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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF LEVEL 3) DOCKET NO. T-01051B-05-0350
COMMUNICATIONS, LLC'S PETITION FOR) DOCKET NO. T-03654A-05-0350
ARBITRATION PURSUANT TO SECTION 252(b))
OF THE COMMUNICATIONS ACT OF 1934, AS)
AMENDED BY THE TELECOMMUNICATIONS)
ACTS OF 1996, AND THE APPLICABLE STATE)
LAWS FOR RATES, TERMS, AND CONDITIONS)
OF INTERCONNECTION WITH QWEST)
CORPORATION.)
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**RESPONSE TO QWEST'S
NOTICE OF FILING
SUPPLEMENTAL AUTHORITY**

Level 3 Communication, LLC submits the following documents in response to Qwest's Notice of Filing Supplemental Authority (filed December 9, 2005): (i) Level 3 Communication's Application for Reconsideration of Arbitration Order, filed with the Iowa Utilities Board (dated January 5, 2006) and (ii) an Iowa Utilities Board Order Granting Reconsideration (dated January 30, 2006) to allow the Board additional time to consider the Application for Reconsideration.

RESPECTFULLY SUBMITTED this 1st day of February 2006.

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8 this 1st day of February 2006 to:

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ATTACHMENTS

JAN -5 2006

IOWA UTILITIES BOARD

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms and Conditions for Interconnection with Qwest Corporation)	Docket No. ARB-05-4
)	
)	APPLICATION FOR
)	RECONSIDERATION OF
)	ARBITRATION ORDER
)	

Level 3 Communications, LLC ("Level 3") respectfully requests reconsideration of the Board's December 16, 2005, Arbitration Order (the "Order") in the above-captioned matter. Section 252(c) of the Communications Act requires the Board to resolve all "open issues" in accordance with the requirements of federal law, including 47 U.S.C. §§ 251-52 and associated regulations of the Federal Communications Commission ("FCC"). In addition, Iowa administrative law requires the Board's decisions to meet certain specific criteria. As described below, however, the Order is deficient under these state and federal standards.

With respect to applications for reconsideration, Board Rule 7.27(2) provides

[a]pplications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error.

The Order did not specify any factual findings or legal conclusions. Consequently, Level 3 cannot enumerate specific erroneous findings or conclusions. Instead, Level 3 will address each subsection of the Order and identify the errors that require reconsideration. Level 3 believes this complies with the intent of Rule 7.27(2), as applied to the Order itself, and will in any event facilitate review by the Board.

Issue 1A: Single Point of Interconnection (“POI”) Per LATA

The Board states that Qwest’s “language does not preclude Level 3 from establishing a single POI per LATA and both parties agree that Level 3 has that right.” *See* Order at 9. On that basis, the Board accepts Qwest’s language regarding POIs. Unfortunately, however, Qwest’s language does not assure Level 3 of a single POI per LATA (“SPOI”).

First, Qwest’s proposed Section 7.1.2 does not acknowledge Level 3’s right to a SPOI. Rather, it contemplates “at least one” POI per LATA, leaving open and ambiguous the question of which party can require the establishment of additional POIs, and in what circumstances. In this regard, the testimony shows that Qwest believes it may require interconnection at more than one point. Qwest avoids calling additional points of physical connection “POIs,” but claims, for example, that if it has more than one tandem in a LATA, Level 3 should establish separate physical facilities to each tandem – *i.e.*, a POI at each tandem. *See* Tr. 1205.

Moreover, the Order only permits a unified interconnection arrangement (carrying all traffic types) using Feature Group D trunks, not on Local Interconnection Service (“LIS”) trunks (an issue discussed in more detail below). Given this, by uncritically adopting Qwest’s language, the Order further confuses the SPOI issue. For example, Qwest’s proposed Section 7.1.1 ties the definition of “Interconnection” to LIS, and defines certain tandem-routed calls into a class where connections may or may not be made available.

