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AZ CORP COMMISSION
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8 **IN THE MATTER OF LEVEL 3**
 9 **COMMUNICATIONS, LLC'S PETITION FOR**
 10 **ARBITRATION PURSUANT TO SECTION**
 11 **252(b) OF THE COMMUNICATIONS ACT OF**
 12 **1934, AS AMENDED BY THE**
 13 **TELECOMMUNICATIONS ACT OF 1996,**
 14 **AND THE APPLICABLE STATE LAWS FOR**
 15 **RATES, TERMS, CONDITIONS OF**
 16 **INTERCONNECTION WITH QWEST**
 17 **CORPORATION**

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

**QWEST CORPORATION'S LIMITED
EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S
RECOMMENDED OPINION AND
ORDER**

18 Qwest Corporation ("Qwest") respectfully submits these limited exceptions to the
 19 Recommended Opinion and Order ("ROO") issued by the Administrative Law Judge ("ALJ") in
 20 this docket on April 7, 2006. Qwest recommends that the Arizona Corporation Commission
 21 ("Commission") amend the ROO as set forth in Exhibit A and then adopt the ROO as so
 22 amended.

I. INTRODUCTION

23 In this arbitration, the parties presented their positions on twenty-two issues (not counting
 24 subparts). The ROO resolves all of the issues presented by the parties except for the question
 25 whether the FCC's *ISP Remand Order* requires compensation for long distance calls made to
 26 Internet Service Providers ("ISPs"). On this issue, the ROO states the following:

1 Because we do not permit the use of VNXX arrangements as Level 3 has
2 proposed them in this case, we do not need to reach the issue of whether the *ISP*
3 *Remand Order* only applies to 'local' ISP traffic. (ROO at 29, lines 13-14).

4 Qwest does not disagree with the first clause of the sentence; however, for the reasons set forth
5 below, it is essential that the Commission adopt an order that matches Qwest's compensation
6 obligation under the ICA to the requirements of federal law. Subsequent to the release of the
7 ROO, a second federal court of appeals confirmed that the *ISP Remand Order*¹ prescribes
8 compensation only for calls placed to an ISP in the same local calling area as the calling party.
9 *Global NAPs v. Verizon New England*, 2006 WL 924035 (1st Cir. April 11, 2006) ("*Global*
10 *NAPs*"). This case also confirmed that long distance calls placed to ISPs, whether through
11 VNXX arrangements or otherwise, are subject to the existing access charge regime.

12 In this proceeding, Level 3 has attempted to obtain contract terms under which it would
13 receive compensation from Qwest for long distance calls placed by customers of Level 3's ISPs.
14 Level 3's proposed contract terms would fundamentally change the existing access charge rules
15 and effectively reverse the flow of compensation that should apply to these calls. In the *ISP*
16 *Remand Order*, the FCC recognized that requiring incumbent local exchange carriers like Qwest
17 to pay compensation to CLECs like Level 3 who focus exclusively on serving ISPs sends
18 inappropriate market signals, leads to regulatory arbitrage and undermines the operation of
19 competitive markets. (*ISP Remand Order* ¶ 71). Level 3 should be obtaining compensation for
20 the services it provides to ISPs from those ISPs, not from Qwest. To that end, the Commission
21 should make the attached amendments to the ROO so that it properly reflects existing federal and
22 Arizona law.

23
24

25 ¹ Order on Remand and Report and Order, *In the Matter of Implementation of the Local*
26 *Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for*
 ISP-Bound Traffic, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*")

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II. EXCEPTIONS

A. **The ROO Should Be Amended To Reflect That Only Calls Placed to an ISP in the Same Local Calling Area as the Calling Party are Subject to the *ISP Remand Order's* Compensation Scheme (Qwest Amendment 1).**

The breadth of the *ISP Remand Order* was extensively addressed by both parties.² However, the ROO declines to decide whether the *ISP Remand Order* is limited to calls placed to an ISP in the same local calling area ("LCA"). (ROO at 28). The ROO adopted an approach that bans VNXX until a docket including industry and Staff can be concluded that addresses the broad question of the public policy underlying VNXX and whether it is in the public interest. (*Id.*). Qwest agrees that that is a prudent approach, and agrees wholeheartedly that broad input is essential before the traditional call rating method is subjected to wholesale changes.

