

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

IN THE MATTER OF:

LEVEL 3 COMMUNICATIONS, LLC'S
PETITION FOR ENFORCEMENT OF
INTERCONNECTION AGREEMENT WITH
QWEST CORPORATION

Docket No. UT-053039

**LEVEL 3 COMMUNICATIONS, LLC'S
PETITION FOR INTERLOCUTORY
REVIEW AND MOTION TO AMEND
SCHEDULE**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. QUESTIONS PRESENTED..... 3

III. CONCLUSIONS OF LAW FOR REVIEW 3

IV. EVIDENCE RELIED UPON 4

V. STANDARD OF REVIEW 5

VI. PROCEDURAL BACKGROUND..... 6

VII. FACTUAL BACKGROUND..... 7

VIII. REASONS FOR GRANTING THIS PETITION AND REVERSING THE
ADMINISTRATIVE LAW JUDGE'S DECISION 13

 A. The Administrative Law Judge erred in ruling that the Commission has
not approved the use of VNXX arrangements for ISP-bound traffic in
interconnection agreements in this state. 13

 B. The Administrative Law Judge erred in granting Qwest's Motion on
Counterclaim 3 and ruling that Level 3 is not entitled to payment from
Qwest for all ISP-bound traffic as of October 8, 2004, in accordance with
the FCC's decision in the *Core Forbearance Order*. 16

 C. The Administrative Law Judge erred in denying Level 3's Motion on
Count 2 and failing to require Qwest to execute Level 3's proposed
amendment to the Interconnection Agreement to incorporate the terms of
the FCC's decision in the *Core Forbearance Order*. 18

D.	The Administrative Law Judge erred in denying Level 3’s Motion on Qwest’s Counterclaim 4, which alleges that Level 3 misassigned telephone numbers in violation of section 13.4 of the Interconnection Agreement.....	20
E.	The Administrative Law Judge erred in denying Level 3’s Motion on Qwest’s Counterclaim 5, which alleges that the Interconnection Agreement does not permit Level 3 to exchange VNXX ISP-bound traffic on LIS interconnection trunks.....	22
IX.	MOTION TO AMEND SCHEDULE.....	23
X.	CONCLUSION.....	23

I. INTRODUCTION

1. Level 3 Communications, LLC (“Level 3”), petitions the Washington Utilities and Transportation Commission (“Commission”) for interlocutory review pursuant to WAC 480-07-810 of the Order of Administrative Law Judge Ann E. Rendahl, issued August 26, 2005 (“ALJ Order”), denying in part and granting in part motions for summary determination filed by Level 3 and Qwest Corporation (“Qwest”). The Administrative Law Judge erred by failing to grant Level 3’s motion for summary determination on all claims and counterclaims. Level 3 respectfully requests that the Commission grant interlocutory review and reverse portions of the Administrative Law Judge’s order. Specifically, Level 3 requests that the Commission rule as follows:

- The Administrative Law Judge erred in ruling that the Commission has not approved the use of virtual NXX (“VNXX”)¹ arrangements for ISP-bound traffic in interconnection agreements in this state. This Commission approved Level 3’s use of VNXX-routed ISP-bound traffic in its order approving Level 3’s interconnection agreement with CenturyTel;²
- The Administrative Law Judge erred in granting Qwest’s motion for summary determination on Counterclaim 3 and ruling that Level 3 is not entitled to payment from Qwest for all ISP-bound traffic as of October 8, 2004, in accordance with the FCC’s decision in the *Core Forbearance Order*.³ Level 3 is entitled to payment as a matter of law for *all* ISP-bound traffic, including VNXX traffic, under the *ISP Remand Order*⁴ and the terms of the parties’ Interconnection Agreement;
- The Administrative Law Judge erred in denying Level 3’s motion for summary determination on Count 2 and failing to require Qwest to execute Level 3’s proposed

¹ VNXX ISP-bound traffic refers to a LEC’s assignment of an NXX code for one local calling area to an internet service provider (“ISP”) located in a different local calling area. To the end-user placing the call, the call appears to be local. ALJ Order at ¶ 10; *see also Pac-West Telecomm, Inc. v. Qwest Corporation*, WUTC Docket No. UT-053036, *Order No. 03: Recommended Decision to Grant Petition* (August 23, 2005) (“*Pac-West Recommended Decision*”).

² *In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC, and CenturyTel of Washington, Inc., Pursuant to 47 U.S.C. Section 252*, Docket No. UT-023043, *Seventh Supplemental Order Affirming Arbitrator’s Report and Decision*, February 28, 2003 (“*Level 3/CenturyTel Arbitration Order*”).

³ *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, Order, FCC 04-241, WC Docket No. 03-171 (rel. Oct. 18, 2004) (“*Core Forbearance Order*”).

⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001), *remanded, WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert.den.* 538 U.S. 1012 (2003) (“*ISP Remand Order*”).

amendment to the Interconnection Agreement to incorporate the FCC's decision in the *Core Forbearance Order*.

- The Administrative Law Judge erred in denying Level 3's motion for summary determination on Qwest's Counterclaim 4, which alleges that Level 3 misassigned telephone numbers in violation of section 13.4 of the parties' Interconnection Agreement. There are no disputed issues of material fact, and Qwest failed to allege any violation of the provisions of the Interconnection Agreement or applicable law; and
- The Administrative Law Judge erred in denying Level 3's motion for summary determination on Qwest's Counterclaim 5, which alleges that the Interconnection Agreement does not permit Level 3 to exchange VNXX ISP-bound traffic on LIS interconnection trunks. Given the ALJ's conclusion that the reciprocal compensation regime set forth in the FCC's *ISP Remand Order* applies to VNXX ISP-bound traffic, Level 3 is entitled to judgment as a matter of law on Counterclaim 5.

2. The Administrative Law Judge granted summary determination in Level 3's favor on Counterclaim 1, ruling that the intercarrier compensation regime for ISP-bound traffic established in the FCC's *ISP Remand Order* applies to VNXX ISP-bound traffic.⁵ Level 3 agrees with this conclusion.

3. Interlocutory review of the ALJ Order is appropriate because such "review could save the commission and the parties substantial effort or expense."⁶ The issues presented in this proceeding are issues of law that are appropriately decided by summary determination. There are no issues of fact that need further development. By failing to grant summary determination, the parties and this Commission will be required to undergo the unnecessary burden and expense of a hearing. This potential burden outweighs the costs in time and delay of exercising interlocutory review.⁷ Interlocutory review is also appropriate because the Commission should address the inconsistencies between the ALJ Order in this docket and the *Pac-West Recommended Decision*,⁸ as well as inconsistencies within the ALJ Order.