Qwest’s language – or Qwest’s interpretation of it, as demonstrated by the record – also severely undermines any practical meaning of a “single” POI. Qwest argues that while Level 3 can have a SPOI, the result of doing so is that virtually all traffic exchanged with Qwest will be subject to access charges. Qwest’s proposed solution? Level 3 should have a physical presence in every Qwest local calling area (“LCA”) – in other words, Level 3 must exchange traffic (*i.e.* interconnect) with Qwest at numerous points within the LATA. Compensation issues are further

discussed below, but collectively it is clear that Qwest's language does not and is not intended to permit Level 3 to utilize a SPOI.

In short, in this and other areas, the Order seems to direct one result (here, a clear affirmation of Level 3's right to a SPOI) but then – by requiring the parties to use Qwest's language – effectively contradicts its own substantive ruling. Level 3 appreciates that the details of interconnection agreement language can be complex and contentious. But Section 252 requires that the Board resolve the open issues between the parties, which, in this case, almost necessarily involves either (a) dictating specific language that differs from that proposed by Qwest or (b) more clearly articulating the principles the Board is adopting and then directing the parties to craft language that comports with those principles. Here the Board has created irretrievable ambiguities by declaring certain principles that diverge from Qwest's language, but then simultaneously purporting to affirm that language.¹

In addition to the result being contrary to sections 251 and 252, this result is also suspect under Iowa Code § 17A.19(10)(d), in that it did not follow the legal requirement to resolve all open issues; under § 17A.19(10)(j), in that the Board appears to have not considered the ambiguities created between the language of the Order and the Agreement language the Board approved; and under §§ 17A.19(10)(1), (m) and (n), in that allowing Qwest to undermine Level 3's established right to a SPOI is contrary to law, and misapplies the law to the facts in this case.

For all these reasons, the Board should adopt Level 3's language, which makes clear its right to a SPOI. At the very least the Board should expressly affirm that Level 3 has a right to a single POI per LATA that is not subject to Qwest's conditions, discretion, or circumvention, and that the agreement should contain language to that effect.

¹ For this reason, among others, it is unrealistic to expect the parties to agree on "conforming" contract language by January 16th, or, indeed, at all. By failing to specifically address the details of Qwest's proposed language, the Order tries to sweep this problem under the rug, but the problem remains and will only result in further litigation between the parties if not resolved prior to any agreement being submitted.

Issue 1B: Compensation for the Interconnection

With little discussion, the Order notes that there are “different types of interconnection” and adopts Qwest’s language regarding interconnection compensation. The Board’s decision is directly contrary to its July 22, 2005, decision in *LTDS v. Iowa Telecom*, ARB-05-3 (“ARB-05-3”). In that decision, the Board ordered a contract provision which expressly states “[e]ach Party will pay 100% of the trunking and transport costs on its side of the POI.” See ARB-05-3 at 12. Contrary to Qwest’s argument in its briefs, that language was not limited to any particular type of interconnection. To the contrary, the Board’s analysis in ARB-05-3 was based heavily on the Board’s traditional emphasis on defaulting to bill-and-keep arrangements. As discussed below, in the present case the Order again defaults to bill-and-keep. Yet after applying bill-and-keep to transport in ARB-05-3, the Order inexplicably fails to apply it here. The Order states (at page 11) that the result from ARB-05-3 is appropriate “if a mid-span meet point is used.” But ARB-05-3 makes clear that case did not involve a mid-span meet: LTDS had connected at the Iowa Telecom switch. The Order should be revised, therefore, to comport with the Board’s own prior precedent, so that Qwest and Level 3 are each required to pay for the facilities on their own side of the POI. In this regard, reconsideration is also called for by Iowa Code § 17A.19(10)(h), regarding the role of prior precedent in Board proceedings. Moreover, any other result diminishes the meaning of the POI as a demarcation between the responsibilities – technical *and financial* – of Level 3 and Qwest.

The Order’s single paragraph of analysis on this point also does not distinguish between voice (VoIP) and ISP traffic, but rather seems to adopt Qwest’s position (as the Board recasts it) – that this is all “information access” traffic. This view, however, is inconsistent with the Board’s June 20, 2005, Order in Lieu of Certificate in TF-05-31, where the Board found that Level 3’s voice offering is a “wholesale telecommunications service” (the issue being that

certificates had not traditionally been given to wholesale providers). *See* Order in Lieu at 4. Here again, the Board has failed to apply its own prior precedents here, leading to unclear and unfair results, to Level 3's detriment. This failure also raises issues under Iowa Code § 17A.19(10)(h) (failure to properly consider precedent) and § 17A.19(10)(j) (failure to consider all issues and resolve ambiguities).