Nevertheless, the Commission should nonetheless find that the *ISP Remand Order* prescribes intercarrier compensation only for calls placed by a caller to an ISP located in the same LCA. The scope of the *ISP Remand Order* is not an issue that arises solely in the context of VNXX traffic. It is an issue that arises anytime calls are placed to an ISP located in a different local calling area than the calling party. Under Arizona law, long distance calls to an ISP are interexchange calls that are subject to the existing access charge rules. Furthermore, the breadth of the *ISP Remand Order* is currently an issue before the Commission in the complaint dockets of Level 3 and Pac-West.

Four days after the ROO was released, the First Circuit issued its decision in *Global Naps* in which it found that that the *ISP Remand Order* only prescribed compensation for calls placed to ISPs located in the same LCA. In light of this decision, there is no longer any uncertainty under federal law concerning the scope of the *ISP Remand Order*. Accordingly, the Commission should amend the ROO so that it provides that the *ISP Remand Order's* compensation scheme

² Qwest Opening Brief at 9-27; Qwest Reply Brief at 7-17; Level 3 Opening Brief, at 54-70; Level 3 Reply Brief at 26-29.

1 applies only to calls placed to an ISP located in the same LCA as the calling party.

2 **1. The Hobbs Act Empowers Federal Courts of Appeal to Render Definitive**
3 **Interpretations of FCC Orders.**

4 Under the terms of the Hobbs Act, federal courts of appeal have “*exclusive jurisdiction* to
5 enjoin, set aside, suspend (in whole or in part), or determine the validity of (a) all final orders of
6 the Federal Communications Commission made reviewable by section 402(a) of title 47.”³
7 (Emphasis added). Thus, the interpretations of the federal courts of appeals are binding sources
8 of law that state commissions are obligated to follow in interpreting FCC orders and rules.

9 **2. WorldCom and Global NAPs Conclusively Establish that only Local ISP**
10 **Traffic is Subject to the ISP Remand Order.**

11 The Hobbs Act court for the *ISP Remand Order* was the federal court of appeals for the
12 D. C. Circuit. It performed that function in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir.
13 2002), where it stated the *holding* of the *ISP Remand Order* in these terms: “In the order before
14 us the [FCC] held that under § 251(g) of the Act it was authorized to ‘carve out’ from §
15 251(b)(5) calls made to internet service providers (“ISPs”) *located within the caller’s local*
16 *calling area.*” (*Id.* at 430; emphasis added).⁴

17 _____
18 ³2 U.S.C. § 2342(1). 47 U.S.C. § 402(b) sets forth a few specific exceptions to 47 U.S.C. §
19 402(a), none of which applies here. Further, state commissions, under authority delegated by the
20 Act, must follow decisions of federal courts interpreting the Act and interpreting FCC decisions
21 that implement the Act. See 47 U.S.C. § 408 (Orders of the FCC “shall continue in force for the
22 period of time specified in the order or until the Commission or a court of competent jurisdiction
23 issues a superseding order.”); see also *Hawaiian Tel. Co. v. Hawaii Pub. Util. Comm’n*, 827 F.2d
24 1264, 1266 (9th Cir. 1987); *Southwestern Bell Tel. Co. v. Arkansas Pub. Serv. Comm’n*, 738 F.2d
25 901, 907 (8th Cir. 1984) *vacated on other grounds*, 476 U.S. 1167 (1986); *Southwestern Bell Tel.*
26 *Co. v. Texas Pub. Util. Comm’n*, 812 F. Supp. 706, 708 (W.D. Tex. 1993).

23 ⁴ Although the *WorldCom* court found much to criticize in the *ISP Remand Order* (the
24 ALJ described one of these problems in the ROO ¶ 20), it took the unusual step of remanding,
25 *but not vacating*, the *ISP Remand Order* or any of the FCC’s rules adopted pursuant to the *ISP*
26 *Remand Order*. The court explicitly stated that “there is plainly a non-trivial likelihood that the
Commission has authority to elect such a system (perhaps under §§ 251(b)(5) and 252(d)(B)(i)):”