⁵ ALJ Order at ¶¶ 35, 73.

⁶ WAC 480-07-810(2)(c).

⁷ *Id.*

⁸ *See* n.2, *supra*.

II. QUESTIONS PRESENTED

4. This Petition presents the following issues for the Commission's review and resolution:

5. **ISSUE 1:** Did the Administrative Law Judge err in ruling that the Commission has not approved the use of VNXX arrangements for ISP-bound traffic in interconnection agreements in this state?

6. **ISSUE 2:** Did the Administrative Law Judge err in granting Qwest's motion for summary determination on Counterclaim 3 and ruling that Level 3 is not entitled to payment from Qwest for all ISP-bound traffic as of October 8, 2004, in accordance with the FCC's decision in the *Core Forbearance Order*?

7. **ISSUE 3:** Did the Administrative Law Judge err in denying Level 3's Motion on Count 2 and failing to require Qwest to execute Level 3's proposed amendment to the Interconnection Agreement to incorporate the FCC's decision in the *Core Forbearance Order*?

8. **ISSUE 4:** Did the Administrative Law Judge err in denying Level 3's motion for summary determination on Qwest's Counterclaim 4, which alleges that Level 3 misassigned telephone numbers in violation of section 13.4 of the Interconnection Agreement?

9. **ISSUE 5:** Did the Administrative Law Judge err in denying Level 3's motion for summary determination on Qwest's Counterclaim 5, which alleges that the Interconnection Agreement does not permit Level 3 to exchange VNXX ISP-bound traffic on LIS interconnection trunks?

III. CONCLUSIONS OF LAW FOR REVIEW

10. This Petition seeks Commission review of the following Conclusions of Law entered by ALJ Rendahl:

11. **Conclusion of Law No. 8:** "The Commission has not approved or rejected the use of VNXX arrangements for ISP-bound traffic or any other traffic in interconnection agreements in the state."⁹

⁹ ALJ Order at ¶ 76 (*see* Issue 1).

12. **Conclusion of Law No. 9:** “Given that the nature of Level 3’s VNXX arrangements are not fully understood, the issues raised in Qwest’s Counts 2, 4, and 5 of its Counterclaims are better addressed after the parties have an opportunity to develop a complete record on the issues.”¹⁰

13. **Conclusion of Law No. 12:** “Level 3 may not implement the changes in law under the *Core Forbearance* Order by billing Qwest for additional ISP-bound traffic before the Commission approves an amendment implementing the *Core Forbearance Order*.”¹¹

IV. EVIDENCE RELIED UPON

14. Level 3 relies upon the following evidence in this Petition for Interlocutory Review:

- a. Level 3 Communications, LLC’s Petition for Enforcement of Interconnection Agreement with Qwest Corporation, filed June 21, 2005, WUTC Docket No. UT-053039 (“Level 3 Petition”).¹²
- b. Qwest Corporation’s Answer to Level 3 Communications’ Petition for Enforcement of Interconnection Agreement and Counterclaims, filed June 29, 2005 (“Qwest Answer and Counterclaims”).
- c. Level 3 Communications, LLC’s Response to Qwest Corporation’s Counterclaims, filed July 6, 2005 (“Level 3 Response”).
- d. Order No. 1: Prehearing Conference Order; Notice of Hearing; Notice of Oral Argument, issued by Administrative Law Judge Ann Rendahl on July 11, 2005 (“Prehearing Conference Order”).
- e. Level 3 Communications, LLC’s Motion for Summary Determination, filed August 15, 2005 (“Level 3’s Motion”).
- f. Affidavit of Mack Greene in Support of Level 3 Communications, LLC’s Motion for Summary Determination, filed August 15, 2005 (“Greene Affidavit”).
- g. Qwest’s Motion for Summary Determination and Qwest’s Memorandum in Support of Motion for Summary Determination, filed August 15, 2005 (“Qwest’s Motion”).
- h. Qwest’s Supplemental Authority, filed August 22, 2005 (Ruling of Administrative Law Judge Finding that Compensation for VNXX-routed

¹⁰ *Id.* at ¶ 77 (see Issues 1, 4, and 5).

¹¹ *Id.* at ¶ 80 (see Issues 2 and 3).

¹² All of the listed documents were filed in WUTC Docket No. UT-053039.

ISP-bound Traffic Not Authorized Under Interconnection Agreement, *Qwest Corporation v. Level 3 Communications, LLC*, Public Utility Commission of Oregon, Docket No. IC 12).

- i. Level 3's Supplemental Authority, filed August 25, 2005 (Order No. 03: Recommended Decision to Grant Petition, *Pac-West Telecomm, Inc. v. Qwest Corporation*, WUTC Docket No. UT-053036).
- j. *In the Matter of Level 3 Communications, LLC's Petition For Enforcement of Interconnection Agreement with Qwest Corporation*, Order No. 03: Order Denying, in Part, and Granting, in Part, Level 3's Motion for Summary determination; Denying in Part, and Granting, in Part, Qwest's Motion for Summary Determination, issued August 26, 2005.

V. STANDARD OF REVIEW

15. The ALJ Order states that it must be treated as an interlocutory order.¹³ Petitions for review of interlocutory orders may be granted where “[a] review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.”¹⁴

16. Commission review of interlocutory orders is conducted de novo.¹⁵ Because Level 3 is requesting interlocutory review of a ruling on motions for summary determination, the law governing such motions is relevant. Motions for summary determination before the Commission are governed by WAC 480-07-380(2)(a), which provides:

A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

¹³ ALJ Order at ¶ 89.

¹⁴ WAC 480-07-810(2)(c).

¹⁵ See *WUTC v. Cougar Ridge Water System*, WUTC Docket No. UW-040367, *Order No. 3: Order Granting Petition for Interlocutory Review, Affirming in Part, and Denying in Part, Interlocutory Order; Establishing Filing Schedule* (November 22, 2004); *In re Application No. B-079273 of Aqua Express, LLC, for a Certification of Public Convenience and Necessity to Provide Commercial Ferry Service*, WUTC Docket No. TS-040650, *Order No. 04: Order Accepting Staff's Petition Interlocutory Review of Order No. 02, Denying Relief Requested* (June 30, 2004); *In the Matter of the Review of Unbundled Loop and Switching Rates, and Review of the Deaveraged Zone Rate Structure*, WUTC Docket No. UT-023003, *Fourteenth Supplemental Order: Denying Petition for Review of Interlocutory Order; Granting Motions to Compel* (October 14, 2003).