Issue 1C: Traffic Origination Charges – Relative Use Factor

With respect to the “relative use factor” (“RUF”), the Order confounds two distinct issues, which may well have contributed to its violation of federal law on this point.

The Board correctly finds that there is no need for any RUF when interconnection is by means of a “meet point.” *See* Order at 11, 14. It also correctly finds that, in the abstract, with other kinds of interconnection, some form of RUF could properly be applied. *See id.* at 11-12. The Board, however, apparently misunderstood Level 3's position. Level 3 is entitled to any technically feasible means of interconnection, including meet point interconnection. *See* 47 U.S.C. § 251(c)(2) (interconnecting carrier entitled to interconnection “at any technically feasible point”); 47 C.F.R. §§ 51.5 (defining meet point); 51.321(b) (defining meet points as technically feasible). Level 3 made clear that meet point interconnection is what it wanted with Qwest. *See* Level 3 opening Brief at 12-15, 17-21.

The Board, apparently, took Level 3's insistence on its right to establish a single “meet point” POI per LATA as an effort by Level 3 “to apply the meet point analysis to all types of interconnection.” Order at 11. This is wrong. Level 3 recognizes that for some types of interconnection, a (properly calculated) RUF might apply. Level 3 just does not want to use such types of interconnection, or to have its agreement with Qwest complicated by Qwest's ambiguous language regarding such other arrangements. Level 3 submits that this confusion led the Board into error with respect to the RUF itself.

The Board correctly ruled that with a meet point POI, “the RUF does not apply.” Order at 14. The Board, however, approved “Qwest’s proposed language regarding traffic origination charges and the use of a RUF,” Order at 15, which creates two serious problems.

First, as Level 3 explained, Qwest’s language is unclear and will almost certainly result in disputes as Qwest tries to assess traffic origination charges – including charges imposed under the guise of the RUF – contrary to federal law, notably, 47 C.F.R. §§ 51.703(b) and 709(b). For this reason alone, the Board should direct the parties to establish language that clearly reflects the Board’s ruling, including, specifically, the ruling that no RUF applies in the case of a meet point interconnection.

Second, if Qwest and Level 3 establish an interconnection to which the RUF would apply, the Board failed to comply with 47 C.F.R. § 41.709(b). Level 3 showed without contradiction that this FCC rule only permits Qwest to charge Level 3 for Qwest-supplied facilities and trunking used to connect their two networks (including, if applicable, jointly used facilities, entrance facilities, and/or direct trunked transport) based on the amount of capacity that *Level 3* uses to send traffic *to Qwest* over those facilities. Level 3 also showed that Qwest’s RUF language violates this rule by permitting Qwest to charge Level 3 for such facilities, subject to potential discounts or rebates based on how much “telecommunications” traffic *Qwest* sends to *Level 3*. Qwest’s proposed RUF language, in short, directly contravenes a binding FCC regulation. The Board, therefore, had to reject Qwest’s language under 47 U.S.C. § 252(c)(1), which obliges the Board to *comply* with such regulations. *See* Order at 5 (quoting Section 252(c)); *see also* Iowa Code §§ 17A.19(10)(l)-(n).

Nothing in the Order indicates that the Board even considered the effect of Rule 51.709(b) on Qwest’s proposed RUF language. Certainly nothing in the Board’s “Analysis” of this issue either acknowledges the conflict between Qwest’s language and Rule 51.709(b) or

attempts to explain why the Board thinks it can ignore that rule. Instead, the Order relied on an earlier ruling that excludes “ISP-bound traffic from RUF calculations.”²

With due respect, ARB-04-1 is of no help to the Board here. That case involved a peculiar arrangement in which AT&T would purchase tariffed private lines from Qwest to link Qwest’s network with AT&T’s, and then try to employ a version of the Qwest’s RUF formula – on which, in broad terms, Qwest and AT&T appeared to agree – to charge some or all of the costs of the private lines back to Qwest, based on the inclusion of ISP-bound traffic within the RUF formula. The question was whether, under the RUF language in that case, ISP-bound traffic should “count” or not.

