Replacement
Exhibit LBB-1RT

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In The Matter Of **Level 3 Communications, LLC'S Petition for Arbitration Pursuant to Section 252(B) of the Communications Act of 1934, as Amended by The Telecommunications Act Of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Qwest Corporation**	**DOCKET NO. UT-063006**

REPLACEMENT

DIRECT TESTIMONY

OF LARRY B. BROTHERSON

QWEST CORPORATION

(Disputed Issue Nos. 1A, 3A, 3B, 3C, 4, 10, 15, 16, 19, and New Issues)

AUGUST 18, 2006

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST.

A. My name is Larry B. Brotherson. I am employed by Qwest Corporation ("Qwest") as a Director-Wholesale Advocacy in the Wholesale Markets organization. My business address is 1801 California Street, Room 2350, Denver, Colorado, 80202.

Q. PLEASE DESCRIBE YOUR EMPLOYMENT BACKGROUND.

A. Since joining Northwestern Bell Telephone Company in 1979, I have held several positions within Northwestern Bell, U S WEST Communications, and Qwest. Most of my responsibilities and assignments have been within the Law Department. Over the past 20 years, I have been a state regulatory attorney in Iowa, a general litigation attorney, and a commercial attorney supporting several organizations within Qwest. My responsibilities have included advising the company on legal issues, drafting contracts, and addressing legal issues that arise in connection with specific products. With the passage of the Telecommunications Act of 1996 (the "Act"), I took on responsibility for providing legal advice and support for Qwest's Interconnection Group. In that role, I was directly involved in working with competitive local exchange carriers ("CLECs"). I negotiated ICAs with CLECs that implemented various sections of the Act, including the Act's reciprocal compensation provisions. In 1999, I assumed my current duties as Director of Wholesale Advocacy. My current responsibilities include coordinating the witnesses for all

interconnection arbitrations and for hearings involving disputes over interconnection issues. Additionally, I work with various groups within the Wholesale Markets organization of Qwest to develop testimony addressing issues associated with interconnection services.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I received a Bachelor of Arts degree from Creighton University in 1970 and a Juris Doctor degree from Creighton in 1973.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the interconnection agreement language proposed in this docket by Level 3. Level 3 filed its Petition for Arbitration and proposed contract language on January 25, 2006. The parties filed direct testimony on May 30, 2006 based on Level 3's initial proposed language.

Recently, however, Level 3 made major changes to its proposed contract language, and as a result, the parties agreed to a new round of direct testimony that addresses the current state of the dispute between Level 3 and Qwest. Therefore, this testimony specifically addresses Level 3's new language. Given the extensive changes in that language, this testimony is a complete replacement for my earlier direct testimony. My previously filed direct testimony

addressing Level 3's old proposed language should be disregarded and this should be considered my direct testimony on the current disputed issues.

Q. IS THERE A POTENTIAL ISSUE IN THIS DOCKET REGARDING THE PROPER QWEST ICA TEMPLATE THAT IS BEING USED?

A. In its Petition, Level 3 attached a 2003 Qwest template agreement as the starting point for the proposed contract. This is the incorrect template for this docket. The template attached by Level 3 was the template the Parties had used as the starting point for negotiations in an earlier (2004) rounds of negotiations. However, before negotiating an interconnection agreement with Level 3 for Washington and several other states (those negotiations began in 2005), in May 2005 Qwest provided Level 3 with its 2005 template interconnection agreement as the starting point for negotiations. This template includes provisions necessary to comply with Triennial Review Order ("TRO") and Triennial Review Remand Order ("TRRO"). Because the 2005 template was the agreement proposed by Qwest as the starting point for negotiation in Washington, this is the agreement attached to Qwest's response to Level 3's Petition.