17. This rule further instructs the Commission to consider the standards applicable to motions made under CR 56¹⁶ of the Washington Rules of Superior Court, which applies to summary judgment, in considering motions for summary determination.¹⁷ Summary determination is appropriate if, based on all of the evidence, there are no issues of material fact and reasonable people could reach but one conclusion.¹⁸ A material fact is “one upon which the outcome of the litigation depends in whole or in part.”¹⁹ The Commission must consider the facts in the light most favorable to the nonmoving party. However, once the moving party has demonstrated that there are no material facts in dispute, the burden shifts to the nonmoving party to set forth specific facts sufficient to rebut the moving party’s contentions.²⁰ Mere allegations or denials are not sufficient.²¹ If the nonmoving party fails to set forth any such facts, summary judgment is proper.²²

VI. PROCEDURAL BACKGROUND

18. On June 21, 2005, Level 3 filed the Level 3 Petition. Qwest filed its Answer and Counterclaims on June 29, 2005. On July 6, 2005, Level 3 filed the Level 3 Response.

19. Administrative Law Judge Ann Rendahl held a prehearing conference on July 8, 2005. Following that conference, Judge Rendahl entered an order establishing a procedural schedule for the docket, including a date for both parties to submit simultaneous motions for

¹⁶ CR 56(c) states that summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

¹⁷ WAC 480-07-380(2)(a).

¹⁸ CR 56; *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805, 810 (2005) (en banc).

¹⁹ *Samis v. City of Soap Lake*, 143 Wn.2d 798, 803, 23 P.3d 477, 481 (2003).

²⁰ See *Atherton Condo. Apartment-Owner Ass’n Bd. of Directors v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250, 257 (1990).

²¹ CR 56(e).

²² *Atherton*, 115 Wn.2d at 516, 799 P.2d at 257.

summary determination.²³ No opportunity for replies to these motions was established in the schedule.²⁴

20. Judge Rendahl granted an extension of time to file motions for summary determination on August 5, 2005. Level 3 and Qwest filed simultaneous motions on August 15, 2006.

21. On August 26, 2005, Judge Rendahl issued the order that is the subject of this Petition for Interlocutory Review. In her order, Judge Rendahl: (a) denied Level 3's Motion on Counts 1 and 2 of the Level 3 Petition; (b) denied Level 3's Motion on Qwest Counterclaims 2, 3, 4, and 5; (c) granted Level 3's Motion on Qwest Counterclaim 1; (d) denied Qwest's Motion on Qwest Counterclaims 1, 2, 4, and 5; and (e) granted Qwest's Motion Qwest Counterclaim 3.

VII. FACTUAL BACKGROUND

22. Level 3 is an international communications and information services company headquartered in Broomfield, Colorado, and organized as a Delaware limited liability company. The company operates one of the largest, most advanced communications and Internet backbones in the world. Level 3 is one of the largest providers of wholesale dial-up services to ISPs in North America and is the primary provider of Internet connectivity for millions of broadband subscribers through its cable and DSL partners.²⁵

23. Level 3 provides competitive local exchange telecommunications services in Washington pursuant to this Commission's authorization in Dockets UT-980490 and UT-980492. Level 3 maintains IP-based switching and routing equipment in its gateway located in Seattle, Washington.²⁶

²³ Prehearing Conference Order, Appendix B.

²⁴ *Id.*

²⁵ *See* Greene Affidavit at ¶ 6.

²⁶ *Id.* at ¶ 7.

24. Qwest is a Delaware corporation with its principal place of business located in Denver, Colorado. Qwest is an incumbent local exchange carrier certified to provide local exchange service and intrastate interexchange service in Washington.²⁷

25. The Commission has jurisdiction under WAC 480-07-650 and RCW sections 80.01.040, 80.36.080, 80.36.170, and 80.36.186 to investigate the matters raised in the Level 3 Petition. In addition, the Commission has jurisdiction to interpret and enforce the terms of the parties' Interconnection Agreement pursuant to Section 252(e) of the Communications Act of 1934, as amended.²⁸ The United States Court of Appeals for the Eighth Circuit has held that the Act "vests in the state commission the power to enforce the interconnection agreements they approve."²⁹

26. Level 3 and Qwest began exchanging ISP-bound traffic in March 1999 pursuant to the Parties' original interconnection agreement.³⁰

27. On or about March 7, 2003, the parties' successor interconnection agreement was filed with the Commission in accordance with the Commission's final order in Docket No. UT-023042 ("Interconnection Agreement").³¹ Qwest did not seek reconsideration or further review of the Commission's decision.³²

28. The Interconnection Agreement expired on August 7, 2005, but remains in effect until a successor agreement is negotiated. Level 3 and Qwest are currently negotiating a successor agreement.³³

²⁷ Qwest Answer and Counterclaims at ¶ 47.

²⁸ 47 U.S.C. § 252(e).

²⁹ *Iowa Util. Bd v. FCC*, 120 F.3d 753, 804 (8th Cir. 1997), *aff'd in part, rev'd in part on other grounds*, *AT&T Corp. v. Iowa Util. Bd.*, 525 U.S. 366.

³⁰ Greene Affidavit at ¶ 8.

³¹ *Id.* at ¶ 9; see *In the Matter of the Petition for Arbitration of an Interconnection Agreement between Level 3 Communications, LLC, and Qwest Corporation Pursuant to 47 U.S.C. Section 252*, Docket No. UT-023042, Fourth Supplemental Order: *Commission's Final Decision*, February 5, 2003 ("*Level 3/Qwest Arbitration Order*").

³² ALJ Order at ¶ 72.

³³ *Id.* at ¶ 10.