[W]e do not decide whether handling calls to ISPs constitutes ‘telephone

1 To the extent there was any question whether the *WorldCom* Court meant what it said,
2 that question was resolved by *Global NAPs*. In *Global NAPs*, a company with the same
3 business plan as Level 3 (*i.e.*, providing services to ISPs for dial up access to the Internet)
4 appealed a decision of a Massachusetts federal district court that had upheld the decision of the
5 Massachusetts Commission⁵ that access charges apply to interexchange ISP calls. In so ruling,
6 the Massachusetts Commission ruled that calls placed to ISPs outside the LCA of the calling
7 party were not subject to the *ISP Remand Order*. In *Global NAPs*, the CLEC, argued that the
8 *ISP Remand Order* preempted state commissions and required that *all* ISP traffic be subject to
9 the *ISP Remand Order*. The First Circuit rejected that claim on several grounds.

10 First, the court described the legal principles that define whether a federal agency has
11 preempted state regulation:

12 [T]he law requires a *clear indication* that an agency intends to preempt state
13 regulation. *Hillsborough County v. Automated Med. Labs. Inc.*, 471 U.S. 707,
14 718 (1985) (“[B]ecause agencies normally address problems in a detailed manner
15 and can speak through a variety of means, . . . we can expect that they will make
16 their intentions clear if they intend for their regulations to be exclusive.”); *see also*
17 *Qwest Corp.*, 380 F.3d at 374 (finding no preemption of state regulation where
18 FCC regulations were “notably agnostic” on the question. (*Id.* at *10; emphasis
19 added).

20 Applying those principles, the court concluded that “the *ISP Remand Order* does not clearly
21 preempt state authority to impose access charges for interexchange VNXX ISP-bound traffic; it
22 is, at best ambiguous on the question, and ambiguity is not enough to preempt state regulation

23 exchange service’ or ‘exchange access’ (as those terms are defined in the Act), . . .
24 . or neither, or whether those terms cover the universe to which such calls might
25 belong. Nor do we decide the scope of the “telecommunications” covered by §
26 251(b)(5). Nor do we decide whether the Commission may adopt bill-and-keep
for ISP-bound calls pursuant to § 251(b)(5); *see* § 252(d)(B)(i) (referring to bill-
and-keep). *Indeed, these are only samples of the issues we do not decide . . .*
(288 F.3d at 434; emphasis added).

⁵ The Massachusetts regulatory agency’s full name is the Massachusetts Department of
Telecommunications and Energy. For convenience and to avoid confusion, Qwest refers to it as
the “Massachusetts Commission.”

1 here.” (*Id.* at *11).

2 Second, Global NAPs argued that, if the FCC only intended to preempt on local ISP
3 traffic, “it would have expressed its intent more clearly, by specifying ‘local ISP-bound traffic.’”
4 (*Id.* at *12). The First Circuit responded by pointing out that this argument ignores the important
5 distinction between local and interexchange traffic, as well as the existing compensation regime
6 for interexchange calls:

7 The FCC has consistently maintained a distinction between local and
8 “interexchange” calling and the intercarrier compensation regimes that apply to
9 them, and reaffirmed that states have authority over intrastate access charge
10 regimes. . . .

11 Indeed, in the *ISP Remand Order* itself, the FCC reaffirmed the distinction
12 between reciprocal compensation and access charges. It noted that Congress, in
13 passing the [Act], did not intend to disrupt the pre-[Act] access charge regime,
14 under which “LECs provided access services . . . in order to connect calls that
15 travel to points – both interstate and intrastate – beyond the local exchange. In
16 turn, both the Commission and states has in place access regimes applicable to
17 this traffic, which they have continued to modify over time.” (*Id.*, quoting *ISP
18 Remand Order* ¶ 37).

19 Third, the court addressed the context of the FCC’s two ISP orders, the 1999 *ISP
20 Declaratory Order*⁶ and the 2001 *ISP Remand Order*. The court described both orders as only
21 addressing the question “whether reciprocal compensation obligations apply to the delivery of
22 calls from one LEC’s end-user customer to an ISP *in the same local calling area* that is served
23 by the competing LEC.” (*Id.* at *13, quoting *ISP Remand Order* ¶ 13; emphasis added). The
24 First Circuit also cited the critical description of the holding of the *ISP Remand Order* articulated
25 in *WorldCom*, noting that *WorldCom* stated that the question before the FCC involved “calls
26 made to [ISPs] located within the caller’s local calling area.” (*Id.*, quoting *WorldCom*, 288 F.3d

24 ⁶ Declaratory Ruling in CC Docket No. 96-98 and NPRM in CC Docket No. 99-68, *In the Matter
25 of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996
26 and Intercarrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689 (1999) (“*ISP
Declaratory Order*”).