If one assumes that Qwest’s basic RUF language is to be used, the question certainly arises whether ISP-bound traffic should be excluded from the traffic Qwest is deemed to have originated, in order to calculate the “discount” the other carrier earns. In the case at hand, however, Level 3 is not proposing to use Qwest private lines to link the parties’ networks, and Level 3 has flat-out rejected Qwest’s proposed RUF language. This latter difference is critically important to the legal analysis of this issue, as it actually exists between Level 3 and Qwest. Level 3 has explained that the basic RUF language Qwest has proposed is fundamentally inconsistent with FCC Rule 51.709(b). The question here, therefore, is not how the Board might have interpreted analogous language in the past. The question is whether the challenged language may be imposed on Level 3 at all, given its objection. In this regard, as the Board is aware, parties to interconnection negotiations are free to agree to terms that do not comply with the requirements of federal law. *See* 47 U.S.C. § 252(a)(1) (permitting parties to agree to terms that do not comply with federal requirements). In ARB-04-1, AT&T and Qwest did not,

² Order at 14-15, *citing* IN RE ARBITRATION OF: QWEST CORPORATION, Petitioning Party, vs. AT&T COMMUNICATIONS OF THE MIDWEST, INC., AND TCG OMAHA, Responding Parties, *Arbitration Order*, DOCKET NO. ARB-04-1, 2004 Iowa PUC LEXIS 289 (June 17, 2004) (“ARB-04-1”).

apparently, disagree about the basic RUF language – merely how it should be applied. So, in that case the question of whether the RUF language can be *mandated* simply never came up. Here, because Level 3 does *not* agree with Qwest’s basic language, the Board is obliged under Section 252(c)(1) to impose language that *does* comply with federal requirements – including FCC Rule 51.709(b).³

For these reasons, the Board must reconsider its decision regarding the RUF. FCC Rule 51.709(b) is binding on the Board under the terms of 47 U.S.C. § 252(c)(1). Qwest’s proposed RUF language, to which Level 3 specifically objected, is plainly, flatly, literally inconsistent with that rule. To the extent that the Board persists in its conclusion that the parties’ agreement must contain RUF language, therefore, that language must be reformulated to comply with the calculation of cost sharing permitted by that rule.⁴

Issue 1D: Traffic Commingling – Feature Group D Trunks Versus LIS Trunks

In order to avoid wasteful duplication of facilities, Level 3 wants to be able to combine both “access” and “local” traffic on Qwest’s “LIS” trunks. Qwest argued that if combined traffic is to be permitted, it must flow over Feature Group D trunks. The Board approved Qwest’s language and rejected Level 3’s. Order at 17.

The essence of the Board’s ruling is that technical limitations on Qwest’s LIS trunks, particularly related to billing, compelled a ruling for Qwest. The Board, however, failed to take account of at least two legal standards that should have led to the opposite result. First, as Level 3 pointed out, “interconnection” under Section 251(c)(2) plainly and expressly exists for the

³ There is no evidence that either AT&T or Qwest even raised Rule 51.709(b) in ARB-04-1, much less argued its significance to the Board. Although ARB-04-1 cites other FCC rules, there is no citation to, or mention of, Rule 51.709(b) at all. Level 3 need not speculate as to why AT&T and Qwest might have overlooked this rule in their earlier dispute: the fact that the rule did not come up confirms that ARB-04-1 has no bearing on the claims that Level 3 has pressed before the Board here.