29. Section 7.1.1 of the Interconnection Agreement provides that Qwest and Level 3 shall interconnect for purposes of exchanging ISP-bound traffic:

7.1.1. This section describes the Interconnection of Qwest's network and CLEC's network for the purpose of exchanging Exchange Service (EAS/Local traffic), Exchange Access (IntraLATA Toll), *ISP-bound traffic* and Jointly Provided Switched Access (InterLATA and IntraLATA) traffic. Qwest will provide Interconnection at any technically feasible point within its network. . . . "Interconnection" is as described in the Act and refers, in this Section of the Agreement, to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, ISP-bound traffic, and Exchange Access traffic at points (ii) and (iii) described above. Interconnection, which Qwest currently names "Local Interconnection Service" (LIS) is provided for the purpose of connecting End Office Switches to End Office Switches or End Office Switches to local or access tandem switches for the exchange of Exchange Service (EAS/Local traffic); or End Office Switches to access tandem switches for the exchange of Exchange Access (IntraLATA Toll) or Jointly Provided Switch Access traffic.³⁴

30. Section 7.2.1.2.6 of the Agreement further provides that "[t]he traffic types to be exchanged under this Agreement include . . . ISP-bound traffic as described in Section 7.6.3 below."³⁵

31. The Agreement provides the rate schedule that is reflected in the *ISP Remand Order*:

- 7.3.6.2.3 Rate Caps - Intercarrier compensation for ISP-bound traffic exchanged between Qwest and [Level] 3 will be billed as follows:
- 7.3.6.2.3.1 \$0.0015 per MOU for six (6) months from June 14, 2001 through December 13, 2001.
 - 7.3.6.2.3.2 \$0.001 per MOU for eighteen (18) months from December 14, 2001 through June 13, 2003.

³⁴ Level 3 Petition at ¶ 9; Qwest Answer and Counterclaims at ¶ 49.

³⁵ Level 3 Petition at ¶ 10; Qwest Answer and Counterclaims at ¶ 49.

7.3.6.2.3.3 \$0.0007 per MOU from June 14, 2003 until thirty six (36) months after the effective date of the FCC ISP Order or until further FCC action on intercarrier compensation, whichever is later.³⁶

32. In approving the Interconnection Agreement, this Commission ruled that Level 3 is entitled to exchange ISP-bound traffic over the Local Interconnection Service (“LIS”) trunks that connected the parties’ networks.³⁷ The Commission rejected Qwest’s arguments that traffic originated by Qwest customers and directed to ISPs serviced by Level 3 should not be included in the calculation of relative use:

Qwest argues that the FCC amended the relative use rule in its most recent order addressing ISP-bound traffic, with the effect of excluding ISP-bound traffic from relative use calculations. Qwest argues further that because the FCC has exempted ISP-bound traffic from reciprocal compensation obligations, the ISP Remand Order also must be read to exclude this traffic from the relative use calculation to apportion costs of interconnection. The Commission does not accept this conclusion. Nothing in the text of the ISP Remand Order suggests that it applies to any functions other than transport and termination on the terminating side of the POI.³⁸

33. The parties also agreed that their Interconnection Agreement would be modified to reflect changes in law, including any change in law relating to the *ISP Remand Order*.³⁹ Section 2.2 of the Agreement provides:

2.2. The provisions in this Agreement are based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the Existing Rules). . . . To the extent that the Existing Rules should be changed, dismissed, stayed or modified, then this Agreement and all contracts adopting all or part of this Agreement shall be amended to reflect such modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the modification or change of the

³⁶ Level 3 Petition at ¶ 11; Qwest Answer and Counterclaims at ¶ 50.

³⁷ *Level 3/Qwest Arbitration Order* at ¶¶ 9-11.

³⁸ *Id.* at ¶ 37.

³⁹ Level 3 Petition at ¶ 13; Qwest Answer and Counterclaims at ¶ 52.

Existing Rules, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement.⁴⁰

34. Section 5.18 of the Interconnection Agreement sets forth the dispute resolution provisions. Subsection 5.18.6 provides that “[n]otwithstanding the foregoing, either Party may seek any relief from the Commission, the FCC, or a court of competent jurisdiction for disputes arising under this Agreement.”⁴¹ Sections 2.2 and 5.18.6 provide that either party can seek relief from the Commission regarding a dispute arising from the parties’ failure to negotiate an amendment to the Interconnection Agreement to reflect a change in law.

35. Prior to the FCC’s determination in the *Core Forbearance Order*, Level 3 and Qwest were exchanging ISP-bound traffic pursuant to the terms of the Commission-approved Interconnection Agreement.⁴² Qwest did not seek reconsideration or further review of the Commission’s decision.⁴³ Under the Agreement, the companies were exchanging traffic over the LIS trunks, and Qwest was paying Level 3 for all ISP-bound traffic at the rate of \$0.0007 for all minutes of use up to the market cap established by the *ISP Remand Order*. During this time period, Qwest did not restrict compensation based on whether the ISP was physically located within the same local calling area as Qwest’s end-user customer.

36. The *Core Forbearance Order* was a narrow ruling by the FCC that modified two discrete provisions of the intercarrier compensation regime for ISP-bound traffic originally established in the FCC’s *ISP Remand Order*: (a) the *Order* lifted the artificial cap on compensable traffic; and (b) allowed compensation in new markets. The *Core Forbearance Order* did not disturb the FCC’s intercarrier compensation regime for ISP-bound traffic or this Commission’s prior decisions applying that regime.

37. On the effective date of the *Core Forbearance Order*, Level 3 began to invoice Qwest for all ISP-bound traffic above the market caps, in addition to the traffic below the caps

⁴⁰ *Id.*

⁴¹ Greene Affidavit, Exhibit A.

⁴² Greene Affidavit at ¶ 11.

⁴³ ALJ Order at ¶ 72.

which Level 3 had previously been invoicing. Qwest has not paid these invoices. Level 3 also sought to amend the Interconnection Agreement to bring it into compliance with the *Core Forbearance Order*.⁴⁴

38. On January 27, 2005, Steve Hansen, Vice President-Carrier Relations for Qwest, responded in writing to Level 3, opening the dispute resolution timeframes.⁴⁵

39. On March 31, 2005, Level 3 delivered to Qwest an amendment to the Interconnection Agreement that would implement the *Core Forbearance Order*.⁴⁶

40. Throughout the periods referenced, the parties continued negotiations toward a new interconnection agreement, which included discussions related to updating existing and successor agreements to reflect recent changes in law, including the *Core Forbearance Order*.

41. Level 3 has tried to resolve this dispute and to amend the Interconnection Agreement through negotiations with Qwest pursuant to the Agreement's change in law provision. Qwest does not dispute that, under the FCC's *ISP Remand Order* and *Core Forbearance Order*, it must pay intercarrier compensation to Level 3 for ISP-bound traffic originated by Qwest customers and terminated by Level 3 at the rate of \$0.0007 per minute of use ("MOU"). Qwest claims, however, that the FCC's compensation regime applies only if the customer initiating the call and the ISP server receiving the call are physically located in the same local calling area, and therefore does not apply to VNXX ISP-bound traffic.

