial and
15 OneFlexTM services provide a similar functionality.

16 **Q. ARE THERE CIRCUMSTANCES UNDER WHICH LEVEL 3 HAS AGREED**
17 **TO PAY FOR FACILITIES ON THE QWEST SIDE OF THE POI?**

18 **A.** Yes. As Mr. Ducloo explains, Level 3 typically adds direct trunks when traffic
19 volumes reach 512 BHCCS. There may, however, be circumstances when traffic
20 should be allowed to increase beyond this point for a period of time. This is consistent

⁸ Qwest has yet to provide a response to Level 3 Request No. 25; however, it has stated that in other states including Iowa and Colorado that it has offered such services from 1954 or so I would expect their AZ response to be the same.

1 with Level 3's practices with Qwest as well as with every other major ILEC. In fact,
2 Mr. Linse noted in his testimony that "Level 3 has historically been very cooperative
3 when working with Qwest's trunk administration group." (Direct of Linse at 23)
4 Level 3 has historically been very proactive in its relationships with Qwest and other
5 ILECs to ensure that traffic is properly engineered to avoid tandem exhaust and
6 blocking that might impact service quality. Parenthetically, as Mr. Ducloo has noted,
7 Qwest's insistence upon a duplicative FGD architecture is somewhat confusing as this
8 requirement would accelerate tandem exhaust throughout Qwest's network.

9 **Issue 1G Dispute Over Traffic Types**

10 **Q. AT PAGE 16 OF HIS TESTIMONY, MR. EASTON DISCUSSES LANGUAGE**
11 **FOR SECTION 7.3.1.1.1 (ENTRANCE FACILITIES). QWEST PROPOSES**
12 **LANGUAGE THAT WOULD HAVE THE "TERMINATING" CARRIER**
13 **RESPONSIBLE FOR THE ISP-BOUND AND VNXX TRAFFIC. IS THIS**
14 **CONSISTENT WITH COST CAUSATION?**

15 **A.** Absolutely not. As discussed above, the originating carrier is responsible for getting
16 traffic to the POI for termination by the interconnected provider. Qwest turns this
17 economic principle on its head by suggesting that the "terminating" carrier is
18 responsible for ISP-bound traffic and for VNXX traffic.

19 **Q. WHAT LANGUAGE HAS QWEST PROPOSED?**

20 **A.** Qwest's proposed language for Section 7.3.1.1.3 is as follows:

21 7.3.1.1.3 If the Parties elect to establish LIS two-way trunks, for
22 reciprocal exchange of Exchange Service (EAS/Local) traffic, the cost of the

1 LIS two-way facilities shall be shared among the Parties by reducing the LIS
2 two-way entrance facility (EF) rate element charges as follows:
3

4 7.3.1.1.3.1 Entrance Facilities - The provider of the LIS two-way Entrance
5 Facility (EF) will initially share the cost of the LIS two-way EF by assuming
6 an initial relative use factor (RUF) of fifty percent (50%) for a minimum of
7 one (1) quarter if the Parties have not exchanged LIS traffic previously. The
8 nominal charge to the other Party for the use of the EF, as described in Exhibit
9 A, shall be reduced by this initial relative use factor. Payments by the other
10 Party will be according to this initial relative use factor for a minimum of one
11 (1) quarter. The initial relative use factor will continue for both bill reduction
12 and payments until the Parties agree to a new factor, based upon actual
13 minutes of use data for non-ISP-bound traffic to substantiate a change in that
14 factor. *If a CLEC's End User Customers are assigned NPA-NXXs*
15 *associated with a rate center different from the rate center where the*
16 *Customer is physically located, traffic that does not originate and terminate*
17 *within the same Qwest local calling area (as approved by the Commission),*
18 *regardless of the called and calling NPA-NXXs, involving those Customers*
19 *is referred to as "VNXX traffic". For purposes of determining the RUF, the*
20 *terminating carrier is responsible for ISP-bound traffic and for VNXX*
21 *traffic.* If either Party demonstrates with non-ISP-bound traffic data that
22 actual minutes of use during the first quarter justify a new relative use factor,
23 that Party will send a notice to the other Party. Once the Parties finalize a new
24 factor, the bill reductions and payments will apply going forward, from the
25 date the original notice was sent. ISP-bound traffic or traffic delivered to
26 Enhanced Service providers is interstate in nature. Qwest has never agreed to
27 exchange VNXX Traffic with CLEC. (emphasis added)
28

29 **Q. WHAT LANGUAGE DOES LEVEL 3 PROPOSE?**

30
31 A. Level 3 proposes the following:

32 7.3.1.1.3 Each party is solely responsible for any and all costs arising
33 from or related to establishing and maintaining the interconnection trunks and
34 facilities it uses to connect to the POI. Thus, neither party shall require the
35 other to bear any additional costs for the establishment and operation of
36 interconnection facilities that connect its network to its side of the POI.
37

38 7.3.1.1.3.1 Intercarrier compensation. Intercarrier compensation for traffic
39 exchanged at the SPOI shall be in accordance with FCC Rule 51.703 and
40 associated FCC rulings. For avoidance of doubt, any traffic that constitutes
41 "telecommunications" and that is not subject to switched access charges,
42 including without limitation so-called "information access" traffic, shall be

1 subject to compensation from the originating carrier to the terminating carrier
2 at the FCC-mandated capped rate (as of the effective date hereof) of \$0.0007
3 per minute. Any dispute about the appropriate intercarrier compensation
4 applicable to any particular traffic shall be resolved by reference to the FCC's
5 rule and associated orders.
6

7 Level 3's language is simple and consistent with the FCC rules regarding who bears
8 responsibility on each side of the POI. Qwest's language, on the other hand, creates
9 an artificial and unconventional distinction for traffic based on the physical location
10 of customers.