⁴ For the reasons described in Level 3’s briefing, excluding ISP-bound traffic from the RUF calculation is also inconsistent with FCC Rule 51.703(b). However, once RUF language is crafted that conforms to Rule 51.709(b) – that is, language that allows Qwest to charge Level 3 for network capacity only to the extent that Level 3 sends traffic to Qwest – the Rule 51.703(b) issue is much less significant.

purpose of exchanging “telephone exchange service and exchange access” traffic. It is impossible to square this fundamental legal ground for establishing interconnection in the first place, with Qwest’s claims that its Section 251(c)(2) interconnection arrangements somehow cannot handle “exchange access” traffic. Second, FCC Rule 51.305(c) states that “[p]revious successful interconnection ... using particular facilities, constitutes substantial evidence that interconnection is technically feasible ... in networks employing substantially similar facilities.” Here, Level 3 presented uncontradicted testimony that it had reached agreements with all other major ILECs, in dozens of states, to exchange all traffic – both “local” and “access” – over a single set of “interconnection” trunks, not Feature Group D trunks, and that any associated billing issues were fully manageable. Moreover, FCC Rule 51.305(e) makes clear that the burden of proof was on Qwest to show that it was *infeasible* to use LIS trunks to exchange all traffic. For Qwest to note the same billing concerns *that the other ILECs have been able to overcome* cannot be deemed sufficient to meet its burden of proving that Level 3’s suggestion is infeasible. Further, by ignoring the unchallenged evidence that Level 3 and other ILECs were successfully exchanging commingled traffic over unified interconnection facilities the Board’s Order is not supported by substantial evidence on the record *as a whole*, as required by Iowa Code § 17A.19(10)(f).

For these reasons, the Board should reconsider its ruling on this issue, and direct Qwest to permit Level 3 to exchange all traffic over a single group of LIS trunks.

Issue 2-3A: “Background” of VNXX (Authorization for VNXX)

In discussing whether VNXX was “authorized” in Iowa, the Board reiterated its two concerns: efficient use of numbering resources, and an acceptable intercarrier compensation regime. The Board acknowledges that, in Qwest territories where thousand-block pooling is in effect, the number resource issue is addressed. The Board holds, however, that VNXX remains

an unauthorized service in Iowa, because “the Board’s concerns regarding the implementation of VNXX architecture in Iowa intercarrier compensation is still relevant and the parties have offered little to alleviate that.” Order at 29.

This ruling creates an impermissible “Catch 22” with respect to this service arrangement. Level 3 expressly requested that the Board resolve its dispute with Qwest about what compensation regime should apply to VNXX traffic, and Level 3 argued for a specific compensation regime to apply to VNXX calls. The Board, therefore, was obliged to resolve that issue under Sections 252(b)(4)(c) and 252(c)(1). The only reason this issue is still unresolved – supposedly justifying the Board’s continued ban on actually offering VNXX arrangements – is the Board’s own refusal to fulfill its obligation to resolve it.

In this regard, if the Board did not believe either party’s specific proposal alleviated its concerns, it had the authority and responsibility under Section 252(b)(4)(B) to ask for whatever information it needed, and ultimately was required to “proceed on the basis of the best information available to it from whatever source derived.” See Section 252(b)(4)(B). It is completely impermissible for the Board to avoid fulfilling its own clear duties under Section 252 and then rely on that failure to justify the continued ban on VNXX arrangements.⁵ See also Iowa Code § 17A.19(10)(d).

As part of its refusal to resolve this issue as required by law, the Board relied on a misinterpretation of the FCC’s *ISP Remand Order* with respect to whether VNXX-routed ISP-bound traffic is subject to the FCC’s compensation regime for ISP-bound traffic.⁶ As Level 3

⁵ The Board’s continued delay in resolving this matter raises independent issues under 47 U.S.C. § 253(a), which forbids states from banning or imposing unreasonable entry barriers with respect to the offering of “any interstate or intrastate telecommunications service.” Particularly in light of the uncontradicted evidence showing that the costs to Qwest of transporting VNXX traffic to a single LATA-wide POI are *de minimis*, there is no conceivable basis for continuing this discriminatory prohibition.

⁶ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Inter-Carrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order*, 16 FCC Rcd 9151 (2001) (“*ISP Remand Order*”).

explained, the FCC's pre-2001 regime regarding reciprocal compensation under Section 251(b)(5) was limited to "local" traffic, so it made sense during that earlier period to consider whether ISP-bound traffic should properly be considered "local" for compensation purposes. However, in the *ISP Remand Order*, the FCC abandoned its reliance on the "local" classification. Instead, it established a regime under which all ISP-bound traffic, whether traditionally viewed as "local" or not, was subject to special, low compensation rates. It misreads federal law to exclude VNXX-routed ISP-bound traffic from this regime. *See* Level 3 Opening Brief at 41-65; Level 3 Reply Brief at 21-23.