1 at 430). Based on this contextual analysis, the court concluded that “[t]here is no express
2 statement that ISP-bound traffic is not subject to access charges.” (*Id.*).

3 Fourth, the court turned to the *Amicus Brief* filed by the FCC at the request of the First
4 Circuit panel: “The FCC’s helpful brief, while not taking a position on the outcome of this
5 appeal, *nonetheless supports the conclusion that the order did not clearly preempt state*
6 *regulation of intrastate access charges.*” (*Id.*; emphasis added). Citing several portions of the
7 *Amicus Brief*, the First Circuit observed:

8 The FCC further notes that “in establishing the new compensation scheme for
9 ISP-bound calls, the Commission was considering only calls placed to ISPs
10 located in the same local calling area as the caller.” According to the FCC, “[t]he
11 Commission itself has not addressed application of the *ISP Remand Order* to ISP-
12 bound calls outside the local calling area” or “decided the implications of using
13 VNXX numbers for intercarrier compensation more generally.” (*Id.* at *14,
14 quoting *Amicus Brief* at 10, 11).

15 The First Circuit thus concluded that, “[g]iven the requirement of a clear indication that the FCC
16 preempted state law, the *ISP Remand Order* does not have the broad preemptive effect that
17 Global NAPs seeks to assign it.” (*Id.* at *14).

18 **3. The FCC *Amicus Brief* in *Global NAPs* Confirms that the *ISP Remand Order*
19 *Addressed Only Compensation for Calls Placed to ISPs in the Same Local*
20 *Calling Area as the Calling Party.***

21 As discussed above, the *Global NAPs* court relied on an *Amicus Brief* filed by the FCC.
22 After the case was fully briefed and argued by the parties, the First Circuit panel took the unusual
23 step of seeking input from the FCC. Specifically, the FCC was asked “[w]hether, in the *ISP*
24 *Remand Order*, . . . the [FCC] intended to preempt states from regulating intercarrier
25 compensation for *all* calls placed to [ISPs], or whether it intended to preempt only with respect
26 to calls bound for [ISPs] in the same local calling area?” (*Amicus Brief* at 2; emphasis in
original). The *Amicus Brief* responds primarily to that issue.

The FCC was careful to state that the *ISP Remand Order* could be read to answer the
question in either the affirmative or the negative. Nonetheless, FCC stated that the FCC *did not*

1 in the *ISP Remand Order* establish a compensation regime for calls placed to ISPs outside of the
2 caller's local calling area:

3 "The Commission itself has not addressed application of the *ISP Remand Order*
4 to ISP-bound calls outside a local calling area. Nor has the Commission decided
5 the implications of using VNXX numbers for intercarrier compensation more
6 generally." (*Amicus Brief* at 10-11).

7 "The administrative history that led up to the *ISP Remand Order* indicates that in
8 addressing compensation, *the Commission was focused on calls between dial-up*
9 *users and ISPs in a single local calling area.* . . . Thus, when the Commission
10 undertook in the *ISP Declaratory Ruling* to address the question "whether a local
11 exchange carrier is entitled to receive reciprocal compensation for traffic that it
12 delivers to . . . an Internet service provider," . . . the proceeding focused on calls
13 that were delivered to ISPs in the same local calling area.

14 ***The administrative history does not indicate that the Commission's focus***
15 ***broadened on remand.*** The *ISP Remand Order* repeats the Commission's
16 understanding that "an ISP's end-user customers typically access the Internet
17 through an ISP service located in the same local calling area." . . . *The Order*
18 *refers multiple times to the Commission's understanding that it had earlier*
19 *addressed – and on remand continued to address – the situation where 'more*
20 *than one LEC may be involved in the delivery of telecommunications within a*
21 *local service area.'*" (*Id.* at 12-13; citations to *ISP Remand Order* omitted;
22 emphasis added).

23 Thus, while avoiding a definitive answer to the question posed by the First Circuit, the FCC's
24 statements confirm Qwest's analysis of the *ISP Remand Order*, and the decisions⁷ of the Oregon,
25 Indiana, Iowa, Minnesota, and South Carolina commissions that the *ISP Remand Order* only
26 applies to calls placed to an ISP located in the same local calling area..