The use of the 2005 template has virtually no impact on the disputed issues in this case. In fact, with one exception that I address in my testimony where language in the definitions section was moved virtually unchanged to sections 7.2.2.12 and 7.2.2.12.1. With that minor exception, Qwest's language is the same in both templates. However, in approving a final interconnection agreement, no matter how the Commission rules on the individual

disputed contract language, the 2005 contract provided to Level 3 in the Washington negotiations and attached to the Qwest Response should be the approved version of the interconnection agreement with disputed paragraphs incorporated to reflect the Commission's decisions on disputed issues. Although Level 3 has informed Qwest several times that it may have some additional issues related to the new template, and despite repeated assurances from Level 3 that it would identify those issues and provide alternative language, Level 3 has never identified any new issues that have arisen as a result of using the 2005 template (Level 3 has raised other new issues, however, that are unrelated to the new template, two of which I address in my testimony). Given that Level 3 has had over a year to examine the new template, and given the fact that Level 3 recently provided Qwest with new language that raises no new issues related specifically to the 2005 template, Qwest believes the Level 3 has waived its right to contest any of the language that is unique to the 2005 template.

Q. WHAT SPECIFIC ISSUES DO YOU ADDRESS IN YOUR TESTIMONY?

I will discuss (in the following order) the Level 3 contract language that relate to the following disputed issues:

- ISSUE 3B: DEFINITION OF VNXX TRAFFIC
- ISSUE 3A: COMPENSATION FOR VNXX TRAFFIC
- ISSUE 3C: RATE OF COMPENSATION FOR ISP TRAFFIC
- ISSUE 4: COMPENSATION FOR VOICE AND VOIP TRAFFIC
- ISSUE 16: DEFINITION OF VoIP

- ISSUE 1A: SECTION 7.1.1.1 (AUDITS OF VoIP TRAFFIC)
- ISSUE 1A: SECTION 7.1.1.2 (CERTIFICATION OF VoIP TRAFFIC)
- ISSUE 10: DEFINITION OF "INTERCONNECTION"
- ISSUE 15: DEFINITION OF "TELEPHONE TOLL SERVICE"
- ISSUE 19: 3:1 RATIO
- NEW ISSUES: DEFINITION OF TRAFFIC AND PSTN-IP-PSTN TRAFFIC

Q. WHY AREN'T YOU ADDRESSING THE ISSUES IN THE ORDER RAISED IN LEVEL 3'S PETITION?

A. During the negotiation period, Qwest provided Level 3 with a matrix similar in format to others it has used in most other arbitrations involving CLECs, including ones before this Commission. The matrix showed Qwest's proposed language, and then incorporated Level 3's proposed additions in bold underline and Level 3's proposed deletions in a bold strikethrough format. Because the Qwest proposed matrix also followed the contract numbering order, issues dealing with paragraph 5.2 would be addressed before issues dealing with paragraph 6.4 or 7.1. Level 3 objected to this format and proposed its own matrix and format. In an effort to advance the negotiations, Qwest agreed to the use of Level 3's matrix format. Unfortunately, the structure that Level 3 uses in its matrix format is difficult to use in order to compare contract language. Following the numerical order in the current matrix is extremely difficult because Level 3 groups contract paragraphs not in numerical order but into what it has characterized as "Tier 1" issues and "Tier 2" issues. In Level 3's words, Tier 2 issues are "derived" from Tier 1 issues. Therefore, the language

sections in Level 3's matrix do not flow in the order of the disputed issues in the contract; instead they follow the order in the Level 3 tier structure. Level 3 is, of course, free to use the format it prefers; however, in order for me to respond to Level 3's issues in an orderly and logical sequence, it is necessary to address the competing language in a different sequence so that necessary pre-requisite issues are dealt with first. For example, the Level 3 matrix shows the first issue dealing with VoIP as language in contract sections 7.1.1.1 and 7.1.1.2, which deal with operational audits and certification of VoIP traffic. Before discussing audits of VoIP, it is obviously necessary to understand what VoIP is, how the FCC describes VoIP, and what disagreements exist between the parties as to the requirements for a call to qualify as a VoIP call. These definitional differences ultimately will determine the subject matter of the audits. Therefore, when my testimony addresses the issues dealing with VoIP, it will start by addressing Issue 16: the definition of VoIP. Only after the Commission understands what each party claims are the proper elements of VoIP, will other VoIP issues be meaningful, such as the issue of the necessity of certification that VoIP traffic complies with the FCC definition of VoIP. My testimony will address each disputed paragraph in the ICA related to VNXX and VoIP even though I address them in a different order from Level 3's matrix. My testimony will describe the parties' positions for each disputed paragraph and demonstrate why Qwest's language is the appropriate language and should be adopted by the Commission.