11 **Q. ARE THE VNXX AND ISP-BOUND CALLS ORIGINATED BY QWEST**
12 **CUSTOMERS, AND DIALED ON A LOCAL BASIS?**

13 **A. Yes.**

14 **Q. QWEST REFERS TO RULE 51.709(B) TO SUPPORT ITS POSITION ON THE**
15 **RUF CALCULATION. SPECIFICALLY, MR. EASTON SUGGESTS THAT**
16 **LEVEL 3 MUST BE RESPONSIBLE FOR THE ISP-BOUND AND VNXX**
17 **TRAFFIC. (DIRECT OF EASTON AT 15) IS THAT A CORRECT**
18 **INTERPRETATION OF RULE 51.709(B)?**

19 **A. No. Rule 51.709(b) states:**

20 (b) The rate of a carrier providing transmission facilities dedicated to
21 the transmission of traffic between two carriers' networks shall
22 recover only the costs of the proportion of that trunk capacity used by
23 an interconnecting carrier to send traffic that will terminate on the
24 providing carrier's network. Such proportion may be measured during
25 peak periods.
26

27 This rule is again consistent with the economic principle of cost-causation in that it
28 calculates the proportion to be paid based on the originating traffic as a proportion of

1 total traffic. That proportion is then used to allocate the cost of the facilities between
2 the two providers. The ISP-bound and VNXX traffic is originated by Qwest
3 subscribers and assuming a relative use factor is appropriate for calculating costs,
4 then the ISP-bound and VNXX traffic must be included in Qwest's proportion of the
5 cost, and not in Level 3's proportion of the cost.

6 **Q. IS THERE ANY COST BASIS FOR TREATING THE ISP-BOUND AND**
7 **VNXX TRAFFIC ANY DIFFERENTLY THAN OTHER LOCAL TRAFFIC?**

8 **A.** No. In Level 3 Request No. 01-024, Level 3 asked the following question:

9 Does Qwest contend that the costs it incurs in originating a call to a
10 Level 3 customer differ in any respect whatsoever based upon the
11 physical location of the Level 3 customer? If Qwest responds to the
12 above question with anything other than an unequivocal "no," please
13 provide a detailed explanation of how the location of Level 3's
14 customer on Level 3's side of the POI could affect Qwest's costs.
15 Include in that explanation all cost studies and any other
16 documentation in your possession that you believe provides support
17 for your position.

18 Qwest's response in pertinent part was, "The costs Qwest incurs do not vary based
19 upon the physical location of the Level 3 customer."

20 **Q. AT PAGES 21 OF HIS TESTIMONY, MR. EASTON ARGUES THAT RULE**
21 **51.703(B) REFERS TO TELECOMMUNICATIONS TRAFFIC AND NOT ISP-**
22 **BOUND TRAFFIC. PLEASE COMMENT.**

23 **A.** Subpart H of the FCC Rules does refer to telecommunications traffic and Section
24 51.703(b) refers to reciprocal compensation obligations. The FCC – in its *ISP*
25 *Remand Order* – carved out federal authority to set intercarrier compensation rates for

1 ISP-bound traffic, under one particular subsection of Section 251. But the FCC was
2 crystal clear in stating that it was *not* changing the scope of how ISP-bound traffic is
3 exchanged between carriers under the other subsections of Section 251, or to limit the
4 state commissions' jurisdiction beyond the issue of setting intercarrier compensation
5 rates. Specifically, the FCC emphasized in footnote 149 of its *ISP Remand Order*
6 that its establishment of the interim regime "affects only the intercarrier
7 *compensation (i.e., the rates)* applicable to the delivery of ISP-bound traffic. It does
8 not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or
9 existing interconnection agreements, such as obligations to transport traffic to points
10 of interconnection." (emphasis in original) Thus, the *ISP Remand Order* does not
11 relieve Qwest of its interconnection obligations under rule 51.703(b). Finally, no
12 matter what the Commission rules on compensation for ISP-bound traffic, such traffic
13 will be going over the interconnection trunks and facilities and therefore should be
14 included in determining relative use of the trunks and facilities to originate traffic.

15 **Q. ARE THE CALLS ORIGINATED BY QWEST CUSTOMERS THAT ARE**
16 **ULTIMATELY DETERMINED TO BE ISP-BOUND OR VNXX, IMPOSING**
17 **ANY ADDITIONAL COSTS ON QWEST?**

18 **A.** No. As noted above, Qwest has admitted that these calls do not increase its costs.
19 The calls are dialed and routed like any other local call and Qwest cannot distinguish
20 the ISP-bound or VNXX calls from other local calls. As such, Qwest's
21 responsibilities and costs for delivering this traffic to the POI are the same as for any
22 other local call. Contrary to Mr. Easton's suggestion, Rule 51.703(b) does apply to

1 the exchange of ISP-bound and VNXX traffic. The only difference is that Level 3
2 will receive the lower FCC mandated rate of \$0.0007 per minute instead of the
3 standard reciprocal compensation rate for terminating the traffic.