42. To date, more than eight months after Level 3 served notice upon Qwest to implement the terms of the *Core Forbearance Order*, Level 3 and Qwest have been unable to agree upon an appropriate amendment to the Interconnection Agreement.

43. On June 21, 2005, Level 3 filed its Petition for Enforcement of Interconnection Agreement with Qwest. Level 3's Petition sought the following relief: (a) enforcement of the change of law provisions of its Interconnection Agreement by requiring Qwest to execute an

⁴⁴ A copy of this letter was attached to the Level 3 Petition as Exhibit B.

⁴⁵ A copy of this letter was attached to the Level 3 Petition as Exhibit C.

⁴⁶ A copy of the March 31, 2005 letter from Andrea Gavalas, Vice President of Interconnection Services to Dan Hult of Qwest, which included the proposed amendment, was attached to the Level 3 Petition as Exhibit D.

amendment reflecting the terms of the FCC's *Core Forbearance Order*; and (b) payment of compensation for the transport and termination of calls to ISPs originated by Qwest customers, as required by the terms of the *Core Forbearance Order*, the prior decisions of this Commission, and the parties' Interconnection Agreement approved by this Commission.

44. In the ALJ Order, the Judge rejected Qwest's argument that the FCC's reciprocal compensation regime applies only to "local" traffic and ruled that Qwest must pay reciprocal compensation to Level 3 for the termination and transport of *all* ISP-bound traffic, including VNXX traffic.⁴⁷ The Judge, however, made several rulings that are inconsistent with federal and state law. The ALJ Order is also internally inconsistent, as addressed below.

VIII. REASONS FOR GRANTING THIS PETITION AND REVERSING THE ADMINISTRATIVE LAW JUDGE'S DECISION

A. The Administrative Law Judge erred in ruling that the Commission has not approved the use of VNXX arrangements for ISP-bound traffic in interconnection agreements in this state.

45. In Counterclaim 2, Qwest alleges that Level 3 is violating state law by billing Qwest the federal reciprocal compensation rate for all VNXX ISP-bound traffic. The Administrative Law Judge denied both Level 3 and Qwest's motions for summary determination on this Counterclaim. Although the Judge agreed that federal law is established on this issue and requires Qwest to compensate Level 3 for the transport and termination of all ISP-bound traffic, including VNXX ISP-bound traffic, the Judge found that state law on this issue has not yet been established. The Administrative Law Judge found that this Commission has "*not* approved or rejected the use of VNXX arrangements for ISP-bound traffic or any other traffic in interconnection agreements in the state."⁴⁸ However, this Commission's decision in the *Level 3/CenturyTel Arbitration Order* contradicts the Administrative Law Judge's conclusion. The Commission should reverse the Judge's ruling and grant Level 3's Motion on Counterclaim 2.

⁴⁷ ALJ Order at ¶¶ 35, 73.

⁴⁸ ALJ Order ¶ 42.

46. With regard to Counterclaim 2, there are no disputed issues of fact. The issue presented by Counterclaim 2 is whether, as a matter of state law, the federal reciprocal compensation regime for ISP-bound traffic applies to VNXX ISP-bound traffic. This issue presents a pure legal question that has been decided by this Commission in the *Level 3/CenturyTel Arbitration Order*. Qwest admits that the FCC’s *ISP Remand Order* and *Core Forbearance Order* require it to pay intercarrier compensation to Level 3 for locally-dialed ISP-bound traffic originated by Qwest customers and terminated by Level 3 at the federally-mandated rate of \$0.0007 per MOU. Qwest asserts, however, that the FCC’s reciprocal compensation regime for ISP-bound traffic applies only if the customer initiating the call and the ISP server receiving the call are physically located in the same local calling area. Under Qwest’s interpretation of the law, Qwest is not required to pay reciprocal compensation for VNXX traffic.

47. In the *Level 3/CenturyTel Arbitration Order*, the Commission affirmed the arbitrator’s decision that “ISP-bound calls enabled by virtual NXX should be treated the same as other ISP-bound calls for purposes of determining intercarrier compensation requirements consistent with the FCC’s ISP Order on Remand.”⁴⁹ In other words, Judge Rendahl erred in concluding that the Commission has not yet approved the use of VNXX arrangements in interconnection agreements in this state. In approving the interconnection agreement between Level 3 and CenturyTel, the Commission specifically approved payment of reciprocal compensation for VNXX ISP-bound traffic and rejected CenturyTel’s argument that the *ISP Remand Order* did not apply to VNXX ISP-bound traffic.⁵⁰

48. Judge Rendahl stated that this Commission has the authority “to exclude VNXX traffic from compensation for ISP-bound traffic.”⁵¹ But this Commission’s authority to determine

⁴⁹ *Level 3/CenturyTel Arbitration Order* at ¶¶ 1, 35.

⁵⁰ *Id.* at ¶ 10 (“CenturyTel argues that both the FCC and the D.C. Circuit Court [WorldCom] decisions characterize the issue as one of proper compensation for calls to *local* ISPs. CenturyTel emphasizes the use of the word ‘local.’ We believe CenturyTel reads too much into what are very general characterizations by the FCC and the appeals court of the issue before it. The substance of the decision makes no distinction based on the location of the ISP’s modems, and doing so would be inconsistent with rationales previously offered by the FCC for its treatment of ISP-bound traffic. We believe the arbitrator properly rejected CenturyTel’s argument.”).

⁵¹ ALJ Order at ¶ 35.

the correct intercarrier compensation to apply to ISP-bound traffic has been preempted by the FCC, as specifically recognized by this Commission in the Level 3/CenturyTel arbitration proceedings.⁵²

49. Not only did this Commission approve the use of VNXX arrangements for the transport and termination of VNXX ISP-bound traffic in the *Level 3/CenturyTel Arbitration Order*, but the Commission also specifically approved Level 3's transport and termination of VNXX traffic pursuant to the Interconnection Agreement at issue in this case. Judge Rendahl concluded that the Commission was not aware that "Level 3 intended to establish VNXX arrangements" when it approved the current Interconnection Agreement between Level 3 and Qwest.⁵³ But the Judge is incorrect. The Commission issued its ruling in the Level 3/CenturyTel arbitration only 23 days after it issued its ruling in the Level 3/Qwest arbitration. Given the importance of the VNXX issue in the Level 3/CenturyTel decision, it defies reason to conclude that the Commission was not aware that Level 3 used VNXX arrangements when it approved Level 3's Interconnection Agreement with Qwest.⁵⁴

50. Judge Rendahl's conclusion is also inconsistent with the Administrative Law Judge's Recommended Decision in *Pac-West Telecomm v. Qwest Corporation*. In that decision, Judge Caillé rejected Qwest's claim that Pac-West violated state law by billing Qwest for the transport and termination of ISP-bound traffic and ruled that her conclusion was consistent with this Commission's decision in the *Level 3/CenturyTel Arbitration Order*.⁵⁵

51. For the above reasons, the Commission should reverse the Administrative Law Judge's ruling and grant Level 3's Motion on Counterclaim 2.