Q. IN ITS NEW PROPOSED LANGUAGE, HAS LEVEL 3 NOW AGREED WITH QWEST'S LANGUAGE ON SOME FORMERLY DISPUTED ISSUES?

A. Yes. Based on my review of the new language proposed by Level 3, it has agreed with Qwest's proposed language (or it has withdrawn its alternative language) on the following issues (I have also identified the section number or definition to which each issue relates):

Issue 1C:	Section 7.2.2.1.1
Issue 1F:	Section 7.2.2.9.6
Issue 6:	Definition of "Automatic Message Accounting ("AMA")
Issue 8:	Definition of "Call Record"
Issue 9:	Definition of "Exchange Access"
Issue 11:	Definition of "Interexchange Carrier ("IXC")"
Issue 12:	Definition of "IntraLATA Toll Traffic"
Issue 13:	Definition of "Local Interconnection Service or 'LIS' Entrance Facility."
Issue 14:	Definition of "Exchange Service" or "Extended Area Service (EAS)/Local Traffic"
Issue 17:	Sections 7.2.2.8.1 through 7.2.2.8.16
Issue 20	Section 7.3.8
Issue 22:	Section 19.1.1

Qwest is, therefore, treating each of these issues as closed and is not presenting any testimony with regard to them.

III. EXECUTIVE OVERVIEW

Q. PLEASE PROVIDE A GENERAL SUMMARY OF THE ISSUES YOU ADDRESS IN YOUR TESTIMONY.

A. Although I address a variety of sub-issues, my testimony addresses two major issues that are critical to the interconnection agreement: (1) Virtual NXX ("VNXX") issues and (2) Voice over Internet Protocol ("VoIP") issues.

VNXX Issues:

- I first define VNXX, which is the inappropriate assignment by CLECs of local telephone numbers to end user customers who are not located in that local calling area, thus creating an erroneous impression that a call directed to a local number is a local call, when in fact it is delivered to an Internet Service Provider ("ISP") located in another exchange (or even in another state)—in other words, VNXX refers to disguised interexchange calls.

- I demonstrate that the proper means of determining whether a call is local or interexchange is based on the physical locations of the end users to the call. I point out that Level 3's language is contradictory in that it uses at least two different theories for call rating, one based the location of Level 3 "facilities" and the other based on the telephone numbers assigned to end users. Both theories are inappropriate because they would violate proper call rating rules and would result in calls that are interexchange in nature being treated as though they were local calls. Both of Level 3's theories create a convenient fiction that interexchange calls are local in nature. If accepted, this would dramatically change the long-standing distinction between local and interexchange calls in Washington, not just for Qwest, but potentially for the entire industry.

VoIP Issues:

- The next issue I address is the proper definition of VoIP. True VoIP calls are calls initiated through the use of IP-compatible equipment over a broadband connection. Calls initiated over traditional telephone customer premises equipment ("CPE") on the public switched telephone network ("PSTN") are not VoIP calls. Although they may eventually reach the Internet and be terminated on Internet Protocol ("IP") CPE, these traditional calls begin as traditional PSTN calls over a local loop and through the local central office. There is no more reason that such a call should be categorized as a VoIP call than to categorize a call that is initiated through the use of IP-compatible

equipment over a broadband connection should be categorized as a traditional PSTN call.

- I point out that where there is a net protocol conversion, a provider that offers VOIP is treated as an enhanced service provider ("ESP") under FCC rules, which means that the "ESP Exemption" applies to VoIP calls to the PSTN. Under the ESP exemption, the location of the enhanced service provider point of presence "POP" (also referred to as the VoIP provider POP), is treated as the end user customer for purposes of determining whether a call is treated as a local or interexchange call. Contrary to Level 3's position, there is no FCC rule or policy that "exempts" information service providers or VoIP calls from honoring local exchange boundaries—the rule simply moves the customer premises for analysis purposes from the actual broadband customer's premises where the IP packets originate to the location of the enhanced service provider on the PSTN, the ESP POP.