4 **Q. ARE THERE ANY FEDERAL ORDERS THAT ADDRESS THE COST OF**
5 **ISP-BOUND TRAFFIC AS OPPOSED TO OTHER LOCALLY DIALED**
6 **TRAFFIC?**

7 **A.** Yes. Paragraph 90 of the *ISP Remand Order* addresses the cost of ISP-bound and
8 voice traffic:

9 This is the correct policy result because we see no reason to impose
10 different rates for ISP-bound and voice traffic. The record developed
11 in response to the *Intercarrier Compensation NPRM* and the *Public*
12 *Notice* fails to establish any inherent differences between the costs of
13 any one network of delivering a voice call to a local end-user and a
14 data call to an ISP. Assuming the two calls have otherwise identical
15 characteristics (e.g., duration and time of day), a LEC generally will
16 incur the same costs when delivering a call to a local end-user as it
17 does delivering a call to an ISP. We therefore are unwilling to take
18 any action that results in the establishment of separate intercarrier
19 compensation rates, terms and conditions for local voice and ISP-
20 bound traffic. To the extent that the record indicates that per minute
21 reciprocal compensation rate levels and rate structures produce
22 inefficient results, we conclude that the problems lie with this recovery
23 mechanism in general and are not limited to any particular type of
24 traffic. (emphasis in original)

25
26 It is clear from Qwest's admissions and the FCC's findings that there is no difference
27 in cost for delivering a local voice call or an ISP-bound call to the POI. Since these
28 calls are dialed in the same manner, handled in the same manner from a network
29 perspective, and – not surprisingly – have the same cost, there is no justification for
30 treating these calls differently from all other locally dialed calls. Indeed, this is

1 precisely what the FCC found in paragraph 92 of the *ISP Remand Order*, “Nor does
2 the record demonstrate that CLECs and ILECs incur different costs in delivering
3 traffic that would justify disparate treatment of ISP-bound traffic and local voice
4 traffic under section 251(b)(5).”

5 **Issue 1H Relative Use Formula**

6
7 **Q. AT PAGES 21 AND 22 OF MR. EASTON’S TESTIMONY HE DISCUSSES**
8 **THE PROPOSED LANGUAGE OF THE TWO PARTIES WITH RESPECT**
9 **TO DIRECT TRUNKED TRANSPORT. QWEST AGAIN DEFINES VNXX**
10 **TRAFFIC AND STATES THAT “FOR PURPOSES OF DETERMINING THE**
11 **RUF, THE TERMINATING CARRIER IS RESPONSIBLE FOR ISP-BOUND**
12 **TRAFFIC AND FOR VNXX TRAFFIC.” PLEASE COMMENT.**

13 **A.** For all the economic reasons stated above, ISP-bound and VNXX traffic must be
14 included in the RUF calculation. These locally dialed calls are originated by Qwest
15 local service subscribers who pay Qwest to complete the calls.

16 **Q. IN THAT SAME SECTION REGARDING ISSUE NO. 1H, QWEST STATES,**
17 **“ISP-BOUND TRAFFIC IS INTERSTATE IN NATURE. QWEST HAS**
18 **NEVER AGREED TO EXCHANGE VNXX TRAFFIC WITH CLEC.” IS**
19 **THAT CONSISTENT WITH ITS OTHER POSITIONS?**

20 **A.** No. In this instance Qwest again attempts to apply its retail calling area distinctions
21 to locally dialed traffic exchanged between interconnected LECs. In testimony and
22 other statements, Qwest misconstrues the ESP exemption to apply only when the

1 calling and called parties are in the same local calling area. This is completely
2 inconsistent with the FCC's treatment of this traffic. The FCC has pre-empted the
3 Commission on intercarrier compensation for this traffic, but Qwest is still required to
4 route this traffic to the POI per the state approved interconnection agreement.

5 **Issue 1J NRCs for LIS Trunking**

6 **Q. AT PAGES 23 OF HIS TESTIMONY MR. EASTON STATES THAT LEVEL**
7 **3'S LANGUAGE FOR SECTION 7.3.3.1 DENIES QWEST COMPENSATION**
8 **FOR WORK PERFORMED ON BEHALF OF LEVEL 3. DO YOU AGREE?**

9 **A.** No. Level 3's language is consistent with economic principles in that "neither" party
10 may charge for trunking on its side of the POI. This is consistent with the FCC
11 mandate that each party pays for the facilities on its side of the POI. Qwest's
12 language would have Level 3 pay for facilities on both sides of the POI. Qwest's
13 proposal is anticompetitive, unreasonable, internally contradictory when viewed in
14 light of unbundling relief granted to them, and against sound public policy in light of
15 the fact that local rates in Iowa are going up, not down. Qwest is trying to change the
16 rules and that is unfair.

17 **DISPUTED ISSUE 2: ALL TRAFFIC ON INTERCONNECTION TRUNKS**

18 **Q. PLEASE INTRODUCE THIS ISSUE.**

19 **A.** This issue is a dispute as to whether Level 3 should be allowed to combine all types
20 of traffic on a single interconnection trunk group. Qwest wants Level 3 to use
21 different trunk groups for different types of traffic ostensibly for billing purposes.

1 **Q. FROM AN ECONOMIC PERSPECTIVE, WHAT IS THE IDEAL SOLUTION**
2 **TO THIS DISPUTE?**

3 **A.** The correct solution would be to route all traffic over a single interconnection trunk
4 group. This solution is the most efficient solution from an engineering perspective as
5 discussed by Mr. DuCloo, but it is also the most efficient solution from an economic
6 perspective. By not allowing Level 3 to route all traffic on its interconnection trunks
7 it is denying Level 3 the efficiencies that it could obtain otherwise. In other words,
8 Qwest is forcing Level 3 to purchase additional trunks and facilities that are not
9 necessary given the level of traffic. Artificially increasing the cost of an incumbent's
10 competitors is a common tactic, but is not in the public interest.

11 **Q. MR. EASTON STATES AT PAGE 28 THAT "QWEST HAS NO**
12 **OBLIGATION TO PERMIT LEVEL 3 TO COMMINGLE SWITCHED**
13 **ACCESS TRAFFIC WITH OTHER TYPES OF TRAFFIC ON THE**
14 **INTERCONNECTION TRUNKS CREATED UNDER THE AGREEMENT."**
15 **DO YOU AGREE?**

16 **A.** No. Qwest should allow Level 3 to interconnect in the most efficient manner
17 possible so long as it is technically feasible. Though Qwest refuses to admit in
18 Arizona that there is no technical reason that would prohibit Qwest from combining
19 all types of traffic on interconnection trunks (Level 3's Motion to Compel is
20 pending), Qwest did admit to this in other states (such as Iowa) and I would expect
21 the same answer in Arizona.

