



BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
CHAIRMAN
MARC SPITZER
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER
MIKE GLEASON
COMMISSIONER
KRISTIN MAYES
COMMISSIONER

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

Docket Nos. T-03654A-~~00~~⁶⁵-0350
T-01051B-~~00~~⁶⁵-0350

NOTICE OF FILING REBUTTAL TESTIMONY

Qwest Corporation files herewith its Rebuttal Testimony of Philip Linse, William R. Easton and Larry B. Brotherson, in the above-referenced matter.

DATED: August 15, 2005.

QWEST CORPORATION

By:


FENNEMORE CRAIG, P.C.
Timothy Berg
Theresa Dwyer
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012

PERKINS COIE
John M. Devaney
Mary Rose Hughes
607 Fourteenth Street, N.W.
Suite 800
Washington, D.C. 20005-2011

Attorneys for Qwest Corporation

1 ORIGINAL and 13 copies hand-delivered
2 for filing this 15th day of August, 2005, to:

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

7 COPY of the foregoing hand delivered
8 this 15th day of August, 2005, to:

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

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

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

25 Copy of the foregoing mailed and emailed
26 this 15th day of August, 2005, to:

Thomas H. Campbell
Michael T. Hallam
LEWIS AND ROCA LLP
40 N. Central Avenue
Phoenix, AZ 85004
Email: tcampbel@lrlaw.com
mhallam@lrlaw.com

Henry T. Kelley
Joseph E. Donovan
Scott A. Kassman
Kelley, Drye & Warren, LLP
333 W. Wacker Drive
Chicago, IL 60606
Email: HKelly@KelleyDrye.com
JDonovan@KelleyDrye.com

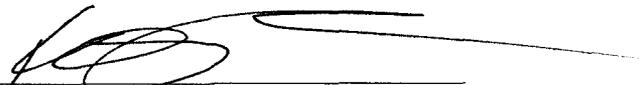
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21
22
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24
25
26

SKassman@KelleyDrye.com

Christopher W. Savage
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Avenue, NW
Washington, D.C. 20006
Email: csavage@crblaw.com

Richard E. Thayer, Esq.
Director – Intercarrier Policy
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
Email: rick.thayer@level3.com

Erik Cecil, Regulatory Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
Email: erik.cecil@level3.com



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Rebuttal Testimony
Of Philip Linse

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER

Chairman

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

**Docket No. T-03654A-05-0350
T-01051B-05-0350**

REBUTTAL TESTIMONY OF PHILIP LINSE

ON BEHALF OF

QWEST CORPORATION

(Disputed Issue Nos. 1, 2, 3, 6, 8, AND 20)

August 15, 2005

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1 **I. IDENTIFICATION OF WITNESS**

2
3 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH**
4 **QWEST CORPORATION.**

5 A. My name is Philip Linse. My business address is 700 West Mineral Avenue, Littleton
6 Colorado. I am employed as Director – Technical Regulatory in the Network Policy
7 Organization. I am testifying on behalf of Qwest Corporation (“Qwest”).

8 **Q. ARE YOU THE SAME PHILIP LINSE THAT PROVIDED DIRECT TESTIMONY**
9 **IN THIS ARBITRATION?**

10 A. Yes I am.

11 **II. PURPOSE OF TESTIMONY**

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

13 A. The purpose of my testimony is to respond to the testimonies of Mr. Ducloo and Mr. Gates
14 with respect to technical matters related to certain disputed issue between the parties. My
15 testimony will address the following issues from the Matrix of Unresolved Issues filed by
16 Level 3 in this arbitration:

- 17 ▪ Issue 1: Costs of Interconnection
- 18 ▪ Issue 2: Combining Traffic on Interconnection Trunks
- 19 ▪ Issue 6: AMA and Switch Technology

1 ▪ Issue 8: Definition of Call Record

2 ▪ Issue 20: Signaling Parameters

3 In portions of my testimony that follow, where Level 3 proposes modifications to Qwest's
4 language, I have underlined the language Level 3 wishes to delete or add.

5 **III. DISPUTED ISSUE NO. 1: COSTS OF INTERCONNECTION**

6 **Issue No. 1A**

7 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 1A.**

8 A. Issue 1A involves disputed language regarding points of interconnection. Level 3
9 mischaracterizes the issue as having to do with its right to interconnect at a single point in
10 the LATA and Qwest's obligation on its side of the point of interconnection ("POI").
11 However, Qwest does not dispute that Level 3 can establish a single POI in a Qwest
12 LATA. The POI is not the real issue here. The real issue is whether Qwest should be
13 required to provide interconnection where it is not technically feasible or to provision/build
14 such transport facilities to Level 3 without compensation. My testimony will explain
15 where Level 3 concurs with Qwest, why this language is important from a technical
16 perspective, and why there is still dispute regarding this issue.

17 **Q. WHAT LANGUAGE DOES QWEST PROPOSE?**

18 A. Qwest proposes the following language, which is also found on page 65 of the ICA filed by
19 Qwest on June 7th, 2005.

1 7.1.1 This Section describes the Interconnection of Qwest's network and CLEC's
2 network for the purpose of exchanging Exchange Service (EAS/Local traffic), Exchange
3 Access (IntraLATA Toll carried solely by local exchange carriers), ISP-Bound traffic,
4 and Jointly Provided Switched Access (InterLATA and IntraLATA) traffic. Qwest will
5 provide Interconnection at any Technically Feasible point within its network.
6 Interconnection, which Qwest currently names "Local Interconnection Service" (LIS), is
7 provided for the purpose of connecting End Office Switches to End Office Switches or
8 End Office Switches to local or Access Tandem Switches for the exchange of Exchange
9 Service (EAS/Local traffic); or End Office Switches to Access Tandem Switches for the
10 exchange of Exchange Access (IntraLATA Toll carried solely by local exchange carriers)
11 or Jointly Provided Switched Access traffic. Qwest Tandem Switch to CLEC Tandem
12 Switch connections will be provided where Technically Feasible. New or continued
13 Qwest local Tandem Switch to Qwest Access Tandem Switch and Qwest Access Tandem
14 Switch to Qwest Access Tandem Switch connections are not required where Qwest can
15 demonstrate that such connections present a risk of Switch exhaust and that Qwest does
16 not make similar use of its network to transport the local calls of its own or any
17 Affiliate's End User Customers.

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

19 A. Level 3 proposes the following:

20 7.1.1 This Section describes the Interconnection of Qwest's network and
21 CLEC's network for the purpose of exchanging Telecommunications Including
22 Telephone Exchange Service And Exchange Access traffic. Qwest will provide
23 Interconnection at any Technically Feasible point within its network.

24
25 7.1.1.1 **Establishment of SPOI:** Qwest agrees to provide CLEC a Single Point of
26 Interconnection (SPOI) in each Local Access Transport Area (LATA) for the exchange of
27 all telecommunications traffic. The SPOI may be established at any mutually agreeable
28 location within the LATA, or, at Level 3's sole option, at any technically feasible point
29 on Qwest's network. Technically feasible points include but are not limited to Qwest's
30 end offices, access tandem, and local tandem offices.

31
32 7.1.1.2 **Cost Responsibility.** Each Party is responsible for constructing,
33 maintaining, and operating all facilities on its side of the SPOI, subject only to the
34 payment of intercarrier compensation in accordance with Applicable Law. In accordance
35 with FCC Rule 51.703(b), neither Party may assess any charges on the other Party for the
36 origination of any telecommunications delivered to the other Party at the SPOI, except for

1 Telephone Toll Service traffic outbound from one Party to the other when the other Party
2 is acting in the capacity of a provider of Telephone Toll Service, to which originating
3 access charges properly apply.

4 7.1.1.3 Facilities included/transmission rates. Each SPOI to be established under the
5 terms of this Attachment shall be deemed to include any and all facilities necessary for
6 the exchange of traffic between Qwest's and Level 3's respective networks within a
7 LATA. Each Party may use an Entrance Facility (EF), Expanded Interconnect Channel
8 Termination (EICT), or Mid Span Meet Point of Interconnection (POI) and/or Direct
9 Trunked Transport (DTT) at DS1, DS3 , OC3 or higher transmission rates as, in that
10 Party's reasonable judgment, is appropriate in light of the actual and anticipated volume
11 of traffic to be exchanged. If one Party seeks to establish a higher transmission rate
12 facility than the other Party would establish, the other Party shall nonetheless reasonably
13 accommodate the Party's decision to use higher transmission rate facilities.

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

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

28
29 **Q. THROUGHOUT HIS TESTIMONY MR. GATES SUGGESTS THAT QWEST**
30 **REQUIRES LEVEL 3 TO ESTABLISH MULTIPLE POIS PER LATA. DOES**
31 **QWEST REQUIRE MULTIPLE POIS PER LATA?**

32 **A.** No. Qwest's proposed language does not force Level 3 to establish more than a single POI
33 per LATA.

1 **Q. MR. GATES ALSO SUGGESTS THAT QWEST WISHES TO MAKE LEVEL 3**
2 **DUPLICATE QWEST'S NETWORK. DOES QWEST'S PROPOSED LANGUAGE**
3 **FORCE LEVEL 3 TO DUPLICATE QWEST'S NETWORK?**

4 A. No. Qwest's proposed language allows Level 3 to establish a single POI in each LATA
5 and provides Level 3 with multiple options to interconnect the Level 3 network with the
6 Qwest network. Level 3's POI may be located at a Point of Presence ("POP") location
7 where its equipment is located, collocated within Qwest's Central office, or at a mid-way
8 point between Level 3's POP and Qwest's central office. Level 3 can provision its own
9 interconnection facilities through Collocation in a Qwest central office or have Qwest
10 provision entrance facilities to Level 3's POI located at its POP. A mid-span meet-point
11 option is also available where Qwest and Level 3 both build facilities to a meet-point near
12 the halfway point between Level 3's Point of Presence and Qwest's network. None of
13 these interconnection options force Level 3 to duplicate Qwest's network.

14 **Q. IN HIS TESTIMONY, MR. GATES SUGGESTS THAT QWEST IS REQUIRING**
15 **LEVEL 3 TO INTERCONNECT AT EACH AND EVERY SWITCH IN THE**
16 **QWEST NETWORK. IS THAT AN ACCURATE DESCRIPTION OF QWEST'S**
17 **POSITION?**

18 A. No. As I explained in my direct testimony, Level 3 has several options for interconnection.
19 Single Point of Presence ("SPOP") is a Qwest wholesale product that provides Level 3 with
20 LIS trunking that allows as few as one trunk connection with Qwest's access tandem for
21 the delivery of local traffic. SPOP is provided over any of the interconnection facility

1 options my testimony describes above. This type of interconnection trunking has been
2 offered to and used by CLECs for several years.

3 **Q. IN HIS DIRECT TESTIMONY MR. GATES MISCHARACTERIZES A POI AS**
4 **BOTH THE PHYSICAL AND FINANCIAL DEMARCATION POINT. PLEASE**
5 **EXPLAIN THE DIFFERENCE BETWEEN A FINANCIAL DEMARCATION**
6 **POINT AND A PHYSICAL DEMARCATION POINT.**

7 A. A financial demarcation point is where financial responsibilities for network facilities are
8 divided. As I explained in my direct testimony, a POI is a physical demarcation point
9 between the Level 3 and Qwest networks. Although, the POI is the physical location
10 where networks interconnect, the financial responsibility of the interconnection facilities is
11 shared based upon the interconnection option chosen.

12 **Q. IS LEVEL 3 OBJECTING TO ESTABLISHING INTERCONNECTION WITH**
13 **MULTIPLE SWITCHES IN QWEST'S NETWORK?**

14 A. No. Mr. Ducloo states that Level 3 is willing to establish interconnection with Qwest's
15 local tandem for delivery of local traffic as well as with end office switches when traffic
16 volumes justify such direct trunking.

17 **Q. WHY SHOULD QWEST'S PROPOSED LANGUAGE BE ADOPTED?**

18 A. Qwest's language more clearly and appropriately distributes the cost of interconnection.
19 As Mr. Ducloo states:

20 As a contractual matter, the parties agree that the cost of facilities used to connect
21 their networks will be split based on relative use, so that cost responsibility

1 follows in proportion to which party originates which portion of traffic on the
2 affected facilities.¹

3 Level 3's proposed language does not reflect the testimony that has been given by Mr.
4 Ducloo. Level 3's proposed language does not even discuss relative use. Accordingly,
5 Qwest's language must be adopted since it is the only language setting forth the terms of
6 relative use.

7 **Issue No. 1B**

8 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 1B.**

9 A. Issue 1B involves disputed language in which Level 3 incorrectly proposes methods of
10 establishing a POI that are actually methods of interconnection.

11 **Q. WHAT LANGUAGE DOES QWEST PROPOSE?**

12 A. Qwest proposes the following, as found on page 67 of the ICA:

13 **7.1.2 Methods of Interconnection**

14 The Parties will negotiate the facilities arrangement used to interconnect their respective
15 networks. CLEC shall establish at least one (1) physical Point of Interconnection in
16 Qwest territory in each LATA CLEC has local Customers. The Parties shall establish,
17 through negotiations, at least one (1) of the following Interconnection arrangements, at
18 any Technically Feasible point: (1) a DS1 or DS3 Qwest provided facility; (2)
19 Collocation; (3) negotiated Mid-Span Meet POI facilities; or (4) other Technically
20 Feasible methods of Interconnection, such as an OCn Qwest provided facility, via the
21 Bona Fide Request (BFR) process unless a particular arrangement has been previously
22 provided to a third party, or is offered by Qwest as a product. OCn Qwest provided
23 facilities may be ordered through FCC Tariff No. 1.

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

25 A. Level 3 proposes the following:

¹ Direct testimony of Mr. Ducloo Page 7 Line 18 through Page 8 Line 2

1 **7.1.2 Methods of Interconnection**

2 CLEC may establish a POI through: (1) a collocation site established by CLEC at a
3 Qwest wire center, (2) a collocation site established by a third party at Qwest wire center,
4 or (3) transport (and entrance facilities where applicable).

5 CLEC shall establish one POI at any technically feasible point on Qwest's network
6 within each LATA in which CLEC desires to exchange traffic directly with Qwest by any
7 of the following methods:

- 8 1. a collocation site established by CLEC at a Qwest Wire Center,
- 9 2. a collocation site established by a third party at Qwest Wire Center, or;
- 10 3. transport (and entrance facilities where applicable) ordered and purchased
11 by CLEC from Qwest; or,
- 12 4. Fiber meet point.

13 CLEC shall establish one POI on Qwest's network in each LATA. POIs may be
14 established by CLEC through:

- 15 1. a collocation site established by CLEC at a Qwest Wire Center,
- 16 2. a collocation site established by a third party at Qwest Wire Center,
- 17 3. transport (and entrance facilities where applicable) ordered and purchased
18 by CLEC from Qwest at the applicable Qwest intrastate access rates and
19 charges; or,
- 20 4. Fiber meet point.

21 **Q. HAVE LEVEL 3'S WITNESSES ADDRESSED THE LANGUAGE SPECIFIC TO**
22 **THIS ISSUE?**

23 **A.** No. Level 3's witnesses do not specifically discuss either Level 3's proposed language or
24 Qwest's proposed language. Level 3's proposed language confuses the methods of
25 obtaining interconnection with establishment of its POI "within" Qwest's network. In
26 contrast, Qwest's proposed language appropriately explains how interconnection takes
27 place and describes the methods that may be used for interconnection.

1 **Q. WHAT ARE THE THREE TYPICAL ARRANGEMENTS FOR**
2 **INTERCONNECTION?**

3 A. I have attached exhibits PL 3, 4 and 5 which illustrate the options that Qwest currently
4 provides that enable Level 3 to interconnect its network with Qwest's network. As I have
5 explained in my direct testimony these methods include Collocation, Entrance Facilities,
6 and Mid-span Meet-point as well as any technically feasible method of interconnection.

7 **Q. ARE THESE METHODS OF INTERCONNECTION AVAILABLE TO LEVEL 3'S**
8 **SINGLE POI IN THE LATA?**

9 A. Yes. Each interconnection method may be used to interconnect Qwest's network with
10 Level 3's SPOI.

11 **Q. DOES QWEST REQUIRE LEVEL 3 TO PROVISION SEPARATE FACILITIES**
12 **TO ESTABLISH TRUNKING BETWEEN LEVEL 3'S POI AND QWEST'S END**
13 **OFFICES AS MR. DUCLOO CONTENDS IN HIS DIRECT TESTIMONY?**

14 A. Not at all. As I explained in my direct testimony, Qwest provides Direct Trunked
15 Transport ("DTT") so that Level 3 does not have to build separate facilities to Qwest's end
16 offices. Qwest's DTT product will provide Level 3 with the appropriate trunking capacity
17 so that Level 3 may establish interconnection trunking with Qwest's end offices as needed
18 by Level 3. DTT is provided to Level 3 using Qwest's existing facilities and can be
19 provisioned to Level 3's single POI in the LATA.

1 **Q. IS MR. GATES CORRECT WHEN HE STATES THAT EACH CARRIER IS**
2 **REALLY ONLY ABLE TO CONTROL THE COSTS AND ACTIVITIES ON ITS**
3 **OWN NETWORK AND NOT ON THE OTHER PARTY'S NETWORK?**

4 A. Absolutely not. Level 3's interconnection imposes costs on Qwest's network and requires
5 Qwest to undertake additional activities to manage the interconnection. Qwest is required
6 to build/provision interconnection facilities to Level 3's POI. Although these costs are
7 shared, there is no doubt that Qwest's costs are directly impacted by the CLEC that
8 requests interconnection. In addition, the ongoing management of that interconnection
9 imposes costs on Qwest's network. Forecasting and trunk monitoring are just two
10 additional activities that Qwest must take on when CLECs interconnect with Qwest. To
11 say that each carrier only controls the costs of its own network is wrong.

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

13 A. Qwest language more appropriately reflects the interconnection between Qwest's network
14 and Level 3's network. Unlike Level 3's language, Qwest's language does not confuse
15 what is required to create a POI with what is realistically required to interconnect two
16 networks.

17 **Issue No. 1F**

18 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 1F.**

19 A. Level 3 removes the language describing how Level 3 may interconnect at Qwest local and
20 access tandem switches. Level 3 also removes the requirement for Level 3 to establish
21 trunking as requested by Qwest where traffic volumes justify alternate trunking.

1 **Q. WHAT LANGUAGE IS QWEST PROPOSING?**

2 A. Qwest proposes the following, as found on page 80 of the ICA:

3 7.2.2.9.6 The Parties shall terminate Exchange Service (EAS/Local) traffic on
4 Tandem Switches or End Office Switches. CLEC may interconnect at either the Qwest
5 local tandem or the Qwest access tandem for the delivery of local exchange traffic.
6 When CLEC is interconnected at the access tandem and when there is a DS1 level of
7 traffic (512 BHCCS) over three (3) consecutive months between CLEC's Switch and a
8 Qwest End Office Switch, Qwest may request CLEC to order a direct trunk group to the
9 Qwest End Office Switch. CLEC shall comply with that request unless it can
10 demonstrate that such compliance will impose upon it a material adverse economic or
11 operations impact. Furthermore, Qwest may propose to provide Interconnection facilities
12 to the local Tandem Switches or End Office Switches served by the Access Tandem
13 Switch at the same cost to CLEC as Interconnection at the Access Tandem Switch. If
14 CLEC provides a written statement of its objections to a Qwest cost-equivalency
15 proposal, Qwest may require it only: (a) upon demonstrating that a failure to do so will
16 have a material adverse affect on the operation of its network and (b) upon a finding that
17 doing so will have no material adverse impact on the operation of CLEC, as compared
18 with Interconnection at such Access Tandem Switch.

19

20 **Q. WHAT LANGUAGE IS LEVEL 3 PROPOSING?**

21 A. Level 3 proposes the following:

22 7.2.2.9.6 When CLEC is interconnected at the access tandem and when there is a
23 DS1 level of traffic (512 BHCCS) over three (3) consecutive months between CLEC's
24 Switch and a Qwest End Office Switch, Qwest may request CLEC to order a direct trunk
25 group to the Qwest End Office Switch. Notwithstanding references to Qwest's ability to
26 requests that CLECs order direct trunk groups to the Qwest end office, nothing in this
27 agreement shall be construed to require CLEC to pay Qwest for any services or facilities
28 on Qwest's side of the POI in connection with the origination of traffic from Qwest to
29 CLEC; and nothing herein shall be construed to require CLEC to pay for any services or
30 facilities on Qwest's side of the POI in connection with the termination of traffic from
31 CLEC by Qwest, other than reciprocal compensation payments as provided in this
32 Agreement.

33

1 **Q. WHY IS QWEST OPPOSED TO THE LEVEL 3 LANGUAGE?**

2 A. As I explained in my direct testimony, Level 3 has removed the language that specifies
3 tandems and end offices as points where traffic is delivered. Level 3's proposed language
4 ignores the existing architecture of the public switched network and creates ambiguity that
5 may lead to later disputes because there are no other locations on Qwest's network where
6 traffic may be delivered.

7 **Q. DOES QWEST HAVE OTHER CONCERNS ABOUT LEVEL 3'S PROPOSED**
8 **LANGUAGE FOR SECTION 7.2.2.9.6?**

9 A. Yes. Although Level 3 also believes there is benefit in direct trunking, Level 3 holds to its
10 originally proposed language that removes the requirement to establish trunking to
11 subtending network switches when increases in traffic volumes justify the alternate
12 trunking. As discussed below, Level 3 admits to the benefits of direct trunking, yet still
13 proposes to remove the language that requires this fundamental network management and
14 maintenance process that benefits all interconnecting carriers (including Level 3).

15 **Q. WHY DO YOU SAY LEVEL 3'S TESTIMONY ACKNOWLEDGES THE**
16 **REASONABLENESS OF QWEST'S LANGUAGE THAT REQUIRES DIRECT**
17 **TRUNKING TO ALTERNATE SWITCHES WHEN TRAFFIC VOLUMES**
18 **JUSTIFY?**

19 A. The direct testimony of Mr. Ducloo explains that Level 3 sees the value in direct trunking
20 to alternate switches when traffic volumes justify. Mr. Ducloo states: "that when total
21 traffic between Level 3 and a particular Qwest end office switch reaches a certain

1 reasonable volume, we (Level 3) will establish a direct trunk group between that end office
2 and Level 3.” (Page 6 Lines 4-6) Mr. Ducloo also agrees on page 47 of his direct
3 testimony:

4 It is standard practice in the circuit-switched telephone industry to establish direct
5 trunks between switches when the level of traffic between them exceeds a certain
6 level. Given this, Level 3 is perfectly willing to work with Qwest to avoid the
7 problem of tandem overload by jointly engineering separate trunk groups that go
8 directly between Level 3 and those Qwest end offices with enough traffic to
9 justify the direct trunking. These are known in the industry as “Direct End Office
10 Trunks,” or DEOTs.

11 On page 48 of his testimony Mr. Ducloo states:

12 With DEOTs, even though the total number of trunks will be higher than would
13 be the case in a single massive trunk group, Qwest is able to avoid the use of
14 tandem switching and to cut down on the total number of trunk ports it has to use.
15 Level 3 is certainly willing to work with Qwest to permit Qwest to obtain those
16 network efficiencies.

17 In addition, Mr. Ducloo states on page 51:

18 What avoids exhausting Qwest’s tandem is establishing DEOTs to carry *all* the
19 traffic from Level 3 to a Qwest end office on an efficient basis. Level 3 is willing
20 to do this.

21 Finally Mr. Ducloo states on page 53:

22 “As I note elsewhere in my testimony, Level 3 is not averse to establishing
23 multiple physical points of interconnection in a LATA when *traffic levels*
24 (emphasis added) and other factors so warrant...”

25 Thus, Level 3 and Qwest agree on this issue. However, Level 3’s proposed language does
26 not capture their agreement.

1 **Q. HAS LEVEL 3 PROVIDED ANY EXPLANATION AS TO WHY LEVEL 3 HAS**
2 **REMOVED THE QWEST PROPOSED LANGUAGE THAT PROVIDES FOR THE**
3 **TERMINATION OF TRAFFIC AND INTERCONNECTION AT QWEST'S**
4 **TANDEMS AND END OFFICES?**

5 A. No. Level 3 has not provided any testimony explaining why Level 3 proposes to delete
6 Qwest's proposed language in section 7.2.2.9.6.

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

8 A. Qwest's language for issue 1F (section 7.2.2.9.6) should be adopted because it more
9 appropriately represents the positions of the parties as reflected in their respective direct
10 testimony.

11 **IV. DISPUTED ISSUES NO. 2A AND 2 B: ALL TRAFFIC ON**
12 **INTERCONNECTION TRUNKS**

13
14 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 2.**

15 A. Issue 2 concerns the types of traffic that may be combined over LIS trunks and whether
16 Qwest is entitled to compensation for the interconnection trunks it provides to Level 3.

17 **Q. WHAT LANGUAGE IS QWEST PROPOSING?**

18 A. Qwest is proposing the following language, as found on page 78 of the ICA:

19 7.2.2.9.3.1 Exchange Service (EAS/Local), ISP-Bound Traffic, IntraLATA LEC Toll,
20 VoIP traffic and Jointly Provided Switched Access (InterLATA and IntraLATA Toll
21 involving a third party IXC) may be combined in a single LIS trunk group or transmitted
22 on separate LIS trunk groups.

1 7.2.2.9.3.1.1 If CLEC utilizes trunking arrangements as described in Section
2 7.2.2.9.3.1, Exchange Service (EAS/Local) traffic shall not be combined with Switched
3 Access, not including Jointly Provided Switched Access, on the same trunk group, i.e.
4 Exchange Service (EAS/Local) traffic may not be combined with Switched Access
5 Feature Group D traffic to a Qwest Access Tandem Switch and/or End Office Switch.

6 7.2.2.9.3.2 CLEC may combine originating Exchange Service (EAS/Local) traffic,
7 ISP-Bound Traffic, IntraLATA LEC Toll, VoIP Traffic and Switched Access Feature
8 Group D traffic including Jointly Provided Switched Access traffic, on the same Feature
9 Group D trunk group.

10 7.2.2.9.3.2.1 CLEC shall provide to Qwest, each quarter, Percent Local Use (PLU)
11 factor(s) that can be verified with individual call detail records or the Parties may use call
12 records or mechanized jurisdictionalization using Calling Party Number (CPN)
13 information in lieu of PLU, if CPN is available. Where CLEC utilizes an affiliate's
14 Interexchange Carrier (IXC) Feature Group D trunks to deliver Exchange Service
15 (EAS/Local) traffic with interexchange Switched Access traffic to Qwest, Qwest shall
16 establish trunk group(s) to deliver Exchange Service (EAS/Local), Transit, and
17 IntraLATA LEC Toll to CLEC. Qwest will use or establish a POI for such trunk group
18 in accordance with Section 7.1.

19
20 **Q. WHAT LANGUAGE IS LEVEL 3 PROPOSING?**

21 **A.** Level 3 proposes the following language:

22 7.2.2.9.3.1 Where CLEC exchanges Telephone Exchange Service, Exchange Access
23 Service, Telephone Toll Service, and Information Services traffic with Qwest over a
24 single interconnection network, CLEC agrees to pay Qwest, on Qwest's side of the POI,
25 state or federally tariffed rates applicable to the facilities charges for InterLATA and/or
26 InterLATA traffic in proportion to the total amount of traffic exchanged over such
27 interconnection facility. Otherwise each party remains 100% responsible for the costs of
28 its interconnection facilities on its side of the POI. Thus, by way of illustration only,
29 where 20% of such traffic is interLATA (intrastate and interstate) and the remaining 80%
30 is Section 251(b)(5) Traffic, CLEC would pay Qwest an amount equal to 20% of the
31 applicable tariffed transport rate that would apply to a tariffed facility used solely for the
32 exchange of such access traffic for such traffic exchanged on Qwest's side of the POI
33 over a single interconnection trunk.