27 Finally, while ultimately irrelevant in light of the governing nature of *WorldCom* and
28 *Global NAPs*, the decisions of other state commissions, particularly recent decisions that have
29 comprehensively addressed the issue, are solidly in agreement with *WorldCom* and *Global*
30 *NAPs*.⁸

31 _____
32 ⁷In addition to references to Oregon decisions in Qwest's briefs, Qwest filed two Oregon
33 decisions as supplemental authority (both Oregon decisions were filed on February 3, 2006).
34 Qwest filed the Iowa Board order December 19, 2005. The Minnesota ALJ decision (which has
35 now been unanimously approved by the Minnesota Commission) was filed on January 23, 2006.
36 The South Carolina Commission order was filed on March 28, 2006.

⁸ Given the governing authority of *WorldCom* and *Global NAPs*, the issue of

1 **B. The ROO Should Be Amended To Include Qwest's Proposed Language Relating To**
2 **Certification and Audits (Qwest Amendment 2).**

3 The ROO rejected Qwest-proposed (1) requiring Level 3 to certify that VoIP traffic
4 meets the approved definition and (2) the language that would provide Qwest with a right to
5 audit to assure that VoIP calls were properly identified. (ROO at 56). Ironically, Level 3 never
6 addressed the auditing issue in any manner until its reply brief: it provided neither direct nor
7 rebuttal testimony on the auditing issue, nor did it address the issue in its opening brief. Its only

8
9 disagreement among state commissions is irrelevant. Nonetheless, it is important to note that
10 recent decisions, particularly in Oregon and Minnesota, that engaged in comprehensive analyses
11 of the issue, are in complete agreement with *WorldCom* and *Global NAPs*. As Qwest has
12 demonstrated in its briefs and in its supplemental filings of authority, more state commissions in
13 the Qwest region (Oregon, Iowa, and Minnesota) have ruled that the *ISP Remand Order* does not
14 apply to VNXX ISP traffic than have ruled otherwise. These orders are comprehensive analyses
15 of the issue that take into account *all* parts of the *ISP Remand Order*, in particular those
16 paragraphs of the order that make it clear that the FCC did not intend to interfere with existing
17 federal and state access charge regimes for interexchange traffic (paragraphs 37-40). In an order
18 issued last week, the Oregon Commission affirmatively relied on the *Global NAPs* decision.
19 Order, *In the Matter of Qwest Corporation's Petition for Arbitration of Interconnection Rates,*
20 *Terms, Conditions, and Related Arrangements with Universal Telecommunications, Inc.* Docket
21 ARB 671, Order No. 06-190, at 5 (OPUC, April 19, 2006) (relying on *Global NAPs* and
22 characterizing the First Circuit as "the highest court to address" this issue). This order may be
23 viewed at <http://apps.puc.state.or.us/orders/2006ords/06-190.pdf>.

24 Level 3 filed a Washington decision in support of its position. Order, *In the Matter of*
25 *Level 3 Communications LLC v. Qwest Corporation, Level 3's Petition for Enforcement of the*
26 *Interconnection Agreement with Qwest Corporation*, Docket No. UT-053039, Order No. 05
(W.U.T.C., February 10, 2006). That is the only state commission decision from the 14-state
Qwest region that has ruled against Qwest on this issue. The Washington Commission's legal
analysis is lacking on key issues. For example, the decision ignores the *WorldCom* court's
conclusion that the *ISP Remand Order* applies only to local ISP traffic. The decision also
ignores paragraphs 36-40 of the *ISP Remand Order*, where the FCC ruled that it was not
interfering with the existing access charge regime—the Washington decision makes no reference
at all to those paragraphs. In *Global NAPs*, the First Circuit relied on both the *WorldCom*
language and on the paragraphs of the *ISP Remand Order* (in particular paragraph 37) that make
it clear that the FCC intended no disruption of the existing access charge regime. (*Global NAPs*,
2006 WL 924035, at *12,*13). The Washington analysis ignored key arguments that the *Global*
NAPs court found to be persuasive. It should, therefore, not be relied upon by the Commission
in this docket.