- I comment on a variety of specific language proposals submitted by Qwest and Level 3 related to VoIP issues and demonstrate that Level 3's proposed language would erroneously and illogically treat all VoIP calls as though they were local, even calls between local calling areas. I demonstrate that this is merely a convenient fiction to avoid appropriate intercarrier compensation. When a Qwest end user customer originates a call destined for a remote VoIP POP (that is, a location where the VoIP provider purchased local service located outside of the LCA of the originating caller), that call must be treated as an interexchange call for all purposes. Likewise, when Qwest receives a call from a distant LCA where the VoIP POP obtains service, for termination in a different LCA, that call should also be treated as an interexchange call for all purposes. Qwest's proposed language treats VoIP calls consistently with current intercarrier compensation plans. It uses the location of the ESP to classify calls. Local VoIP calls (terminating calls in the LCA where the ESP purchases local service) should be treated like other local calls, including making them subject to reciprocal compensation, while VoIP calls that are interexchange in nature (calls bound for LCAs different than the one where the ESP purchased local service) should be subject to appropriate state and federal access charge regimes.

Other Issues:

- I also address issues related to the FCC's mirroring rule. Level 3, in its new language, has inserted numerous references to the mirroring rule. I point out that Level 3 misunderstands the mirroring rule, that Qwest is in full compliance with it, and that Level 3's language appears to be an opportunistic and inappropriate effort to receive compensation at the voice rate on ISP traffic.

- I address several other issues, most of them definitional in nature, that relate to the VNXX and VoIP issues. In most cases, the Level 3 definitions are designed to provide

special treatment to its VoIP and VNXX traffic, while Qwest's language is designed to treat Level 3's traffic in a manner consistent with all other telecommunications traffic. Qwest's language is also consistent with how the Commission has determined local and interexchange traffic should be handled with other carriers.

IV. DISPUTED ISSUE 3B: DEFINITION OF VNXX TRAFFIC (ALSO INCLUDES DISCUSSION OF THOSE PORTIONS OF ISSUES 3A, 3C, 4, 16, AND 19 RELATING TO THE FCC'S MIRRORING RULE)

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 3.

A. Level 3 listed three separate issues under Issue 3, which Level 3 designated Issues 3A, 3B, and 3C. Issue 3A concerns section 7.3.6.3 of the agreement, dealing with intercarrier compensation for calls not physically originating and terminating within the same local calling area ("LCA"). Issue 3B relates to the agreement's definition of "Virtual NXX" or "VNXX" traffic. Finally, Issue 3C addresses whether intercarrier compensation is required on VNXX traffic in section 7.3.6.1. I will begin my discussion of issue 3 by addressing issue 3B the definition of VNXX.

Q. WHAT IS THE DISPUTE REGARDING THE DEFINITION OF VNXX (ISSUE 3B) AND WHY ARE YOU ADDRESSING IT FIRST?

A. Issue 3B involves the definition of VNXX traffic. Because a discussion of the definition of VNXX traffic is necessary in order to understand the fundamental dispute of the parties about VNXX, I address that issue first. An understanding of the definitional differences between the parties is a necessary prerequisite to the later discussion of compensation for local and interexchange traffic and how VNXX should be handled.

Q. WHY IS VNXX AN ISSUE IN THIS DOCKET?

A. Because Level 3 insists that it is entitled to receive terminating compensation on traffic that is not local in nature. Over the course of this case and the VNXX dispute in other states, Level 3 has articulated several different theories to attempt to justify such a result. Its position has changed in this docket, and its current language is based on a hodge-podge of different theories, some of them self-contradictory. They all seek the same result however; Level 3 wants Qwest to deliver VNXX traffic from throughout the LATA to Level 3 for free, an obligation that only applies only to local traffic. Once delivered, Level 3 wants to charge Qwest terminating compensation for that traffic (also an obligation that applies only to local traffic).

In its initial language filed with its Petition, Level 3's VNXX theory was based on telephone numbers. Thus, if two customers have telephone numbers associated with the same LCA—that is, NXX codes associated with the same LCA—then Level 3 argued the call is a local call (without regard to the location of the calling parties) and should be so treated for intercarrier compensation purposes. In other words, Level 3's approach was to create the fiction that calls are local based on telephone numbers, no matter where the parties to the call are located. In its initial definition of VNXX, Level 3 defined various types of VNXX calls and simply proposed that the Commission require Qwest to pay terminating compensation rates for such calls. In other words, while Level 3 acknowledged the existence of VNXX traffic, it proposed language that nonetheless

required the payment of terminating compensation on such traffic (thus rendering the VNXX concept meaningless).