1 **Q. DOES QWEST COMBINE ALL TRAFFIC TYPES ON FGD TRUNK**
2 **GROUPS FOR OTHER CLECS?**

3 **A.** Yes. Qwest allows CLECs, who have a preponderance of FGD traffic, to combine all
4 other types of traffic on those trunks as well.⁹ Level 3 has a preponderance of local
5 traffic, and should be allowed to combine what little FGD traffic it might have on its
6 interconnection trunks. This solution is workable and fair.

7 **Q. WHAT THEN IS QWEST'S OBJECTION TO COMBINING ALL TRAFFIC**
8 **ON A SINGLE INTERCONNECTION TRUNK GROUP?**

9 **A.** Qwest is willing to combine all traffic on a single trunk group, as long as it is a FGD
10 trunk group. Indeed, Qwest will allow all traffic types, with the exception of
11 switched access traffic, to be carrier over interconnection trunks. (Easton Direct at
12 25) The impact of Qwest's proposals is to increase Level 3's costs. For instance,
13 Qwest says that it is willing to allow the exchange of differently rated traffic over
14 FGD trunk groups, but Qwest's proposal again is nothing more than an attempt to
15 obtain more money wrapped in the enigma of contradictory requirements. Mr.
16 Ducloo speaks to those issues at length. The economics of the situation, however, are
17 clear: Qwest imposes unnecessary costs upon its competitor - Level 3 - for no other
18 reason than to force upon Level 3 billing "solutions" that already are unworkable in
19 the real world. Instead, as Level 3 already does with Verizon, BellSouth and SBC,
20 the parties should exchange traffic over a single set of interconnection trunks and
21 apply factors - which Qwest itself already applies to both the interconnection trunks

⁹ See Qwest Response to Level 3 Request No. 01-49. (Exhibit TJG 7)

1 (to allocate billing for “locally” rated traffic and “intraLATA Toll” traffic) and on the
2 FGD trunks (to allocate billing for “InterLATA interstate” and “InterLATA
3 intrastate”).

4 **Q. WHY DOES QWEST OPPOSE LEVEL 3’S PROPOSAL TO USE BILLING**
5 **FACTORS?**

6 **A.** Mr. Easton argues that Level 3’s proposal to use billing factors would not result in
7 accurate bills. His argument lacks rational foundation as the telecommunications
8 industry – and as I note above -- Qwest itself not only has used billing factors for
9 decades. Requiring separate trunk groups, as suggested by Qwest, results in a
10 deadweight economic loss to society.

11 **Q. IF BILLING ACCURACY IS AN ISSUE IN THIS PROCEEDING, WOULD**
12 **THAT SAME ISSUE BE PERTINENT FOR THE COMBINED TRAFFIC ON**
13 **FGD TRUNKS?**

14 **A.** Yes. Qwest is apparently concerned about incentives to misreport traffic since
15 different traffic is subject to different rates. If that were truly a concern, then Qwest
16 would not have allowed other CLECs to combine all traffic on FGD trunks. Qwest
17 allows other CLECs to combine all traffic on FGD trunks, so it is only fair to allow
18 Level 3 to combine all traffic on interconnection trunks.

19 **Q. DOES QWEST CURRENTLY USE BILLING FACTORS FOR SERVICES IN**
20 **IOWA?**

21 **A.** Yes. Qwest’s Iowa access tariff (Access Service Tariff; IA QC Tariff No. 4, Section
22 2.3.10) has “jurisdictional report requirements” that date back to 1985. In fact, those

1 requirements only require a “projected” percentage rounded to the nearest percent
2 that is updated quarterly.

3 **Q. WHAT IS LEVEL 3’S PROPOSAL FOR THE USE OF BILLING FACTORS?**

4 **A.** The billing factors would be based on actual traffic data and adjusted as new data
5 becomes available. Level 3 would provide updates for the factors quarterly or
6 perhaps more often. Level 3’s proposal is certainly preferable to forcing a carrier to
7 use FGD trunks in addition to interconnection trunks.

8 **Q. PLEASE SUMMARIZE YOUR POSITION ON COMBINING TRAFFIC ON**
9 **TRUNK GROUPS.**

10 **A.** Qwest and Level 3 agree that there is no technical reason that would prohibit Qwest
11 from combining all types of traffic on interconnection trunks. So the only issue to
12 resolve is whether it is more efficient to use billing factors or to force Level 3 to incur
13 the additional and unnecessary costs of the FGD trunks. Unless and until Qwest can
14 show that billing factors are not appropriate, there is no economic justification for
15 forcing these additional costs on Level 3. As such, the Commission should order
16 Qwest to route all traffic to the interconnection trunks and allow Level 3 to provide
17 billing factors that allow for the appropriate pricing of the traffic.

18

1 **ESP EXEMPTION**

2 **Q. MR. BROTHERSON ADDRESSES THE ESP EXEMPTION IN HIS**
3 **TESTIMONY AT PAGES 13 – 15. DO YOU AGREE WITH HIS**
4 **DISCUSSION?**

5 A. No. Mr. Brotherson is correct that the exemption has a long history, but his
6 interpretation of the exemption assumes that it was created solely for the benefit of
7 Qwest and that it applies solely according to a pre-Act view of the world. Qwest's
8 interpretation would force ISPs to purchase services only from ILECs since they
9 would be the only provider with facilities in every local calling area. This is
10 completely inconsistent with the wording of the exemption and with the pro-
11 competitive intent of the Act.