1 discussion of the issue was in its reply brief at 36, n. 59, where it suggested that auditing would
2 be difficult and burdensome, but without citing any record evidence. As to the certification
3 issue, Level 3 never addressed it in testimony or in either brief.

4 Thus, it is un rebutted that the language is necessary so that Qwest can verify that the
5 traffic that Level 3 identifies as VoIP traffic is valid VoIP traffic entitled to the ESP exemption
6 and is properly classified for billing purposes. It was undisputed that Level 3 agreed to
7 numerous other audit procedures in other portions of the agreement, and even proposed section
8 7.3.9, an auditing provision for company factors. As with auditing provisions, Level 3 agreed to
9 numerous certification requirements in the agreement. Given the benefit of such provisions and
10 Level 3's failure to provide any valid reason to reject them, the Commission should grant
11 Qwest's exception and adopt both provisions.⁹

12
13 **C. The ROO Correctly Decides Issue No. 2; However, a Technical Correction is**
14 **Necessary So That the Ordering Clause Matches the ROO's Resolution of the Issue**
15 **(Qwest Amendment 3)**

16 Level 3 cast Issue No. 2 as whether it would be permitted to exchange all traffic types
17 over the same interconnection trunks. However, that is not the real issue.¹⁰ Rather, Issue No. 2
18 concerns whether Level 3 should be permitted to terminate interexchange traffic (referred to as
19 "switched access traffic" in Qwest's proposed language) to Qwest over interconnection trunks
20 that do not have the capability to properly record this traffic. This is an even more significant
21 issue now because Level 3 recently acquired Wiltel, a major carrier of interexchange traffic. The
22 Wiltel acquisition means that the volume of interexchange traffic Level 3 delivers to Qwest

23
24 ⁹ See Qwest's Opening Brief at 50 for a more detailed discussion of both issues.

25 ¹⁰ Qwest's proposed paragraph 7.2.2.9.3.2 clearly allows Level 3 to exchange all traffic types
26 over Feature Group D interconnection trunks. Qwest has made its Feature Group D
interconnection trunks capable of carrying all traffic types.

1 under the agreement may be substantial.¹¹

2 The ROO adopts Qwest's proposed language on Issue No. 2. (ROO, at 72, lines 3-4).
3 Adoption of Qwest's proposed language properly reflects federal law. Level 3's interconnection
4 rights arising under section 251(c) are limited to interconnection that Level 3 uses to provide
5 "telephone exchange service" or "exchange access." Section 251(c) interconnection rights do
6 not encompass or extend to interconnection to be used by the CLEC to terminate its
7 interexchange traffic on the network of the ILEC providing interconnection. Since Level 3 is
8 requesting that a section 251(c) interconnection arrangement be expanded to include termination
9 of its interexchange traffic, it is appropriate for the Commission to require that the
10 interconnection trunks established under the agreement have the capability to properly record
11 this switched access traffic.

12 Level 3 erroneously claimed in its briefs that it had the right to deliver interexchange
13 traffic to Qwest under section 251(c) of the Act. However, in its *Local Competition Order*,¹² the
14 FCC has specifically rejected this argument:

15 [A]ll carriers (including those traditionally classified as IXCs) may obtain
16 interconnection pursuant to section 251(c)(2) for the purpose of terminating calls
17 originating from their customers residing in the same telephone exchange (*i.e.*,
18 non-interexchange calls).

18 We conclude, however, that an IXC that requests interconnection solely for the
19 purpose of originating or terminating its interexchange traffic, not for the
20 provision of telephone exchange service and exchange access to others, on an
21 incumbent LEC's network is not entitled to receive interconnection pursuant to
22 section 251(c)(2). (*Local Competition Order* ¶¶ 190-91).

21 The FCC reasoned that a carrier that requests interconnection to terminate a long distance call is
22 not "offering" access services, but rather is "receiving" access services. (*Id.* ¶ 186). Since the
23 interconnection is not for the purpose of providing "telephone exchange service" or "exchange

24 _____
25 ¹¹ The broad scope of the interexchange services offered by WiTel can be viewed on its website:
26 http://www.witel.com/products/content/voice_services/oneplus.htm.