⁵² *In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC, and CenturyTel of Washington, Inc., Pursuant to 47 U.S.C. Section 252*, Docket No. UT-023043, *Third Supplemental Order Confirming Jurisdiction*, October 25, 2002.

⁵³ ALJ Order at ¶ 46.

⁵⁴ Level 3 agrees with Judge Rendahl's conclusion that the Commission neither approved nor rejected the use of VNXX arrangements for ISP-bound traffic in its decision in Docket No. UT-033035. ALJ Order at ¶ 42. However, as the ALJ noted, the Commission did not seek to discourage the parties' ability to negotiate the use of services equivalent to Qwest's FX service. *Id.* (citing Docket No. UT-033035, Final Order at ¶¶ 15-16).

⁵⁵ *Pac-West Recommended Decision* at ¶¶ 37-40.

B. The Administrative Law Judge erred in granting Qwest’s Motion on Counterclaim 3 and ruling that Level 3 is not entitled to payment from Qwest for all ISP-bound traffic as of October 8, 2004, in accordance with the FCC’s decision in the *Core Forbearance Order*.

52. In Counterclaim 3, Qwest asserts that Level 3 has violated Section 2.2 of the parties’ Interconnection Agreement by invoicing Qwest for the transport and termination of Qwest-originated VNXX ISP-bound traffic, rather than negotiating an amendment to the Agreement to reflect the *Core Forbearance Order*. The Administrative Law Judge granted Qwest’s Motion on this claim, stating that Level 3 was not entitled to bill Qwest pursuant to the *Core Forbearance Order* until an amendment to the parties Interconnection Agreement incorporating that order is negotiated and approved.⁵⁶ As discussed below, the Judge’s ruling is inconsistent with the terms of the Interconnection Agreement, inconsistent with the *Pac-West Recommended Decision*, and would create a perverse incentive for ILECs to delay negotiating amendments to reflect changes in the law. Accordingly, the Commission should reverse the Administrative Law Judge’s decision.

53. With respect to this Counterclaim, there is no disputed issue of material fact. Both Level 3 and Qwest agree that an amendment to the Interconnection Agreement is necessary to reflect the FCC’s decision in the *Core Forbearance Order*. The parties have been unsuccessful in negotiating such an amendment. Qwest claims that it presented a proposed amendment that complied with the order, “but Level 3 has rejected Qwest’s proposed language.”⁵⁷ Qwest’s proposal, however, is contrary to state and federal law.

54. Because Qwest’s proposal is inconsistent with state and federal law, Level 3 declined to agree to Qwest’s proposed amendment. Level 3 presented a different amendment to Qwest, which Qwest rejected. Given this inability to agree, Level 3 deemed it necessary to continue to invoice Qwest in accordance with the *Core Forbearance Order* and the decisions of this Commission in order to perfect and maintain its claim.

⁵⁶ ALJ Order at ¶ 52.

⁵⁷ Qwest Answer and Counterclaims at ¶ 70.

55. In the event that the parties are unable to negotiate an amendment to reflect a change of law, Section 2.2 of the Interconnection Agreement provides that the parties should resolve the issue pursuant to the dispute resolution provisions of the Interconnection Agreement. Section 5.18 governs dispute resolution and allows either party to seek resolution of a dispute before this Commission.⁵⁸ Judge Rendahl ruled that, as a matter of law, Level 3 has failed to comply with the change in law provisions of the Interconnection Agreement, even though Level 3 has done everything that the Interconnection Agreement requires. Level 3 tried to negotiate an amendment pursuant to Section 2.2. When the parties were unsuccessful in their attempts to negotiate, Level 3 sought resolution before this Commission by filing the Level 3 Petition, as allowed by Section 5.18 of the Interconnection Agreement. Accordingly, this Commission should reverse the Administrative Law Judge's decision and rule that Level 3 has not violated Section 2.2 of the Interconnection Agreement as a matter of law.

56. Furthermore, this Commission should rule that Level 3 is entitled to compensation for *all* ISP-bound traffic, included VNXX ISP-bound traffic, starting on the effective date of the *Core Forbearance Order* (October 8, 2004). Although the Administrative Law Judge's ruling is unclear on this point, it appears that she ruled that Level 3 is not entitled to *invoice* Qwest for amounts due in accordance with the *Core Forbearance Order* until an amendment incorporating that order is negotiated and approved.⁵⁹ Level 3 requests clarification that the Administrative Law Judge did not rule that Level 3 is not entitled to *payment* of reciprocal compensation for the transport and termination of all ISP-bound traffic, including VNXX ISP-bound traffic, until an amendment is negotiated and approved. It is clear from the Administrative Law Judge's ruling on Counterclaim 1 that Level 3 is entitled to payment for all ISP-bound traffic, including VNXX ISP-bound traffic. The *Core Forbearance Order* simply changed the amount of compensable traffic.⁶⁰ Therefore, the issue is not whether Level 3 is entitled to compensation, the question is

⁵⁸ Interconnection Agreement at § 5.18.6.

⁵⁹ ALJ Order at 52.

⁶⁰ *Core Forbearance Order* at ¶¶ 1, 20, 21, 26.

when Qwest's obligation to compensate Level 3 began. Under the *ISP Remand Order*, Level 3 is entitled to compensation for all ISP-bound traffic. Effective October 8, 2004, the FCC lifted certain restrictions set forth in the *ISP Remand Order* – namely the growth caps and new markets restrictions.⁶¹ Therefore, as a matter of law, Level 3 is entitled to reciprocal compensation for the transport and termination of *all* ISP-bound traffic as of October 8, 2004. To hold otherwise would permit ILECs such as Qwest to ignore their legal obligations as a result of a change in the law by refusing to negotiate an amendment in a timely manner. This would give all ILECs a perverse incentive to delay negotiation of amendments to reflect changes in the law, which would be inconsistent with the Section 251 of the Act.