34 Except as expressly provided in Section 7.3.1.1.3, each party shall bear all costs of
35 interconnection on its side of the network in accordance with 47 C.F.R. § 51.703.
36 Accordingly, unless otherwise expressly authorized according to Section 7.3.1.1.3,

1 neither Party may charge the other (and neither Party shall have an obligation to pay) any
2 recurring and/or nonrecurring fees, charges or the like (including, without limitation, any
3 transport charges), associated with the exchange of any telecommunications traffic
4 including but not limited to Section 251(b)(5) Traffic on its side of the POI.

5 Each party is solely responsible for any and all costs arising from or related to
6 establishing and maintaining the interconnection trunks and facilities it uses to connect to
7 the POI. Thus, neither party shall require the other to bear any additional costs for the
8 establishment and operation of interconnection facilities that connect its network to its
9 side of the POI. If traffic is combined, Section 7.3.9 of this Agreement applies.

10 7.2.2.9.3.2 CLEC may combine Exchange Service (EAS/Local) traffic, ISP-Bound
11 Traffic, Exchange Access (IntraLATA Toll carried solely by Local Exchange Carriers),
12 VoIP Traffic and Switched Access Feature Group D traffic including Jointly Provided
13 Switched Access traffic, on the same Feature Group D trunk group or over the same
14 interconnection trunk groups as provided in Section 7.3.9.

15
16 **Q. HAS LEVEL 3 SPECIFICALLY ADDRESSED THE PROPOSED LANGUAGE**
17 **THAT IS IN DISPUTE WITH ISSUE NO. 2?**

18 A. No. Level 3's direct testimony never criticizes any specific Qwest language or even
19 explains its own specific language in any detail.

20 **Q. IS IT TRUE THAT QWEST WANTS LEVEL 3 TO PROVISION SEPARATE**
21 **TRUNK GROUPS AS STATED IN THE TESTIMONY OF MR. DUCLOO?**

22 A. No. In fact, Qwest has specifically proposed language (section 7.2.2.9.3.2) that allows
23 Level 3 to provision a single Feature Group D trunk group for the routing of access and
24 local traffic. Accordingly, Qwest is not an outlier on this issue as Mr. Ducloo portrays
25 Qwest to be.

1 **Q. IS MR. DUCLOO'S DIRECT TESTIMONY CORRECT WHERE HE CONCLUDES**
2 **THAT QWEST WOULD REQUIRE LEVEL 3 TO ESTABLISH SEPARATE**
3 **TRUNKS FOR IP-ENABLED TRAFFIC?**

4 A. No. Qwest's proposed language does not require Level 3 to establish separate trunks for
5 IP-enabled traffic.

6 **Q. MR. DUCLOO ANALOGIZES THE TELECOMMUNICATIONS NETWORK TO**
7 **A HIGHWAY AND EXPLAINS THAT IT WOULD BE INEFFICIENT TO BUILD**
8 **TWO HIGHWAYS NEXT TO EACH OTHER BOTH GOING TO THE SAME**
9 **PLACE. PLEASE COMMENT ON MR. DUCLOO'S ANALOGY.**

10 A. Although it may seem inefficient to build two highways going to the same place, this is
11 often done to provide people with transportation options. For example, there are often
12 separate toll and non-toll highways. The characteristics of these types of highways also
13 resemble the way the telecommunications network works.

14 A toll highway operator has a method of collecting usage charges that is not used by a
15 non-toll highway operator. This is similar to the relationship between the method for
16 collecting usage charges for switched access trunking and local trunking. Charges for
17 switched access trunking are accomplished through switched access billing. Qwest's local
18 trunking does not have this same capability. Level 3's proposal to route switched access
19 over local trunk groups creates a difficulty analogous to the collection of usage charges on
20 a non-toll highway. On a non-toll highway there are no toll booths and no people to take
21 and record the toll charges.

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Q. WOULD LEVEL 3 OBTAIN THE SAME TRUNK GROUP EFFICIENCIES BY ROUTING LOCAL TRAFFIC TO FGD TRUNK GROUPS?

A. Yes. Level 3 would experience the same trunk group efficiencies by routing its local traffic to Qwest over FGD trunking.

Q. ARE THERE CIRCUMSTANCES WHERE LEVEL 3 IS WILLING TO ESTABLISH FGD TRUNKING WITH QWEST?

A. Yes. Mr. Ducloo agrees that if Level 3 were to route its IXC traffic over LIS that third party LECs would receive inadequate information to render access bills. Mr. Ducloo's testimony agrees that Level 3 will send this traffic to Qwest's tandems where adequate recording for the third parties can be made. The recordings that Level 3 is referring to are the same recordings that are only provided via FGD trunking. Thus, because, Level 3 has agreed to use FGD trunking for the purposes of delivering this third party traffic, there would be no reason that Level 3 would have not to also route its local traffic to this same FGD trunking. Therefore, the Commission should adopt Qwest's proposed language that allows Level 3 to route local and access traffic over FGD trunking.

Q. DO THE DIRECT TESTIMONIES OF MR. DUCLOO AND MR. GATES INCORRECTLY SPECULATE AS TO QWEST'S ABILITY TO EFFICIENTLY MANAGE ITS NETWORK'S TRUNK CAPACITY?

A. Yes. The testimony of Mr. Ducloo and Mr. Gates inappropriately and incorrectly speculate that Qwest either over estimates network capacity demands or under estimates network

1 capacity demands, suggesting that Qwest does not efficiently manage its network. Mr.
2 Ducloo and Mr. Gates couldn't be further from the truth. Qwest has processes and
3 procedures to efficiently maintain network capacities for both wholesale and retail network
4 demand. In addition, Qwest has quarterly forecasting meetings with CLECs so that
5 network capacity can be made available or decommissioned in a timely manner.
6 Furthermore, Qwest collaborated with CLECs and state commissions to create
7 Performance Indicator Definitions ("PIDs") regarding the provisioning of LIS. For
8 example, the Ordering and Provisioning ("OP") PIDs provide measurement of Qwest's
9 ability to provision service in an efficient manner. Where PID Measurements are not met,
10 Qwest's Performance Assurance Plan ("PAP") triggers a self executing payment to CLECs
11 and/or State commissions.

12 **V. DISPUTED ISSUE NO. 3: VNXX TRAFFIC**

13
14 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 3B.**

15 A. Issue number 3B concerns the agreement's definition of VNXX traffic. My testimony will
16 reply to Level 3's testimony on this issue.

17 **Q. WHAT LANGUAGE IS QWEST PROPOSING?**

18 A. Qwest proposes the following, as found on page 32 of the ICA:

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

1 **Q. WHAT LANGUAGE IS LEVEL 3 PROPOSING?**

2 A. Level 3 proposes the following:

3 VNXX Traffic shall include the following:

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

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

32 **Circuit Switched VNXX traffic** is traditional “telecommunications services” associated
33 with legacy circuit switched telecommunications providers, most of which built their
34 networks under monopoly regulatory structures that evolved around the turn of the last
35 century. Under this scenario, costs are apportioned according to the belief that bandwidth
36 is scarce and transport expensive. The ILEC offers to a customer the ability to obtain a
37 “local” service (as defined in the ILEC’s retail tariff) by paying for dedicated transport
38 between the physical location of the customer and the physical location of the NPA-

1 NXX. Thus, this term entirely describes a service offered by ILECs, but which cannot be
2 offered by IP-based competitors as such networks do not dedicate facilities on an end-to-
3 end basis.

4 **Q. DID YOU ADDRESS VNXX IN YOUR DIRECT TESTIMONY?**

5 A. No. I am addressing VNXX here because of inconsistencies and inaccuracies in the
6 testimony filed by Level 3's witnesses.

7 **Q. MR. GATES EXPLAINS THAT ISPS PURCHASE SERVICES FROM CARRIERS**
8 **IN THE LOCAL CALLING AREAS WHERE THEY HAVE OR DESIRE**
9 **CUSTOMERS. DOES LEVEL 3 PROVIDE SERVICE TO ISPS IN THESE SAME**
10 **LOCAL CALLING AREAS?**

11 A. No. Level 3 does not, in most cases, provide services to its ISP customers within the local
12 calling areas that ISPs have or desire customers. By that I mean that Level 3 has no
13 physical presence (nor do its ISP customers) in many (probably the vast majority) of the
14 local calling areas where they purport to serve. Instead, Level 3 inappropriately assigns
15 numbers to its ISP customers that do not reflect the local calling area in which the ISP is
16 located, thereby allowing Level 3 to avoid (and pass on to Qwest) the additional costs
17 associated with provisioning local service to its ISP customers. By doing this, Level 3
18 avoids actually provisioning facility-based services to the local calling areas in which Level
19 3 claims to provide local service.

1 **Q. DOES LEVEL 3 VIOLATE INDUSTRY GUIDELINES BY ASSIGNING NUMBERS**
2 **IN THE WAY YOU HAVE DESCRIBED?**

3 A. Yes. There are industry rules that dictate the different types of numbers and how numbers
4 are to be assigned.

5 **Q. HOW WERE THE RULES FOR ASSIGNING NUMBERS ESTABLISHED?**

6 A. In 1995, prior to the passage of the 1996 Act, the FCC created the North American
7 Numbering Council (“NANC”), which makes recommendations to the FCC on numbering
8 issues and oversee the North American Numbering Plan (“NANP”). At the same time, the
9 FCC also created the North American Numbering Plan Administrator (“NANPA”), an
10 impartial entity that is responsible for assigning and administering telecommunications
11 numbering resources in an efficient and non-discriminatory manner. Thus NANPA is
12 responsible for allocating NPA and NXX codes. Under FCC rules, NANPA is directed to
13 administer numbering resources in an efficient and non-discriminatory manner, *and* in
14 accordance with the guidelines developed by INC (the North American Industry
15 Numbering Committee).²

16 **Q. ARE THE “GUIDELINES” DEVELOPED BY INC INTENDED TO BE MERE**
17 **GUIDELINES THAT CAN BE DISREGARDED?**

18 A. No. INC guidelines are really more than just guidelines because the adherence to them is
19 an FCC mandate.³ The Alliance for Telecommunications Industry Solutions (ATIS) has
20 published a set of INC guidelines entitled “Central Office Code (NXX) Assignment

² 47 C.F.R. § 52.13(b) and (d)

³ 47 C.F.R. § 52.13(d)

1 Guidelines (COCAG).” Level 3’s method of assigning numbers (i.e., its use of VNXX) is
2 in violation of these industry guidelines, which designate NPA-NXX codes as
3 geographically-specific.

4 **Q. WHAT PROVISIONS OF THE COCAG DEFINE NPA NXX CODES AS**
5 **GEOGRAPHICALLY SPECIFIC?**

6 A. Section 2.14 of the COCAG states that “CO [central office] codes/blocks allocated to a
7 wireline service provider are to be utilized to provide service to a customer’s premise
8 *physically located* in the same rate center that the CO codes/blocks are assigned.
9 Exceptions exist, such as for tariffed services like foreign exchange services.” (Emphasis
10 added.) Mr. Gates’ direct testimony at pages 43 and 44 references this section. However,
11 VNXX is not identified as an exception, and is certainly not an “exception” as it is
12 provisioned by Level 3 without local service in the rate center that the codes/ blocks are
13 assigned.

14 **Q. ARE THERE OTHER PROVISIONS IN THE COCAG THAT SPECIFY A**
15 **GEOGRAPHIC CORRELATION WITH NUMBERS?**

16 A. Yes. Section 4.2.6 of the COCAG provides that “[t]he numbers assigned to the facilities
17 identified must serve subscribers in the *geographic area corresponding with the rate center*
18 *requested.*” (Emphasis added.)

1 **Q. DOES THE COCAG DISTINGUISH BETWEEN GEOGRAPHIC NUMBERS AND**
2 **NON-GEOGRAPHIC NUMBERS?**

3 A. Yes. The COCAG also states that “Geographic NPAs” are the “NPAs which correspond to
4 discrete geographic areas within the NANP” while “Non-geographic NPAs” are “NPAs
5 that do not correspond to discrete geographic areas, but which are instead assigned for
6 services with attributes, functionalities, or requirements that transcend specific geographic
7 boundaries, the common examples [of which] are NPAs in the N00 format, e.g., 800.”

8 **Q. DOES LEVEL 3 APPROPRIATELY ASSIGN NUMBERS TO ITS CUSTOMERS**
9 **OF VNXX SERVICE ACCORDING TO INC GUIDELINES?**

10 A. No. The numbers that Level 3 use are geographic NPA numbers – in other words, they are
11 numbers that should, according to guidelines, correspond to discrete geographic areas. But
12 under Level 3’s inappropriate assignment of these numbers, they no longer reflect a
13 specific geographic location. Callers who dial a Level 3 “local” number would not reach
14 anyone in the local calling area – rather, they would be transported over Qwest’s LIS
15 network to Level 3’s switch, and then on to an ISP’s equipment (e.g., modems, routers, and
16 servers) that may be in a different local calling area in the state, or in another state entirely.
17 This use of numbers violates industry guidelines.

18 **Q. DOES LEVEL 3’S PERSPECTIVE OF ITS VNXX SERVICE COMPORT WITH**
19 **THE INDUSTRY NUMBERING GUIDELINES?**

20 A. Not at all. As explained above, the industry numbering guidelines recognize that there are
21 numbers that are geographic in nature and others that are non-geographic in nature. The

1 determination of whether a NPA NXX is geographic or non-geographic is based on the
2 NPA digits that precede the NXX digits. Geographic numbers are the numbers that most
3 people associate with their wireline service. Non-geographic numbers are numbers that
4 have NPA digits such as 800 or 900. However, Level 3 has chosen to use geographic
5 numbers to facilitate a non-geographically provisioned service.

6 **Q. IS THE DIRECT TESTIMONY OF MR. GATES CORRECT WHEN HE EQUATES**
7 **THE ROUTING OF VNXX TRAFFIC TO THAT OF FX TRAFFIC?**

8 A. No. Mr. Gates incorrectly equates VNXX calls with foreign exchange ("FX") calls. Mr.
9 Gates fails to recognize that non-VNXX calls, such as those placed to a subscriber of FX
10 service, are associated with services that are provisioned to the customer from within the
11 local calling area where the traffic originates. For example, the FX call that originates with
12 an end user in local calling area (LCA) A but is destined for an end user located in LCA B
13 is actually placed by dialing a number associated with local service physically provisioned
14 in LCA A. The call is routed to an FX service in LCA A, where it is then transported to
15 LCA B. The end user subscribing to FX service in this example must establish local
16 service in LCA A and pay rates that are intended to cover the additional costs associated
17 with transporting the call from LCA A to LCA B. In contrast, with Level 3's VNXX
18 service, Level 3 simply *assigns* numbers to its customers that are associated with wire
19 centers outside the end user's local calling area. In doing so, Level 3's VNXX service
20 relies on Qwest to the transport the traffic between local calling areas. Level 3 incorrectly

1 asserts that Qwest must provide this transport to Level 3 for free, ostensibly because the
2 transport is on Qwest's side of the POI.

3 **Q. MR. DUCLOO CONTENDS THAT SWITCHES HAVE NO WAY OF KNOWING**
4 **THE GEOGRAPHIC LOCATIONS ASSOCIATED WITH THE PHONE**
5 **NUMBERS ASSIGNED TO A SWITCH. DOES MR. DUCLOO MISREPRESENT**
6 **HOW NUMBERS ARE ASSIGNED?**

7 A. Yes. If Mr. Ducloo's method of assigning telephone codes/blocks to switches, were taken
8 to its logical conclusion, all switches should recognize all telephone numbers as local calls.
9 Mr. Ducloo misses the concept that a switch only "knows" what is programmed into it.
10 Switch programming determines what is local and what is toll. This programming is based
11 on decades of regulatory precedent that distinguished local and toll calls based on
12 geographic boundaries such as local calling area, EAS boundaries and LATA boundaries.
13 These geographic boundaries are either established by federal courts or approved by the
14 state commissions and remain a significant feature of the telecommunications environment
15 in which all industry participants operate today. To imply that geographic location makes
16 no difference is absurd. The history of the telecommunications industry and its method of
17 regulation are fundamentally based on the geographic location of end users.

1 **Q. ALTHOUGH LEVEL 3'S TESTIMONY DOES NOT ADDRESS MOST OF MR.**
2 **DUCLOO'S EXHIBITS, DO THE EXHIBITS CORRECTLY REPRESENT THE FX**
3 **SERVICE THAT QWEST PROVIDES?**

4 A. No. RRD #10 does not correctly represent FX service. Mr. Ducloo only depicts local
5 service provisioned to customers within each LCA. Mr. Ducloo also attempts to depict FX
6 service provisioned using multiple switches including tandem switches. Switching for
7 Qwest FX service is never provisioned using switching other than what is provided by the
8 switch from which local service is purchased by the subscriber. In addition, exhibits RRD
9 #11 and #13 are labeled as local service but depict non-local call flows.

10 Furthermore, Mr. Ducloo's exhibits are not consistent with Level 3's own advocacy. On
11 exhibit RRD #15, Level 3 shows Qwest as being compensated for its transport to the CLEC
12 switch but, as is described in the discussion of Issue No. 1, Level 3 argues that Qwest must
13 pay for this transport outside of the local calling area since it is on Qwest's "side" of the
14 POI.

15 **VI. DISPUTED ISSUE NO. 6: AMA SWITCH TECHNOLOGY**
16

17 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 6.**

18 A. This issue was never a point of contention during the negotiation of the interconnection
19 agreement and only became an issue when Level 3 filed its petition. Level 3 also did not
20 address this language in their direct testimony. The issue in dispute is Level 3's objection
21 to use the term "inherent in Switch technology" within the definition of Automated

1 Message Accounting ("AMA"). Level 3 disputes the use of the language "inherent in
2 Switch technology."

3 **Q. DOES QWEST STILL AGREE WITH LEVEL 3'S PROPOSED LANGUAGE**
4 **CHANGE?**

5 A. Yes.

6 **VII. DISPUTED ISSUE NO. 8: DEFINITION OF CALL RECORD**

7
8 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 8.**

9 A. Disputed issue No. 8 concerns what call information must be provided in a call record so
10 that the record may be used for intercarrier billing purposes. Level 3 agrees that there are
11 some instances when some signaling information may not always be available.
12 Nevertheless, a call record must include certain fundamental information to create a record
13 for billing purposes.

14 **Q. WHAT LANGUAGE IS QWEST PROPOSING?**

15 A. Qwest proposes the following, as found on page 13 of the ICA:

16 "Call Record" means a record that provides key data about individual telephone calls. It
17 includes originating telephone number, terminating telephone number, billing telephone
18 number (if different from originating or terminating number) time and date of call,
19 duration of call, long distance carrier (if applicable), and other data necessary to properly
20 rate and bill the call.

21 **Q. WHAT LANGUAGE IS LEVEL 3 PROPOSING?**

22 A. Level 3 proposes the following:

1 "Call Record" shall include identification of the following: charge number, Calling Party
2 Number ("CPN"), Other Carrier Number ("OCN"), or Automatic Number Identifier
3 ("ANI"), Originating Line Indicator ("OLI"). In the alternative, a "Call Record" may
4 include any other information agreed upon by both Parties to be used for identifying the
5 jurisdictional nature of the calling party or for assessing applicable intercarrier
6 compensation charges.

7
8 **Q. WHY IS QWEST OPPOSED TO LEVEL 3'S PROPOSED DEFINITION OF A**
9 **CALL RECORD?**

10 A. Level 3's definition of a call record obligates both parties to provide certain types of
11 information about a call that has never been required by industry standards and may not be
12 available on every call. Level 3's proposed language would require call information that is
13 not necessary for the creation of a call record and yet omits information that should be
14 required for the creation of a call record.

15 **Q. DO LEVEL 3'S WITNESSES ADDRESS LEVEL 3'S DEFINITION OF CALL**
16 **RECORD IN THEIR TESTIMONY?**

17 A. No not specifically. Mr. Ducloo only addresses it to the extent that Level 3 proposes to
18 populate the OLI parameter in the signaling stream and in a brief discussion of the process
19 for billing intercarrier compensation. Level 3 otherwise is silent on what information
20 should be required in a call record.

21 **Q. DOES MR. DUCLOO DESCRIBE THE INFORMATION THAT SHOULD BE**
22 **CONTAINED IN A CALL DETAIL RECORD?**

23 A. Yes. In his direct testimony, Mr. Ducloo describes information that is consistent with
24 Qwest's definition of a call record. For example, Mr. Ducloo lists calling number (i.e.

1 originating telephone number), the dialed number (i.e. terminating telephone number),
2 carrier delivering the call (i.e. long distance carrier) time that the call starts and stops (i.e.
3 time and date of call, duration of call) as appropriate for inclusion in a call detail record.
4 These are also elements in Qwest's proposed call record definition. However, Level 3's
5 proposed definition does not include all of the elements Mr. Ducloo listed in his testimony.
6 Based on Level 3's testimony, it is clear that Qwest's proposed definition of call record
7 more appropriately represents the fundamental information that belongs in a call record.

8 **Q. IN HIS DIRECT TESTIMONY, MR. DUCLOO CONCLUDES THAT THERE ARE**
9 **PRECEDENTS FOR POPULATING UNUSED SS7 FIELDS AND CODES. HAS**
10 **QWEST POPULATED UNUSED SIGNALING PARAMETERS OR REQUIRED**
11 **INTERCONNECTING CARRIERS TO POPULATE UNUSED SIGNALING**
12 **PARAMETERS THAT ARE UNDEFINED BY THE INDUSTRY?**

13 A. No. Qwest has not established these types of processes because of the future impact it may
14 have to Qwest's network if and when particular unused parameters become defined
15 differently by the industry. If a signaling parameter becomes defined differently by the
16 industry than the way network operators have decided to use the parameter, then the
17 operators must change their network to be compliant with the industry change. They must
18 then find a new way of accomplishing the original purpose for populating the unused
19 signaling parameter. Using signaling parameters in the way that Level 3 proposes will only
20 cause unnecessary up-front costs and magnify future costs when the changes must be made
21 to the network.

1 **Q. DOES MR. DUCLOO THEN PROVIDE A PRECEDENT FOR THE POPULATION**
2 **OF UNUSED SS7 FIELDS?**

3 A. No. Mr. Ducloo provides an example of population of a call record, not population of a
4 signaling parameter.

5 **Q. HAVE INDUSTRY STANDARDS GROUPS RECOMMENDED THE OLI**
6 **PARAMETER BE USED TO IDENTIFY VOIP TRAFFIC?**

7 A. No. In fact industry standards groups such as the AMA Technical Support Group
8 (“AMASTG”) have recommended against the use of the OLI signaling parameter for the
9 purposes of identifying VoIP traffic.⁴ Identification of VoIP traffic through the signaling
10 stream is only one of several proposals that the industry has identified.⁵ Based on the
11 activity at the industry level, it is clear that the issue of developing a method for identifying
12 VoIP traffic is being addressed. Level 3, however, wishes to include the OLI as a method
13 of identifying VoIP in its agreement with Qwest. Thus, Level 3 is attempting to create a
14 de facto standard that appears to have been all but dismissed by industry standards groups.
15 It is more appropriate for Level 3 to represent its position in the industry standards forums
16 that have been established to address these types of issues than try to unilaterally force their
17 industry rejected opinion through an interconnection agreement.

⁴ Exhibit PL6 Letter dated February 4th 2005 from the AMASTG to the Alliance for Telecommunications Industry Solutions Ordering and Billing Forum Billing Committee, Subject OBF Issue 2776: Identification of VoIP-Originated Calls.

⁵ Exhibit PL7 Letter dated May 9th 2005 from the Alliance for Telecommunications Industry Solutions Ordering and Billing Forum Billing Committee to the Alliance for Telecommunications Industry Solutions Packet Technologies and Systems Committee (“PTSC”), Subject OBF Issue 2776: Identification of VoIP-Originated Calls.

1 **Q. DOES LEVEL 3'S LANGUAGE FORCE QWEST TO POPULATE THE OLI**
2 **PARAMETER?**

3 A. Yes. Although the testimony of Mr. Ducloo suggests that it is only Level 3 that wishes to
4 populate the OLI parameter, Level 3's proposed call record definition language does not
5 make this distinction. Accordingly, Level 3's definition of call record should be rejected.

6 **Q. WHY SHOULD QWEST'S DEFINITION OF CALL RECORD BE USED IN THE**
7 **INTERCONNECTION AGREEMENT BETWEEN LEVEL 3 AND QWEST?**

8 A. Qwest's definition of call record should be used because it includes the fundamental
9 information that is required to create a valid call record and provides flexibility to include
10 other data that may be used to rate and bill calls for intercarrier compensation purposes. In
11 addition, Qwest uses terms that are specific enough to identify what is required while at the
12 same time remaining flexible enough to encompass all of the optional parameters that
13 Level 3 wishes to require should they eventually become industry requirements. Unlike
14 Level 3's language, Qwest's language does not include call information that would create
15 disputes over the interpretation of the terms used in the definition. Likewise, Qwest's
16 language eliminates any potential dispute as to whether the existence of call duration and
17 the time and date a call occurred are required in a valid call record. Simply put, Qwest
18 language addresses all of Level 3's concerns, more clearly establishes the expectations of
19 both companies for the creation of a valid call record, and has the flexibility to include
20 additional call information that may be required to generate a valid call record in the future.

1 **VIII. DISPUTED ISSUE NO. 20: SIGNALING PARAMETERS**

2
3 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 20.**

4 A. The issue in dispute here is whether SS7 signaling is an appropriate method for signaling
5 call information for the exchange of traffic between Qwest and Level 3.

6 **Q. WHAT LANGUAGE IS QWEST PROPOSING?**

7 A. Qwest proposes the following, on page 87 of the ICA:

8 7.3.8 Signaling Parameters: Qwest and CLEC are required to provide each other the
9 proper signaling information (e.g., originating Calling Party Number and destination
10 called party number, etc.) per 47 CFR 64.1601 to enable each Party to issue bills in a
11 complete and timely fashion. All CCS signaling parameters will be provided including
12 Calling Party Number (CPN), Originating Line Information Parameter (OLIP), calling
13 party category, Charge Number, etc. on calls to 8XX telephone numbers. All privacy
14 indicators will be honored. If either Party fails to provide CPN (valid originating
15 information), and cannot substantiate technical restrictions (i.e., MF signaling) such
16 traffic will be billed as Switched Access. Traffic sent to the other Party without CPN
17 (valid originating information) will be handled in the following manner. The transit
18 provider will be responsible for only its portion of this traffic, which will not exceed
19 more than five percent (5%) of the total Exchange Service (EAS/Local) and Exchange
20 Access (IntraLATA Toll) traffic delivered to the other Party. The Switch owner will
21 provide to the other Party, upon request, information to demonstrate that Party's portion
22 of no-CPN traffic does not exceed five percent (5%) of the total traffic delivered. The
23 Parties will coordinate and exchange data as necessary to determine the cause of the CPN
24 failure and to assist its correction. All Exchange Service (EAS/Local) and IntraLATA
25 LEC Toll calls exchanged without CPN information will be billed as either Exchange
26 Service (EAS/Local) Traffic or IntraLATA LEC Toll Traffic in direct proportion to the
27 minutes of use (MOU) of calls exchanged with CPN information for the preceding
28 quarter, utilizing a PLU factor determined in accordance with Section 7.2.2.9.3.2 of this
29 Agreement.