12 **Q. HAS THE PURPOSE OF THE EXEMPTION CHANGED SINCE ITS**
13 **INCEPTION?**

14 A. No. The ESP exemption is the cornerstone of the policy of the United States “to
15 promote the continued development of the Internet and other interactive computer
16 services and interactive media...[and] to preserve the vibrant and competitive free
17 market that presently exists for the Internet and other interactive computer services,
18 unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(1)-(2).

19 **Q. WHAT IS MR. BROTHERSON'S POSITION ON THIS EXEMPTION?**

20 A. Mr. Brotherson says the effect of the exemption is to allow ESPs to avoid access
21 charges when making calls within a local calling area. (Brotherson Direct at 20) This
22 makes no sense. If the ESP is making local calls, then access charges would not

1 apply in any case. In fact, the FCC has noted that access charges do not apply to ISPs
2 providing what appear to be long distance calls. As the FCC noted there are
3 exceptions, "...(*e.g.*, long-distance calls handled by ISPs using IP telephony are
4 generally exempt from access charges under the enhanced service provider (ESP)
5 exemption)." ¹⁰ Using Qwest's application of the exemption, ESPs would be exempt
6 from access charges for local calls and would pay access charges for calls outside the
7 local calling area; in effect, Qwest's application of the exemption renders it useless.

8 **Q. WHAT IS YOUR INTERPRETATION OF THE ESP EXEMPTION?**

9 **A.** ESPs – including ISPs – are treated as end users, rather than carriers, for purposes of
10 the FCC's interstate access charges. ISPs are allowed to purchase their services from
11 local tariffs and are not subject to access charges. As such, ESPs are "exempt" from
12 access charges, and obtain service from their local telephone companies under
13 intrastate local tariffs.¹¹

14 **Q. MR. BROTHERSON STATES THAT QWEST'S LANGUAGE IS ESSENTIAL**
15 **TO AVOID ESPS FROM PROVIDING CALLS "...TO ANOTHER LCA IN**

¹⁰ See, *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92; Notice of Proposed Rulemaking; Released April 27, 2001; at para. 6. See, also, the *ISP Remand Order* at para. 60.

¹¹ See *MTS and WATS Market Structure Order*, 97 FCC 2d at 715 (ESPs have been paying local business service rates for their interstate access and would experience rate shock that could affect their viability if full access charges were instead applied); see also *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2633 (1988) (*ESP Exemption Order*) ("the imposition of access charges at this time is not appropriate and could cause such disruption in this industry segment that provision of enhanced services to the public might be impaired"); *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 16133 (1997) (*1997 Access Charge Reform Order*), *aff'd*, *Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998 ("[m]aintaining the existing pricing structure ... avoids disrupting the still-evolving information services industry.")).

1 **THE LATA, TO ANOTHER LATA, TO ANOTHER STATE, OR TO**
2 **ANOTHER COUNTRY...” (BROTHERSON DIRECT AT 20) IS THAT A**
3 **RELEVANT CONCERN?**

4 **A.** No. It is commonly recognized that ESPs and ISPs provide services that cross local
5 calling boundaries, LATA boundaries and even state boundaries. The FCC has
6 recognized that since the inception of the ESP exemption. For instance, the FCC
7 stated in 1997 that, “ISPs may pay business line rates and the appropriate subscriber
8 line charge, rather than interstate access rates, even for calls that appear to traverse
9 state boundaries.”¹²

10 **Q. AT PAGES 20 AND 21 OF HIS TESTIMONY MR. BROTHERSON STATES**
11 **THAT LEVEL 3’S INTERPRETATION OF THE ESP EXEMPTION WOULD**
12 **“...GIVE IT FREE ACCESS TO QWEST’S ENTIRE NETWORK**
13 **ESSENTIALLY FREE OF CHARGE TO TERMINATE IXC TRAFFIC.” IS**
14 **THAT A CORRECT STATEMENT?**

15 **A.** No. Qwest’s only responsibility is to route Qwest originated traffic to the POI for
16 termination by Level 3. Level 3 has agreements with IXCs such that they do pay
17 access charges for IXC traffic. As it has stated repeatedly, Level 3 is willing to pay
18 access charges for IXC traffic.

19 **Q. FROM AN ECONOMIC PERSPECTIVE, WHAT WOULD BE THE IMPACT**
20 **OF QWEST’S INTERPRETATION OF THE ESP EXEMPTION?**

¹² *Id.* at para. 342.

1 A. Qwest's interpretation would not only eliminate the intended benefits of the
2 exemption, but would actually force ESPs to deploy facilities in every local calling
3 area in the nation. As with the single POI discussed above, forcing competitors to
4 duplicate decades-old network architectures according to the retail designs of the
5 incumbent (which retail regulation the incumbent is only partially subjected to) is
6 ridiculous where a state seeks promotion of effective competition. The FCC never
7 intended this result nor should any state commission. Instead, ESPs should be able to
8 purchase local services from LECs without paying access charges and without
9 placing equipment (a VoIP POP per Brotherson's LBB1) in every local calling area.
10 Qwest's proposal disadvantages Level 3 and ESPs, and provides a distinct advantage
11 to Qwest's affiliates who provide similar services.