¹² First Report and Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*")

1 access,” the ILEC is not required to provide the interconnection under section 251(c)(2).
2 Interconnection for the purpose of originating or terminating long distance calls is governed by
3 section 251(g), which states:

4 On and after February 8, 1996, each local exchange carrier, to the extent that it
5 provides wireline services, shall provide exchange access, information access, and
6 exchange services for such access to interexchange carriers and information
7 service providers in accordance with the same *equal access and*
8 *nondiscriminatory interconnection restrictions and obligations (including receipt*
9 *of compensation)* that apply to such carrier on the date immediately preceding
10 February 8, 1996, under any court order, consent decree, or regulation, order or
11 policy of the Commission, until such restrictions and obligations are explicitly
12 superseded by regulations prescribed by the Commission after February 8, 1996.

13 In this proceeding, Level 3 is inappropriately attempting to extend its interconnection
14 rights under section 251(c)(2) to encompass the exchange of long distance traffic with Qwest.
15 However, the rules applicable to local interconnection under section 251(c)(2) do not apply to
16 interconnection used to deliver interexchange calls. Qwest is required by section 251(g) to
17 provide interconnection to IXCs on a nondiscriminatory basis. Thus, section 251(g) requires
18 Qwest to charge Level 3 the same tariffed recurring and nonrecurring rates for interconnection
19 for interexchange calls that Qwest charges other IXCs. Otherwise, Level would be receiving
20 discriminatorily advantageous treatment in violation of the Act.

21 It is quite apparent from the positions that Level 3 is taking in this proceeding that
22 Feature Group D (“FGD”) interconnection trunks are necessary. Qwest and Level 3 have
23 fundamental disagreements as to the applicability of access charges. Moreover, the evidence at
24 hearing demonstrated conclusively that FGD interconnection trunks are necessary so that records
25 can be prepared for independents companies and CLECs who terminate Level 3’s traffic. Level
26 3 offered no solution to this problem.

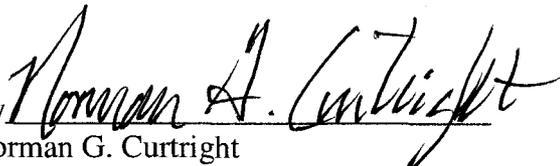
27 The ROO adopts Qwest’s proposed language on Issue No. 2 but did not include all of the
28 pertinent language in the ordering clause. (ROO at 72, lines 3-4). Thus, a technical correction is
29 necessary so that all of the pertinent language is included in the contract. Specifically, Qwest’s

1 proposed Sections 7.2.2.9.3.1 and 7.2.2.9.3.1.1 should be referenced. (See ROO at 65, lines 20-
2 28). Also, the ROO contains a typographical error on page 77 in Section 7.3.8). On line 24, the
3 acronym "CGS" should be replaced with "CCS."

4
5 **III. CONCLUSION**

6 On the basis for the foregoing exceptions, Qwest respectfully requests that the
7 Commission either reverse and remand the ALJ's recommendation to conform to the proper
8 application of federal law or, in the alternative, enter an order consistent with the law, as set forth
9 above.

10 RESPECTFULLY SUBMITTED this 24th day of April, 2006.

11
12
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3 Docket Control
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7 COPY of the foregoing hand delivered
8 this 24th day of April, 2006, to:

9 Lyn Farmer, Chief Administrative Law Judge
10 Jane Rodda, Administrative Law Judge
11 Hearing Division
12 ARIZONA CORPORATION COMMISSION
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EXHIBIT A

| | | |
|---------------------------------|---|------------------------------------|
| THIS AMENDMENT: | | |
| <input type="checkbox"/> Passed | <input type="checkbox"/> Passed as amended by _____ | |
| <input type="checkbox"/> Failed | <input type="checkbox"/> Not Offered | <input type="checkbox"/> Withdrawn |

PROPOSED AMENDMENT # _____

TIME/DATE PREPARED: April 24, 2006

COMPANY: Qwest Corporation

AGENDA ITEM: N/A

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

OPEN MEETING DATE: May __, 2006

Page 29, lines 13-14

DELETE: “Because we do not permit the use of VNXX arrangements as Level 3 has proposed them in this case, we do not need to reach the issue of whether the *ISP Remand Order* only applies to ‘local’ ISP traffic.”