30 **Q. WHAT LANGUAGE IS LEVEL 3 PROPOSING?**

31 A. Level 3 proposes the following:

1 7.3.8 Signaling Parameters: Qwest and CLEC are required to provide each other proper
2 signaling information (e.g., originating Calling Record Information and destination called
3 party number, etc.) to enable each Party to issue bills in a complete and timely fashion.
4 All CCS signaling parameters will be provided including Call Record Information (CRI),
5 Originating Line Information Parameter (OLIP) on calls to 8XX telephone numbers,
6 calling party category, Charge Number, etc. All privacy indicators will be honored. If
7 either Party fails to provide CRI (valid originating information), and cannot substantiate
8 technical restrictions (e.g., MF signaling, IP origination, etc.) such traffic will be billed as
9 interstate Switched Access. Transit Traffic sent to the other Party without CRI (valid
10 originating information) will be handled in the following manner. The transit provider
11 will be responsible for only its portion of this traffic, which will not exceed more than
12 five percent (5%) of the total Exchange Service (EAS/Local) and Exchange Access
13 (IntraLATA Toll) traffic delivered to the other Party. The Switch owner will provide to
14 the other Party, upon request, information to demonstrate that Party's portion of no-CRI
15 traffic does not exceed five percent (5%) of the total traffic delivered. The Parties will
16 coordinate and exchange data as necessary to determine the cause of the CRI failure and
17 to assist its correction. All Exchange Service (EAS/Local) and Exchange Access calls
18 exchanged without CRI information will be billed as either Exchange Service
19 (EAS/Local) Traffic or Exchange Access Traffic in direct proportion to the minutes of
20 use (MOU) of calls exchanged with CRI information for the preceding quarter, utilizing a
21 PLU factor determined in accordance with Section 7.2.2.9.3.2 of this Agreement.

22 **Q. DID LEVEL 3 ADDRESS THIS SECTION IN ITS TESTIMONY?**

23 A. No. None of Level 3's witnesses have provided testimony in support for their proposed
24 language for section 7.3.8.

25 **Q. PLEASE DESCRIBE AGAIN WHY QWEST OBJECTS TO LEVEL 3'S**
26 **PROPOSED LANGUAGE?**

27 A. Qwest objects to Level 3's language because it mischaracterizes *IP origination* (emphasis
28 added) as a technical limitation for populating signaling information in the SS7 signaling
29 stream. Level 3's proposed language also creates an obligation to populate a signaling
30 parameter, specifically Call Record Information ("CRI"), which does not exist within the
31 SS7 protocol. In addition, Level 3 does not define CRI. To the extent Level 3's definition
32 of CRI would use similar terms to those used in Level 3's definition of Call Record, it is

1 not at all clear that the requirement to provide the CRI can be met. Level 3's proposed
2 language also fails to acknowledge the fact that the FCC has recognized certain limitations
3 exist that prohibit or limit the delivery of specific types of signaling information. Qwest
4 further objects to Level 3 language because it inappropriately applies interstate switched
5 access rates to traffic that is intrastate as is described in Issue 2.

6 **Q. WHY IS QWEST'S LANGUAGE MORE APPROPRIATE?**

7 A. Qwest's language uses terms that are clearly defined by the contract and the industry.
8 Qwest language provides clear expectations for the signaling of traffic between the parties'
9 networks.

10 **IX. SUMMARY/CONCLUSION**

11
12 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

13 A. My testimony has responded to the testimony of Level 3's witnesses relating to technical
14 matters concerning: 1) the manner of interconnection; and 2) the types of traffic that may
15 be combined on interconnection trunks; and 3) the appropriate assignment of numbering
16 resources and the associated routing of local calls; and 4) the call information that should
17 be required in a call record.

18 The FCC has recognized that each carrier must be able to retain responsibility for the
19 management, control, and performance of its network. Qwest provides technical feasible
20 points for the purpose of interconnection with Qwest's network. However, Level 3's

1 proposed language attempts to shun these well established arrangements, not for technical
2 reasons, but in an attempt to avoid paying the cost that interconnection inevitably imposes
3 on the existing network.

4 Qwest has attempted to be responsive to Level 3's desire to combine traffic on trunk
5 groups. Qwest has attempted to accommodate Level 3's desire for network efficiencies by
6 agreeing to allow Level 3 to combine all of its traffic to Qwest over Feature Group D
7 trunks. This solution achieves the efficiencies sought by Level 3 while at the same time
8 allowing Qwest to continue to use its existing billing systems and processes. For these
9 reasons, Level 3's proposed combining of traffic on LIS trunks should be rejected.

10 The FCC and state commissions have recognized certain jurisdictional boundaries for
11 telecommunications traffic. These jurisdictional boundaries have been incorporated into
12 virtually every aspect of the telecommunications network, from the routing of traffic and
13 provisioning of facilities to end users to the interconnection of carriers with other carriers.
14 Accordingly, until industry wide changes are made, the Qwest/Level 3 interconnection
15 agreement should continue to require that the assignment of telephone numbers be based
16 on the local calling areas associated with those numbers.

17 Finally, a call record must include certain fundamental information to create a record for
18 billing purposes. Qwest's definition provides for all the fundamental information needed
19 in a call record and at the same time provides the flexibility to accept additional
20 information to create a call record which may be used for billing. Level 3 goes beyond

1 what is recognized by the industry and then inappropriately places financial penalties for
2 non-compliance.

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

4 A. Yes it does.

5
6 1699908/67817.259

BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO. T-03654A-05-0350
T-01051B-05-0350

AFFIDAVIT OF
PHILIP LINSE

: SS

Philip Linse, of lawful age being first duly sworn, depose and states:

1. My name is Philip Linse. I am Director for Qwest Corporation in Littleton, Colorado. I have caused to be filed written rebuttal testimony in Docket No. T-03654A-05-0350 T-01051B-05-0350.
2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.


Philip A. Linse

SUBSCRIBED AND SWORN to before me this 9th day of August, 2005.


Notary Public

My Commission Expires: 8/15/08

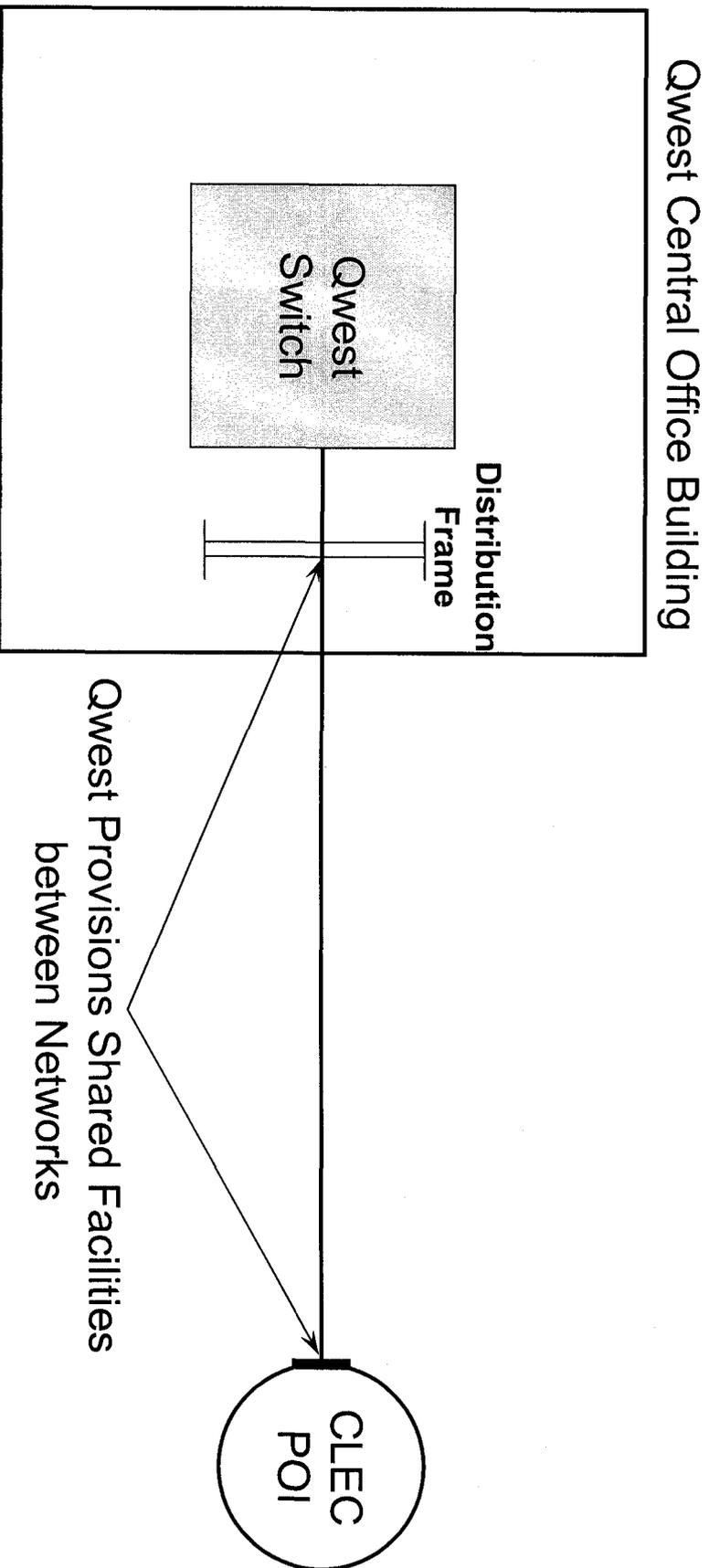
DONNA GOLDMAN
STATE OF COLORADO
NOTARY PUBLIC

EXHIBIT

PL 3

Entrance Facilities

Arizona Corporation Commission
Docket Nos. T-03654A-05-0350,
T-01051B-05-0350
Rebuttal Testimony of Philip Linse
August 15, 2005
Page 1
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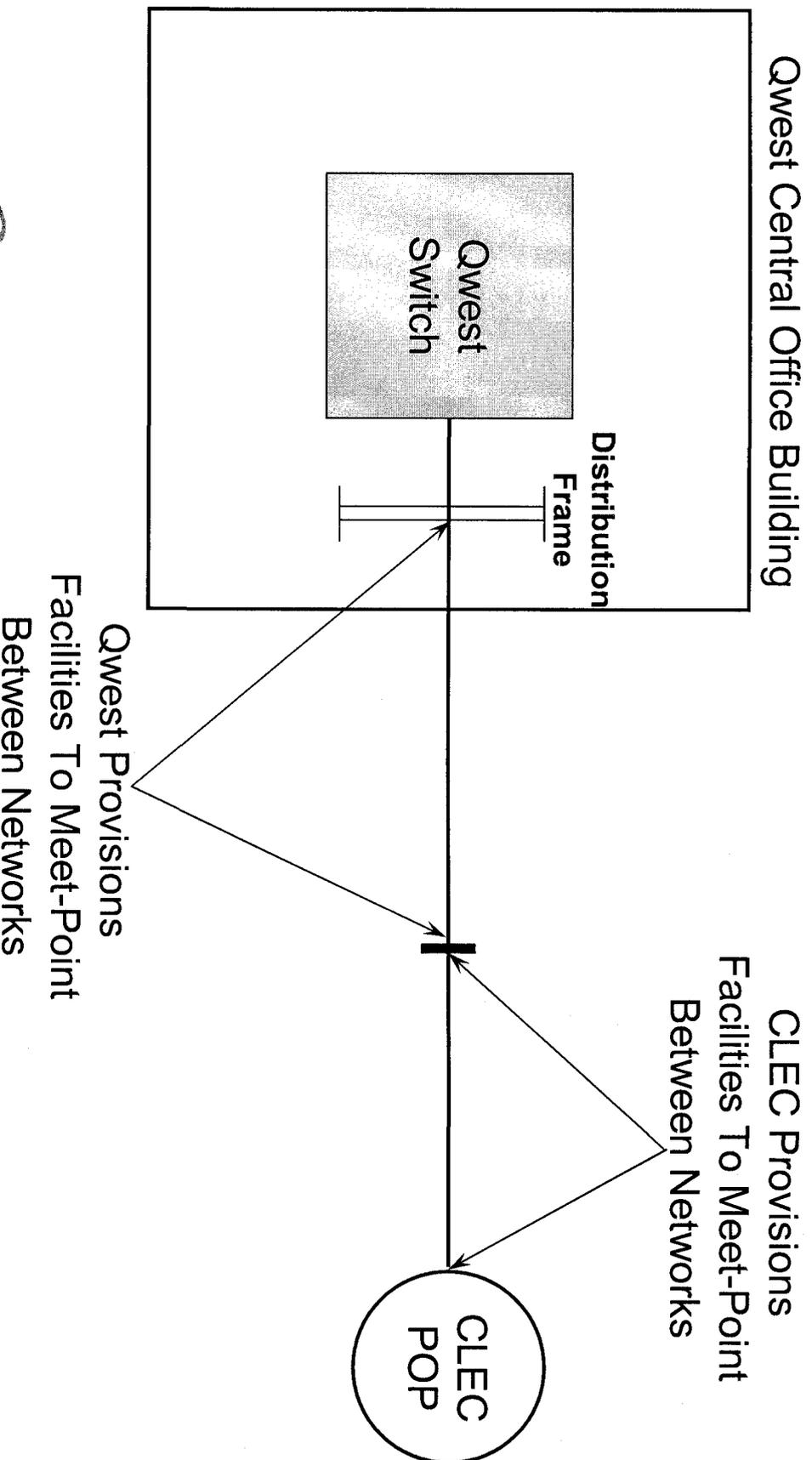


EXHIBIT

PL 4

Mid-Span Meet Point

Arizona Corporation Commission
Docket Nos. T-03654A-05-0350,
T-01051B-05-0350
Rebuttal Testimony of Philip Linse
August 15, 2005
Page 1
Exhibit PL-4

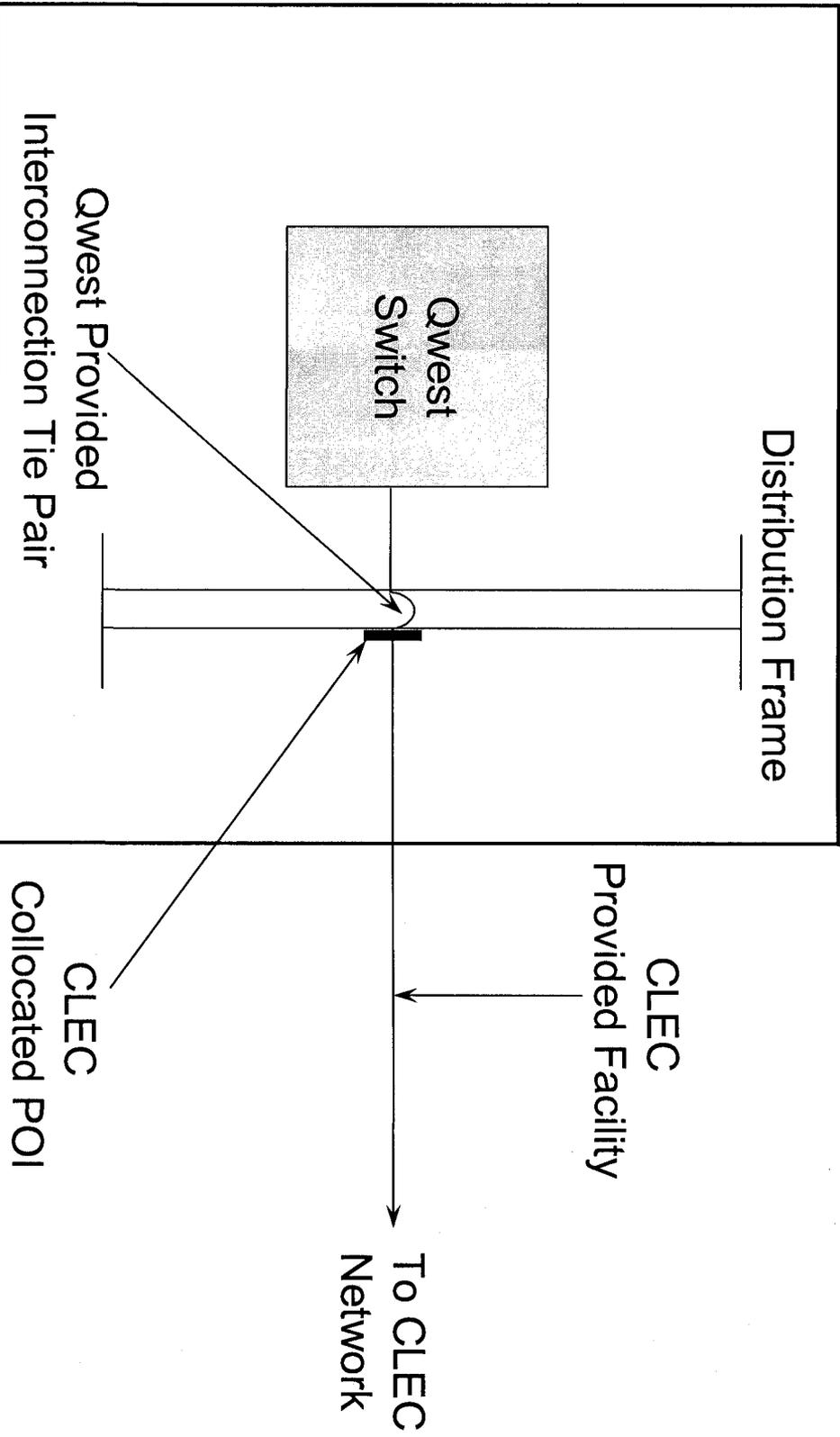


EXHIBIT

PL 5

Collocation

Qwest Central Office Building



Arizona Corporation Commission
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Rebuttal Testimony of Philip Linse
August 15, 2005
Page 1
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EXHIBIT

PL 6

AMATSG

AMA Technical Support Group

Date: February 4, 2005
To: Alliance for Telecommunications Industry Solutions
Ordering and Billing Forum
Billing Committee
Subject: OBF Issue 2776: Identification of VoIP-Originated Calls

Billing Committee Members:

This is an open letter to the participants in the Billing Committee of the Ordering and Billing Forum (OBF), written at the direction of the AMA Technical Support Group (AMATSG), regarding OBF Issue 2776: Identification of VoIP-Originated calls. At its last three quarterly meetings, the AMATSG has been tracking the discussions at the OBF on this issue, and the members of the AMATSG feel that now is an appropriate time to contribute the AMATSG's current thinking on this issue.

The AMATSG meets quarterly to discuss matters related to the generation of AMA in stored program control switches. Its members are the recognized AMA subject matter experts in their respective companies. Some of the companies represented at the OBF are also members of the AMATSG, and the AMATSG SMEs are regularly consulted to provide their expertise on matters related to new network capabilities and services.

1. Background

The AMATSG believes that the Billing Committee made the correct decision to accept and work the issue of identifying calls that originate in a VoIP network and ingress to the PSTN via an interface between a VoIP gateway and a traditional TDM (Time Division Multiplexing) switching system. There is no need to reiterate the potential regulatory and technical reasons for acting on this issue; these are already well documented in the OBF record.

The AMATSG members would like to address the potential technical solutions that might be available to accomplish identification of VoIP-Originated calls. We understand that there have been some proposals floated at this point, and we would like to address those proposals that we have heard about and propose some of our own. The AMATSG, like the Billing Committee, realizes that the most efficient network-based solution will involve some type of alteration to call setup signaling in the Signaling System 7 protocol. We also realize that neither of our groups can effect a change to this protocol without the assistance of the standards bodies responsible for standardizing the SS7 protocol. Therefore, the goal of this letter is to provide substantive technical input from an AMA and billing perspective to the appropriate standards bodies so that this issue is resolved in an efficient, expeditious manner.

Before going into each of the proposals, the AMATSG would like to note that each of the variations on the call setup signaling solution will likely require modifications to existing TDM switch generic software. Whatever signaling variation is chosen will require some

modification of call processing and AMA generic software in most TDM switching systems. For companies using a Link Monitoring System (LMS) to generate CDRs, the impact of a signaling solution may be considerably less involved. Finally, whether a modified CDR is generated at the switch or the LMS, the newly-generated VoIP indicator will have to be detected and processed by service provider billing systems. That said, the goal of the AMATSG is to minimize the impact of all these software changes.

2. Potential Signaling Solutions

The AMATSG client companies asked the BAF experts at Telcordia Technologies to provide a preliminary analysis of potential SS7 parameters that are already present in call setup signaling that could be used for identification of VoIP-Originated calls. The criteria specified by the AMATSG for parameter selection included the following characteristics/restrictions:

- The parameter:
 1. must be a parameter within the Initial Address Message (IAM)
 2. must be in general use
 3. must be signaled forward as part of normal call transiting
 4. must be sent end-to-end
- The value set in the parameter:
 1. must have an available value within the existing parameter
 2. must minimize interaction with or be independent of existing parameter values (stand-alone)
 3. must be transparent to networks not using the value and yet be signaled forward as part of normal call transiting.

Using these criteria as a guide, two of the parameters that had been mentioned in discussions of Issue 2776, namely the Originating Line Information (OLI) parameter and the Calling Party Number (CPN) parameter, were examined. In addition, two other parameters that the AMATSG believes may meet the above criteria were also investigated. The two additional parameters for consideration are the Forward call Indicator (FCI) and the Nature-of-Connection Indicators (NCI).

Table 1 is a summary representation of how these four parameters meet the criteria.

Table 1: Comparison of Proposed IAM Parameters

	General Use	Transiting	End-to-End	Value Available	Independent (Stand-alone)	Transparent
OLI	No	No	No	Yes	No	No
CPN	Yes	No	No	Yes	Yes	Yes
FCI	Yes	Yes	Yes	Yes	Yes	Yes
NCI	Yes	Yes	Yes	Yes	Yes	Yes

3. Points of Comparison

The following is a brief explanation of the entries in Table 1 for each parameter.

3.1 Originating Line Information (OLI) parameter

Using the Originating Line Information parameter, the AMATSG believes, will be problematic. The first difficulty with using this parameter is that it is in general use only for the Exchange Access version of the SS7 protocol (reference Telcordia GR-394-CORE). Traditional signaling used between local exchange carriers for local and short-haul toll calls does not call for the inclusion of the OLI parameter in the IAM (reference GR-317-CORE). The AMATSG believes that, if the VoIP-Originated indicator comes to be required, it will be required for both Exchange Access calls and local calls. If OLI were to be selected as the parameter, then call processing logic would be required to generate this parameter for local calls where it is not generated today.

The transiting and end-to-end characteristics for OLI are also deficient in the protocol at this time. Transiting nodes would be required to pass this parameter through to the terminating node and while it is true that the standards language states that an unused or unrecognized parameter should be signaled forward, experience has shown that this is not always the case in existing implementations.

The last characteristic that argues against using OLI to identify VoIP-Originated calls is the value assignment question. OLI is currently used to identify originating line characteristics such as cellular calls, toll-free calls, and calls made from coin/coinless stations. Adding a VoIP-Originated component to this mix does not require just one or two additional values, but requires values and/or procedures to convey on the originating end and interpret on the terminating end that VoIP technology was used, which could occur in conjunction with a line characteristic already assigned an OLI value. Therefore, a "multiplier effect" will cause values to need to be assigned representing each of many existing values in conjunction with the new need. This type of analysis and assignment is complicated. The AMATSG believes that resources can be better and more profitably spent using another parameter rather than trying to develop something that will be inherently complicated and confusing.

3.2 Calling Party Number (CPN) parameter

The AMATSG believes that the Calling Party Number (CPN) parameter could be used to convey an indication that a call has originated in a VoIP network. However, there are at least two caveats that must be considered. The first is the indicator itself. The AMATSG believes an independent and stand-alone indicator should be used to avoid interworking and compatibility issues with established values. To accomplish this in the current implementation of the SS7 protocol definition for CPN would require the spare bit in the second octet of the parameter be used to indicate VoIP-Originated. This bit is currently spare and is the only spare bit available. The fact that the only spare bit would be used to identify a VoIP call may cause some concern within the signaling standards community.

The second consideration is the industry's experience overall with signaling forward CPN from an originating network through transiting networks and on to the terminating

network. The instances where transiting and terminating networks do not receive the CPN parameter are still numerous enough to warrant caution in using this parameter for a needed piece of information. The AMATSG members believe that the industry should be wary of relying on the presence of the CPN parameter for yet another potentially significant financial and fiduciary function. The AMATSG believes that using the CPN parameter for VoIP identification is not a viable solution.

3.3 Forward Call Indicator (FCI)

The most recent industry-wide requirement for sending an indicator from the originating switch to the terminating switch was accomplished using a bit in the FCI parameter. The application was Number Portability (NP), and FCI was used to indicate that a NP query was or was not performed. This indicator was essential for network efficiency and was a critical piece of information that each network node needed to know as call setup signaling was passed through to the terminating network. The terminating network used the 'M' bit in the FCI to trigger whether or not to swap out the telephone number in the generic address parameter (GAP) with the called party number in order to terminate the call properly.

It can be argued that the VoIP-Originated indicator is the next industry-wide critical indicator that must be passed end-to-end in the network. The AMATSG members believe that the indicator for VoIP-Originated may have applications beyond the initial regulatory/accounting purpose that is now its focus. The implication to the AMATSG is that the indicator will be required beyond the point of initial interface between the VoIP network and the ingress TDM network. This means that the indicator must be available end-to-end for call setup and, like the 'M' used in NP, must also be stand-alone and not be burdened with complicated interworking scenarios. As its use for NP demonstrates, the FCI indicators are stand-alone bits, and as part of the essential information for call setup, are passed from node to node essentially unaltered.

This parameter meets all of the criteria listed in Table 1; however, the AMATSG members acknowledge that the available bits in the FCI parameter are limited. Currently, there are three bits that remain unassigned ('L', 'O', and 'P'). The 'L' bit is spare and the latter two are reserved for 'National Use'. The AMATSG recommends that the FCI parameter be considered a reasonable candidate for use as an indicator for VoIP-Originated calls.

3.4 Nature-of-Connection Indicators (NCI)

The last parameter examined by the AMATSG is the Nature-of-Connection Indicators (NCI). Like FCI, the NCI indicator meets all of the criteria listed in Table 1 in that it is in general use, is signaled forward as part of normal call transiting, and is sent end-to-end. The value could be set in the parameter by a '0' or '1' in an available bit, which would be stand-alone and would eliminate interactions with existing parameter values. NCI would be signaled forward as part of call setup, yet it would be transparent to networks not using the value. The NCI also has three unassigned bits available ('F', 'G', and 'H'). As far as the title of the parameter to be used, "Nature of Connection" is appropriate for an indication of the technology used to originate the call. The AMATSG recommends that the NCI parameter also be considered a reasonable candidate for use as an indicator for VoIP-Originated calls.

4. Conclusion

The AMATSG members, after considerable research and thought on this issue, would like to recommend that the OBF consider our arguments for using either the NCI parameter or the FCI parameter to identify VoIP-Originated calls. Conversely, we would ask that the OBF avoid any recommendation for using either the OLI parameter or the CPN parameter for this purpose.

The AMATSG hopes that the Billing Committee of the OBF will find this letter useful in focusing your discussions in the committee and invites the Billing Committee to avail itself of any and all of the information contained in this letter when interacting with the signaling standards and network interoperability groups.

Thank you for your time and attention. If you have any questions on the technical content of this letter, please contact either Sara Knapp (732) 699-6080 or Bill Krall (732) 699-6052 at Telcordia Technologies.