12 **Q. HOW WOULD QWEST'S POSITION BENEFIT QWEST AND ITS**
13 **AFFILIATES?**

14 A. Under Qwest's proposed language, there would have to be a VoIP POP in every local
15 calling area where a call was originated; or, the called and calling parties would have
16 to be physically located within the same local calling area. Assuming Qwest could
17 make such a determination, the only party that could comply with this proposal would
18 be Qwest. Other parties would have to essentially duplicate Qwest's network by
19 placing facilities in every Qwest local calling area. What this means in simplest
20 terms is that only an ILEC would benefit from the ESP exemption and all other
21 providers would not only have to forfeit intercarrier compensation, but would have to
22 pay access charges as well. Not only would such a result be contrary to the Act's

1 goal of creating competition, but it would be contrary to the fundamental purpose of
2 the ESP exemption. If Qwest's language were adopted, ISPs would only purchase
3 services from ILECs – since CLEC service would have access charges on top of the
4 actual cost of providing service. Qwest's position is unreasonable, anticompetitive
5 and should be rejected.

6 **VNXX TRAFFIC**

7 **Q. MR. BROTHERSON SPENDS CONSIDERABLE TIME IN HIS TESTMONY**
8 **ADDRESSING VNXX TRAFFIC. PLEASE COMMENT.**

9 **A.** Qwest evidently considers VNXX traffic to be an improper scheme to convert toll
10 calls to local calls. (Brotherson Direct at 41) But this service has been around for
11 decades and it provides an important service to consumers and especially to the ISP
12 industry. Qwest is offering services that provide the very same functionality, so it
13 must recognize the demand and benefits of such an offering. In response to Level 3
14 Request No. 01-025, Qwest indicated that it does offer FX service in Iowa.

15 **Q. AT PAGE 41 OF HIS TESTIMONY MR. BROTHERSON STATES THAT**
16 **“...VNXX IS AN ARRANGEMENT THAT PROVIDES THE**
17 **FUNCTIONALITY OF TOLL OF 8XX SERVICE, BUT AT NO EXTRA**
18 **CHARGE.” IS THAT CORRECT?**

19 **A.** No. From the consumer's perspective VNXX, FX and 800 services offer similar
20 results – dial-up access to the Internet without the imposition of additional per minute
21 of use charges. But the similarity ends there. Mr. Brotherson is wrong to suggest that

1 Level 3 is providing toll or 8XX functionality. Toll calls and 8XX calls use the
2 familiar 1+ dialing pattern and consumers expect the calls to be routed to an IXC of
3 their choosing for completion. They also know, because of the 1+ dialing, that they
4 will pay toll charges for the call. VNXX calls are locally dialed calls, without the use
5 of the 1+ dialing pattern and without the services of an IXC. In other words, the so
6 called "VNXX" which is nothing more than an ILEC invented term that attempts to
7 pull competitors back into the ILEC cost structures and retail offerings, makes no use
8 of the interexchange carrier access network. Mr. Ducloo explains in great detail why
9 8XX services are not similar to VNXX calls in his rebuttal.

10 **Q. AT PAGE 51 OF HIS TESTMONY, MR. BROTHERSON STATES THAT**
11 **"LEVEL 3 WANTS THE CALL ROUTED OVER THE PSTN, BUT FEELS**
12 **NO RESPONSIBILITY FOR PROVIDING THE TRANSPORT TO THE**
13 **DISTANT LOCATION." IS THAT A CORRECT STATEMENT?**

14 **A.** No. Level 3 is completely responsible for the termination of the call regardless of the
15 location of the Level 3 subscriber. All Qwest is required to do is to deliver the call to
16 the POI. Mr. Brotherson's statement completely misstates the way these calls are
17 routed. He suggests that Level 3 uses Qwest's "toll network", and that is likewise
18 incorrect. It is Level 3 – not Qwest – that is transporting these "Qwest originated"
19 calls to their destination.

20 **Q. MR. BROTHERSON SAYS THERE IS NO EXTRA CHARGE FOR THE**
21 **VNXX CALL. IS THAT CORRECT?**

1 A. No. From the perspective of the Qwest customer, the "VNXX" call is no different
2 from any other locally dialed call and no per minute of use charges are imposed upon
3 the Qwest end user, unlike a 1+ call to an IXC or 8XX service. From the perspective
4 of Qwest, the VNXX call imposes no additional costs. From Level 3's perspective,
5 the call is picked up at the POI and delivered over Level 3's network to its customers.
6 Level 3 imposes no additional charge to Level 3's customers for these calls, but even
7 if it did, such fact would not convert the call to a "toll" call nor would it impose any
8 additional costs upon Qwest.

9 **Q. AT PAGES 40 THROUGH 43, MR. BROTHERSON DISCUSSES HIS**
10 **UNDERSTANDING OF VNXX AND THE USE OF NUMBERING CODES.**
11 **AT PAGE 43 HE STATES THAT THIS "...IS AN UNINTENDED AND**
12 **INAPPROPRIATE USE OF THE ASSIGNED NXX." DO YOU AGREE?**

13 A. No. Nor is Mr. Brotherson able to cite to any rules which support his proposition.
14 Rather, he mixes retail regulation with interconnection requirements in ways that are
15 enormously beneficial to Qwest resulting in windfall profits, but cites to nothing that
16 would require interconnecting carriers to mimic ILEC architecture for purposes of
17 routing locally dialed calls to the parties' single point of interconnection within the
18 LATA. Moreover, based upon my review of carrier offerings throughout the
19 industry, the use of VNXX codes is not only common but intended, as previously
20 indicated. To find otherwise would impose the exact kinds of regulatory and
21 economic constraints upon competitors that the FCC and state commissions
22 nationwide intend to lift. Thus the issue of "physical location of the end user" is a red

1 herring developed by an incumbent wireline provider seeking desperately to protect
2 toll revenues in an age where intermodal competition means competing upon the
3 basis of the best technology without the constraints of economic regulation common
4 in a period of single technology monopoly regulation.