In its new VNXX definition language, Level 3 has changed its underlying theory. Instead of relying on telephone numbers as the test, Level 3 now suggests the test should be based on the location of Level 3's facilities. Ironically, while Level 3 abandons the NXX theory for purposes of defining VNXX, it then resurrects that theory in section 7.3.6.3 (Issue 3A). In the end, however, both of Level 3's theories are designed to create the legal fiction that interexchange calls are local in nature. After I provide some general background on VNXX, I will address the specifics of Level 3's current VNXX definition and demonstrate why it should not be accepted.

Q. WHAT IS VNXX TRAFFIC?

A. VNXX is a dialing arrangement that provides the functionality of toll or toll-free 8XX service, but at no extra charge to the calling parties, who are able to call numbers that *appear* to be directed to customers also located in their LCAs. In other words, in the number (206) 345-XXXX, the "345" prefix (the NXX) is assigned to a specific LCA in the (206) area code and thus identifies the general geographic area in which the customer is located. By contrast, a "virtual" NXX, or VNXX undercuts that concept because it results in a carrier-assigned NXX associated with a particular LCA; but instead of the numbers being assigned to customers located in the LCA associated with the specific NXX, they are assigned to customers physically located outside the LCA associated with that particular

NXX. With VNXX, the physical location of the CLEC customer is in a LCA that would require a toll call from the LCA with which the telephone number of the CLEC customer is associated. The NXX is labeled "virtual" because it is an assigned number that suggest to callers that the called party is located in the *calling party's* LCA; in reality, the called party is located in a different LCA, often half way across the state. Thus, a VNXX call does not result in a local call within the LCA to which the VNXX number is assigned because it is delivered to a customer, usually an Internet Service Provider ("ISP") in a different LCA. Exhibit LBB-2 attached hereto demonstrates visually how VNXX circumvents the proper numbering plan.

Q. HAS THE WASHINGTON COMMISSION DEFINED VNXX?

A. Yes. The Commission used identical VNXX definitions in the recent decisions in the complaint cases brought by Pac-West and Level 3: "'VNXX' or 'Virtual NXX' refers to carrier's acquisition of a telephone for one local calling area that is *used in another geographic area*. The call *appears* to be local based on the telephone number."[1] Although not as detailed as my description of VNXX in the prior answer, the Commission's definition of VNXX is consistent with it. The Commission's definition captures the essence of VNXX, which is the assignment of a telephone number associated with one LCA that is used by customer actually located in a different LCA. Thus, even though the

[1] Order No. 06*, Pac-West Telecomm v. Qwest Corporation*, Docket No. UT-053036, at 1, n. 1 (WUTC, June 9, 2006) *("Pac-West Final Order");* Order No. 06*, Level 3 Communications v. Qwest Corporation,* Docket No. UT-053039, at 1, n. 1 (WUTC, June 9, 2006) *("Level 3 Final Order")* (emphasis added).

call is interexchange in nature based on the location of the parties to the call, it "appears to be local based on the telephone number."

Q. HAS THE DEVELOPMENT OF SINGLE POINT OF PRESENCE ("SPOP"), THE ABILITY OF A CLEC TO CONNECT AT A SINGLE POINT IN THE LATA, IMPACTED THE VNXX ISSUE?

A. Yes. For many years, CLECs argued that they should be permitted to provide *local service* to customers located in several different LCAs from a single switch rather than placing switches in each LCA. In about 2000 or 2001, Qwest agreed to that proposal and added language to the ICA that allowed such a form of interconnection, which is known as Single Point of Presence or "SPOP." If a CLEC elects to provide local service from a single switch within a LATA, it is entitled to request from NANPA, the national numbering authority, NXXs for LCAs both near and far from its switch. However, the manner in which those NXXs are used is critical. If a CLEC is assigned an NXX for a particular Washington town located in a different LCA (Olympia, for example) than its switch and has constructed or leases loops to retail subscribers located within the Olympia LCA, that is consistent with the use of the assigned NXX (*i.e.,* it allows the CLEC to provide local exchange service to customers located within that LCA without having to place a switch in each LCA). That was the purpose for SPOP: to allow CLECs to compete more effectively for *local exchange service*.