Carla Worland

Chair – AMA Technical Support Group
(205) 321-3171

Jackie Rymill

Vice Chair – AMA Technical Support Group
(402) 422-3767

Copy to: AMATSG Members

Tom Buhler – Qwest
Lourdes Coronado – SBC
Fran Fischbach – Qwest
Mel Kennedy – Verizon
Cindy Kontz – Verizon
Sandy Lauterbach – Verizon
Doug Mabie – Verizon
Deborah May – BellSouth
Robbie McCarty – Verizon
Bob McHugh – SBC
Linda Mudd – SBC
Jackie Rymill - Qwest
Al Todd – SBC
Dave Whitney – BellSouth
Carla Worland – BellSouth
Sara Knapp – Telcordia Technologies
Bill Krall – Telcordia Technologies
Loren Lewin – Telcordia Technologies

EXHIBIT

PL 7



1200 G Street, NW
Suite 500
Washington, DC 20005
www.atis.org

May 9, 2005

Packet Technologies and Systems Committee (PTSC)

Bob Hall
PTSC Chair
SBC Communications
bhall@labs.sbc.com

Joe Zebarth
PTSC Vice Chair
Nortel Networks
zebarth@nortel.com

**Ordering and Billing Forum
(OBF)**

Dean Grady
OBF Co-Chair
dean.grady@mci.com

David Thurman
OBF Co-Chair
David.Thurman@mail.sprint.com

John Pautlitz
ATIS Director Industry Forums-OBF
jpautlitz@atis.org

RE: OBF Billing Committee Issue 2776 - Identification of IP-
Originated, PSTN-Terminated Traffic for Inter-carrier Compensation
Purposes

The OBF Billing Committee is currently reviewing Issue 2776 (See Attachment 1), related to Inter-carrier Compensation between IP and PSTN networks. Due to the nature of Voice Over Internet Protocol (VoIP) origination, there is an apparent need to separate VoIP traffic from other PSTN traffic for inter-carrier compensation issues.

The committee is investigating the following three options for identifying VoIP traffic:

1. Utilizing existing signaling parameters as provided by the AMATSG (See Attachment 2) – where the possible solution includes one of the following:
 - a. Originating Line Identifier (OLI)
 - b. Calling Party Number (CPN)
 - c. Nature of Connection Indicator (NCI)
 - d. Forward Call Indicator (FCI)
2. ENUM Database type solution – which may contain a list of all VoIP 10-digit numbers.
3. New Feature Group trunk type for packet type interconnection – which could be similar to existing Feature Group trunk types (Example: FGB & FGD). In this case, we would need to investigate the best signaling protocol available.

*"Developing Standards
that Drive the Business
of Communications and
Information Technology"*

We are requesting any recommendations specific to the AMATSG solution (1) but would also like to get your input regarding the other alternatives (2 & 3) that we are considering. We would welcome any other options that we have not yet identified.

Would you kindly provide a response with a status or update in time for review prior to the next OBF General Session (June 22, 2005).

Your questions and feedback may be directed to the Billing Committee Co-Chairs: Syl-Vonna Mabie (919) 844-9043 (email: sylvonna.mabie@nisc.coop) and Larry Martin at (936) 637-4262 (email: larry.martin@consolidated.com)

Regards,

Syl-Vonna Mabie
Billing Committee Co-Chair
NISC

Larry Martin
Billing Committee Co-Chair
Consolidated Communications

CC:

Dean Grady, OBF Co-Chair, MCI, dean.grady@mci.com
Dave Thurman, OBF Co-Chair, Sprint, David.Thurman@mail.sprint.com
Khristine Natelli, OBF Billing Committee Administrator, knatelli@atis.org
John Pautlitz, ATIS OBF Director, jpautlitz@atis.org
Alissa Medley, OBF Project Manager, amedley@atis.org
Yvonne Reigle, OBF Team Manager yreigle@atis.org
Tom Goode, ATIS Attorney, tgoode@atis.org
Jean-Paul Emard, Director - Technical Committee, PTSC, ATIS, jpemard@atis.org
Steve Barclay, PTSC Manager, ATIS, sbarclay@atis.org
Catrina Akers, PTSC Committee Associate, cAkers@atis.org
Nicole Butler, PTSC Committee Administrator, nbutler@atis.org
Joe Scolaro, LSOP SME, jscolaro@atis.org

Rebuttal Testimony
Of William R. Easton

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER

Chairman

MARC SPITZER

Commissioner

WILLIAM A. MUNDELL

Commissioner

MIKE GLEASON

Commissioner

KRISTIN MAYES

Commissioner

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

**Docket No. T-03654A-05-0350
T-01051B-05-0350**

REBUTTAL TESTIMONY OF WILLIAM R. EASTON

ON BEHALF OF

QWEST CORPORATION

(Disputed Issue Nos. 1, 2, 5, 13, 17, 18, 21 and 22)

AUGUST 15, 2005

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER

Chairman

MARC SPITZER

Commissioner

WILLIAM A. MUNDELL

Commissioner

MIKE GLEASON

Commissioner

KRISTIN MAYES

Commissioner

**IN THE MATTER OF THE PETITION)
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**Docket No. T-03654A-05-0350
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AUGUST 15, 2005

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- 6

7 **III. DISPUTED ISSUE NO. 1: COSTS OF INTERCONNECTION**

8 **Q. IN DISCUSSING THE COSTS OF INTERCONNECTION AT PAGE 6 OF HIS**
9 **TESTIMONY, MR. GATES CLAIMS THAT QWEST'S NETWORK**
10 **ARCHITECTURE "DOES NOT REMOTELY REFLECT WHAT AN EFFICIENT**
11 **FIRM WOULD CONSTRUCT TODAY." PLEASE COMMENT.**

12 A. Mr. Linse addresses Mr. Gates allegations from a network perspective. From a
13 policy perspective, and from the perspective of the issues that must be resolved by
14 this Commission, it is irrelevant which company has the more or less efficient
15 network. Issue 1 raises the question of which party is responsible for the costs of
16 interconnection. Embedded in this question is the assumption that interconnection
17 to Qwest's network, regardless of its alleged state of technological obsolescence,
18 is valuable to Level 3. My direct testimony and the direct testimony of Mr. Linse

1 explain that Qwest offers Level 3 a number of different options for interconnection
2 and allows Level 3 to select the option that best meets its needs, given its business
3 strategy, its own network configuration and its desire to interconnect with the
4 Qwest network. The costs related to each of these options have been identified,
5 discussed and determined by this Commission in various cost dockets. There is
6 no question that, under the Act, Qwest is allowed to recover costs that are just and
7 reasonable and based on the cost of providing service.

8
9 **Q. ON PAGE 14 OF HIS TESTIMONY MR. GATES STATES THAT THE POINT OF**
10 **INTERCONNECTION (POI) IS NORMALLY VIEWED AS THE FINANCIAL AND**
11 **PHYSICAL DEMARCATION POINT THAT DEFINES WHERE ONE PARTY'S**
12 **FINANCIAL AND OPERATIONAL OBLIGATIONS END AND THE OTHER**
13 **PARTY'S BEGIN. DO YOU AGREE?**

14 A. No. The POI is clearly the physical demarcation point between the parties'
15 networks, but it is not necessarily the demarcation point from a financial
16 perspective. Whether Level 3 will incur expense on Qwest's side of the POI will
17 depend on the form of interconnection Level 3 chooses. As Mr. Linse explained in
18 his testimony, the POI is merely the point at which the two networks meet, but by
19 itself it does not establish interconnection. If, for example Level 3 requires an
20 entrance facility to bring its traffic from the POI to the Qwest switch, it will be
21 required to pay for its use of that facility as provided in the FCC's rule 51.709(b),
22 which states:

1 The rate of a carrier providing transmission facilities dedicated to the
2 transmission of traffic between two carriers' networks shall recover only
3 the costs of the proportion of that trunk capacity used by an
4 interconnecting carrier to send traffic that will terminate on the providing
5 carrier's network. Such proportions may be measured during peak
6 periods.
7

8 Clearly the FCC rules allow for Qwest to be compensated for the use of facilities
9 on its side of the POI.
10

11 **Q. AT PAGE 14 OF HIS TESTIMONY, MR. GATES STATES THAT FCC RULE**
12 **51.703(B) REQUIRES THAT EACH CARRIER BE RESPONSIBLE FOR THE**
13 **COSTS OF ITS OWN NETWORK ON ITS SIDE OF THE POI. IS THAT A**
14 **CORRECT INTERPRETATION OF 51.703(B) ?**

15 **A.** No. Rule 51.703(b) states that, "A LEC may not assess charges on any other
16 telecommunications carrier for *telecommunications traffic that originates on the*
17 *LECs network.*" (Italics added). This rule pertains only to the costs associated
18 with telecommunications traffic originated by a local exchange carrier. It certainly
19 does not state that each carrier is responsible for the costs on its side of the POI,
20 as Mr. Gates has suggested.
21

22 **Q. MR. GATES DISCUSSES "MEET POINT" INTERCONNECTION ON PAGES 47**
23 **AND 48 AND STATES THAT THE FCC HAS RECOGNIZED THAT WITH THIS**
24 **TYPE OF ARRANGEMENT "EACH PARTY IS RESPONSIBLE FOR ITS OWN**

1 **COSTS IN GETTING TO A MEET POINT.” IS THIS AN ISSUE AT DISPUTE IN**
2 **THIS ARBITRATION?**

3 A. No. As I discussed in my direct testimony, section 7.1.2.3 of the agreement allows
4 for Mid-Span Meet POI interconnection,¹ which would involve Qwest and Level 3
5 each building facilities to the meet point and each being responsible for its own
6 costs. This form of interconnection does not require entrance facilities.

7
8 **Q. WHAT THEN, IS THE CONFUSION?**

9 A. Mr. Gates seems to confuse establishing a Mid-Span Meet POI with another form
10 of interconnection that does require entrance facilities. The relative use (RUF)
11 calculations, which apply to an entrance facility purchased from Qwest, do not
12 apply to a Mid-Span Meet Point of Interconnection. Section 7.1.2.3 states that,
13 under this latter option, “[e]ach Party will be responsible for its portion of the build
14 to the Mid-Span Meet POI.” Thus, to the extent that Level 3 seeks to avoid
15 financial responsibility for entrance facilities provided by Qwest, it is free, under this
16 agreement, to select the Mid-Span Meet POI option and avoid charges based on
17 the RUF calculation.

18
19 **Q. ON PAGE 48 MR. GATES STATES THAT “...QWEST WILL TRY TO ASSIGN**
20 **SOME OF THE COSTS OF ITS OWN NETWORK ON ITS SIDE OF THE POI TO**

¹ *Local Competition Order*, ¶ 553 cited by Mr. Gates refers to “meet point arrangements (or mid-span meets).”

1 **LEVEL 3, BASED IN SOME WAY ON THE AMOUNTS OF TRAFFIC THAT**
2 **QWEST SENDS LEVEL 3 AND VICE VERSA. THAT IS UNREASONABLE IN**
3 **AND OF ITSELF.” IS QWEST BEING UNREASONABLE?**

4 A. No. Qwest is merely complying with FCC rule 51.709(b) cited earlier, which allows
5 for cost recovery in proportion to the parties' usage of the facilities. If Level 3 uses
6 a Qwest facility, it is entirely reasonable for Qwest to be compensated for network
7 capacity used by Level 3 to transmit traffic that will terminate on the Qwest
8 network. I would add that Mr. Gates' testimony is also at odds with the testimony
9 of Mr. Ducloo who states on pages 7-8 of his direct testimony that “the parties
10 agree that the cost of facilities used to connect their networks will be split based on
11 relative use.”

12
13 **Q. ON PAGE 48 OF HIS TESTIMONY MR. GATES ALLEGES THAT QWEST IS**
14 **SEEKING TO “UNFAIRLY AND UNREASONABLY” EXCLUDE ISP-BOUND**
15 **TRAFFIC THAT IT SENDS LEVEL 3 FROM THE RELATIVE USE**
16 **CALCULATION. AT PAGE 8 OF HIS TESTIMONY MR. DUCLOO CHARGES**
17 **THAT REMOVING ISP-BOUND TRAFFIC FROM THE CALCULATION IS A**
18 **“SLEIGHT OF HAND.” PLEASE COMMENT.**

19 A. Although Mr. Gates argues that “there is no basis for excluding ISP-bound traffic
20 from any RUF calculation,” in a 2003 arbitration between Qwest and AT&T
21 Communications, the Commission ruled that internet related traffic should be

1 excluded when determining relative use.² Given the Commission's previous ruling
2 on this issue, Qwest's proposal to exclude this traffic is neither "unreasonable" nor
3 accomplished by a "sleight-of-hand."
4

5 **Q. MR. GATES STATES THAT EXCLUDING THE ISP-BOUND TRAFFIC IS**
6 **CONTRARY TO THE ECONOMIC RULE OF COST CAUSATION. DO YOU**
7 **AGREE?**

8 A. No. In a previous arbitration between Level 3 and Qwest, the Colorado
9 Commission directly addressed the issue of cost causation, stating:
10

11 When connecting to an ISP served by a CLEC, the ILEC end-user acts
12 primarily as the customer of the ISP, not as a customer of the ILEC. The
13 end-user should pay the ISP; the ISP should charge the cost-causing end-
14 user. The ISP should compensate both the ILEC (Qwest) and the CLEC
15 (Level 3) for costs incurred in originating and transporting the ISP-bound
16 call. Therefore, we agree with Qwest that Internet related traffic should be
17 excluded when determining relative use of entrance facilities and direct
18 trunked transport.³
19

²*In the Matter of Petition of AT&T Communications of the Mountain States, Inc. and TCG Phoenix, for Arbitration With Qwest Corporation, Inc. Pursuant to 47 U.S.C. Section 252(b).* Docket No. T-02428A-03-0553. (Arizona Corporation Commission, December 17, 2003).

³*In the Matter of Petition of Level 3 Communications LLC, for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Qwest Corporation.* Docket No.00B-601T. (Colorado PUC, March 16, 2001), p. 36.

1 **Q. HOW DO YOU RESPOND TO MR. GATE'S CLAIMS AT PAGE 51 OF HIS**
2 **TESTIMONY THAT QWEST IS ATTEMPTING TO SHIFT ITS OWN NETWORK**
3 **COSTS TO LEVEL 3?**

4 A. The reality is that it is Level 3 who is attempting to shift costs. As the Colorado
5 Commission noted in the order just cited, it is Level 3 who is attempting to shift the
6 cost of providing service to its ISP customers to Qwest. Consistent with the
7 Commission's previous ruling on this issue, these costs should not be borne by
8 Qwest.

9
10 **Q. AT PAGE 51 OF HIS TESTIMONY MR. GATES STATES THAT UNDER FCC**
11 **RULE 51.703(B) QWEST HAS AN OBLIGATION TO COMPENSATE LEVEL 3**
12 **FOR ALL CALLS WHICH ORIGINATE ON QWEST'S NETWORK. DO YOU**
13 **AGREE?**

14 A. No. Clearly, under the FCC's rules Qwest has an obligation to compensate Level
15 3 for "telecommunications traffic" that originates on its network. The ISP-bound
16 traffic in question here, however, has been defined as "information access" by the
17 FCC and, as such, is explicitly excluded from the FCC's definition of
18 telecommunications traffic.⁴

19

1 **Q. HAVE FEDERAL COURTS REVIEWED THE ISSUE OF EXCLUDING ISP**
2 **BOUND TRAFFIC?**

3 A. Yes. Qwest's language and position have been subject to federal court review in
4 both Oregon and Colorado, and both courts upheld Qwest's language.⁵ Judge
5 Nottingham of the United States District Court for the District of Colorado recently
6 addressed this issue and affirmed that Qwest's language accurately reflects the
7 law. In particular, Judge Nottingham held that the rules that relate to relative use,
8 47 C.F.R. §§ 703(b) and 709(b), apply only to "telecommunications traffic" and,
9 under the unambiguous terms of the *ISP Remand Order*, Internet-bound traffic is
10 not "telecommunications traffic."⁶ He further held that because Internet-bound
11 traffic is not "telecommunications traffic," Rule 709(b) is inapplicable and the
12 Colorado commission properly excluded Internet-bound traffic from the relative use
13 provisions of the parties' interconnection agreement.⁷ Moreover, Judge
14 Nottingham upheld the Colorado commission's policy determinations, the same
15 policy determinations the FCC made in the *ISP Remand Order* and that Qwest

⁴ FCC rule 51.701(b)(1) defines "telecommunications traffic" as traffic "exchanged between a LEC and a telecommunications carrier other than a CMRS provider, *except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access.*" (Italics added).

⁵ Order and Memorandum of Decision, *Level 3 Communications, LLC v. Pub. Utils. Comm'n of Colorado*, Civil Action No. 01-N-2455 (CBS) (D. Colo. Dec. 8, 2003) ("*Colorado Level 3 Order and Memorandum of Decision*"); Opinion and Order, *Level 3 Communications, LLC v. Public Utils. Comm'n of Oregon*, CV 01-1818 (D. Or. Nov. 25, 2002) (slip op.).

⁶ See *Colorado Level 3 Order and Memorandum of Decision* at 23.

⁷ *Id.* at 22.

1 relies upon here: that costs of serving ISPs should be absorbed by ISPs, not
2 Qwest and its customers.⁸
3

4 **Q. ON PAGE 47 MR. GATES STATES THAT THE FCC'S TRIENNIAL REVIEW**
5 **REMAND ORDER HELD THAT ENTRANCE FACILITIES ARE "NO LONGER TO**
6 **BE PROVIDED – AT LEAST AT TELRIC-BASED RATES." IS THIS YOUR**
7 **UNDERSTANDING AS WELL?**

8 A. No. My understanding is that the FCC determined that ILECs were no longer
9 required to make unbundled elements available for use as entrance facilities. As
10 the proposed language in the interconnection agreement makes clear, Qwest
11 continues to offer entrance facilities as an interconnection option. These entrance
12 facilities are offered at TELRIC rates.

13 **Q. AT PAGE 25 MR. GATES REFERS TO PARAGRAPH 995 OF THE FCC'S**
14 **LOCAL COMPETITION ORDER, STATING THAT ONCE A POI IS**
15 **ESTABLISHED IT CAN BE USED FOR THE EXCHANGE OF ALL TYPES OF**
16 **TRAFFIC. IS THIS AN ACCURATE DESCRIPTION OF PARAGRAPH 995.**

17 A. No. Mr. Gates refers to only a portion of the paragraph. The full text of paragraph
18 995 reads as follows:

19 We conclude that, if a company provides both telecommunications and
20 information services, it must be classified as a telecommunications carrier for
21 purposes of section 251, and is subject to the obligations under section 251(a),
22 to the extent that it is acting as a telecommunications carrier. We also

⁸ *Id.* at 25.

1 conclude that telecommunications carriers that have interconnected or gained
2 access under sections 251(a)(1), 251(c)(2), or 251(c)(3), may offer information
3 services through the same arrangement, so long as they are offering
4 telecommunications services through the same arrangement as well. Under a
5 contrary conclusion, a competitor would be precluded from offering information
6 services in competition with the incumbent LEC under the same arrangement,
7 thus increasing the transaction cost for the competitor. We find this to be
8 contrary to the pro-competitive spirit of the 1996 Act. By rejecting this
9 outcome we provide competitors the opportunity to compete effectively with
10 the incumbent by offering a full range of services to end users without having
11 to provide some services inefficiently through distinct facilities or agreements.
12 *In addition, we conclude that enhanced service providers that do not also*
13 *provide domestic or international telecommunications, and are thus not*
14 *telecommunications carriers within the meaning of the Act, may not*
15 *interconnect under section 251. (Italics added).*
16

17 It is clear that telecommunications carriers are allowed to interconnect and, having
18 done so, may carry both information services and telecommunications services. It is
19 also clear that companies that do not provide telecommunications services are not
20 entitled to interconnect under section 251. What is not clear is whether Level 3 has
21 any end-user telecommunications customers, which raises the question of whether it
22 is in fact a telecommunications carrier or an enhanced service provider.
23

24 **Q. DO YOU HAVE ANY OTHER COMMENTS ON THE LEVEL 3 TESTIMONY ON**
25 **ISSUE NO. 1?**

26 **A.** Yes. As I explained in my direct testimony and as Level 3 details in the matrix of
27 disputed issues, Issue Number 1 is comprised of 10 subparts. It is worth noting
28 that, other than the high level discussion about points of interconnection,
29 compensation on each parties' side of the POI and the RUF calculation, to which I

1 have just responded, Level 3 has offered neither detailed objections to Qwest's
2 proposed language nor an explanation of why Level 3's language is appropriate.

3
4 **IV. DISPUTED ISSUE NO. 2: ALL TRAFFIC ON INTERCONNECTION TRUNKS**

5
6 **Q. AT PAGE 7 OF HIS TESTIMONY MR. GATES STATES THAT QWEST WANTS**
7 **LEVEL 3 TO SEPARATE TRAFFIC AND ROUTE IT OVER DIFFERENT TRUNK**
8 **GROUPS BASED ON WHETHER THE TRAFFIC FALLS INTO "ARBITRARY"**
9 **CATEGORIES. IS THIS WHAT QWEST IS PROPOSING?**

10 **A.** No. First, the "arbitrary" categories to which Mr. Gates refers are anything but
11 arbitrary. These categories (e.g. local vs. switched access) have long been
12 established and maintained by telecommunications companies and regulators
13 alike. Each category has its own well recognized intercarrier compensation
14 mechanism.

15
16 More importantly, Qwest does allow all traffic types to be combined on a single
17 trunk group. Qwest's proposed language in section 7.2.2.9.3.2 of the agreement
18 allows for the combining of traffic over the same Feature Group D (FGD) trunk.
19 But, as I explained in my direct testimony, Qwest is not able to allow local and
20 switched access traffic to be combined over LIS trunks because LIS trunks are not

1 capable of producing records for the billing of switched access. In addition to the
2 system changes necessary to create Jointly Provided Switched Access records
3 from LIS trunks, there are extensive billing changes that have the potential to be
4 extremely expensive to implement. There are also potential network changes and
5 multiple process changes required to reflect the changed manner in which LIS
6 trunks will be used. Finally, Level 3's proposal would necessitate a change in
7 Qwest's access tariffs which spell out how switched access is ordered, provisioned
8 and billed today.

9
10 Combining all traffic over FGD would allow for the efficiencies Level 3 claims it is
11 seeking while allowing Qwest to use its existing processes and access tariffs for
12 billing the appropriate tariffed rates for switched access and producing the
13 necessary jointly provided switched access records used by other ILECs, CLECs
14 and wireless carriers.

15
16 **Q. ON PAGE 30 OF HIS TESTIMONY MR. GATES SPECULATES THAT QWEST'S**
17 **TRUNKING PROPOSAL APPEARS TO BE DESIGNED TO "DISADVANTAGE**
18 **OR DRIVE ITS COMPETITORS FROM THE MARKET PLACE." PLEASE**
19 **COMMENT.**

20 **A.** Qwest's trunking proposal here is entirely consistent with what Qwest has offered
21 every other carrier and with what the Commission has approved in numerous
22 ICA's. Despite Mr. Gate's heated speculation, the accurate and more rational

1 explanation is that Qwest has offered Level 3 a solution that allows Qwest to use
2 the tariffs, processes and systems it has in place and avoid significant investment
3 in systems and processes to meet the demands of a single carrier.
4

5 **Q. ON PAGE 45 OF HIS TESTIMONY MR. DUCLOO OFFERS THAT LEVEL 3**
6 **WILL SEND TOLL TRAFFIC THAT DOESN'T TERMINATE TO QWEST END**
7 **USERS OR UNE/RESALE CUSTOMERS TO QWEST TOLL TANDEMS WHERE**
8 **ADEQUATE RECORDINGS FOR THE 3RD PARTIES CAN BE MADE. DOES**
9 **THIS ALLEVIATE QWEST'S CONCERNS ABOUT THE USE OF FACTORS FOR**
10 **BILLING?**

11 A. No. It does not reduce the systems changes required of Qwest to apply the
12 factors, and the appropriate tariffed rates, to traffic on LIS trunks. Nor does it
13 eliminate the issue of the 3rd parties need for Jointly Provided Switched Access
14 records. It also does not remove the need for Qwest to modify its state and federal
15 access tariffs to allow for this new way of ordering, provisioning and billing
16 switched access service. I would also note that the proposed agreement filed by
17 Level 3 does not include language that describes how traffic destined to non-
18 Qwest end users will be handled. Thus there is no language for the Commission
19 to consider regarding this.
20
21

1 **V. DISPUTED ISSUE NO. 5: SHOULD INTERCONNECTION TERMS BE**
2 **INCORPORATED BY REFERENCE**

3 **Q. IN DISCUSSING ISSUE NO. 5 ON PAGE 9 OF HIS TESTIMONY, MR. GATES**
4 **STATES THAT IT IS LARGELY "LEGAL" IN NATURE. PLEASE COMMENT.**

5 A. There is apparently still confusion around this issue. Qwest's response to the
6 Level 3 Petition for Arbitration and my direct testimony explain that Qwest is not
7 proposing to incorporate SGAT language into the interconnection agreement by
8 reference. The SGAT language was cited in the contract negotiation template as a
9 means to highlight the fact that state-specific language was to be a part of the
10 proposed language for the states cited. The appropriate proposed language has
11 been included in the interconnection agreement filed with Qwest's reply to the
12 Level 3 request for arbitration. Level 3 has yet to state whether this explanation
13 allows for the closure of this issue or whether it is objecting to the proposed
14 language.

15
16 **VI. DISPUTED ISSUE NO. 13: LOCAL INTERCONNECTION SERVICE**
17 **DEFINITION**

18 **Q. DID LEVEL 3 FILE ANY TESTIMONY SPECIFICALLY RELATED TO THE**
19 **DEFINITION OF LOCAL INTERCONNECTION SERVICE?**

1 A. No.

2

3

VII. DISPUTED ISSUE NO. 17: TRUNK FORECASTING

4 **Q. DID LEVEL 3 FILE ANY TESTIMONY SPECIFICALLY RELATED TO TRUNK**
5 **FORECASTING?**

6 A. No.

7

8

VIII. DISPUTED ISSUE NO. 18: JURISDICTIONAL ALLOCATION FACTORS

9 **Q. AT PAGE 28 OF HIS TESTIMONY MR. GATES ARGUES THAT THE USE OF**
10 **BILLING FACTORS IS A SIMPLE, INEXPENSIVE WAY TO RESOLVE BILLING**
11 **ISSUES RELATED TO ALLOWING ALL TRAFFIC TYPES ON A LIS TRUNK**
12 **GROUP. DO YOU AGREE?**

13 A. No. Changing Qwest systems to allow for the use of factors is not a trivial matter
14 and would require Qwest to significantly rework its systems and processes. In
15 addition, Level 3's factor proposal relies on estimates of traffic, based on periodic
16 sampling, rather than recordings of actual traffic information, which is a clearly
17 superior method and is what Qwest is able to use today. There is simply no need
18 to go through a process of developing estimates when there is already a system in
19 place (FGD) that does this based on actual traffic recording.

1 **Q. AT PAGE 43 OF HIS TESTIMONY MR. DUCLOO ARGUES THAT QWEST**
2 **ALREADY USES FACTORS TO DETERMINE HOW MANY MINUTES ARE**
3 **SUBJECT TO ACCESS CHARGES AND HOW MANY ARE SUBJECT TO**
4 **RECIPROCAL COMPENSATION. IS HE CORRECT?**

5 A. No. Mr. Ducloo apparently misunderstands how Qwest uses the Percent Local
6 Usage (PLU). The PLU is used only with traffic that does not contain a calling
7 party number and cannot be jurisdictionalized based on a comparison of the calling
8 and called parties' numbers. In these situations, the PLU is applied to the bucket
9 of these "unidentified" calls to determine what percent should be billed at the local
10 rate. These calls represent a small minority of the total. The jurisdiction for all
11 other calls is based on a comparison of the calling and called parties' numbers.