Correcting this legal error, of course, solves the Board's stated concern about permitting VNXX-routed ISP-bound traffic in the first place, by establishing a reasonable compensation mechanism for this traffic. Specifically, VNXX-routed ISP-bound traffic would be subject to the same rate as other ISP-bound traffic, which, in Iowa, is a default "bill-and-keep" arrangement.

Either way, the Board should have reached a determination on appropriate compensation for VNXX traffic, which would have met the criteria for authorization of VNXX.

Issue 2-3B: Intercarrier Compensation for VoIP Traffic

The Board considered Issues 2 and 3 together, and designated "Intercarrier Compensation for VoIP Traffic" as Issue 2-3B. The board ruled that VoIP traffic shall be treated as a call between the Iowa end user and the VoIP POP from which the call emerges from the Internet (in the case of incoming calls) or at which it is converted to IP format (in the case of outgoing calls). *See* Order at 33. To reach this conclusion the Board relies on two considerations. First, the Board declares that "a voice call between separate LCAs is a toll call and must be treated as such." Second, the Board holds that under the "ESP Exemption," the VoIP POP "is the relevant point to measure the end point of the traffic." *Id.* Both of these grounds are erroneous.

The Board does not appear to disagree that VoIP traffic is interstate in nature. Yet the impact of treating the VoIP POP as one of the end points will be – except where the POP and the end user are in the same LCA – that the traffic will be subject to Qwest’s intrastate, Iowa-specific access charges. It makes no sense to establish a regime in which intrastate charges will necessarily apply to plainly interstate traffic. As a result, if *any* access charges are applied to VoIP traffic, Level 3 submits that only interstate access charges could ever apply.

More fundamentally, however, because VoIP traffic is interstate in nature, federal law, not state law, determines whether and how access charges may be assessed. Level 3 explained that federal law contains a two-part test for whether a call is a “telephone toll service” call, to which access charges may apply. Specifically, the call must be *both* “long distance” (*i.e.*, what the Board noted in referring to traffic between separate LCAs) *and* “toll” (*i.e.*, be subject to a separate charge other than local service charges). *See* 47 U.S.C. §§ 153(48), 153(16); 47 C.F.R. § 51.701(b). Even if VoIP calls are deemed to meet the first test, they do not meet the second. As a result, VoIP calls are not excluded from the FCC’s general definition of traffic subject to reciprocal compensation, so that general rule – which in the case of Iowa means bill-and-keep – applies to VoIP traffic. *See* Level 3 Reply Brief at 23-30.

Furthermore, the ESP exemption does not work in the way described in the Order. That doctrine holds that an enhanced (or information) service provider (“ESP”) may obtain connections to the public switched network without incurring access charges; instead, the ESP may buy service on the same terms as any business customer. But when two LECs are involved in getting traffic to or from an ESP, the fact that the ESP buys its connections at retail business rates does not determine how that traffic will be handled for purposes of intercarrier compensation. This is proven by the FCC’s original February 1999 ruling on the subject to calls to ISPs. In that case CLECs and ISPs argued that the ESP exemption meant that ISP-bound calls

must be deemed to "end" at the ISP's location, making ISP-bound calls subject to traditional reciprocal compensation. The FCC, however, expressly rejected that claim: "The fact that ESPs are exempt from access charges and purchase their PSTN links through local tariffs does not transform the nature of traffic routed to ESPs."⁷

For all these reasons, the Order's conclusion that the appropriate intercarrier compensation for VoIP traffic should be based on the locations of the end user and the VoIP POP cannot be squared with applicable federal law. *See also* Iowa Code §§ 17A.19(10)(c), (l)-(n). The Board should reconsider this aspect of the Order and direct the parties to use Level 3's proposed language.