57. The determination of when Qwest's obligation to pay Level 3 should be made at the time that an amendment to the Interconnection Agreement is approved. If the Commission determines that Qwest should execute Level 3's proposed amendment immediately, as requested below, Level 3 requests that the Commission also rule that Level 3 is entitled to payment beginning October 8, 2004. If the Commission determines that it is not appropriate to approve the proposed amendment to the Interconnection Agreement at this time, then Level 3 requests that the Commission rule that the Administrative Law Judge's order does not limit Level 3's ability to argue that Level 3 is entitled to payment beginning October 8, 2004.

C. The Administrative Law Judge erred in denying Level 3's Motion on Count 2 and failing to require Qwest to execute Level 3's proposed amendment to the Interconnection Agreement to incorporate the terms of the FCC's decision in the *Core Forbearance Order*.

58. The Administrative Law Judge erred in denying Level 3's Motion on Count 2 of the Level 3 Petition, which requests that the Commission require Qwest to execute Level 3's proposed amendment to the Interconnection Agreement to incorporate the FCC's decision in the *Core Forbearance Order*.⁶² The Commission should reverse the Judge's decision and grant summary determination in Level 3's favor on Count 2. The Commission should find, as a matter

⁶¹ *Id.*

⁶² A copy of Level 3's proposed amendment is attached as Exhibit B to the Greene Affidavit.

of law, that the parties should adopt Level 3's proposal, should require Qwest to execute the amendment as of the effective date of the *Core Forbearance Order*, and should require Qwest to compensate Level 3 accordingly.

59. There are no disputed issues of fact with regard to Count 2. Both Qwest and Level 3 agree that an amendment to the Interconnection Agreement is required in order to reflect the change in law set forth in the FCC's *Core Forbearance Order*. The only issue is one of law—whether Qwest's proposed amendment or Level 3's more accurately reflects the terms of that order.

60. Qwest's proposed amendment states:

- 1.3 Qwest will not pay reciprocal compensation on traffic, including ISP-bound traffic, originated by the Qwest end user customer that is not terminated to the CLEC's end use customer physically located within the same Qwest local calling area (as approved by the state Commission) as the originating caller, regardless of the NPA-NXX dialed and, specifically, regardless of whether the CLEC's end user customer is assigned an NPA-NXX associated with a rate center in which the Qwest customer is physically located (a/k/a "VNXX Traffic").
- 1.4 For the purposes of Relative Use Factor (RUF) calculation, if and where applicable to facilities charges within the Agreement, CLEC is responsible for all ISP-bound traffic originated by the Qwest end user customer and all traffic, including ISP-bound, that is not terminated to the CLEC's end user physically located within the same Qwest local calling area (as approved by the state Commission) as the originating caller, regardless of the NPA-NXX dialed and, specifically, regardless of whether the CLEC's end user customer is assigned an NPA-NXX associated with a rate center in which the Qwest customer is physically located (a/k/a "VNXX Traffic").⁶³

61. As discussed above, this Commission has specifically ruled that "ISP-bound calls enabled by virtual NXX should be treated the same as other ISP-bound calls for purposes of determining intercarrier compensation requirements consistent with the FCC's ISP Order on

⁶³ Exhibit C to the Greene Affidavit.

Remand.”⁶⁴ Accordingly, Qwest’s proposed paragraph 1.3 directly contradicts this Commission’s *Level 3/CenturyTel Arbitration Order* and inaccurately reflects state and federal law.

62. In addition, Qwest’s proposed paragraph 1.4 states that for the purposes of the Relative Use Factor (RUF) calculation, Level 3 is responsible for all ISP-bound traffic originated by the Qwest end user customer. This is inconsistent with this Commission’s prior decision in the *Level 3/Qwest Arbitration Order*, which is the decision approving the very Interconnection Agreement that the parties are seeking to amend.⁶⁵ In its order approving the Agreement, the Commission found that *Qwest*, not Level 3, is responsible for all ISP-bound traffic originated by its end user customers for purposes of the RUF calculation.

63. Level 3’s proposed amendment states that “the Parties shall exchange ISP-bound traffic pursuant to the compensation mechanism set forth in the FCC *Core Order*” and that “[c]ompensation for ISP-bound traffic will be at the rate of \$0.0007 per minute.”⁶⁶ Given this Commission’s ruling in the *Level 3/CenturyTel Arbitration Order* and the ALJ Order regarding Counterclaim 1 in this docket,⁶⁷ ISP-bound traffic would include VNXX ISP-bound traffic. Level 3’s proposed amendment accurately reflects state and federal law. Accordingly, the Administrative Law Judge erred in denying Level 3’s Motion on Count 2 of the Level 3 Petition, and this Commission should reverse the decision and require Qwest to execute Level 3’s proposed Amendment.

D. The Administrative Law Judge erred in denying Level 3’s Motion on Qwest’s Counterclaim 4, which alleges that Level 3 misassigned telephone numbers in violation of section 13.4 of the Interconnection Agreement.

64. In Counterclaim 4, Qwest alleges that Level 3 is in breach of section 13.4 of the Interconnection Agreement because it is “misassigning local telephone numbers to ISP servers which are physically located outside the local area to which the telephone number is assigned.”

⁶⁴ *Level 3/CenturyTel Arbitration Order* at ¶¶ 1, 9, 10.

⁶⁵ See *Level 3/Qwest Arbitration Order*.

⁶⁶ Exhibit B to the Greene Affidavit at ¶¶ 2.1, 2.2.

⁶⁷ ALJ Order at ¶¶ 35, 72.

This argument is not supported by the language of the Interconnection Agreement. Section 13.4 of the Interconnection Agreement states:

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

65. This section simply identifies the administrative responsibilities associated with the assignment of NXX codes; it is silent with respect to the physical location of the servers to which ISP servers are assigned. In short, assigning NXX codes to ISP servers located outside of a particular calling area is not a breach of section 13.4 of the Interconnection Agreement.

66. To the extent that COCAG guidelines control the proper use of numbering resources, as asserted by Qwest in its motion for summary judgment, these guidelines do not apply to VNXX services.⁶⁸ Indeed, these guidelines specifically state that “[e]xceptions exist, such as for tariffed services like foreign exchange services.” Qwest quotes this language in its motion, claiming that “VNXX is not identified as an exception.”⁶⁹ While this is technically true, it ignores the fact that foreign exchange services and VNXX services are the same. It also ignores the fact that the guidelines do not purport to list all exceptions, but merely use foreign exchange services as an example of the type of services that are excepted.