12
13 **Q. IT APPEARS THAT THE LEVEL 3 PROPOSED LANGUAGE REQUIRES**
14 **QWEST TO PROVIDE FACTORS TO LEVEL 3. ARE SUCH FACTORS**
15 **NECESSARY?**

16 A. No. Qwest believes that Level 3 is able to bill accurately today. Level 3 provides
17 no reasons why Qwest provided factors will be necessary in the future.

18
19 **Q. DO YOU HAVE ANY ADDITIONAL COMMENT ON LEVEL 3'S PROPOSED**
20 **FACTORS?**

1 A. Yes. Level 3's proposed language does not include a factor for intrastate toll
2 traffic. It is unclear to Qwest how this type of traffic would be handled under Level
3 3's proposal.

4
5

6 **IX. DISPUTED ISSUE NO. 21: ORDERING OF INTERCONNECTION TRUNKS**

7

8 **Q. DID LEVEL 3 FILE ANY TESTIMONY SPECIFICALLY RELATED TO THE**
9 **ORDERING OF INTERCONNECTION TRUNKS?**

10 A. No.

11

12 **X. DISPUTED ISSUE NO. 22: COMPENSATION FOR SPECIAL CONSTRUCTION**

13 **Q. DID LEVEL 3 FILE ANY TESTIMONY SPECIFICALLY RELATED TO**
14 **COMPENSATION FOR SPECIAL CONSTRUCTION?**

15 A. No.

16

17

18

1 In this arbitration, Level 3 has raised objections to the concept of a relative usage
2 calculation and specifically to Qwest's proposal to exclude ISP-bound traffic from
3 the calculation. These objections are misplaced, as the FCC has specifically
4 provided for compensation based upon the relative usage of the parties and this
5 Commission has specifically ruled that ISP-bound traffic should be excluded from
6 the relative use calculation.

7
8 Finally, Level 3 mischaracterizes Qwest's trunking options, stating that Qwest
9 refuses to allow it to combine all traffic on a single trunk group. Level 3 fails to
10 acknowledge that Qwest has agreed to allow the combining of all traffic over FGD
11 trunks. This proposal allows for the efficiencies Level 3 claims it is seeking while
12 allowing Qwest to use existing tariffs, processes and systems to bill appropriate
13 rates for switched access and producing jointly provided switched access records.
14 This proposal also has the benefit of using actual recordings of traffic for billing
15 purposes, rather than using estimated factors as Level 3 proposes.

16
17 For all of these reasons, Qwest respectfully requests that the Commission approve
18 and adopt Qwest's language as it relates to these issues.

19
20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 **A.** Yes it does.

BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO. T-03654A-05-0350
T-01051B-05-0350

STATE OF WASHINGTON)
COUNTY OF KING)

AFFIDAVIT OF
WILLIAM R. EASTON

: SS

William R. Easton, of lawful age being first duly sworn, depose and states:

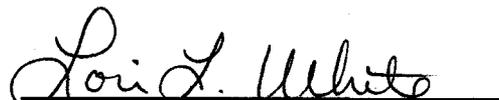
1. My name is William R. Easton. I am Director – Wholesale Advocacy for Qwest Corporation in Seattle, Washington. I have caused to be filed written rebuttal testimony in Docket No. T-03654A-05-0350, T-01051B-05-0350.
2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.


William R. Easton

SUBSCRIBED AND SWORN to before me this 8th day of August, 2005.




Notary Public

My Commission Expires: 7/10/07

Rebuttal Testimony of
Larry B. Brotherson

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER

Chairman

MARC SPITZER

Commissioner

WILLIAM A. MUNDELL

Commissioner

MIKE GLEASON

Commissioner

KRISTIN MAYES

Commissioner

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

Docket No. T-03654A-05-0350
T-01051B-05-0350

REBUTTAL TESTIMONY OF LARRY B. BROTHERRSON

ON BEHALF OF

QWEST CORPORATION

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

AUGUST 15, 2005

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- 1 • ISSUE 10: DEFINITION OF INTERCONNECTION
- 2 • ISSUE 11: DEFINITION OF INTEREXCHANGE CARRIER
- 3 • ISSUE 12: DEFINITION OF INTRALATA TOLL TRAFFIC
- 4 • ISSUE 14: DEFINITION OF TELEPHONE EXCHANGE SERVICE
- 5 • ISSUE 15: DEFINITION OF TELEPHONE TOLL SERVICE
- 6

7 In addition, I will respond to some of the general comments made by Level 3 regarding
8 competition, network efficiencies, and the Internet.

9
10 **Q. BEFORE ADDRESSING SPECIFIC ISSUES IN THE MATRIX AND SPECIFIC**
11 **LANGUAGE SECTIONS, DO YOU HAVE ANY GENERAL COMMENTS?**

12 A. Yes. This has been an unusual arbitration in terms of responding to the Petition and
13 responding to the direct testimony. For a case whose sole purpose is to establish contract
14 language in a disputed interconnection agreement pursuant to section 252 of the Act, Level
15 3 spends little time defending its own language or comparing it to Qwest's language. Its
16 testimony is virtually all high-level policy discussion, whose thrust is that Level 3 should
17 be entitled to special treatment. Furthermore, it should be noted that while Mr. Ducloo
18 filed 17 exhibits, my review of his testimony indicates that he only refers to four of them
19 (RRD ## 1-3, and 9) in his testimony. Nonetheless, I have actually responded below to a
20 few of the exhibits that he does not mention, simply because there are serious errors in
21 them. Qwest, of course, reserves the right to move to strike exhibits that are not
22 appropriately presented to the Commission.

1 I direct my reply testimony to specific issue numbers, but in general all of the Level 3
2 direct testimony on issues for which I am responsible fall into two issues: (1) the definition
3 of VoIP and (2) the proper means of defining local and interexchange calls for
4 compensation purposes.

5
6 In light of the fact that Level 3 has chosen not to provide testimony related to specific
7 interconnection agreement language in its direct testimony, and given the possibility that it
8 will raise specific issues related to language for the first time in rebuttal testimony, Qwest
9 reserves the right to seek an opportunity to reply to such testimony in live surrebuttal
10 testimony or in some other appropriate manner.

11 **III. DISPUTED ISSUE 16: DEFINITION OF VOIP**

12 **Q. WHY IS VOIP AN ISSUE IN THIS INTERCONNECTION AGREEMENT?**

13 A. Until now, Level 3's business model has been primarily the offering of originating numbers
14 to ISPs using its status as a CLEC with single point of interconnection to provide state wide
15 free **originating** calling to ISPs. This is the VNXX issue that I address later. However,
16 Level 3 now appears to be expanding its business model. It appears that Level 3 intends to
17 use its status as a CLEC able to assign local telephone numbers in distant towns as the
18 means to provide LATA-wide **termination** to VOIP providers over Qwest's network, and
19 to treat these calls as local as well. Because Qwest's language limits ISP terminations to

1 within the local calling area (“LCA”) in which the Enhanced Service Provider (“ESP”)
2 purchases local service, Level 3 objects to Qwest’s contract language related to VoIP.

3 **Q. PLEASE EXPLAIN THE DISPUTE RELATING TO THE DEFINITION OF VOIP?**

4 A. Level 3 and Qwest disagree on a variety of issues related to the definition of VoIP. These
5 issues include (1) where the special equipment that converts calls to Internet Protocol
6 (“IP”) must be located; (2) how the ESP exemption applies to VoIP calls under certain
7 circumstances; and (3) the significance of the location of the ESP point of presence
8 (“POP”) as it relates to defining a call as local or toll. My rebuttal testimony addresses Mr.
9 Ducloo’s and Mr. Gates’ testimony relating to these issues.

10 **Q. DID MR. DUCLOO OR MR. GATES SPECIFICALLY ADDRESS THE**
11 **INTERCONNECTION AGREEMENT (“ICA”) LANGUAGE IN DISPUTE**
12 **RELATING TO THE DEFINITION OF VOIP?**

13 A. No, as I noted, the Level 3 testimony is mostly high level policy testimony. However, in
14 the course of delivering their high level testimony, both Mr. Ducloo and Mr. Gates do
15 address some of the issues associated with the language in dispute, though rarely the
16 language itself. Mr. Ducloo discussed his definition of VoIP and provided Exhibit RRD #6
17 as an illustration of two types of VoIP connections to the Public Switched Telephone
18 Network (“PSTN”).

19 **Q. DO YOU AGREE WITH MR. DUCLOO’S DEPICTION OF A VOIP CALL IN**
20 **EXHIBIT RRD #6?**

1 A. Generally yes. Exhibit RRD #6 is an accurate depiction of two configurations I discuss in
2 my direct testimony. The example at the top of the page represents the type of traffic
3 addressed in the AT&T case discussed in my initial testimony (TDM-IP-TDM),¹ which the
4 FCC determined starts and ends as a TDM call and therefore has undergone no net protocol
5 conversion. The FCC has ruled that this type of call is not properly characterized as VoIP.

6
7 The example at the bottom of that page is an accurate depiction of a second call that does
8 involve a net protocol conversion. Based on this exhibit, Qwest and Level 3 appear to
9 agree that traffic that originates in IP on IP-compatible equipment and then is converted to
10 TDM for delivery to a customer on the PSTN (IP-TDM) is an Interconnected VoIP call
11 (hereafter VoIP) and is properly characterized as VoIP traffic under the ICA (in other
12 words, on the lower half of RRD #6, traffic that moves from left (IP) to right (TDM) is
13 VoIP traffic). Although we agree in both the testimony and exhibits, Level 3 nevertheless
14 seeks to strike the defining language in the ICA to that effect.

15 **Q. ARE THERE OTHER PARTS OF MR. DUCLOO'S EXHIBIT #6 WITH WHICH**
16 **YOU DISAGREE?**

17 A. Yes. Exhibit RRD # 6 appears to show VoIP calls going both ways. Qwest and Level 3
18 disagree on whether traffic that is originated in TDM on a PSTN phone and delivered in IP
19 is a VoIP call for purposes of the ICA and the ESP exemption. Calls originating in TDM

¹ Order, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, 19 FCC Rcd 7457, ¶¶ 12-13 (April 14, 2004) (ruling that AT&T's service was a telecommunications service and is subject to access charges) ("*AT&T Declaratory Ruling*").

1 over PSTN telephones by Level 3 or its customers are not VoIP calls because, by
2 definition, they would fall into the TDM-IP-TDM classification that Mr. Ducloo agrees is
3 not an enhanced service. Mr. Ducloo's exhibit also fails to show the location of a VoIP
4 POP, a critical piece in the exhibit and in this case. Assuming the dashed line labeled "net
5 protocol conversion" is the VoIP POP, then under Qwest's language (which is consistent
6 with FCC characterizations) two things are required in order for a call to be categorized as
7 VoIP. First, it must originate in IP on IP-compatible CPE and, second, it must undergo a
8 net protocol conversion (i.e., into TDM) before being delivered to a PSTN customer.
9 Because the second example on Exhibit RRD #6, moving from right (TDM) to left (IP),
10 does not meet the first criterion, it is not a VoIP call and should not be treated as VoIP
11 under the ICA. It is simply a voice call, a TDM call to a location on the network of the
12 VoIP provider.

13 **Q. IS LEVEL 3'S LANGUAGE CONSISTANT WITH LEVEL 3'S POSITION THAT A**
14 **PSTN-ORIGINATED CALL IS A VOIP CALL?**

15 A. No. While Level 3 discusses general theories, it makes no comment about Qwest's
16 language. Interestingly, Qwest has no problem with Level 3's actual language in the ICA
17 on this issue. However, in light of the exhibits there may be a misunderstanding that needs
18 comment for the record. Despite proposing language that states "VoIP" is "traffic that
19 *originates* in Internet Protocol using IP-Telephone handsets . . . ," Level 3's response to
20 Qwest Data Request No. 28 (attached hereto as Exhibit LBB-1) states that Level 3 takes the
21 position that calls that originate in TDM, but which terminate in IP, are also VoIP calls.

1 Level 3's response to the data request is inconsistent with its own proposed ICA language.
2 But more importantly, calls that terminate in IP over broadband would not be delivered to
3 Qwest under this ICA; they would route directly to the end user customer without ever
4 being converted to TDM and without passing through the PSTN. Qwest would never see
5 the terminating end of such calls. As such, there is no need to address them in the ICA.

6 **Q. WHY DOES QWEST'S ICA LANGUAGE (SECTION 7.2.2.12) MAKE THE VOIP**
7 **PROVIDER'S POP THE RELEVANT LOCATION FOR DETERMINING HOW**
8 **TO PROPERLY CATEGORIZE A VOIP CALL AS LOCAL OR**
9 **INTEREXCHANGE?**

10 A. Mr. Ducloo discusses how, through the use of IP equipment connected to the Internet via a
11 broadband connection, a customer can connect anywhere there is a broadband Internet
12 connection to make a VoIP call. (See page 62 of Mr. Ducloo's Direct Testimony). Qwest
13 does not dispute this. Broadband IP calls originate, connect to the Internet backbone, and
14 crisscross the country without ever touching the PSTN. That is one of the reasons the
15 physical location of the VoIP provider's POP, the point at which the call is converted to
16 TDM and enters the PSTN, is so important. For purposes of application of the ESP
17 exemption, the ESP (in this case, the VoIP provider) is treated as a retail end user
18 customer. Given the fact that the ESP exemption allows the ESP to connect to the network
19 by purchasing local services as an end user customer, it is essential to know which LCA the
20 VoIP POP is located in (i.e., where it is buying local service). Thus, given the nature of the
21 traffic (assuming it is properly categorized as VoIP), and given the fact that VoIP providers

1 desire to take advantage of the benefits of the ESP exemption, it is essential that the
2 physical location of the VoIP provider's POP be one of the relevant points for properly
3 characterizing the traffic (the other relevant point is the physical location of the PSTN
4 customer to whom the call is being terminated). The language that makes the VoIP
5 provider's POP one of the relevant points of measurement is contained in Qwest's updated
6 VoIP definition and shown on page 26 of my direct testimony. Qwest's VoIP definition is
7 critical to the proper application of the ICA and should be adopted by the Commission.
8 Level 3's attempt to strike terms central to the definition of VoIP should be disregarded.

9 **Q. MR. DUCLOO ALSO DISCUSSES IP-COMPATIBLE CPE. IS MR DUCLOO'S**
10 **DISCUSSION CONSISTENT WITH LEVEL 3'S POSITION ON WHAT DEFINES**
11 **VOIP?**

12 A. Mr. Ducloo describes the specialized CPE required by VoIP: "Special phones, called "SIP"
13 phones ("SIP" stands for "Session Initiation Protocol" . . .) can be used for VoIP. These
14 phones have small computers built into them that packetize the voice data and generate SIP
15 messages." (Page 62, lines 8-9) I agree with that statement. Converting the call to IP
16 protocol at the customer premises (wherever that may be) with special equipment de facto
17 makes the call an IP originated call that must travel over a broadband connection. This is
18 why Level 3's attempt to strike the language that requires that the call originate in this type
19 of equipment on the customer premises is surprising. If the end user customer does not
20 have this equipment on the customer premises to convert the call to IP, the call must be
21 originated as a traditional PSTN call in TDM and thus, when delivered to Qwest in TDM,

1 cannot have undergone a net protocol conversion. Qwest's proposed ICA language for the
2 definition of VoIP "traffic that originates in Internet Protocol *at the premises of the party*
3 *making the call* using IP-Telephone handsets, *end user premises...*" (emphasis added)
4 requiring that the specialized equipment Mr. Ducloo describes is critical. The language
5 requiring that the IP equipment is at the customer's premises is an absolutely necessary
6 piece to the definition to assure that the call is an IP originated call. Therefore, Qwest's
7 language should be adopted.

8 **Q. DO MR. DUCLOO AND MR. GATES DISCUSS THE COSTS OF TERMINATING**
9 **CALLS IN THEIR TESTIMONY?**

10 A. Yes. Mr. Ducloo and Mr. Gates discuss whether the costs of terminating various types of
11 calls (including VoIP, local calls, intrastate toll calls, and interstate toll calls) differ. My
12 general comments to those discussions are that through long and extensive cost dockets the
13 Commission has established rates that Qwest can charge for various types of calls. An
14 arbitration of contract terms for one CLEC is not the appropriate forum for changing
15 Commission established rates that apply to all IXCs, CLECs, or other carriers that use the
16 Qwest network. The isolated approach Level 3 proposes would unduly distort the market
17 and could create unanticipated consequences or opportunities for regulatory arbitrage.

18 **Q. MR. DUCLOO STATES THAT "QWEST TERMINATES VOIP CALLS TO ITS**
19 **END USER CUSTOMERS IN THE SAME MANNER THEY WOULD USE TO**
20 **TERMINATE REGULAR PSTN BASED LOCAL CALLS TO THEIR END USER**
21 **CUSTOMERS. THERE ARE NO EXTRA PROCESSES, NO ADDITIONAL**

1 **TRANSPORT, AND NO ADDITIONAL SWITCHING.” IS HIS STATEMENT**
2 **ACCURATE?**

3 A. This statement is accurate only for the termination of “regular PSTN based *local calls*.”
4 (Page 68, line 19), which is the only type of call his answer relates to. But that misses the
5 point. Both parties are in agreement that terminating access charges do not apply to local
6 calls (whether it is a PSTN originated local call or a local call handed off by the VoIP POP
7 in the LCA). However, Mr. Ducloo’s testimony is conspicuously silent about how, for
8 example, VoIP calls from an ESP in Phoenix with Phoenix local exchange service, will be
9 delivered to a Qwest PSTN customer in Flagstaff. Yet that is the central issue in dispute
10 with regard to VoIP in this docket. The Qwest language in 7.2.2.12 is intended to make
11 clear that when a Phoenix Level 3 VoIP provider with a Phoenix local POP terminates a
12 call to a Phoenix PSTN customer, it is a local call, and will be treated that way under the
13 ICA. The call is measured from the VoIP POP to the Qwest PSTN customer. The contract
14 language should make clear that a VoIP call from the Phoenix-based VoIP customer to a
15 Qwest PSTN customer in Flagstaff is not a local call under the ICA, nor should it be.

16 **Q. DO YOU HAVE COMMENTS REGARDING MR. GATES’ COST STATEMENTS**
17 **ON PAGES 52-53?**

18 A. Yes. Level 3 moves the discussion away from Commission rules and onto costs. Mr.
19 Gates states that it would not be appropriate for VoIP to be subject to access charges in any
20 event. An example illustrates the special treatment that Level 3 seeks. First, assume that
21 Level 3’s VoIP provider customer and an IXC each have POPs located in Phoenix in

1 adjoining rooms in the same building. Second, assume that a VoIP call from Level 3
2 destined for a Qwest customer in Flagstaff is delivered to Qwest, and that Qwest transports
3 the call to Flagstaff and delivers it to the PSTN customer. Third, assume that a customer of
4 the IXC does exactly the same thing: delivers a call to Qwest at the Phoenix POP, and that
5 Qwest transports the call to Flagstaff and delivers it to the customer. It is a fact, as Mr.
6 Gates states, that precisely the same Qwest processes, transport, and switching are
7 necessary to deliver both calls, yet under Level 3's proposal Level 3 would pay Qwest
8 \$.0007 per minute to terminate the VoIP call, while the IXC would pay Commission
9 prescribed terminating exchange access rates to deliver the call to the same customer. For
10 both calls, the same processes, transport and switching are necessary, but Level 3 seeks to
11 exempt itself from the rules that apply to other carriers. Comparing costs does not resolve
12 the consequences of disparate regulatory treatment being applied to certain traffic. In the
13 example above, there is absolutely no difference to the PSTN between the two calls: both
14 are delivered to Qwest in TDM, both are voice calls, both use precisely the same processes
15 and facilities to terminate, yet Level 3 proposes completely different regulatory treatment
16 be given to the Level 3 VoIP call. One of the goals of the 1996 Act is to create a
17 competitively-neutral environment—Level 3's proposal is a major step in the wrong
18 direction.

19 **Q. MR. GATES MAKES THE COMMENT; "BROADBAND VOIP SERVICES DO**
20 **NOT IMPOSE ANY ADDITIONAL COSTS ON THE ILECS OR THEIR**
21 **NETWORK EITHER." (PAGE 55, LINES 14-15). HE ALSO IMPLIES THAT**

1 **VOIP SHOULD BE ALLOWED TO USE THE PSTN AT RATES LOWER THAN**
2 **THE ACCESS CHARGES THAT APPLY TO OTHER CARRIERS. (PAGES 55-56).**
3 **PLEASE COMMENT.**

4 A. Again, Mr. Gates is really arguing that Level 3 should be exempt from the current rules and
5 regulations that govern the rest of the industry. Mr. Ducloo, at page 13 of his direct
6 testimony says, “Level 3 is not a traditional competitive local exchange carrier (“CLEC”)”.
7 I agree that Level 3 does not appear to be a typical CLEC. In fact, Level 3 is much more
8 like an ESP seeking inter-LEC compensation. The VoIP call that is converted to TDM,
9 that uses the PSTN just like other types of PSTN calls, should not be treated in a special,
10 discriminatory manner by virtue of the fact that the VoIP call was once in IP protocol or
11 that Level 3 characterizes itself as atypical.

12
13 Yet, despite these facts, Mr. Gates seeks a decision from the Commission that would
14 constitute a major policy shift, to permit either a lower charge or no access charge, on calls
15 bound from Phoenix to LCAs at the other end of the state, if those calls just happened to
16 have once been VoIP calls before being converted into TDM. I can certainly understand
17 Level 3’s desire to reduce or eliminate intrastate access charges—it would certainly be in
18 Level 3’s business interest, particularly if Level 3’s competitors operated under a vastly
19 different set of rules. But such a radical step, if undertaken at all, should be done only after
20 the Commission considers a broader range of interests than are represented in a language
21 dispute in an arbitration between two companies. Before enacting fundamental reform as
22 proposed by Level 3, other local exchange carriers, independent telephone companies,
23 IXCs, wireless providers, and consumers who benefit from what Level 3 refers to as

1 “subsidy-laden” charges, should all have a place at the table so that a reasoned decision,
2 one that takes into account the full consequences, can be reached. An industry forum, for
3 example, would be a reasonable way of addressing these issues. Such an important policy
4 change should not be made in an arbitration proceeding for one specialized CLEC in one
5 agreement.

6 **Q. HAS THE FCC ALSO ADDRESSED THE ISSUE OF DIFFERENT CHARGES FOR**
7 **SIMILAR NETWORK FUNCTIONS?**

8 A. Yes. In the *First Report and Order*, the FCC noted and rejected the same points that Mr.
9 Gates and Mr. Ducloo raise:

10 “We recognize that transport and termination of traffic, whether it originates locally
11 or from a distant exchange, involves the same network functions. Ultimately, we
12 believe that the rates that local carriers impose for the transport and termination of
13 local traffic and for the transport and termination of long distance traffic should
14 converge. We conclude, however, as a legal matter, that transport and termination of
15 local traffic are different services than access service for long distance
16 telecommunications. Transport and termination of local traffic for purposes of
17 reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while
18 access charges for interstate long-distance traffic are governed by sections 201 and
19 202 of the Act. The Act preserves the legal distinctions between charges for
20 transport and termination of local traffic and interstate and intrastate charges for
21 terminating long-distance traffic.”²
22

23 **Q. SHOULD ALL TDM CALLS USING THE PSTN BE TREATED THE SAME EVEN**
24 **IF SOME WERE ORIGINALLY VOIP CALLS?**

25 A. Yes. On page 55 Mr. Gates correctly quotes the FCC: “Dial-up, or narrowband, Internet
26 access utilizes the same PSTN infrastructure that telephone subscribers use to place

1 traditional circuit-switched voice calls.” Qwest agrees with the FCC. Mr. Gates’ ultimate
2 proposals, however, are completely contrary to the substance of the quoted language. Mr.
3 Gates ends his particular answer by saying, in an incongruous way, that “[t]here is simply
4 no economic justification for treating IP-Enabled services as if they were traditional
5 services.” (Page 56, lines 3-4). To the extent that Mr. Gates believes a call to an ESP in
6 TDM protocol is “IP-enabled,” then his conclusion makes no sense. If dial-up access (i.e.,
7 in TDM format) to an ESP to make a VoIP call is identical to a traditional voice call (and it
8 is), then there is no rational reason that a dial-up toll call to make a VoIP call (which is
9 precisely what VNXX is) should not be treated like a traditional voice toll call. A dial-up
10 call in TDM over a modem to a VoIP ESP is indistinguishable to the PSTN to a voice call
11 placed over the PSTN. Thus, the reality reflected in the quote from the FCC is that voice
12 calls and dial-up calls to a VoIP POP are the same, and should be treated the same.

13 **Q. MR. GATES STATES THAT NEITHER PARTY SHOULD BE PERMITTED TO**
14 **IMPOSE COSTS ON THE OTHER PARTY THROUGH AN**
15 **INTERCONNECTION AGREEMENT FOR NO GOOD REASON (PAGE 4). DO**
16 **YOU AGREE WITH HIM?**

17 **A.** I agree with the general concept he articulates, but disagree with the conclusions that Mr.
18 Gates ultimately reaches. The goal of fair and equal imposition of costs is one of the
19 reasons the FCC has, over the years, sought and received extensive comments on how
20 network services should be priced, and has made determinations identifying the network

² First Report and Order and Notice of Proposed Rulemaking, *In the Matters of Implementation of the Local*

1 elements and services for which it is appropriate to impose charges on other carriers.
2 Likewise, the Arizona Commission has held extensive cost docket hearings with numerous
3 participants and expert witnesses and has considered a full range of proposals as to what
4 each party could charge for specific services under interconnection agreements. The rates
5 set forth in Exhibit A to the interconnection agreements were reached only after extensive
6 consideration by the Commission. The language that typically appears in interconnection
7 agreements that imposes inter-carrier charges did not simply come into being for “no good
8 reason.” This language is the product of lengthy and often contentious proceedings. In the
9 end, while Qwest and other parties undoubtedly disagree with specific decisions that have
10 been reached, the result is an effort by the Commission to balance the interests of the
11 parties, to impose reasonable charges based on benefit to the parties, and to promote results
12 that are as competitively neutral as possible.

13 **Q. WHAT IS THE REAL DISPUTE WITH LEVEL 3 OVER PAYMENT OF QWEST’S**
14 **TARIFFED CHARGES FOR CALLS FROM THE VOIP POP TO THE QWEST**
15 **PSTN END USER CUSTOMER?**

16 A. The fundamental problem with the approach taken by Level 3 is that it operates from the
17 premise that, as the provider of new services on a modern IP network, it is entitled to a free
18 pass from the obligations imposed on other carriers when it uses the PSTN, even when its
19 use of the PSTN is identical to the use of other carriers. I doubt very much that any carrier
20 (IXC, ILEC or CLEC) is completely happy with the intercarrier compensation process that

1 currently exists. Most carriers, Qwest included, hope that the FCC will enact changes that
2 will make intercarrier compensation mechanisms more rational than they are today. But,
3 for the time being, the system is what it is, and the existing intercarrier compensation
4 methods achieve a form of rough justice. Level 3, while disparaging the PSTN, has made
5 no effort to duplicate it, and intends to utilize it in order for Level 3 and its customers to
6 complete calls. Qwest believes that, along with the opportunity for Level 3 to use the
7 PSTN for its own business purposes, Level 3 has an obligation to pay its fair share in a
8 manner similar to the obligations of other carriers, no matter whether Level 3 is providing
9 the latest state of the art services or more traditional TDM based services. I agree that costs
10 should not be imposed on one party for “no good reason”—but that does not mean, as
11 Level 3 apparently believes, that one type of carrier is essentially granted a free ride in
12 relation of other carriers or in relation to the network upon which it seeks that free ride.