But SPOP created an opportunity for CLECs like Level 3, who have no intention of providing local exchange service, to make interexchange calls look as though they are local. If a CLEC is assigned an NXX from a distant LCA and, as Level 3 has done, it creates a primary line of business that creates a deliberate misimpression that, from a carrier-to-carrier perspective, toll free calling is really conventional local calling, then that is an unintended and inappropriate use of the assigned NXX. The important fact to keep in mind with SPOP is that it assumes that CLEC calls originate and terminate within the same LCA, regardless of where the CLEC switch is located. VNXX is a misuse of SPOP because it takes advantage of a network arrangement designed to create greater incentives for CLECs to provide local exchange competition; VNXX is used for a completely different arbitrage opportunity by companies like Level 3.

A recent decision of the Second Circuit Court of Appeals neatly described the essence of VNXX: "Global [the CLEC] wants to use [VNXX] *to disguise the nature of its calls*--that is, to offer its customers local telephone numbers that cross Verizon's exchanges instead of the traditional long-distance numbers attached to such calls."[2] That is precisely the issue we are dealing with in this docket.

[2] *Global NAPs v. Verizon New England*, 454 F.3d 91, 102 (2nd Cir. 2006) (emphasis added).

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR ISSUE 3B, DEFINITION FOR VNXX TRAFFIC?

A. Qwest proposes the following language for the definition of VNXX traffic:

> "VNXX traffic" is all traffic originated by the Qwest End User Customer that is not terminated to CLEC's End User 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 CLEC's End User Customer is assigned an NPA-NXX associated with a rate center in which the Qwest End User Customer is physically located.

Q. WHAT IS LEVEL 3'S PROPOSED LANGUAGE FOR THE DEFINITION OF VNXX TRAFFIC?

A. Level 3 proposes the following new language:

> **"VNXX traffic" is traffic that the Washington Utilities and Transportation Commission determines should be compensated at the WUTC approved local reciprocal compensation rate ($0.00161/MOU) where Level 3 does not have facilities in the same Local Calling Area as the end user customer making an ISP-bound or VoIP call to or receiving a VoIP call routed over such Level 3 facilities. ISP-bound and VoIP Traffic that is exchanged at a compensation rate of $0.0007 is not VNXX so long as Level 3 facilities are located within the same LATA as the end user customer making an ISP-bound or VoIP call to or receiving a VoIP call from Level 3's facilities located in the same LATA as that customer.**

Q. IS QWEST'S PROPOSED VNXX DEFINITION CONSISTENT WITH THE DEFINITION USED BY THE COMMISSION?

A. Yes. Like the Commission's definition, Qwest's definition focuses on the location of the parties to a call as the proper test for VNXX. As I will discuss later, Qwest's definition is consistent Commission rules. It is also consistent with the definition of VNXX used by

courts and other state commissions. It is also important to note that it is consistent with the FCC's description of VNXX in the FCC's intercarrier compensation docket: "Virtual NXX codes are central office codes that correspond with a particular geographic area that are assigned to *a customer located in a different geographic area*."[3] Thus, the FCC's conception of VNXX likewise focuses on the location of the parties to the call.

Q. HOW WOULD YOU DESCRIBE LEVEL 3'S NEW VNXX THEORY?

A. Washington is the first state in which Level 3's new VNXX definition has been proposed. To this point, Level 3 has neither provided testimony to describe its proposal nor provided any legal justification for it. Thus, my analysis of the language is based solely on what I can discern from reading it. As I will describe, the new definition appears to define VNXX on the basis of the location of Level 3 "facilities," a term that is not defined. But the definition is also internally inconsistent and, to add further complication, also contains bizarre language that suggests that ISP VNXX traffic is entitled terminating compensation at the voice rate established by the Commission, a position that is directly contrary to the *ISP Remand Order*. Finally, another complicating factor is that the definition attempts to define VNXX for ISP calls *and* for VoIP calls. In the end, however, the definition has the same outcome as Level 3's first proposal, which is to disguise interexchange calls as local calls, and thus require Qwest to deliver the calls from throughout the LATA to Level 3's switch and to pay Level 3 terminating compensation on such calls.

[3] Notice of Proposed Rulemaking*, In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 01-132, ¶ 115, n. 188 (April 27, 2001) ("*Intercarrier Compensation NPRM*").