Other Issues, Including Omitted Issues

Unfortunately, due to the ambiguity and contradictions within the Order, as well as the lack of findings of fact or conclusions of law, the Board's faith that "the parties should be able to determine the outcome of the Tier II issues based on the Board's determination in this order" is misplaced. Without further illumination by the Board, the parties will not be able to resolve issues 6-22.

A substantial number of the Tier II issues (Issue Nos. 6-16) involve definitions for which the Order provides little, if any, insight as to resolution between the respective positions of the parties. While a number of the definitional issues are not even tangentially addressed by the Board (*e.g.*, Issue Nos. 6 & 20), other issues in this vein bear on the very substance of the proceeding, again without any guidance from the Board.

⁷ In the matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, 14 FCC Rcd 3689 14 FCC Rcd 3689 (1999) at ¶ 16. Although this ruling did not fare well on appeal, *see Bell Atlantic v. FCC*, 206 F.3d 1 (2000), in the *ISP Remand Order* the FCC again made clear that it was *retaining* the ESP Exemption as a way for ISPs to obtain access to the PSTN, without in any way limiting the treatment of ISP-bound traffic, for purposes of intercarrier compensation, based on the location of the ISP's gear. *See, e.g., ISP Remand Order* at ¶¶ 27, 29. If the FCC had agreed with the Board that the location of the ESP mattered, then all ISP-bound traffic dialed to local ISPs would have been deemed subject to reciprocal compensation, rather than being subject to a separate regime.

Procedural Matters

The numerous errors identified above result in an Order that unfairly discriminates against Level 3. The result of the Order is to protect the incumbent from new forms of competition and new approaches to delivering services, in contravention of the intent of both the state and federal competition acts. In light of the above described errors, the Board should reconsider its Arbitration Order in this Matter. *Level 3 respectfully requests that the Board accept this application for reconsideration, and then permit both additional briefing and oral argument on this matter pursuant to a reasonable procedural schedule to be established by the Board.*

Level 3 also requests that the Board stay that portion of its Order requiring a conformed agreement be filed on January 16 and establish a new date, if appropriate, once Level 3's application for rehearing has been resolved. For the reasons described herein, it is unrealistic in the extreme to expect the parties to be able to agree on language to implement the Order in its current form.