13 **Q. ON PAGES 54-55 OF HIS TESTIMONY, MR. GATES DISCUSSES THE RETAIL**
14 **PRICES THAT QWEST COMMUNICATIONS CORPORATION (“QCC”)**
15 **CHARGES FOR VOIP SERVICES. IS THAT RELEVANT TO THIS DOCKET?**

16 A. No. In fact, it is unclear precisely what his point is. QCC does offer VoIP, as do many
17 other providers. Qwest has no reason to believe QCC’s pricing is dramatically different
18 than other VoIP providers, including Level 3’s. But that has nothing to do with this case.
19 The relevant issues for this docket are based on the fact that Level 3, a CLEC,
20 interconnects with Qwest and also offers local connection to its VoIP provider customers.
21 The fundamental issue before the Commission is to decide how that interconnection can be
22 provided on a fair and reasonable basis. Mr. Gates offers no evidence, nor is there any, that
23 Qwest provides preferential treatment to QCC. In fact, QCC terminates VoIP calls within

1 the LCA using the ESP exemption, and QCC VoIP calls terminating to a PSTN customer
2 outside the LCA are routed to an IXC. Qwest requires QCC VoIP traffic to be routed in the
3 same manner as it is asking Level 3 to route traffic. As the prior response makes clear,
4 Level 3 is seeking a considerably more advantageous interconnection arrangement with
5 Qwest than QCC receives. Qwest's position is that VoIP providers are ESPs and should
6 not be disadvantaged in relation to other carriers, nor should it receive any preferential
7 treatment beyond the advantages already provided to it from the ESP exemption.

8 **Q. PLEASE RESPOND TO MR. GATES' ARGUMENT THAT VOIP SHOULD BE**
9 **FREE FROM REGULATION. (PAGES 59-60).**

10 A. Qwest agrees that VoIP should be free from regulation. Mr. Gates accurately quotes
11 Qwest's position on VoIP regulation on page 63 of his testimony. But again, Mr. Gates
12 misses the point. The issue before the Commission is how Level 3, in its role as a CLEC,
13 interconnects to the PSTN and exchanges traffic with Qwest, including traffic from ESP
14 end users that purchase connection to the local network from Level 3. In accord with
15 Section 251(c)(2) of the Act, the Qwest/Level 3 ICA presumes interconnection between
16 local exchange carriers ("LECs"). In reality, however, the interconnection between Qwest
17 and Level 3 may not be interconnection between two LECs. Level 3 does not appear to be

1 a LEC, by providing telecommunications service.³ It remains only an ESP by providing
2 only information services.

3
4 To Mr. Gates' point on deregulation of VoIP, the fact is that VoIP is not subject to the kind
5 of regulation to which traditional telecommunications services are subjected. No one
6 regulates the prices of VoIP providers. Furthermore, an IP-IP VoIP call is not regulated in
7 any manner whatsoever. When a Level 3 customer originates a call in IP format over

³ The Act defines "telecommunications service" to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46). In turn the Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43). A "telecommunications carrier" is any provider of telecommunications service that is not an aggregator of telecommunications services. 47 U.S.C. § 153(44). Finally, "information service" means "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. § 153(20). [Although the FCC has interpreted them for us, how do these definitions get us to the view that telecommunications service and information service are mutually exclusive?] 47CFR 51.701 Scope of transport and termination pricing rules. (a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers. (b) Telecommunications traffic. For purposes of this subpart, telecommunications traffic means: (1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see FCC 01-131, ¶¶ 34, 36, 39, 42-43);

Tel Act Section 251(g) CONTINUED ENFORCEMENT OF EXCHANGE ACCESS AND INTERCONNECTION REQUIREMENTS. On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide **exchange access, information access, and exchange services** for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

1 broadband, Level 3 hauls it across the country on its backbone fiber network in IP, and
2 terminates the call in IP format over broadband to a residence or business with a broadband
3 connection; there is not a single vestige of regulation of that call. Nor does the call involve
4 the PSTN or an interconnection with a CLEC. But, and this is the point that Mr. Gates
5 ignores, if a CLEC such as Level 3 wishes to interconnect and terminate traffic on the
6 PSTN then the interconnection agreement and the Arizona Commission are involved.
7

8 There is a fundamental difference between regulating VoIP calls on the Internet, which
9 neither Qwest nor Level 3 support, and the rules governing an ICA between LECs. As a
10 CLEC, the arbitration of this ICA is subject to no more regulation than an agreement
11 between Qwest and any other LEC. But given that Level 3 is operating as a CLEC that
12 wants to use the portion of the PSTN owned by an ILEC, subjecting Level 3 to the rules
13 that govern all other carriers is completely reasonable, and subjects Level 3 to no more
14 regulation than other unregulated providers. If what Mr. Gates is trying to avoid under the
15 guise of freeing VoIP from regulation is that Level 3 not be subject to the same
16 interconnection and compensation requirements as other carriers, Qwest adamantly
17 disagrees.

18
19 **Q. IS IT THE REGULATION OF IP TRAFFIC ON THE INTERNET OR THE**
20 **REGULATION OF PSTN TRAFFIC IN TDM THAT LEVEL 3 REALLY OBJECTS**
21 **TO?**

22 **A.** It is the rules that govern Level 3's use of PSTN that Level 3 is really objecting to. Mr.
23 Gates misinterprets the issue of service regulation from the necessary demands of
24 appropriate intercarrier compensation when two carriers exchange traffic. In other words,

1 Level 3's concept of "no regulation" is that it should receive preferential treatment for use
2 of the PSTN. Long distance prices have not been regulated for years, and wireless rates
3 have never been the subject of state service regulation. That has not meant that IXCs and
4 wireless providers are free from intercarrier obligations when they use the local wireline
5 PSTN for call origination and termination. Access charges still apply to these
6 "unregulated" calls. In fact, Level 3's concept of no regulation of VoIP really means that
7 other companies, like IXCs and wireless providers, not to mention CLECs that are
8 attempting to provide wireline competition to ILECs and to other CLECs, should remain
9 subject to intercarrier compensation obligations, while Level 3, which markets to VoIP
10 providers, gets preferential treatment. That result certainly was not, and is not, Qwest's or
11 QCC's position. In effect, Level 3 believes it should be able to have its customers originate
12 calls in IP, and then, simply because Level 3 converts those calls to TDM before sending
13 them to the PSTN, it should have the ability to reach millions of PSTN customers in areas
14 from the most urban to the most rural without the necessity of meeting the same rules that
15 apply to other carriers interconnecting to the PSTN.

16 **Q. ON PAGE 7 OF HIS TESTIMONY, MR. DUCLOO SUGGESTS THAT QWEST**
17 **ADVOCATES THE IMPOSITION OF SWITCHED ACCESS CHARGES ON ALL**
18 **VOIP TRAFFIC. PLEASE COMMENT ON HIS CONCLUSION.**

19 A. As Level 3 did in its Petition, Mr. Ducloo mischaracterizes Qwest's position on this issue;
20 his suggestion that Qwest seeks to impose switched access charges on *all* VoIP (Page 7,
21 lines 2-3) is simply not true. Qwest does not seek to impose access charges on any traffic

1 that properly qualifies for the ESP exemption. In fact, Qwest's position affirms the ESP
2 exemption, but does so based on a proper interpretation of the exemption. To the extent
3 VoIP traffic meets the ESP exemption requirements, no access charges can or should be
4 applied; if the traffic does not meet those requirements, neither the ESP exemption, nor a
5 sound "competitively neutral" policy, suggests that this type of VoIP traffic should receive
6 preferential treatment—it should be subject to the same rules that apply to other similar
7 traffic. It is this Qwest position that the same rules should apply to Level 3's traffic as it
8 does to other interconnectors' traffic that Level 3 objects to.

9 **Q. DOES QWEST'S LANGUAGE AFFIRM THE ESP EXEMPTION AND WHAT IS**
10 **LEVEL 3'S RESPONSE TO THAT LANGUAGE?**

11 A. Yes. Qwest language in 7.2.2.12 affirms the ESP exemption. The Qwest language that
12 Level 3 seeks to remove from the ICA states:

13 7.2.2.12 VoIP Traffic. VoIP traffic as defined in this agreement shall be treated as an
14 Information Service, and is subject to interconnection and compensation rules and
15 treatment accordingly under this Agreement based on treating the VoIP Provider
16 Point of Presence ("POP") is an end user premise for purposes of determining the end
17 points for a specific call.

18
19 7.2.2.12.1 CLEC is permitted to utilize LIS trunks to terminate VoIP traffic
20 under this Agreement only pursuant to the same rules that apply to traffic from
21 all other end users, including the requirement that the VoIP Provider POP must
22 be in the same Local Calling Area as the called party.
23

24 **Q. DOES LEVEL 3 RECOGNIZE THAT THE ESP EXEMPTION REQUIRES**
25 **COMPLIANCE WITH CERTAIN REQUIREMENTS?**

1 A. Yes. Mr. Ducloo states: "My understanding is that the status of traffic as ESP traffic
2 depends on certain technical characteristics of the entities that provide it, so that entities
3 that qualify as ESPs are entitled to have their traffic rated on an end-user basis, as opposed
4 to on a carrier basis." (Page 7, lines 3-6). That is what Qwest states in its proposed VoIP
5 definition and in Section 7.2.2.12. Qwest's definition of VoIP traffic incorporates the
6 requirements of the ESP exemption. It treats the VoIP provider as an end user customer as
7 required by the ESP exemption, and treats the VoIP provider's POP as an originating and
8 terminating location for purposes of rating the call and applying the appropriate form of
9 intercarrier compensation.

10 **Q. DOES QWEST'S PROPOSED LANGUAGE ACCURATELY CAPTURE THE**
11 **TECHNICAL CHARACTERISTICS MR. DUCLOO REFERS TO?**

12 A. Yes. Consistent with the ESP exemption, Qwest's interpretation includes both the
13 advantages and limitations that come with end user customer status. The principal
14 advantage of the exemption is that ESPs may originate and terminate traffic within the
15 LCA in which its POP is located without being required to pay originating and terminating
16 access charges. The limitation, however, is the same limitation imposed on end user
17 customers. The ESP is permitted to connect to the local network by purchasing out of the
18 local exchange tariffs or catalogs. An ESP cannot interconnect under a section 251 ICA.
19 ESPs are the customers of the ILEC or CLEC. The ESP exemption applies within the
20 LCAs in which the ESP locates a POP, but (just as the rules apply to business end user

1 customers) the exemption does not allow for free calling outside of those LCAs (it certainly
2 does not provide for LATA-wide origination and termination of call, as Level 3 implies).

3 **Q. DOES LEVEL 3 AGREE THAT THE ESP EXEMPTION, AND PURCHASE FROM**
4 **THE LOCAL EXCHANGE TARIFFS, PERMITS ONLY LOCAL CALLING?**

5 A. Since Level 3 does not address the contract language specifically, it is not entirely clear
6 what Level 3's position on the ESP exemption is. To the extent Level 3 asserts the ESP
7 exemption requires Qwest to terminate a call from a Level 3 ESP customer's VoIP POP
8 located in Phoenix, to a Qwest Flagstaff end user PSTN customer, without the VoIP
9 provider handing off the call to a PICed IXC, and the IXC paying access charges, Qwest
10 strongly objects to Level 3's interpretation of the ESP exemption. This would create an
11 inappropriate and competitively preferential result for Level 3 and its VoIP provider
12 customers. Just as any Phoenix end user customer would be required to hand off its call to
13 an IXC to deliver that customer's traffic to Flagstaff, so should the ESP. Qwest's language
14 is consistent with this interpretation and application of the ESP exemption.

15 **Q. IS LEVEL 3'S CONTRACT LANGUAGE CONSISTENT WITH THE ESP**
16 **EXEMPTION?**

17 A. No. The problem with Level 3's position is that it attempts to strike language that says the
18 ESP's POP is an element in determining the jurisdiction of the call. Without this language
19 the distinction between a toll call and a local call disappear. Level 3 misinterprets the ESP
20 exemption, apparently based on the erroneous and self-serving conclusion that unlike end
21 user customers who receive only a LCA-wide exemption from access charges, Level 3's

1 VoIP providers are somehow entitled to LATA-wide (or perhaps even wider) exemption
2 from access charges because the traffic originated in IP. End user customers are not
3 entitled to those benefits, and since an ESP is treated as an end user customer for purposes
4 of the exemption, I am aware of nothing that would suggest that it should be entitled to the
5 broader treatment that Level 3 apparently advocates. In effect, Level 3 desires the
6 exemption, which treats an ESP as an end user, to give it rights those same end users do not
7 have.

8 **Q. PLEASE COMMENT ON MR. DUCLOO'S EXHIBITS RRD #1 AND #2.**

9 A. I think Mr. Ducloo's exhibits accurately show Level 3's real business. Exhibit RRD #1
10 looks very similar to the networks of several long distance carriers with whom Qwest
11 interconnects. It is an impressive network from Boston to Phoenix to Los Angeles for
12 long-haul traffic across the nation and the world. But the ICA being arbitrated here is
13 between LECs. Level 3 seeks to originate and terminate its long-haul IP traffic within
14 Arizona as a CLEC. Exhibit RRD #2 is similar to Exhibit RRD #1 in that it also depicts
15 long-haul IP networks. Those links, however, are not particularly useful for a discussion
16 about local interconnection and local service. As a provider of local service in Arizona,
17 what is important is the map of Level 3's Arizona local network (Exhibit RRD #3). This
18 exhibit depicts Level 3 with POIs located in Arizona, but the exhibit does not depict that
19 Level 3 has any substantial local network beyond those POIs. For that, it must interconnect
20 with Qwest (and other ILECs) and have specific interconnection language providing for

1 origination and termination of "local" calls. That is what the 1996 Act provides and what
2 the ICA in this case is intended to accomplish.

3 **Q. MR. DUCLOO CHARACTERIZES THE VOIP TRAFFIC ISSUE AS "WHETHER**
4 **QWEST MAY PROHIBIT LEVEL 3 FROM UTILIZING LOCAL**
5 **INTERCONNECTION FACILITIES TO TERMINATE INTERNET-ENABLED**
6 **TRAFFIC, SPECIFICALLY FOR VOIP TRAFFIC." (PAGE 54, LINES 12-14). IS**
7 **THIS AN ACCURATE STATEMENT OF THE VOIP ISSUE IN THIS CASE?**

8 **A.** No. This issue statement again misstates Qwest's position. Qwest has no intention of
9 prohibiting the termination of VoIP traffic on Qwest's network, nor does Qwest take the
10 position that no VoIP traffic can be terminated on local facilities. Qwest's proposed
11 language clearly provides for interconnection of Qwest's network with Level 3's network
12 to allow for the exchange of traffic with Level 3, the CLEC. Qwest's language also
13 identifies how, and under what different circumstances, the traffic will be terminated. The
14 real issue is not whether traffic will be exchanged and terminated, but whether a VoIP
15 provider customer of Level 3 can obtain LATA-wide calling or must be bound by the local
16 vs. toll distinctions that other end user customers abide by.

17 **Q. DOES THE QWEST LANGUAGE PERMIT LEVEL 3 TO TERMINATE VOIP**
18 **TRAFFIC WITHIN THE SAME LCA?**

19 **A.** Yes. The VoIP provider may terminate its local traffic (traffic within the same LCA as the
20 VoIP POP) over local LIS facilities, and is not required to terminate its local traffic with
21 switched access connections such as Feature Group D. However, for traffic terminated in a

1 LCA different than the LCA where the VoIP POP is located (i.e., interexchange calls) the
2 traffic should not be routed over local trunks (it should be handed off to an IXC, on FGD
3 connections and the IXC should pay the appropriate terminating access charges). Mr.
4 Ducloo describes this routing on page 25 of his direct testimony.

5 **Q. IS THE ESP EXEMPTION THE SAME WHETHER THE VOIP PROVIDER IS A**
6 **CUSTOMER OF LEVEL 3 OR QWEST?**

7 A. Yes. Qwest's position on the proper application of the ESP exemption has nothing to do
8 with whether the ESP is directly connected to Qwest's network or to Level 3's network. In
9 both cases, in the FCC's words, the ESP is treated as an end user customer and "thus may
10 use *local* business lines for access for which they pay *local* business rates and subscriber
11 line charges."⁴ That rule did not change with the passage of the 1996 Act and Qwest is not
12 proposing a change in this case. In fact, it is Level 3 that is proposing a fundamental
13 change in the application of the ESP exemption. Although Level 3 acknowledges that the
14 historical application of the ESP exemption allowed ESPs to connect their equipment to
15 Qwest's network "on the same basis as any business end user," it has leapt to the
16 unsupported conclusion that the ESP exemption now gives it rights that business end users
17 do not have today nor are part of the services provides by a "local business line" (i.e.,
18 LATA-wide ability to terminate calls without incurring access or toll charges). Nowhere in
19 its Petition or in its testimony does Level 3 provide any support for this proposition, nor
20 does it provide anything more than the cryptic suggestion that ESPs on Level 3's network

1 are somehow invested with greater rights than business end users on the PSTN.⁵ Mr.
2 Ducloo points out that the ESP can purchase the local connection from either Level 3 or
3 Qwest, a proposition with which Qwest agrees, but that does nothing to change the proper
4 application of the ESP exemption.

5 **Q. DO MR. DUCLOO'S EXHIBITS RRD #7 AND RRD #8 ALSO RAISE AN ISSUE**
6 **OF HOW LEVEL 3 VIEWS THE ESP EXEMPTION?**

7 A. Yes. Although Mr. Ducloo's testimony did not address specific disputed language
8 sections, I have attempted to respond to the statements that Level 3 did file. Exhibits RRD
9 #7 and RRD #8 depict how an ESP could purchase local connections from either Level 3 or
10 Qwest. While these exhibits show the connections to end offices, neither of Mr. Ducloo's
11 exhibits make any reference to the LCAs within which those end offices are located. As
12 discussed in prior responses, LCAs (which Level 3 euphemistically characterized as
13 "artificial geographic designations" in its Petition) go to the very heart of the application of
14 the ESP exemption. The ESP connects to the PSTN as an end user customer; this does not
15 entitle the ESP to LATA-wide termination at local calling "end user rates," as the Level 3
16 testimony implies. Adding LCAs to the picture in Exhibit RRD #8 would more accurately
17 depict how the ESP exemption really works and make clear what Level 3 is advocating.

⁴ Order, *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, ¶ 20, n 53 (1988) ("ESP Exemption Order").

⁵ Another example of the vagueness of Mr. Ducloo's testimony on this point is his statement that ESP's are "not subject to access charges though the underlying communication may well involve transport over significant distances." (Page 47, lines 12-14). It is unclear whether a "significant distance" is from the north end to the south end of the Phoenix EAS area or whether he means from Phoenix to Flagstaff. If it is the latter, his statement is inaccurate.

1 For example, in the lower right hand corner of that exhibit, Mr. Ducloo shows an ESP
2 connected to the Qwest network. If that ESP's POP is located in Phoenix, the ESP would
3 be able to purchase Phoenix local service out of Qwest's local exchange tariffs. If the other
4 end offices depicted in Mr. Ducloo's exhibit are also connected to Qwest end offices in the
5 Phoenix LCA, then the ESP could terminate traffic to each of the phones shown in the
6 exhibit without incurring terminating access charges. However, if the three end offices
7 with telephones depicted on Exhibit RRD #8 were in Flagstaff, Tucson, and Sierra Vista
8 (all of which are in different LCAs than Phoenix), the ESP exemption does not allow the
9 Qwest end user ESP to terminate traffic to those other LCAs (just as a typical business end
10 user customer would not be able to do). Under this example, the ESP customer of Qwest
11 would be required to hand off any call bound for those exchanges to an IXC. The call is
12 measured, for jurisdictional purposes, between the ESP's POP and the party called. It is
13 that simple; that is what the ESP exemption requires. By not depicting the LCA
14 boundaries, Level 3 is masking the real issue before the Commission.

15 **Q. WOULD YOU PLEASE SUMMARIZE YOUR REBUTTAL COMMENTS**
16 **REGARDING VOIP TRAFFIC?**

17 A. Yes. VoIP is traffic that originates in IP and terminates on the PSTN using TDM protocol.
18 It originates in one protocol and is converted to TDM, thus resulting in a net protocol
19 conversion; this, in turn, makes it an enhanced service call entitled to the ESP exemption.
20 All other types of calls that Level 3 discusses, such as IP to IP, or TDM to IP, do not
21 terminate over the PSTN and do not involve Level 3's ICA with Qwest. Dial up calls to a

1 VoIP provider are TDM to a VoIP provider and are treated as PSTN calls; the fact that they
2 may later be converted to IP is of no consequence. Qwest's definition and Section 7.2.2.12
3 capture these necessary requirements, and Level 3's attempts to strike them should be
4 rejected. Level 3's arguments that VoIP calls are somehow unique and entitled to different
5 treatment when terminating to distant towns should also be rejected. These calls are
6 subject to the same local and long distance classifications as other PSTN calls on the
7 network. If an ESP, in this case a VoIP provider, purchases a local connection out of the
8 local tariffs, then calls from the ESP bound for other LCAs in the state must be routed
9 through an IXC.

10 **IV. DISPUTED ISSUE 1A: SECTION 7.1.1.1 OPERATION AUDITS**

11 **Q. DOES LEVEL 3 ADDRESS SECTION 7.1.1.1, OPERATION AUDITS, IN ITS**
12 **TESTIMONY?**

13 A. No. Level 3 provided no testimony regarding its dispute with the language contained in
14 Section 7.1.1.1, identified on Level 3's Issue List as Issue 1a.

15 **V. DISPUTED ISSUE 1A: SECTION 7.1.1.2 CERTIFICATION**

16 **Q. DOES LEVEL 3 ADDRESS SECTION 7.1.1.2, CERTIFICATION, IN ITS**
17 **TESTIMONY?**

18 A. No. Level 3 provided no testimony regarding its dispute with the language contained in
19 Section 7.1.1.2, identified on Level 3's Issue List as Issue 1a. Qwest's proposed language

1 requests that Level 3 certify that the connections it sells to its customers will comply with
2 the ESP exemption, and comply with the terms of the ICA. Level 3, however, wants to
3 remove any obligation from the ICA.

4 **Q. DOES QWEST'S LANGUAGE IN ANY WAY PROHIBIT LEVEL 3 FROM**
5 **PERMITTING ESP'S TO CONNECT TO LEVEL 3'S NETWORK?**

6 A. Absolutely not. Qwest is not attempting to prevent VoIP providers from obtaining
7 connection to the PSTN through local service from Level 3, or to prevent them from
8 receiving the benefit of the ESP exemption. But as we have seen, and as Level 3 seems to
9 agree, not every call that once was in IP is entitled to the ESP exemption. And it is for this
10 reason that Qwest is requesting that Level 3 certify that the connections it sells to its
11 customers will comply with the ESP exemption, and comply with the terms of the ICA.
12 Level 3, however, wants to remove any obligation from the ICA by striking the
13 certification language. Qwest simply is requesting assurance that Level 3 will enforce the
14 ESP exemption for its customers on the same basis that other LECs, like Qwest, apply the
15 exemption to its ESP customers. The Commission should adopt Qwest's proposed
16 certification language.

17 **VI. DISPUTED ISSUE 3 VNXX TRAFFIC**

18 **Q. PLEASE EXPLAIN THE DISPUTE RELATING TO VNXX TRAFFIC?**

19 A. Level 3 and Qwest disagree on the definition of VNXX and the treatment of and
20 compensation for VNXX traffic. Just as Level 3's testimony on VoIP essentially ignored

1 the contract language, neither Mr. Ducloo's nor Mr. Gates' testimony specifically
2 addresses the VNXX contract language in dispute. All they do is discuss in broad terms the
3 issues related to VNXX traffic. Since I addressed issues related to the specific language in
4 my direct testimony, I will respond to those broad comments in this testimony.

5 **Q. MR. DUCLOO STATES THE ONLY THING THE PSTN "KNOWS" ABOUT A**
6 **CALL IS THE ORIGINATING AND TERMINATING TELEPHONE NUMBER.**
7 **(PAGE 79, LINES 6-8). PLEASE COMMENT ON HIS STATEMENT.**

8 A. I discuss this issue in more detail later in connection with my testimony on Arizona and
9 federal law as it applies to the local/toll distinction. The fact is that historically telephone
10 companies have routinely assigned telephone numbers based upon the geographic location
11 of the switch to which that number is connected. Thus, to imply that the PSTN knows
12 nothing about the physical location of the called and calling parties is simply untrue. It
13 was not until CLECs began obtaining numbers associated with LCAs that were assigned
14 to customers with absolutely no physical presence in that LCA, that geographical
15 information related to calls became suspect. That is not the fault of the network, nor does
16 it represent an effort by carriers or regulatory commissions to redefine local calls. It is
17 Level 3, and other CLECs like it, that disregard the geographical nature of calls mandated
18 by state law and which has been inherent in federal law for decades. As Mr. Linse points
19 out in his testimony, the numbers that Level 3 uses in Arizona are all Geographic NPA
20 numbers. In other words, they are numbers that should, according to the Central Office
21 Code Administration Guidelines ("COAG"), correspond to discrete geographic areas.

1 Level 3's numbers do not correspond to discrete geographic areas, and Level 3 proposes
2 that the Commission sanction this misuse of numbering resources. The Commission
3 should reject Level 3's practice.

4 **Q. MR. DUCLOO PROVIDES AN ARGUMENT WHY, WITH NEWER**
5 **TECHNOLOGIES, THE GEOGRAPHIC LOCATION OF CUSTOMERS IS NO**
6 **LONGER RELEVANT (PAGE 85). DO YOU AGREE WITH HIS**
7 **CONCLUSIONS?**

8 A, No. Perhaps technically it is possible for Level 3 to declare several states to be one LCA,
9 but the issue here relates to the PSTN and Level 3's use of it. There are two major
10 problems with Mr. Ducloo's argument. The first, of course, is that the entire PSTN and the
11 regulatory structure related to retail service pricing and intercarrier compensation is based
12 on the geographic location of the parties to a call. FCC jurisdiction over interstate calls is
13 determined by the NPA NXX of the calling and called parties because those NPA NXXs
14 have traditionally related to geographic areas. State telephone rates are established
15 recognizing both local and intrastate toll calls based on this numbering scheme. Intrastate
16 access and exchanges of traffic between independent companies is based on this 100 year
17 old convention. Thus, this issue has a rational historical basis and is not, as Mr. Ducloo
18 describes it, an "essentially arbitrary decision." (Page 83, line 6). His so-called "arbitrary
19 decision" has, for good reasons that still exist today, governed the industry for over 100
20 years.

1 The second problem with Mr. Ducloo's testimony on this point is that, while he talks about
2 VoIP and soft switches, of backbone fiber transporting IP packets around the world, the
3 telephone numbers at issue in this case are numbers assigned on the PSTN that relate to
4 specific circuit-based switches. The technologies that Mr. Ducloo discusses are on the
5 Internet side of the POI and are irrelevant to this issue. PSTN numbers must relate to the
6 geographic locations of the end user customers to maintain the current structure of the
7 PSTN or call rating will break down entirely. Level 3, of course, can manage its own
8 network in any manner it chooses. For example, Level 3 may use IP addresses, instead of
9 telephone numbers, to exchange traffic within its own network. But when Level 3 connects
10 to the PSTN, and assigns NANPA assigned telephone numbers to its' end user customers,
11 or delivers VoIP calls to PSTN customers, Level 3 must comply with the same rules that
12 apply to the hundreds of companies whose networks comprise the PSTN.