67. The Administrative Law Judge refused to grant summary determination for either party with respect to Counterclaim 4, on the grounds that there were disputed issues of material fact.⁷⁰ However, no such factual issues exist. While Qwest has attempted to manufacture a factual issue by misconstruing a provision of the Interconnection Agreement and by quoting

⁶⁸ Qwest’s Motion at ¶¶ 67-70.

⁶⁹ *Id.* at ¶ 68.

⁷⁰ ALJ Order at 44.

COCAG guidelines that do not support its position, this is not sufficient to preclude summary judgment in Level 3's favor.⁷¹

E. The Administrative Law Judge erred in denying Level 3's Motion on Qwest's Counterclaim 5, which alleges that the Interconnection Agreement does not permit Level 3 to exchange VNXX ISP-bound traffic on LIS interconnection trunks.

68. In Counterclaim 5, Qwest alleges that Level 3 has improperly routed VNXX ISP-bound traffic over LIS trunks. The Administrative Law Judge's ruling on this claim is inconsistent. In paragraphs 46, 47, and 78, the Judge states that Level 3 is permitted to exchange VNXX ISP-bound traffic over LIS interconnection trunks, but in paragraphs 77 and 86 she denies Level 3's Motion on this Counterclaim.⁷² Assuming that the Judge's final ruling is a denial of Level 3's Motion on this Counterclaim, Level 3 requests that the Commission reverse the Judge's decision and grant summary determination in Level 3's favor. In the alternative, Level 3 requests that the Commission declare that the Administrative Law Judge already granted summary determination in Level 3's favor in the ALJ Order.

69. With regard to this Counterclaim, there are no disputed issues of material fact. Both parties agree that Qwest has routed ISP-bound traffic from its end users to Level 3 over the LIS trunks established under the Interconnection Agreement between the parties. The only issue is whether the Interconnection Agreement permits this exchange of traffic, which is a question of law.

70. The Interconnection Agreement authorizes the parties to exchange ISP-bound traffic over LIS Trunks.⁷³ ISP-bound traffic is defined "as that term is used in the FCC ISP [Remand] Order."⁷⁴ Qwest did not seek reconsideration or further review of the Commission's

⁷¹ The ALJ Order is also inconsistent with Judge Caillé's recommended decision in the *Pac-West* case, which found that Pac-West was not violating a virtually identical provision of the Pac-West/Qwest interconnection agreement through the use of VNXX-routing. *Pac-West Recommended Decision* at ¶¶ 23, 40.

⁷² Paragraph 86 is one of the ordering clauses in the ALJ Order. Level 3 assumes that this paragraph controls and that the Administrative Law Judge denied Level 3's Motion.

⁷³ Interconnection Agreement at ¶ 7.2.1.2.

⁷⁴ *Id.* at ¶ 7.3.4.3.

decision.⁷⁵ The Administrative Law Judge ruled that the term “ISP-bound traffic,” as used in the FCC’s *ISP Remand Order*, includes VNXX-routed ISP-bound traffic. This determination compels the conclusion that section 7.2.1.2 of the Interconnection Agreement permits the exchange of VNXX ISP-bound traffic over LIS trunks. The Commission should grant summary determination in Level 3’s favor on Counterclaim 5.

IX. MOTION TO AMEND SCHEDULE

71. In accordance with the rules governing petitions to enforce interconnection agreements, the procedural schedule in this docket is abbreviated and does not include an opportunity for review of interlocutory orders.⁷⁶ Level 3 therefore moves to amend the procedural schedule in this docket to allow the Commission sufficient time to rule on this Petition for Interlocutory Review. In the alternative, Level 3 moves to stay the proceedings until the Commission has ruled on this Petition.⁷⁷

X. CONCLUSION

72. For the above reasons, Level 3 respectfully requests that the Commission grant this Petition for Interlocutory Review and reverse portions of the ALJ Order. Specifically, Level 3 requests that the Commission:

- Reverse the Administrative Law Judge’s ruling that the Commission has not approved the use of VNXX arrangements for ISP-bound traffic in interconnection agreements in this state and grant summary judgment in Level 3’s favor on Counterclaim 2;
- Reverse the Administrative Law Judge’s ruling granting Qwest’s Motion on Counterclaim 3 and grant summary determination in Level 3’s favor on this issue of whether Level 3 is entitled to payment from Qwest for *all* ISP-bound traffic as of October 8, 2004, in accordance with the FCC’s decision in the *Core Forbearance Order*. At a minimum, Level 3 requests that the Commission find that the Administrative Law Judge’s ruling is limited to the issues of whether Level 3 had the right to invoice Qwest for amounts owed since October 8, 2004, and does not address the question of whether Qwest may own Level 3 for those amounts once an amendment to the Interconnection Agreement incorporating the *Core Forbearance Order* is negotiated and approved;

⁷⁵ ALJ Order at ¶ 72.

⁷⁶ Prehearing Conference Order, Appendix B; *see also* ALJ Order at ¶ 89.

⁷⁷ WAC 480-07-385.

- Reverse the Administrative Law Judge’s denial of Level 3’s Motion on Count 2 and order Qwest to execute Level 3’s proposed amendment to the Interconnection Agreement to incorporate the FCC’s decision in the *Core Forbearance Order*;
- Reverse the Administrative Law Judge’s denial of Level 3’s Motion on Qwest’s Counterclaim 4, which alleges that Level 3 misassigned telephone numbers in violation of section 13.4 of the Interconnection Agreement, and grant summary determination in Level 3’s favor; and
- Reverse the Administrative Law Judge’s denial of summary determination on Counterclaim 5 and grant summary determination in Level 3’s favor on the issue of whether the Interconnection Agreement permits Level 3 to exchange VNXX ISP-bound traffic on LIS interconnection trunks.

RESPECTFULLY SUBMITTED this 6th day of September, 2005.

LEVEL 3 COMMUNICATIONS, INC

By: /s/ Sarah Wallace for Gregg Strumberger
Gregg Strumberger, Regulatory Counsel
Victoria Mandell, Regulatory Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
Tel: (720) 888-2620
Fax: (720) 888-5134
E-Mail: gregg.strumberger@Level3.com
victoria.mandell@Level3.com

Attorneys for Level 3 Communications, LLC