INSERT: “Based on our review of the two definitive federal circuit court decisions that have addressed the breadth of the *ISP Remand Order*, *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002) and *Global NAPs v. Verizon New England*, 2006 WL 924035, at *10-*14 (1st Cir. April 11, 2006) (“*Global NAPs*”), and the *Amicus Brief* filed by the FCC with the First Circuit on March 13, 2006 in *Global NAPs*, we hereby conclude that the *ISP Remand Order* establishes a compensation regime for ISP traffic only in the situation where the calling party and the ISP are located within the same local calling area (as defined by the Arizona Corporation Commission).”

Page 29, lines 15-17

DELETE: “By having a physical presence in the LCA associated with the assigned NPA/NXX, Level 3 would be entitled to reciprocal compensation pursuant to the *ISP Remand Order* as well as pursuant to the language of the proposed ICA.”

INSERT: [None].

DELETE: “7.3.6.1 Subject to the terms of this Section, intercarrier compensation for ISP-bound traffic exchanged between Qwest and CLEC will be billed without limitations as to the number of MOU (“minutes of use”) or whether the MOU are generated in “new markets” as that term has been defined by the FCC, at \$.0007 per MOU or the state ordered rate whichever is lower.”

INSERT: “7.3.6.1 Subject to the terms of this Section, intercarrier compensation for ISP-bound traffic exchanged between Qwest and CLEC (where the end users are physically located within the same Local Calling Area) will be billed without limitations as to the number of MOU (“minutes of use”) or whether the MOU are generated in “new markets” as that term has been defined by the FCC: \$.0007 per MOU or the state ordered rate, whichever is lower.”

| | | |
|---------------------------------|---|------------------------------------|
| THIS AMENDMENT: | | |
| <input type="checkbox"/> Passed | <input type="checkbox"/> Passed as amended by _____ | |
| <input type="checkbox"/> Failed | <input type="checkbox"/> Not Offered | <input type="checkbox"/> Withdrawn |

PROPOSED AMENDMENT # _____

TIME/DATE PREPARED: April 24, 2006

COMPANY: Qwest Corporation

AGENDA ITEM: N/A

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

OPEN MEETING DATE: May __, 2006

Page 55, lines 26-28

DELETE: “Thus, with respect to Matrix Issue 1A, we adopt Qwest’s proposed Section 7.1.1. For reasons set forth in connection with the next issue, we decline to adopt Qwest’s proposed sections 7.1.1.1 and 7.1.1.2.”

REPLACE: [None]

Page 56, lines 18-22

DELETE: “We believe it would be operationally difficult for Level 3 to provide certification of its end users as required by Qwest’s proposed Section 7.1.1.2, and thus, we do not approve this provision. We find further that Qwest’s proposed language for Section 7.1.1.1 is not reasonable as it places an unnecessary burden on Level 3 and its customers in contravention of the FCC’s goal of limiting burdens on VoIP providers.”

INSERT: “We find that the certification and audit provisions proposed by Qwest in Sections 7.1.1.1 and 7.1.1.2 are reasonable. While certification may be difficult, Level 3 has the opportunity through its contracts with third party VoIP providers to require such providers to limit any VoIP calls that terminate on the PSTN to the VoIP definition we adopt herein. Likewise, the contract has numerous audit provisions. The audit provision proposed by Qwest is reasonable and consistent with other such provisions. Thus, we adopt Qwest’s language.”

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| THIS AMENDMENT: | |
| <input type="checkbox"/> Passed | <input type="checkbox"/> Passed as amended by _____ |
| <input type="checkbox"/> Failed | <input type="checkbox"/> Not Offered <input type="checkbox"/> Withdrawn |

PROPOSED AMENDMENT # _____

TIME/DATE PREPARED: April 24, 2006

COMPANY: Qwest Corporation

AGENDA ITEM: N/A

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

OPEN MEETING DATE: May __, 2006

Page 72, lines 3-4 (Technical correction)

DELETE: Consequently, we adopt Qwest's proposed language for Sections 7.2.2.9.3.2 and 7.2.2.9.3.2.1.

INSERT: Consequently, we adopt Qwest's proposed language for Issue No. 2 including Sections 7.2.2.9.3.1, 7.2.2.9.3.1.1, 7.2.2.9.3.2 and 7.2.2.9.3.2.1.

Page 77, line 24 (typographical error)

DELETE: "CGS"

INSERT: "CCS"