13
14 **Q. CAN YOU PROVIDE AN EXAMPLE THAT ILLUSTRATES AN UNINTENDED**
15 **CONSEQUENCE THAT COULD RESULT FROM ABANDONING CUSTOMER**
16 **LOCATION AS A RELEVANT FACTOR IN ASSIGNING NUMBERS?**

17 A. Yes. On page 81 of his testimony, Mr. Ducloo discusses the Local Exchange Routing
18 Guide (LERG), and in particular, the routing and delivery of interexchange calls. The
19 LERG is a database that identifies switches and numbers associated with those switches,
20 based on the NPA NXX codes assigned by NANPA. Of course, the entire basis for
21 whether to assess toll charges to a call relate to the specific physical locations at which
22 traffic bound for particular switches may be delivered. To the extent that telephone
23 numbers lose any geographic significance, then next door neighbors calling each other

1 could each have telephone numbers assigned to different LCAs, and parties on opposite
2 ends of the state could in theory be in the same LCA (in both circumstances, of course, the
3 concept of a LCA becomes meaningless). The point is that there are compelling policy
4 reasons (totally aside from legal mandates, numbering rules, or technical capabilities) to
5 maintain the system of rating calls based on physical location; telephone numbers must
6 retain their geographic associations. Finally, if a LATA boundary becomes essentially an
7 LCA boundary, LEC rates must change dramatically.

8 **Q. MR. DUCLOO TESTIFIES THAT A SWITCH REALLY CANNOT KNOW THE**
9 **GEOGRAPHIC LOCATION OF THE CUSTOMER, THAT THE SWITCH**
10 **CANNOT STORE THE ADDRESSES ASSOCIATED WITH NUMBERS, AND**
11 **THAT IN ORDER TO DEVELOP A PERIPHERAL DEVICE TO TRACK**
12 **ADDRESSES IT WOULD BE EXPENSIVE. (PAGES 84-85). IS THE**
13 **DEVELOPMENT OF SUCH A SYSTEM NECESSARY?**

14 A. Absolutely not. This argument is a red herring. The solution to this issue is simple, which
15 is to require that companies obtaining telephone numbers on the PSTN routinely assign the
16 numbers to customers in the actual LCAs where the customer is located. If that were done,
17 as it has been done for years, none of the tracking discussed by Mr. Ducloo of identifying
18 the actual physical location of the virtual numbers would be necessary. The problem is not
19 the existing system, the problem is companies like Level 3 that adopt a policy of assigning
20 telephone numbers that have no relationship to the LCAs where the numbers are assigned.

1 Neither Qwest, nor Level 3, should build databases to further track geographic locations
2 beyond the LCA.

3 **Q. IN HIS TESTIMONY, MR. DUCLOO (PAGES 79) SUGGESTS THAT QWEST IS**
4 **TRYING TO “CHANGE” THE METHOD OF DETERMINING LOCAL AND**
5 **TOLL FROM TELEPHONE NUMBERS TO THE PHYSICAL LOCATIONS OF**
6 **THE PARTIES TO THE CALL (PAGE 79, LINES 9-11). HAS HE CORRECTLY**
7 **CHARACTERIZED THE MEANS BY WHICH LOCAL AND TOLL CALLS HAVE**
8 **BEEN DETERMINED IN ARIZONA?**

9 A. No. Mr. Ducloo’s testimony is unsound on its face and is directly contrary to Arizona
10 statutes, Commission rules and approved tariffs, prior Commission decisions, federal
11 statutes, and FCC rules.

12 **Q. BEFORE ADDRESSING THOSE ISSUES, PLEASE ADDRESS THE ISSUE FROM**
13 **A COMMON SENSE PERSPECTIVE.**

14 A. From a purely common sense perspective, the Level 3 argument does not make sense and
15 ignores a fundamental building block of telecommunications in Arizona and in every other
16 state (i.e., the concept of the LCA). As I understand it, the Arizona Commission has
17 consistently taken an active role in the definition of LCAs based primarily on the existence
18 or non-existence of a community of interest among the residents and businesses of specific
19 geographical locations. A good example of this was the Commission’s decision in Qwest’s
20 (then U S WEST’s) 1995 rate case, where the Commission ordered broad expansions of

1 EAS in many areas of the state.⁶ The basis for the expansion decisions was the
2 Commission's conclusions that community of interest factors made such changes in the
3 public interest. As part of that order, the Commission adopted a Staff recommendation that
4 the Commission "consider calling volumes, *socio-economic linkages, contiguity*, and
5 public input to determine whether a community of interest exists."⁷ Thus, over time, under
6 the Commission's practices, two areas that may have been separate LCAs can be combined
7 into a single LCA if the Commission concludes that a community of interest exists that
8 justifies classifying all calling within the geographical area as "local" and not as "long
9 distance." Thus, geography (e.g., contiguity) and the location of called and calling parties
10 in relation to each other have been concepts inherent in the establishment of LCAs in
11 Arizona.

12 The language used to distinguish among different types of calls likewise is focused on
13 geography. For example, the use by telephone companies and state commissions of the
14 word "local" is not an accident: the concept of calling *within* a certain specified
15 geographical area where the residents and businesses share a geographically-based
16 community of interest has been plainly distinguished from calls *between* geographical
17 areas, often hundreds of miles apart, where no such community of interest exists.
18 Historically, the Arizona Commission has treated local calls (i.e., where the parties to the
19 call are in the same geographical area) different from toll calls. State commissions have

⁶ Opinion and Order, *In the Matter of the Application of U S WEST Communications, Inc., a Colorado Corporation, for a Hearing to Determine the Earnings of the Company, the Fair Value of the Company for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return Thereon and to Approve Rate Schedules Designed to Develop Such a Return*, Docket No. E-1051-93-183, Decision No. 58927, at 111-15 (ACC January 3, 1995).

⁷ *Id.* at 115 (emphasis added).

1 recognized the community of interest within certain narrowly-defined rural areas or even
2 within large metropolitan areas, and have therefore required that telephone companies
3 provide service *within* these defined geographical areas on a flat-rated basis. These
4 requirements have been based on the idea that calls to and from neighbors and local
5 businesses within an area of community of interest should not be constrained by per-minute
6 charges. Thus, prices for local service in those areas have traditionally been flat-rated so
7 that no extra charges apply no matter how much time a customer spends on the telephone
8 calling others located in the same LCA. To suggest, as Mr. Ducloos and Mr. Gates do, that
9 the concept of local service and local calls is based purely on telephone numbers and not on
10 geographical proximity is incorrect and historically inaccurate.

11 **Q. DO THE RECOGNIZED DISTINCTIONS BETWEEN LOCAL AND TOLL HAVE**
12 **PRICING DIFFERENCES AS WELL?**

13 A. Consistent with the underlying logic of creating geographically-based local calling areas,
14 state commissions and telephone companies have also historically based the pricing of toll
15 calls on the relative lack of geographical proximity. Thus, telephone companies, regulatory
16 Commissions, and the public refer to such calls as “long distance” calls. The phrase “long
17 distance” (like the word “local”) has a direct geographical component inherent in its name.
18 Likewise, another synonym for long distance calls—interexchange calls—suggests that the
19 calls originate in one exchange and terminate in another distant exchange. Given the lack
20 of a general community of interest that justifies flat rate pricing, long distance calls have
21 traditionally been priced on a per-minute basis.

22
23 Thus, a simple analysis of the language used to describe the two types of service (“local
24 calls” versus “long distance calls”) demonstrates the underlying error of Level 3’s

1 testimony. The defining and distinguishing factor for local and toll calling has been
2 geographical proximity (or the lack thereof).
3

4 **Q. IS LEVEL 3'S PROPOSAL TO DEFINE LOCAL AND TOLL BASED ON**
5 **TELEPHONE NUMBERS INSTEAD OF PHYSICAL LOCATION OF THE**
6 **PARTIES TO THE CALL CONSISTENT WITH ARIZONA STATUTES?**

7 A. No. The Arizona Commission, of course, is a constitutional agency under the Arizona
8 Constitution. However, there are statutes that also apply to the Commission that are
9 relevant to the issues in this case. For example, Arizona Code § 4-329 (a statute that long
10 preceded the 1996 Act) grants the Commission authority to require that two telephone
11 corporations connect to each other. One exception to that power is "except where the
12 purpose of the connection is primarily to secure transmission of *local messages or*
13 *conversations between points within the same city, or town.*" The importance of this
14 section to this issue is not that Qwest could refuse to interconnect for local messages (that
15 issue having been resolved by the 1996 Act), but the fact that Arizona statutes define local
16 messages as taking place "between points within the same city, or town." In other words,
17 this statute defines local calling in terms of the geographical proximity of the parties to the
18 call. Arizona Code § 40-282(C)(2)(a) & (b) contemplate separate certification for "local
19 exchange" carriers and "interexchange" carriers.

20
21 **Q. IS QWEST'S CHARACTERIZATION OF CALLS BASED ON LOCATION**
22 **CONSISTENT WITH COMMISSION RULES?**

23 A. Yes. The Commission's "Competitive Telecommunications Services" rule ties local
24 exchange traffic to traffic *within* exchange areas. The rule defines "Local Exchange

1 Service” as “[t]he telecommunications service that provides a *local dial tone*, access line,
2 and *local usage within an exchange or local calling area.*” Arizona Administrative Code
3 (“AAC”) § R14-2-1102(7) (Emphasis added). On the other hand, the Commission’s
4 “Telephone Utilities” rule defines “toll service” as service “*between stations in different*
5 *exchange areas* for which a long distance charge is applicable.” *Id.* § R14-2-501(23)
6 (Emphasis added). Finally, the Commission’s “Telecommunications Interconnection and
7 Unbundling” rule states: “The incumbent LEC’s *local calling areas and existing EAS*
8 *boundaries* will be utilized for the purpose of classifying traffic as local, EAS, or toll for
9 purposes of *intercompany compensation.*” *Id.* § R1421305(A) (Emphasis added). Read
10 together, these provisions could not be more clear in requiring that local and toll traffic be
11 defined in terms of the geographical location of the parties to the call. In fact, section
12 R1421305(A) requires that all carriers, including Level 3, comply with local calling areas
13 and EAS “boundaries” (a physical, geographical concept) for purposes on intercompany
14 compensation. Consistent with these rules, Qwest’s proposed language treats traffic as
15 local traffic only if it originates and terminates within the same exchange area. While these
16 rules retain a clear link to geography, none of the Commission’s rules purport to categorize
17 calls between local and interexchange based on the NPA/NXX assigned to a particular
18 call.

19
20 **Q. ARE QWEST’S ARIZONA TARIFFS CONSISTENT WITH ARIZONA STATUTES**
21 **AND COMMISSION RULES?**

1 A. Yes. Section 2.1 of Qwest's Exchange and Network Services Price Cap Tariff defines an
2 "exchange" as a "geographical unit, established by the Company, for the administration of
3 telecommunication services in a specified area." This tariff section defines "exchange
4 service" as "[t]he service of furnishing equipment and facilities for telephone
5 communications *within* a designated area." (Emphasis added). In turn, "exchange service
6 area" is defined as "[t]he *territory* served by an exchange." This same section defines
7 "local exchange service" as "[t]he furnishing of telecommunications services to the
8 Company's customers *within an exchange for local calling*. This service also provides
9 access to and from the telecommunication network for long distance calling." Further, this
10 section defines "local service area or extended local service area" as "[t]hat area throughout
11 which an exchange service customer, at a given rate, may make calls without the payment
12 of a toll charge. A local service area may be made up of one or more exchange areas."

13 Section 5.1 of Qwest's tariff, "Exchange Areas," states that "[t]he Company develops
14 exchange service areas to establish service *within a defined geographical area*." (Emphasis
15 added) Finally, Section 5.2 states that the rates and charges quoted for "local exchange
16 service" . . . "entitle the customer to *local calls*, without toll charges, *to all local exchange*
17 *access lines connected to a CO of the exchange*, or to all exchange access lines served by
18 COs of the extended local service area where comprised of more than one exchange."
19 (Emphasis added).

20
21 As with Arizona statutes and rules, there is nothing at all to suggest that the toll/local
22 distinction is governed by the telephone numbers assigned; rather, every statute, rule, and

1 tariff define local and interexchange calling strictly in terms of the geographical location of
2 the parties to the call.

3
4 **Q. IS QWEST'S POSITION CONSISTENT WITH A PREVIOUS COMMISSION**
5 **DECISION?**

6 A. Yes. As I noted in my direct testimony, there is one particularly important decision, the
7 Commission's 2004 decision in an arbitration between Qwest and AT&T ("*AT&T*
8 *Arbitration Order*").⁸ In that case, AT&T proposed a definition of that would have
9 defined "EAS/Local Traffic" by "the calling and called NPA/NXXs," just as Level
10 proposes in this docket. Among the arguments advanced by AT&T are the primary
11 arguments asserted by Mr. DuCloo and Mr. Gates: "that today Qwest employs the NPA-
12 NXX to rate calls as local or toll, not the customer's physical location, an by its FX service
13 Qwest provides local calling to its own customers who are physically located outside the
14 geographically defined local calling areas."⁹ The Commission rejected AT&T's
15 arguments:

16 We find that Qwest's proposed definition of "Exchange Service"
17 *comports with existing law and rules, and should be adopted.* AT&T's
18 proposed definition represents a departure from the establishment of
19 local calling areas and may have unintended affect beyond the issues
20 discussed herein and be subject to abuse. Commission Staff did not
21 participate in this arbitration proceeding. We do not believe that it

⁸ Opinion and Order, *In the Matter of the Petition of AT&T Communications of the Mountain States, Inc. and TCG Phoenix, for Arbitration with Qwest Corporation, Inc. Pursuant to 47 U.S.C. Section 252(b)*, Docket Nos. T-02428A-03-0553 and T-01051B-03-0553 (Ariz. Corp. Comm'n, April 6, 2004).

⁹ *Id.* at 11.

1 would be good public policy to alter long-standing rules or practice
2 without broader industry and public participation.¹⁰
3

4 None of the existing laws and rules upon which the Commission relied to reject AT&T's
5 arguments have changed in the period since the *AT&T Arbitration Order* was issued. Nor
6 is there a diminished need to address issues of such broad-ranging importance in a broader
7 forum where all consequences can be properly considered.

8 **Q. IS QWEST'S LANGUAGE CONSISTENT WITH THE DEFINITIONS IN THE**
9 **COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE 1996 ACT?**

10 A. Yes. The Act defines "exchange access," "telephone exchange service," and "telephone toll
11 service" as follows:

12 The term "exchange access" means the offering of access to *telephone exchange*
13 *services* or facilities for the purpose of the origination or termination of telephone
14 toll services.¹¹

15 * * *

16 The term "telephone exchange service" means (A) service *within a telephone*
17 *exchange*, or within a connected system of telephone exchanges *within the same*
18 *exchange area* operated to furnish to subscribers intercommunicating service of
19 the character *ordinarily furnished by a single exchange*, or (B) *comparable service*
20 provided through a system of switches, transmission equipment, or other facilities
21 (or a combination thereof) by which a subscriber can originate and terminate a
22 telecommunications service.¹²

23 * * *

¹⁰ *Id.* at 13.

¹¹ 47 U.S.C. § 153(16) (emphasis added).

¹² 47 U.S.C. § 153(47) (emphasis added).

1 The term "telephone toll service" means telephone service *between stations in*
2 *different exchange areas* for which there is made *a separate charge* not included in
3 contracts with subscribers for exchange services.¹³

4 Under the Act, therefore, telephone exchange service is a service provided to subscribers
5 that enables a particular subscriber to originate and terminate calls within a single exchange
6 or within an area ordinarily served by a single exchange, or comparable service. Telephone
7 toll service, in contrast, applies when a customer places a call to end users located beyond
8 the calling area covered by Qwest's basic local exchange service tariff. Such calls are
9 normally subject to additional charges designed to compensate the toll provider or
10 exchange access providers for carrying calls over what could be considerable distances.¹⁴

11
12 **Q. IS QWEST'S PROPOSED LANGUAGE CONSISTENT WITH FCC RULES?**

13 A. Yes. The FCC recognizes and has preserved the state's role in defining LCAs. For
14 example, in the *Local Competition Order*, the FCC held that except for traffic to or from a
15 CMRS network, "state commissions have the authority to determine what geographic areas
16 should be considered 'local areas' for the purpose of applying reciprocal compensation
17 obligations under section 251(b)(5), consistent with the state commissions' historical
18 practice of defining local service areas for wireline LECs. Traffic originating or
19 terminating outside of the applicable local area would be subject to interstate and intrastate

¹³ 47 U.S.C. § 153(48) (emphasis added).

¹⁴ Of course, as noted in my prior testimony, and in Qwest's response to Level 3's Petition, Level 3 wants to engraft the federal Act's "telephone toll service" definition into the interconnection agreement, then claim that because Qwest does not impose "separate charges" for such traffic it cannot, by definition, be toll. This, of course, ignores the fact that, as a CLEC, Level 3 has no obligation to tell Qwest in advance where calls directed to it will terminate, thus rendering it impossible for Qwest to bill the calls as toll charges.

1 access charges."¹⁵ The FCC further recognized that as a legal matter, transport and
2 termination of local traffic is different from exchange access service. The FCC stated that
3 "[t]he Act preserves the legal distinctions between charges for transport and termination of
4 local traffic and interstate and intrastate charges for terminating long-distance traffic."¹⁶

5
6 **Q. LEVEL 3 CLAIMS THAT THE FCC'S *ISP REMAND ORDER* CHANGED THIS**
7 **BODY OF LAW. DO YOU AGREE?**

8 A. No. The *ISP Remand Order* made no change in this regime. The *ISP Remand Order*
9 addressed the proper rate and treatment of traffic bound for ISPs located in the same local
10 calling area as the calling party. The FCC did not convert intraLATA toll traffic into traffic
11 subject to reciprocal compensation, as Level 3 contends. Had the FCC intended to take
12 away the states' ability to define local calling areas and what constitutes an intraLATA toll
13 call, it would have done so explicitly. In fact, the FCC recognized that Section 251(b)(5)
14 does not apply to intraLATA toll calls.¹⁷ Thus, this Commission's definitions of LCAs and
15 local exchange service continue to govern the proper definition for the parties' agreement.
16

17 **Q. AS PREVIOUSLY DISCUSSED, THE LEVEL 3 WITNESSES CLAIM THAT THE**
18 **MEANS OF DETERMINING LOCAL CALLS HAS ALWAYS BEEN BASED, NOT**
19 **ON GEOGRAPHY, BUT ON THE TELEPHONE NUMBERS ASSIGNED TO THE**

¹⁵ *Local Competition Order* ¶ 1035 (emphasis added).

¹⁶ *Id.* ¶ 1033.

1 **CALLED AND CALLING PARTIES. PLEASE COMMENT ON THEIR**
2 **TESTIMONY.**

3 A. The foregoing discussion of Arizona statutes, rules, and tariffs, as well as federal statutes
4 and FCC rules demonstrates that Level 3's contention is false.

5
6 Their testimony is a typical example of getting the cause and effect relationship between
7 two concepts backwards. The Level 3 witnesses suggest that, because telephone numbers
8 have been the means of rating calls as local or toll, this means that telephone companies
9 and state commissions had made a conscious conclusion that physical location is not
10 relevant to call classification and that assigned telephone numbers are the only criterion. In
11 other words, they suggest that community of interest, distance, and the geographical
12 location of called and calling parties were never relevant factors and that the only relevant
13 factor was the relationship between the assigned telephone numbers.

14
15 As demonstrated above, this argument has no basis in law or fact in Arizona. Geographical
16 locations of the parties to the call have always been the prime criterion under both Arizona
17 and federal law.

18
19 **Q. PLEASE PROVIDE EXAMPLES TO ILLUSTRATE THE FOREGOING POINT.**

20 A. It is true that historically the means by which telephone companies have been able to make
21 the determination of the geographical location of customers has been the telephone number

¹⁷ *ISP Remand Order* at n.66 ("In this regard, we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations, because "it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms") (citing *Local Competition Order*).

1 assigned to them. For example, assume I am an Arizona customer of Qwest and have been
2 assigned the telephone number 602-630-XXXX. Customers with a 602 area code and an
3 NXX of 630 are associated with the Phoenix LCA, which means that I am physically
4 located in the Phoenix LCA,¹⁸ can call other residents of Phoenix (and indeed the entire
5 Phoenix LCA) on a flat rated basis. If I decide to make a call to a friend in Flagstaff (who
6 has a telephone number associated with the Flagstaff exchange), I would first dial 1 and
7 then the Flagstaff number. Qwest's equipment would recognize this as an interexchange
8 call, route it to my toll carrier, and deliver to the call to that carrier. At the Flagstaff end,
9 Qwest would terminate the call (if the Flagstaff customer received local service from
10 Qwest) or it would be terminated by the local provider for that customer.

11
12 In this example, the geographical location of the two parties to the call was disclosed by
13 their telephone numbers, but that does not mean that Qwest or the Commission ever
14 concluded that telephone numbers were the end of the analysis—the telephone numbers
15 and their geographical association with specific exchanges were simply the means to the
16 end of rating calls based on the geographical location of the parties to the call. For
17 decades, this system worked very well because telephone numbers was a reliable and
18 consistent means of determining the geographical location the parties to a call. Thus, the
19 Level 3 witnesses have it backwards. For purposes of distinguishing local from toll calls,
20 the end purpose was to determine whether calls were within or between LCAs, and not (as
21 Level 3 contends) to determine whether the telephone numbers of the parties to the call
22 were assigned to the same LCA.

¹⁸ FX service, of course, is one exception; however, with that service, the customer pays the full private line rate to transport the traffic to a distant LCA.

1
2 **Q. GIVEN THE HISTORY AND EXAMPLES YOU HAVE DESCRIBED, WHAT HAS**
3 **CAUSED THIS TO BECOME AN ISSUE NOW?**

4 A. There are two significant factors: (1) the ability of CLECs like Level 3 to obtain local
5 telephone numbers from NANPA, something end users like ISPs are unable to do, and (2)
6 the regulatory requirement that CLECs are able to interconnect, not in each LCA, but at a
7 single POI ("SPOI") within each LATA. Thus, a company like Level 3 is able to obtain
8 local telephone numbers in LCAs throughout a LATA, but instead of assigning them to
9 customers that are physically located in the exchange associated with the telephone
10 numbers, they assign them to customers actually physically located elsewhere, something
11 CLECs have not been doing until recently.

12
13 To illustrate, let me contrast two methods of operation by CLECs. Many CLECs, unlike
14 Level 3, actually provide local exchange service to customers in the exchanges in which
15 they obtain telephone numbers. Thus, for example, while such a CLEC may have a SPOI
16 in Phoenix, it may serve local exchange customers in Flagstaff. In that case, the CLEC will
17 obtain local Flagstaff numbers and assign them to real customers located in Flagstaff.
18 Thus, a call from a Qwest customer located in Flagstaff to a CLEC Flagstaff customer will
19 be routed to the CLEC POI in Phoenix and the CLEC will then route it back to its customer
20 in Flagstaff. In that case, consistent with the traditional association of telephone numbers
21 with geographical location, the call is truly local in nature because the parties to the call are
22 physically located within the same LCA.

1 The second example—which describes Level 3’s business—illustrates the problem. In
2 Level 3’s case, because it is a CLEC, it may also obtain local telephone numbers in
3 Flagstaff, but Level 3 does not and never has purported to provide local exchange service
4 to end user customers in Flagstaff. Level 3 candidly admits that it is in the business of
5 serving ISPs. Thus, Level 3 will obtain local numbers associated with the Flagstaff
6 exchange, but will assign them to ISPs whose modems, routers, and servers are located in
7 Phoenix or perhaps in another state altogether. Those ISPs will market their dial-up
8 services to Flagstaff customers and will provide the local numbers provided to them by
9 Level 3 as the local access number for the end user customers to access the ISP, and thus
10 the Internet. Other than the telephone numbers, there is nothing remotely “local” about the
11 call to the ISP. It originates in Flagstaff, but it is answered by the ISP’s modems in
12 Phoenix or elsewhere; from there, the call is then sent to websites throughout the country or
13 even the world.
14

15 Level 3’s claims are: (1) despite the fact that such calls are interexchange in nature (as
16 defined the physical end points of the call), it really is “local” because the phone numbers
17 are associated with the call appear to be local to each other and (2) such treatment is
18 sanctioned by the historical means by which Qwest has determined whether a call is local
19 or long distance.
20

21 The error in Level 3’s logic is its contention that telephone companies and state
22 Commissions really intended that these calls be treated as local because the telephone
23 companies’ traditional means of categorizing a call was based on the telephone numbers.
24 This argument stands logic on its head. In fact, what has happened is that, by virtue of
25 rights given to it as a CLEC, Level 3 is able to obtain what appear to be local numbers for

1 the purpose of making interexchange calls. Qwest certainly did not intend that CLECs use
2 “local telephone numbers” in a way that essentially “fools” the system into believing they
3 are really local calls. Furthermore, Arizona statutes, Commission rules, and Commission
4 decisions certainly disclose no intent by the Commission to abandon the concept of
5 geography and the physical end points for the proper classification of calls.

6
7 **Q. HAS A FEDERAL COURT IN QWEST’S TERRITORY RECENTLY ADDRESSED**
8 **THIS ISSUE?**

9 A. Yes. The VNXX issue with regard to ISP-bound calls was recently addressed by a federal
10 district court in Oregon, which ruled that, under the interconnection agreement at issue,
11 Qwest was not responsible to pay a CLEC reciprocal compensation for ISP traffic that did
12 not physically originate and terminate in the same LCA. In that case, *Qwest Corporation v.*
13 *Universal Telecom*,¹⁹ the CLEC (“Universal”) adopted a business plan essentially identical
14 to Level 3. It served only ISPs and, like Level 3, it obtained local numbers that it gave to
15 its ISP customers for local access, but which were actually routed to a Universal POI in
16 another part of the state. The court noted that “VNXX traffic involves a call that is
17 originated in one local calling area “LCA”) and is terminated in a different LCA without
18 incurring the toll charges which would normally apply. The essence of VNXX traffic is
19 that a LEC who does not have a physical presence in a particular calling area *may appear*
20 *to be local*. The LEC gains this local appearance by holding a block of local numbers
21 which the end user, who is located in that LCA, may call. Upon making what *appears to*

1 *be a local call*, the call is relayed over the lines of the local LEC [Qwest], passed of to the
2 distant LEC [Universal], and terminated by that distant LEC.”²⁰ Applying the terms of the
3 interconnection agreement, which required that calls be categorized by Qwest’s local
4 tariffs, which defined local service as service “furnished between customer’s premises
5 located within the same local calling area,” the court found that the calls were not local in
6 nature and that therefore Qwest did not owe reciprocal compensation on non-local ISP
7 traffic.²¹

8
9 The Arizona statutes and rules, like the Oregon Qwest tariffs, define local and toll calling
10 based on geographical proximity of the parties to the call (i.e., whether they are physically
11 located in the same LCA); thus, the language of the interconnection agreement should
12 reflect those requirements. Because Qwest’s proposed language is consistent with the
13 requirements of Arizona and federal law, it should be adopted.

14
15 **Q. MR. GATES STATES THAT BOTH CLECS AND ILECS PROVIDE LOCAL**
16 **NUMBERS TO ISPS. HE THEN SAYS THAT THE VNXX SERVICE OF THE**
17 **CLEC SERVICE IS IDENTICAL TO FX SERVICE OFFERED BY QWEST, “AT**
18 **LEAST FROM AN END USER CUSTOMER PERSPECTIVE.” (PAGE 32) DO**

¹⁹ 2004 WL 2958421 (D. Ore. 2004).

²⁰ *Id.* at *9 (emphasis added).

²¹ *Id.* at *9-*11.