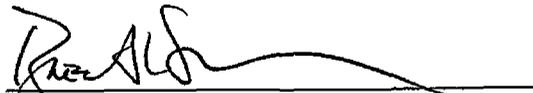
CERTIFICATE OF SERVICE

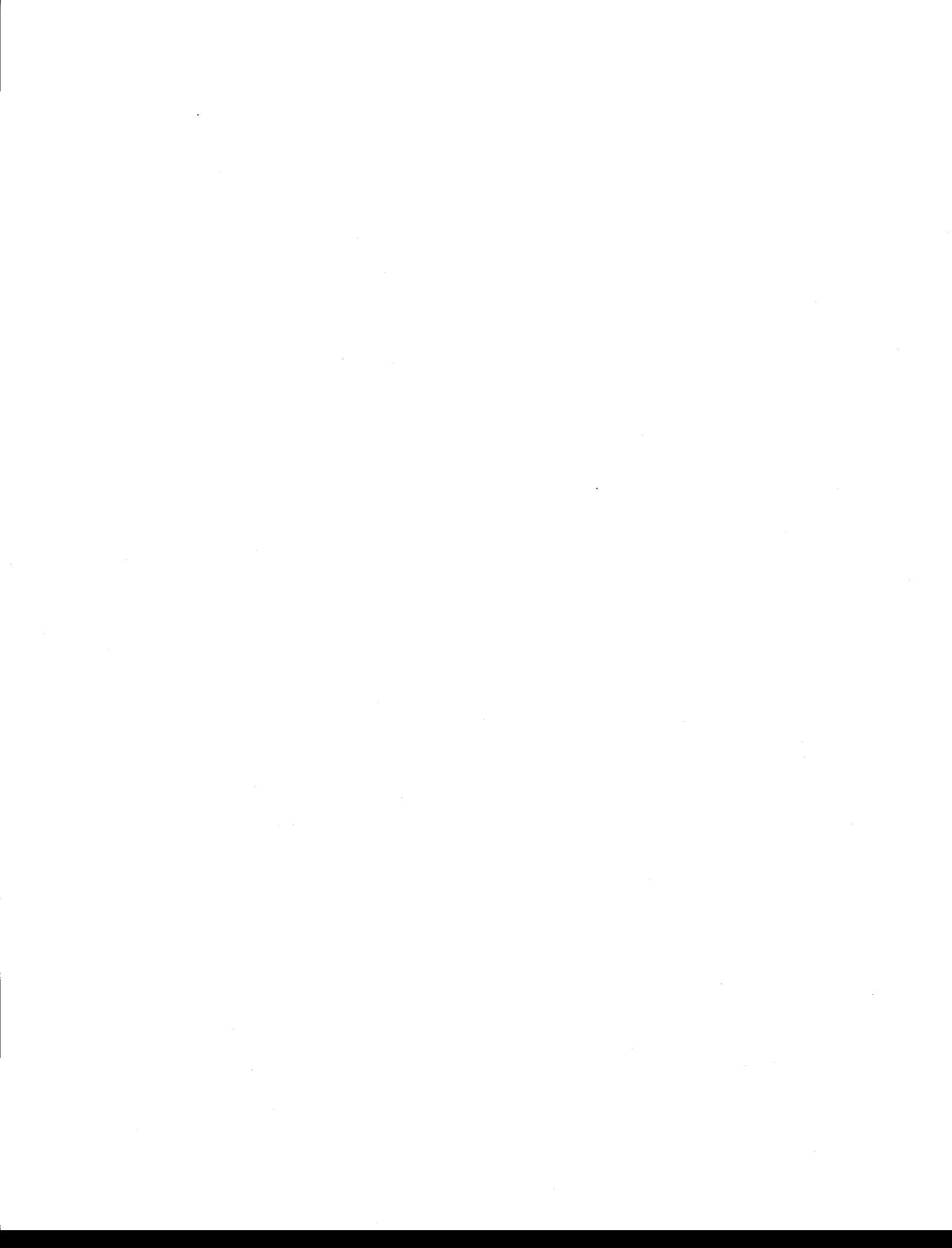
The undersigned hereby certifies that an original of the foregoing document was delivered by hand delivery and/or electronic mail to the persons listed below at the addresses indicated on January 5, 2006.

Office of Consumer Advocate
Consumer Advocate Division
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Des Moines, Iowa 50319
Via Hand Delivery (3 copies)

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Tim Goodwin
Qwest Corp.
925 High Street, 9S9
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Via Hand Delivery

Tom Dethlefs, Senior Attorney
Qwest Services Corporation
1801 California Street, Suite 1000
Denver, Colorado 80202


BRET A. DUBLINSKE



STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>LEVEL 3 COMMUNICATIONS, LLC,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="padding-left: 40px;">vs.</p> <p>QWEST CORPORATION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. ARB-05-4</p>
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ORDER GRANTING RECONSIDERATION

(Issued January 30, 2006)

On December 16, 2005, the Utilities Board (Board) issued an "Arbitration Order" in Docket No. ARB-05-4. The order arbitrated certain terms and conditions of a proposed interconnection agreement between Level 3 Communications, LLC (Level 3), and Qwest Corporation (Qwest). Specifically, the order arbitrated three primary issues identified as "Tier One" issues: (1) interconnection architecture and cost responsibility related thereto; (2) Virtual NXX (VNXX) arrangements; and (3) intercarrier compensation for Internet service provider (ISP) – bound and Voice over Internet Protocol (VoIP) traffic. The order noted that while Level 3 presented 17 "Tier Two" issues, these issues were described by the parties as being derivative of the Tier One issues and, as such, the Board did not discuss them individually.

Level 3 filed an application for reconsideration of the arbitration order on January 5, 2006. Qwest filed a response on January 19, 2006. The Board will grant Level 3's request for reconsideration for the purpose of allowing the Board adequate time to consider the issues raised by Level 3's application.

IT IS THEREFORE ORDERED:

The application for reconsideration filed by Level 3 Communications, LLC, on January 5, 2006, is granted for the purpose of allowing adequate time for consideration of the issues raised by Level 3's application.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 30th day of January, 2006.