5 **Q. DO THE CODE ASSIGNMENT GUIDELINES ALLOW FOR VNXX OR FX**
6 **NUMBERS TO BE ASSIGNED?**

7 A. Yes. In fact Section 2.14 of the Numbering Guidelines specifically identifies foreign
8 exchange services as being eligible for number assignment:

9 It is assumed from a wireline perspective that CO Codes/blocks
10 allocated to a Wireline Service Provider are to be utilized to provide
11 service to a customer's premise physically located in the same rate
12 center that the CO Codes/blocks are assigned. **Exceptions exist, for**
13 **example tariffed services such as foreign exchange service.**¹³
14 (emphasis added)
15

16 If it were improper or a violation of the guidelines to use virtual NXX codes then all
17 ILECs currently providing FX and FX-type services would be in violation today.

18 **Q. MR. BROTHERSON STATES THAT "...LEVEL 3 WANTS TO SHIFT ALL**
19 **OF THE COSTS OF THIS ARRANGEMENT TO QWEST." (BROTHERSON**
20 **DIRECT AT 46) IS THAT A CORRECT STATEMENT?**

21 A. No. There is no additional cost for VNXX calls over and above the cost for a
22 traditional local call. Qwest's obligations and costs are the same in delivering a call
23 originated by one of its customers, regardless of whether the call terminates at a so-

¹³ Alliance for Telecommunications Industry Solutions; Sponsor of Industry Numbering Committee; Central Code (NXX) Assignment Guidelines; Released May 28, 2004; hereinafter referred to as "Numbering Guidelines".

1 called "virtual" or "physical" NXX behind the CLEC switch. Qwest systems and
2 network route these calls in exactly the same way they route other local calls. In
3 response to Level 3 Request No. 01-024, Qwest stated in pertinent part, "The costs
4 Qwest incurs do not vary based upon the physical location of the Level 3 customer."

5 It is clear that Level 3 is providing a service to Qwest in terminating the traffic
6 originated by Qwest customers. If Level 3 or some other provider did not terminate
7 those calls, Qwest would need to deploy facilities and capacity sufficient to terminate
8 those calls. As such, Qwest should be economically indifferent as to whether it pays
9 Level 3 for terminating those calls, or whether it transports and terminates the traffic
10 itself.

11 **Q. DOES QWEST OFFER SERVICES OTHER THAN FX AND WHOLESALE**
12 **DIAL THAT WOULD ENABLE A CUSTOMER PHYSICALLY LOCATED IN**
13 **THE DES MOINES LOCAL CALLING AREA TO HAVE A TELEPHONE**
14 **NUMBER IN A DISTANT QWEST EXCHANGE, SO THAT CALLS TO AND**
15 **FROM THAT PERSON BY LOCAL SUBSCRIBERS IN THE DISTANT**
16 **EXCHANGE WOULD BE TREATED AS LOCAL CALLS.? (BROTHERSON**
17 **DIRECT AT 46)**

18 **A.** Yes. In my direct, I noted that Qwest offers a service called OneFlex™ which
19 permits subscribers to have as many as five virtual numbers. (See Gates Direct at 54)
20 I called Qwest's customer service number (1-866-283-0043) to discuss the
21 characteristics and capabilities of this service. The customer service representative
22 (Lisa) was quick to tell me that a subscriber can get up to five virtual numbers of his

1 or her choice so friends and relatives can call without toll charges. I asked her if I
2 could get a local number in Bend, Oregon, and I was told that I could. When I asked
3 how the system works, she said I would be assigned a local number for Bend, Oregon
4 and when my Mother in Bend dials that number she will be connected to me in
5 Denver on a local basis with no toll charges. On Qwest's website, it describes the
6 virtual numbers as follows:

7 Virtual Numbers are alias phone numbers that can be associated with
8 your OneFlex™ phone number. Your friends and family can dial your
9 Virtual phone number and avoid incurring long-distance charges.
10 For example, if you live in Denver and your primary # is 303.xxx.xxxx
11 and your family lives in Omaha, your family has to call long-distance.
12 With OneFlex, you can get a virtual phone number assigned to your
13 account with an Omaha area code, so your family doesn't have to pay
14 long-distance charges.

15 You can have up to 5 Virtual Phone Numbers attached to one primary
16 OneFlex phone number.

17
18 As such, Qwest is selling a service that does exactly what Level 3's service
19 accomplishes – provides a virtual presence for a customer that does not have a
20 physical presence in the exchange. It is disingenuous for Qwest to object to Level 3's
21 service when it offers the same capability to its customers.

22 **Q. ONEFLEX™ IS A VOIP PRODUCT, CORRECT?**

23 **A.** Yes. But the point is the same; whether it's an FX service, VNXX service or a VoIP
24 service, the consumer is able to purchase a virtual presence in an exchange where he
25 or she has no physical presence. This is the purpose of Level 3's proposed language
26 regarding geographically independent telephone numbers. Mr. Brotherson's

1 statement that “ISP, VoIP or circuit based VNXX calls do not change a toll call into a
2 local call” evidently only applies to Level 3 services and not to Qwest services.
3 (Brotherson Direct at 49)

4 **Q. DOES QWEST HAVE FACILITIES IN EVERY LOCAL CALLING AREA**
5 **WHERE THEY OFFER VIRTUAL NUMBERS?**

6 **A.** I don’t know. But even if it did, it would be because of its historical network
7 development, not because of a technical necessity. Any ruling by this Commission
8 on VNXX and ISP-bound traffic should be technologically and competitively neutral.
9 A ruling requiring physical facilities in every local calling area is not technologically
10 or competitively neutral in that it reflects only Qwest’s network topology.