1 **YOU AGREE WITH HIS CLAIM?**

2 A. No. In fact, FX service offered by Qwest and VNXX service offered by Level 3 are very
3 different. This is true from the perspective of the carriers which Mr. Gates appears to
4 implicitly acknowledge and from the end user customers' perspectives as well. From the
5 end user customers' perspective, they are totally different. If a customer purchases FX
6 service from Qwest, the customer must actually purchase a connection in the geographic
7 LCA associated with the number (for which it pays the appropriate local exchange rate),
8 and must also pay for private line transport. When Qwest provides services to ISPs, it
9 requires the ISP to pick up the calls in the LCA where they want a telephone number by
10 purchasing a local connection in that LCA, and then pay for hauling it to the distant
11 location through a dedicated private line to their premises. The party that wants the call
12 transported to the distant exchange pays the transport. With Level 3's VNXX product,
13 however, there is no need for Level 3 to ask the ISP to pay for any transport from a distant
14 exchange. This is because, by single point of interconnection and number assignments,
15 Level 3 represents to Qwest that the call is a local call that Qwest should deliver to Level
16 3's Phoenix POP for free. Neither Level 3, nor the ISP, nor the end user customer, is
17 required to pay Qwest for gathering and transporting the traffic. Instead, because Level
18 uses local numbers, such calls are routed on local single-point-per LATA interconnection
19 trunks as if the calls were local calls terminating to a customer located in the originating
20 LCA. In fact, not only does Level 3 want the transport for free, Level 3 proposes charging
21 Qwest local termination once the call arrives at its switch as if it were a local call. Most
22 Level 3 VNXX traffic today is ISP calling. Despite Level 3's request in its Petition for
23 \$.0007/minute, those calls are currently rated at \$.00097/minute under Arizona rules. But
24 if the VNXX issue is expanded to terminating calls from VoIP providers or other

1 originating traffic the issue of seeking local termination of VNXX calls remains and must
2 be resolved in the contract language. Thus Qwest's language in 7.3.6.3 stating that
3 reciprocal compensation will not be paid on VNXX traffic should be adopted.
4

5 **Q. ON EXHIBITS RRD #10, #11, AND #15, MR. DUCLOO DEPICTS LEVEL 3'S**
6 **VIEW OF QWEST FX SERVICE AND LEVEL 3'S VNXX SERVICE. (SEE ALSO**
7 **MR. GATES TESTIMONY AT PAGE 33). ARE THESE EXHIBITS ACCURATE?**

8 A. No. Exhibits RRD #10 and RRD #11 inaccurately depict a Qwest FX call. These exhibits
9 show the call path using common PSTN trunk groups and being switched by multiple end
10 offices and tandem offices, in essence using the toll network. In fact, that is completely
11 wrong. Qwest FX is a simple configuration where the customer purchases an actual
12 connection in the LCA where the number is assigned like other end users in that local
13 calling area. It is then transported from that LCA, not over common trunks and switches,
14 but over what is essentially a private line-rated long loop. The FX customer is connected
15 from the actual LCA where the number was assigned directly to the distant customer
16 premises in the "foreign" exchange over a tariffed private line service at full retail rates.
17 Level 3's RRD #10 depiction does not reflect that configuration. The routing on that
18 exhibit is the routing that would apply to a typical toll call using the trunks connecting the
19 two switches following the same path as a toll call.

20 This point is illustrated by Exhibit RRD #15, Mr. Ducloo's diagram of a Level 3 VNXX
21 call. From this exhibit, it is clear that, unlike Qwest's FX service, Level 3 does not pick up
22 the call in the originating LCA, does not take it off the common trunks of the PSTN
23 network, and does not provide the private line circuit carrying the call to the customer
24

1 premises. Rather than the Level 3 VNXX customer paying for transport to its distant
2 premises, Level 3 puts the call on the LIS trunks, whose purpose is to deliver local calls
3 from local customers to the Level 3 switch. And, while the diagram suggests that Level 3
4 pays Qwest TELRIC rates to transport this call to the Level 3 POP, Level 3's position in its
5 Petition is that Qwest is financially responsible for *all costs* on its side of the POI, and that
6 neither Level 3 nor its customers should pay anything for the delivery. Setting that point
7 aside, (Mr. Easton addresses this in his testimony), the point that these exhibits make clear
8 is that the Qwest FX customer bears the full retail cost of transporting the call to the distant
9 location on its private network (i.e., the private line circuit that it leases from Qwest). In
10 Level 3's model, Level 3 seeks state-wide free transport, and wants the call treated as local,
11 including billing local termination charges, without any nexus whatsoever to the
12 originating LCA.

13 **Q. WHAT DO YOU MEAN BY NO NEXUS TO THE LCA?**

14 A. Let me give a real example. According to the LERG, Level 3 has requested and obtained
15 from NANPA 10,000 telephone numbers in area code 928 for NXX of 415. These
16 numbers are associated with the LCA for Wickenburg, Arizona, whose population is
17 approximately 5000 people. Based on Level 3's own descriptions of its business model, it
18 is highly unlikely that Level 3 serves any actual customers who live in Wickenburg. I
19 doubt if a Level 3 employee has ever been in Wickenburg, at least on a work related matter.
20 Level 3's sole purpose in obtaining those numbers is to assign Wickenburg numbers to an
21 ISP customer (such as Earthlink or MSN) actually located in Phoenix or even in another
22 state. Level 3 claims that the Qwest Wickenburg customer has made a local call if they call

1 an ISP when it actually is delivered to the Phoenix POP of Level 3 and then delivered to
2 Level 3's Phoenix ISP customer. Furthermore, Level 3 not only wants Qwest to deliver the
3 traffic to the POP for free, Level 3 also intends to bill reciprocal compensation to Qwest for
4 terminating that local call to their local "Wickenburg" ISP customer. If Level can pull that
5 off, it has a bullet-proof business plan. Qwest gathers and delivers traffic to it for free from
6 throughout Arizona, Level charges the ISPs for that service and then, Level 3 wants Qwest
7 to actually pay it local call termination for the privilege of doing all of these things for
8 Level 3. Beyond charging Qwest to deliver them traffic, as a CLEC certified to provide
9 local service, Level 3 has no relationship with any customer in Wickenburg and no nexus
10 to the Wickenburg LCA.
11

12 **Q. IS THE EXISTENCE OF ILEC FX SERVICE A REASON TO ABANDON THE**
13 **EXISTING MEANS OF RATING CALLS?**

14 A. No. I have already discussed why FX is significantly different than the VNXX arrangement
15 that Level 3 seeks to sanction through the ICA. Level 3 is taking the exception and turning
16 it into the numbering convention. NANPA expects that every company that elects to
17 interconnect with and become part of the network that comprises the PSTN assigns
18 numbers associated with specific geographic locations. There is one exception, specifically
19 permitted by NANPA, which is FX. And NANPA recognizes it not as the general rule but
20 as a limited exception that is regulated by states and recovers the transport through tariffed
21 private line rates. In Arizona, FX lines represent less than one tenth of one percent of the
22 total number of access lines assigned in Arizona. The other 99 and nine tenths percent
23 follow the established structure. Level 3 seeks to use FX (which is actually very different

1 from VNXX), and which by any measure is a small exception to a general rule, as the
2 justification to establish an entire network based on assigning virtually all telephone
3 numbers to customers located outside the LCA associated with the assigned numbers.
4 Thus, the vast majority of its telephone numbers would bear no relationship to their actual
5 physical location of the customer to whom they are assigned. Other than those Level 3 ISP
6 customers who happen to be located within the same LCA as the Level POI, 100% of Level
7 3's traffic would bear no relation to the LCAs with which its numbers are associated.
8 Level 3 does not deny that it has no customers physically located in those communities.
9 Level 3 is simply using the assigned telephone numbers to disguise calls that would
10 otherwise be toll calls, a fact recognized by the Oregon federal court in the *Universal* case,
11 which noted that Universal's VNXX arrangement allowed "the person making the call [to]
12 be billed at the local rate for a call that was *really long distance*."²²

13 **Q. MR. GATES ALSO REFERS TO A SERVICE OFFERED BY QCC KNOWN AS**
14 **"WHOLESALE DIAL" SERVICE (PAGE 55). IS THAT RELEVANT TO THE**
15 **VNXX ISSUES IN THIS CASE?**

16 A. No. Again Level 3 first inaccurately describes the Qwest product, and then says Level 3
17 does the same thing. Mr. Gates states that Wholesale Dial provides many of the same
18 "benefits" as Level 3's service. Wholesale Dial is a product that Qwest's unregulated
19 affiliate company QCC offers to ISPs. QCC is able to offer the product in Qwest's territory
20 because it purchases tariffed services from Qwest (the ILEC) and then packages those

²² 2004 WL 2958421, at * 9 (emphasis added).

1 tariffed services for ISPs. In particular, QCC purchases tariffed Primary Rate ISDN
2 services. This means that Wholesale Dial customers pay tariffed private line transport rates
3 to haul calls from the LCA where the dial tone is provided to the location of the ISP. The
4 calls are handed off within the LCA where the local service is purchased. In other words, it
5 bears no resemblance to VNXX.

6 **Q. WHAT IS WHOLESALE DIAL?**

7 A. QCC, through its Wholesale Dial product offering, is simply aggregating traffic and
8 providing a service as a bundled product to ISPs. Another way of describing this is that a
9 single ISP can buy PRI out of the tariffs or catalogs today as any other end user customer
10 can. But, if a single ISP does not have enough customers or volume to warrant such a
11 purchase, then a company like QCC (or any other carrier, including Level 3) can buy the
12 same tariffed services and create a product that can aggregate traffic for multiple ISPs, just
13 like QCC's Wholesale Dial, and market it to ISPs. The point is that Wholesale Dial is a
14 bundling of tariffed products and is not doing what Level 3 is doing, as Mr. Gates suggests.
15 It is simply built upon existing tariffed products and is not what Level 3 is doing with
16 VNXX. Wholesale Dial bears no resemblance to VNXX, and QCC is not a CLEC in
17 Phoenix assigning VNXX codes to itself so that it may have all traffic in the state delivered
18 to it for free. This is another red herring that should be ignored in addressing the real issue.

19 **Q. LEVEL 3 SEEMS TO IMPLY THAT ONEFLEX™, OFFERED BY QWEST'S**
20 **INTERNET COMPANY, IS ALSO A VNXX TYPE PRODUCT. DO YOU AGREE?**

1 A. No. Level 3's only argument for ignoring numbering convention is to claim everybody
2 does it. I have already shown that is not the case. Level 3 inaccurately describes a Qwest
3 product and then says "they do it, so we can do it". I have attached Qwest's Response to
4 Level 3's Request No. 64S1, labeled as Exhibit LBB-2, in which Qwest states that Qwest
5 Communications Corporation ("QCC") does offer OneFlexTM with virtual numbers. (See
6 Gates Exhibit TJG-7) These numbers honor the LCA guidelines and calls to or from these
7 numbers from outside the LCA where the VoIP POP is located are not local calls, as Level
8 3 advocates. In terms of the ESP exemption, all traffic is measured to and from the VoIP
9 POP, just as Qwest's language requires of Level 3, and all calls comply with the
10 exemption. No VNXX calls are permitted with OneFlexTM because calls are exchanged
11 between the POP and the caller within the same LCA. If Level 3 assigns a Phoenix number
12 to its ESP customer in Phoenix then calls from Qwest Phoenix customers will be delivered
13 to it as local. OneFlexTM does not, nor should Level 3 be permitted to assign a Flagstaff
14 VNXX number to a Phoenix ESP customer.

15 **Q. IN HIS TESTIMONY, MR. GATES STATES THAT "ISP-BOUND TRAFFIC AND**
16 **VIRTUAL NXX ISSUE ARE VERY MUCH INTERTWINED." (PAGE 31, LINE 14)**
17 **DO YOU AGREE?**

18 A. Yes, but that is only because certain CLECs, including Level 3, choose to intertwine them.
19 It is my understanding that currently all of Level 3's assigned VNXX numbers are assigned
20 to ISPs. That does not necessarily mean they must be intertwined. As I stated in my direct
21 testimony, a VNXX call is a VNXX call whether it is to an ISP, an airline, or a hardware

1 store. VNXX can be analyzed and evaluated in its own right and the fact that an ISP has
2 been assigned the number is of no particular impact on the analysis, except from the
3 perspective that the longer holding times associated with dial up Internet calls adds greater
4 cost to Qwest than a call to an airline or hardware store would and the Arizona
5 Commission has excluded ISP calls from reciprocal compensation. From a legal and
6 policy perspective, the issues are the same. A call originating in Flagstaff and terminating
7 to an end user with a Flagstaff number in Phoenix is a VNXX call, and the business of the
8 called party does not change that fact.

9 **Q. MR. GATES STATES ON PAGE 34 OF HIS TESTIMONY, THAT THE**
10 **LOCATION OF THE ISP EQUIPMENT HAS NO IMPACT ON THE PROPER**
11 **JURISDICTION OF THE CALL. IS HE CORRECT?**

12 **A.** No. Remember, the ISP is the customer. To say, as Mr. Gates does, that the location of the
13 customer receiving the call has no impact on the jurisdictional categorization of the call
14 highlights the extreme position that Level 3 is taking in this docket. The local/toll
15 distinction, the intrastate/interstate distinction, and the end user customer/carrier
16 distinction, among other things, are all premised on a historical approach that treats the
17 location of customers as one of the paramount factors. The regulatory structure related to
18 the PSTN is based on these kinds of facts, as is the intercarrier financing structure. While
19 the Level 3 witnesses attempt to camouflage Level 3's approach in rhetoric, the fact of the
20 matter is that its intent is simply to be able to use the PSTN for free (and, incidentally,
21 receive reciprocal compensation at the same time).

1 **Q. BEGINNING ON PAGE 37 OF HIS TESTIMONY MR. GATES LISTS WHAT HE**
2 **CONSIDERS NEGATIVE CONSEQUENCES OF TREATING VNXX CALLS AS**
3 **ANYTHING OTHER THAN LOCAL CALLS. PLEASE ADDRESS THE**
4 **CONSEQUENCES HE DESCRIBES.**

5 A. First let me state that treating a call according to its actual classification is not a negative
6 consequence. If that were so, then every toll carrier could claim that treating its toll calls as
7 toll was a negative consequence as compared to the treatment accorded local calls.
8 Treating a call according to its actual jurisdiction is not a value judgment; it is a
9 jurisdictional assignment that is neither negative nor positive. It is true that different
10 tariffed charges apply to different classifications. Level 3's costs will undoubtedly increase
11 if it cannot treat a call from Flagstaff to Phoenix as a free local call. But that is not the
12 issue. The real question for the Commission is what is the proper treatment and
13 classification of calls under existing compensation methods.

14
15 It is also true that ISPs' costs will likely increase if a call from Flagstaff to Phoenix is no
16 longer called a local call. But ISPs were paying someone to transport calls from Flagstaff
17 to Phoenix before Level 3 became certified. They bought a local connection in a distant
18 town and then bought transport back to their equipment from Qwest, an IXC, or a
19 Competitive Access Provider ("CAP") that would sell transport, or the ISP used its own
20 fiber network. It was only when Level 3 began leveraging its status as a CLEC, and
21 obtaining local numbers throughout the state and claiming these were local calls, that ISPs
22 began getting free transport. Any expense savings or efficiencies that exist for ISPs, exist

1 only because Level 3 has inappropriately classified the calls. Whether ISPs would need to
2 raise rates if forced to buy transport from Level 3, Qwest, an IXC, or a CAP from these
3 distant towns, as Mr. Gates claims, depends on their margins (which are unknown to
4 Qwest). Unlike Mr. Gates, however, if that were to happen it is not an unfair negative
5 impact, but is simply requiring the cost causer, the ISP, to pay the costs rather than
6 imposing those costs on others.

7 **Q. MR. GATES CLAIMS THAT QWEST'S PROPOSAL IMPROPERLY BENEFITS**
8 **ITS OWN AFFILIATE AND REDUCES COMPETITION FOR ISP DIAL-UP**
9 **SERVICES. (PAGE 38, LINES 1-3) IS THAT TRUE?**

10 A. No. Once again, the exact opposite is true. As I explained in my direct testimony, Qwest
11 requires that its ISP customers pay to transport from distant LCAs to their Internet
12 equipment from private line tariffs. Furthermore, Qwest's offerings require the ISP to
13 actually pick up the traffic in the LCA that the local number is associated with. The reality,
14 however, is that there is no significant competition for ISP dial-up today because, given a
15 choice, an ISP prefers free transport from companies like Level 3, rather than paying for
16 the costs of transporting these calls. It doesn't take an extremely sophisticated analyst to
17 figure out that free (even though unfair to Qwest and other customers) is more beneficial
18 than actually paying for service received.

19 **Q. ON PAGE 38, LINE 8 OF HIS TESTIMONY, MR. GATES ASKS THE QUESTION**
20 **"ARE THERE ANY ADDITIONAL NEGATIVE CONSEQUENCES?" WHAT**
21 **ARE THEY AND WHAT IS YOUR RESPONSE?**

1 A. Mr. Gates' fundamental argument is that Level 3 has built a multi-billion dollar, highly
2 efficient network and that the efficiencies of this network are of no use if Level 3 is
3 burdened by the arbitrary and unwarranted requirements of interconnection rules, and the
4 local/toll distinction mandated by state and federal law when they use the PSTN. This, of
5 course, ignores the significant capital dollars that Qwest has spent in Arizona alone to build
6 a network to places like Wickenburg and Flagstaff. It is not unreasonable for Qwest to
7 request compensation for the use of its network. It also ignores the billions spent by IXC's
8 and wireless carriers, all of whom play by the same rules that Level 3 is asking the
9 Commission to exempt Level 3 from. Mr. Gates also states that Level 3's network can
10 serve large regions of the country on an integrated basis. "It is indifferent to ILEC legacy
11 central office boundaries." (Page 38, lines 15-16) Local boundaries are not ILEC local
12 boundaries, but boundaries established for very good reasons by the Arizona Commission.
13 And like it or not, Level 3, if it goes beyond those local boundaries and into the toll
14 business, cannot be indifferent to them just because it happens to have build an IP-based
15 network.

16 **Q. MR. DUCLOO MAKES THE POINT THAT QWEST'S TRUNKING TO LEVEL 3**
17 **IS THE SAME NO MATTER WHERE THE END USER CUSTOMER IS**
18 **LOCATED. (PAGE 88) MR. GATES MAKES A SIMILAR POINT (PAGE 35). IS**
19 **THIS TRUE?**

20 A. Yes, they made similar points when discussing why Level 3's VoIP calls should get special
21 treatment. But Mr. Ducloo misses the critical point. Consistent with regulatory

1 requirements, Qwest's ICAs permit CLECs to serve end user customers in various local
2 calling areas in the LATA from a single switch, in an arrangement known as single point of
3 interconnection ("SPOI") or single point of presence ("SPOP"). Assume that Level 3
4 places its POP for the Phoenix LATA in Phoenix. Under SPOP, if a Qwest customer in
5 Flagstaff calls a Phoenix number of a customer served by Level 3 and located in Phoenix,
6 Qwest will deliver the call to the Level 3 POP in Phoenix. If a Flagstaff Qwest customer
7 calls the Flagstaff number of a customer served by Level 3 and who is physically located in
8 Flagstaff (which, of course, is purely hypothetical since Level 3 provides no local exchange
9 service), Qwest will deliver the call to the Level 3 switch in Phoenix. Level 3 then has the
10 responsibility to deliver the call back to its Flagstaff customer. In both instances, Qwest
11 must transport the call to the Level 3 POP in Phoenix. The cost to Qwest is the same in
12 both situations, but the point is that the regulatory treatment of the two calls is very
13 different. A Flagstaff to Phoenix call is a toll call and access charges apply to the IXC
14 responsible for the traffic. However, the Flagstaff end user customer to Flagstaff end user
15 customer call is a local call, and is treated differently under Arizona regulatory rules and
16 interconnection agreements. Level 3 wants to ignore these rules, and argue that since both
17 calls were delivered to the same POP they are the same kind of call. The issue here is not
18 call routing on one side of the POI—the issue here is the proper categorization of the call
19 and the application of the appropriate intercarrier compensation mechanism.
20

21 **Q. DOES YOUR PREVIOUS RESPONSE REFLECT LEVEL 3'S ACTUAL METHOD**
22 **OF OPERATION?**

23 A. No. In the previous question, I used the example of a Level 3 Flagstaff customer whose
24 telephone number accurately reflected their physical location. In reality, however, Level 3

1 is assigning local numbers from LCAs throughout Arizona to customers with no physical
2 presence in the LCA. These all appear as local calls because the switch operates on the
3 premise that Level 3 has followed industry rules and actually have customers located in
4 those towns; nothing could be further from the truth. The calls at issue in this case are, for
5 example, where a Qwest customer in Flagstaff calls a Flagstaff number of an ISP customer
6 served by Level 3, but the customer is actually located in Phoenix. Under those
7 circumstances, Qwest delivers the call to the Level 3 POP in Phoenix. But unlike the prior
8 example, Level 3 wants to treat the call as local when it is really interexchange in nature.

9 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS ON VNXX.**

10 A. My summary is very simple. Qwest's language is consistent with Arizona statutes, rules,
11 tariffs and decisions. It is consistent with NANPA rules. It is likewise consistent with
12 federal statutes and rules. Qwest's language bases the categorization of calls on the
13 location of the calling and called parties, an approach that is mandated by Arizona law.

14 Level 3, on the other hand, proposes a sweeping change in categorizing calls, all for the
15 purpose of avoiding carrier compensation mechanisms that govern others in the industry.
16 Its purpose is quite obvious. By pretending that interexchange traffic is local (which is the
17 essence of VNXX), Level 3 wants to be able to originate traffic for its ISPs and terminate
18 traffic for its VoIP customers throughout Iowa and force Qwest to transport this traffic for
19 free. In an effort to justify its proposals, Level 3 uses red herrings like FX service (which
20 is not the same as VNXX) and its claim that, because it has built a modern IP-based
21 network, it should not be required to play by the same rules that govern the industry. The

1 latter argument misses a critical point: the special rules Level 3 seeks relate to its use of the
2 PSTN, not its IP network.

3
4 Qwest, like most others in the industry, has suggested that the FCC reform intercarrier
5 compensation. But it must be done on a comprehensive and rational basis that takes into
6 account the consequences on the public interest and individual participants in
7 telecommunications markets. Level 3's approach, which in effect would reform
8 compensation methods to its benefit but require the rest of the industry to play by existing
9 rules, would not only benefit Level 3 financially, it would create a result that is directly
10 contrary to the goal of competitive neutrality. Level 3's self-serving approach should be
11 rejected by the Commission.

12
13 **VII. DISPUTED ISSUE 4: COMPENSATION FOR VOICE AND VOIP TRAFFIC**

14 **Q. DOES LEVEL 3 ADDRESS THE CONTRACT LANGUAGE FOR**
15 **COMPENSATION FOR VOICE AND VOIP TRAFFIC IN ITS TESTIMONY?**

16 A. No. Level 3 provided no testimony regarding the specific contract language in dispute for
17 the compensation for voice and VoIP traffic. Level 3 does provide general testimony,
18 however, relating to these issues, which I addressed above in the VoIP and VNXX sections
19 of my rebuttal testimony.

20
21 **VIII. DISPUTED ISSUE 19: ISP BOUND 3:1 RATIO, SECTION 7.3.6.2**

22 **Q. DOES LEVEL 3 ADDRESS THE CONTRACT LANGUAGE FOR ISSUE 19?**

1 A. No. Level 3 provided no testimony regarding the language in dispute for Issue 19. As
2 discussed in my direct testimony, Qwest has not yet brought this matter before the
3 Commission and the Commission has not yet ruled on Qwest's method of identifying ISP
4 traffic.

5 **IX. DISPUTED ISSUE 10: DEFINITION OF INTERCONNECTION**

6 **Q. DOES LEVEL 3 ADDRESS THE DEFINITION OF INTERCONNECTION IN ITS**
7 **TESTIMONY?**

8 A. No. Level 3 provided no testimony regarding the language in dispute for the definition of
9 interconnection in its testimony. Mr. Gates did mention interconnection on page 13 of his
10 testimony, but he simply said the FCC rules refer to "interconnection" as the linking of two
11 networks. There is no testimony explaining why Qwest's definition should not be
12 accepted. Thus, Qwest's language should be adopted.
13

14 **X. DISPUTED ISSUE 11: DEFINITION OF INTEREXCHANGE CARRIER**

15 **Q. DOES LEVEL 3 ADDRESS THE DEFINITION OF INTEREXCHANGE CARRIER**
16 **IN ITS TESTIMONY?**

17 A. No. Level 3 provided no testimony to support its position regarding the definition of
18 interexchange carrier in its testimony. Thus, Qwest's language should be adopted.

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

2 **Q. DOES LEVEL 3 ADDRESS THE DEFINITION OF INTRALATA TOLL TRAFFIC**
3 **IN ITS TESTIMONY?**

4 A. No. Level 3 provided no testimony to support its position regarding the definition of
5 intraLATA toll traffic. Thus, Qwest's language should be adopted.

6 **XII. DISPUTED ISSUE 14: DEFINITION OF TELEPHONE EXCHANGE SERVICE**

7 **Q. DOES LEVEL 3 ADDRESS THE DEFINITION OF TELEPHONE EXCHANGE**
8 **SERVICE IN ITS TESTIMONY?**

9 A. No. Level 3 provided no testimony to support its position regarding the definition of
10 telephone exchange service in its testimony. As previously discussed, several definitions
11 and other provisions of Qwest's Arizona tariffs demonstrate that the Commission views the
12 local/long distance distinction from a geographical perspective, and among the relevant
13 definitions are exchange, exchange service, and local exchange service. Qwest's definition
14 of telephone exchange service should be adopted.

15 **XIII. DISPUTED ISSUE 15: DEFINITION OF TELEPHONE TOLL SERVICE**

16 **Q. DOES LEVEL 3 ADDRESS THE DEFINITION OF TELEPHONE TOLL SERVICE**
17 **IN ITS TESTIMONY?**

1 A. No. Level 3 provided no testimony to support its position regarding the definition of
2 telephone toll service in its testimony. Thus, Qwest's language should be adopted.

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

4 A. Yes it does.

BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO. T-03654A-05-0350
T-01051B-05-0350

AFFIDAVIT OF
LARRY BROTHERSON

: SS

Larry Brotherson, of lawful age being first duly sworn, depose and states:

1. My name is Larry Brotherson. I am Director of Wholesale Advocacy for Qwest Corporation in Denver Colorado. I have caused to be filed written Rebuttal testimony in Docket No. T-03654A-05-0350 and T-0105B-05-0350.
2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

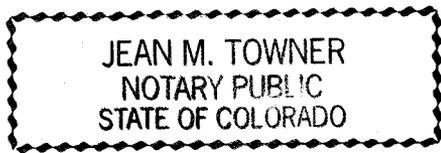
Further affiant sayeth not.


Larry Brotherson

SUBSCRIBED AND SWORN to before me this 9th day of August, 2005.


Notary Public

My Commission Expires: 4-13-2006



INDEX TO EXHIBITS

1		
2		
3	DESCRIPTION	<u>Exhibit</u>
4	Level 3 Response to Data Request #28.....	LBB-4
5		
6		
7	1699902/67817.259	

EXHIBIT

LBB 4

28. Does Level 3 consider a call that originates in Time Division Multiplex (“TDM”), is converted into Internet Protocol (IP), and then is terminated in TDM (commonly referred to as a TDM-IP-TDM call) a VoIP call for purposes of the interconnection agreement in this case?

LEVEL 3’S RESPONSE.

Level 3 objects to this request on the basis that it is vague, ambiguous, and overly broad. Level 3 further objects to this request on the grounds that it calls for speculation. In addition, Level 3 objects on the grounds that it seeks legal conclusions rather than facts and is therefore not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, Level 3 responds as follows: No.

Submitted and prepared

By: Rogier Ducloo
Director, Product Management
Consumer Voice
(720) 888-1114

Tim Gates
Senior Vice President
QSI Consulting
(303) 424-4433