11 **Q. DOES QWEST’S WHOLESALE DIAL SERVICE PROVIDE LOCAL**
12 **NUMBERS FOR ACCESSING THE INTERNET ON A DIAL-UP BASIS?**

13 **A.** Yes, it does. Further, one of the benefits Qwest identifies for its Wholesale Dial
14 customers is that the customer “Incurs no cost of building and maintaining a dial
15 network” and “Can reduce substantial costs associated with network build-out,
16 operations, maintenance and monitoring.”¹⁴

17 **Q. IS MR. BROTHERSON CORRECT TO STATE THAT LEVEL 3’S**
18 **LANGUAGE WOULD CHANGE THE COMMISSION’S DEFINED LOCAL**
19 **CALLING AREAS?**

¹⁴ See Qwest’s Website for Large Business Internet Solutions;
http://www.qwest.com/pcat/large_business/product/1,1016,2098_4_28,00.html

1 A. No. Nothing in Level 3's proposed language would change the Commission's
2 defined local calling areas. Level 3 assigns numbers associated with local calling
3 areas for its customers. That assignment process does nothing to change the
4 established boundaries of the local calling areas. If that were true, then Qwest's
5 foreign exchange service has been guilty of changing Commission defined local
6 calling areas since at least 1954.

7 **Q. MR. BROTHERSON RAISES CONCERNS ABOUT NUMBERING**
8 **RESOURCES. DOES VNXX IMPACT THE NUMBERING RESOURCES**
9 **ANY DIFFERENTLY THAN OTHER SERVICES?**

10 A. No. The Commission has given Level 3 authority to get numbers for its VoIP
11 services, and those same number blocks can be used to offer VNXX services.
12 Offering additional services allows Level 3 to make even more efficient use of the
13 number blocks.

14 **Q. IS NUMBER EXHAUST A PROBLEM IN THE QWEST REGION?**

15 A. No. As of December 31, 2004, 67 percent of the numbers available in Iowa were
16 available for assignment.¹⁵ In fact, only 1.8 percent of the number blocks are pooled
17 in Iowa, indicating that more efficient utilization could occur with additional
18 pooling.¹⁶ Thousands block number pooling has made it unnecessary to distribute
19 nearly 153 million telephone numbers. CLECs are increasing their efficiency in
20 number utilization, while ILECs are decreasing. The overall utilization rate for

¹⁵ See FCC Industry Analysis and Technology Division Report entitled, "Numbering Resource Utilization in the United States as of December 31, 2004." (*Number Utilization Report*) Table 4.

¹⁶ Id. at Table 8.

1 ILECs was 53.5 percent, down from 60.3 percent six months before. The overall
2 utilization for CLECs was 16.4 percent, up from 14.9 percent six months before.¹⁷

3 **Q. MR. BROTHERRSON SUGGESTS THAT LEVEL 3'S USE OF NUMBERS**
4 **THAT ARE NOT ASSOCIATED WITH A PHYSICAL LOCATION OF A**
5 **CUSTOMER IS SOMEHOW IMPROPER. DO YOU AGREE?**

6 **A.** No. As noted above, this type of number assignment is common and accepted. The
7 FCC's Number Utilization Report states, "Carriers use other types of non-geographic
8 numbering resources as well: millions of numbers are used to provide toll-free
9 services using non-geographic area codes such as 800, 888, 877 and 866."¹⁸ Other
10 non geographic numbers include 500 and 900 area codes. Area code 500 is used for
11 "follow me" service and area code 900 is used for information services. Millions of
12 wireless numbers are also assigned without reference to geographic location. The
13 fact that a few numbers are also used for VNXX applications should not be of
14 concern to NANPA or the Commission.

15 **Q. ARE CARRIERS RETURNING NUMBERS TO THE ADMINISTRATOR?**

16 **A.** Yes. In the first half of 2004, carriers returned 5.1 million telephone numbers to the
17 numbering administrator. In the second half of 2004, carriers returned 4.8 million
18 telephone numbers to the NANPA.¹⁹

17 Id. at page 2.

18 Id. at page 5.

19 Id. at page 3.

1 **Q. PLEASE SUMMARIZE YOUR POSITION ON THE ECONOMIC IMPACT**
2 **OF QWEST'S POSITIONS ON VNXX AND OTHER IP-ENABLED**
3 **SERVICES?**

4 **A.** Qwest's positions that require a physical presence (i.e., VoIP POP) or a call definition
5 that is based on the physical location of the calling and called parties, are a fabrication
6 designed to accommodate it's deployed network, not an efficient forward looking
7 network. The physical presence requirement would result in uneconomic duplication
8 of the Qwest network design. The requirement for physical locations of the calling
9 and called parties has **never** been an industry standard and is being used by Qwest to
10 redefine local calling, for the single purpose of denying competitors compensation
11 for terminating calls originated by Qwest customers. Not only do these positions
12 deny compensation, but they impose unwarranted costs on Qwest's competitors and
13 harm the efficient operation of the market. Qwest's positions should be rejected.

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

15 **A.** Yes, it does.

EXHIBIT TJG-7

Arizona
Docket No. T-01051B-05-0350 and
T-03654A-05-0350
L3C 01-049

INTERVENOR: Level 3 Communications, LLC

REQUEST NO: 049

Please admit that Qwest currently has interconnection agreements with one or more CLECs in Arizona under which those CLECs are permitted to carry mixed intraLATA interexchange, and interLATA interexchange traffic on the same trunk groups. If your answer is anything other than an unqualified admission, please describe in detail your qualification or denial, and provide any information or evidence which supports your qualification or denial.

RESPONSE:

Admit. Qwest currently has interconnection agreements with one or more CLECs in Arizona under which those CLECs are permitted to carry mixed intraLATA interexchange, and interLATA interexchange traffic. That traffic, however, is transported on the same Feature Group D trunk groups, and not on Local Interconnection Service (LIS) trunks.