Q. PLEASE DESCRIBE THE COMPONENT PARTS OF LEVEL 3'S DEFINITION.

A. The language is very confusing, but there appear to be three basic parts to Level 3's definition. The first part I will discuss is the portion of the definition (the latter part of the first sentence) that describes the traffic that *is* VNXX. For ISP traffic, VNXX is traffic where Level 3 "does not have *facilities* in the same *Local Calling Area* as the end user customer making an ISP-bound call." (Emphasis added). That same sentence also defines VNXX in the VoIP context as traffic where Level 3 "does not have *facilities* in the same *Local Calling Area* as the end user customer making . . . a VoIP call to or receiving a VoIP call routed over such Level 3 facilities." (Emphasis added). Thus, as I interpret this language, if Level 3 "does not have facilities" in the same *LCA* as an ISP's end user customer making an ISP call, the traffic is VNXX traffic. In the VoIP context, if Level 3 does not have "facilities" in the LCA where a VoIP end user customer makes or receives a call, the call is VNXX. Thus, if Level 3 had stopped there, VNXX would be determined based on the location of Level 3 facilities. As I will discuss, even standing alone, this portion of Level 3's definition is ambiguous. It is also inconsistent with the law of Washington. But the remainder of the language in Level 3's VNXX definition makes the definition completely incomprehensible.

Q. DESCRIBE THE SECOND PART OF LEVEL 3'S DEFINITION.

A. This part of the definition arises in the first part of the first sentence, where Level 3 adds another qualifying phrase. Not only does Level 3 define VNXX in terms of whether Level 3 has some sort of undefined "facilities" in a LCA, Level 3 also defines VNXX in terms of

whether the Commission has determined that traffic should be exchanged at the reciprocal compensation rate established by the Commission for *voice traffic*. The purpose for this unexplained condition is baffling. This condition does not purport to have any connection to any call rating methodology, but is instead based on some sort of illogical connection to traffic the Commission designates as voice traffic. Given that most, if not all, VNXX traffic is ISP traffic, there is no basis whatever for Level 3 to claim the right to recover the voice rate on any ISP traffic (whether VNXX or local).[4] And conversely if the Commission does not apply the voice rate to ISP traffic, by Level 3's definition the traffic is not VNXX. I will address this issue below, but would simply note at this point that Level 3's language appears to have something to do with its misunderstanding of the "mirroring rule" adopted in the *ISP Remand Order*.

Thus, based on the first sentence, Level 3 would define VNXX traffic in terms of (1) whether Level 3 has "no facilities" in a specific LCA and (2) whether the Commission has determined that the traffic must be exchanged at the voice rate.

Q. DOES THE SECOND SENTENCE OF LEVEL 3'S VNXX DEFINITION ADD ANY CLARITY?

A. No. It actually creates even further confusion. The second sentence states: "ISP-bound and VoIP Traffic that is exchanged at a compensation rate of $0.0007 is not VNXX so long

[4] Level 3's language states the voice rate in Washington as $.00161; the correct rate is $.001178. Level 3 repeats the incorrect rate in several other sections as well. See Qwest Washington SGAT § 9.11.1.5 (2-15-05).

as Level 3 facilities are located within the same *LATA* as the end user customer making an ISP-bound or VoIP call to or receiving a VoIP call from Level 3's facilities located in the same *LATA* as that customer." (Emphasis added). At first blush, this language appears to be the flip side of the latter portion of the first sentence. But closer examination demonstrates that it is not. In the second sentence, Level 3 purports to define what is *not* VNXX traffic, but instead of using the *LCA* as the frame of reference, Level 3 now uses the *LATA*. Thus, applying the second sentence, if Level 3 has facilities in the same LATA as the end user who calls his or her ISP or the end user making or receiving a VoIP call, the traffic is, by Level 3's definition, not VNXX. Given this is new language that Level 3 has never explained in testimony, Qwest can only guess at this point why the first sentence focuses on the LCA, while the second focuses on the LATA; but, totally aside from the other incongruities in the definition, it creates the nonsensical situation where traffic can simultaneously be both VNXX traffic and non-VNXX traffic.

An example will illustrate how this would occur under Level 3's language. Olympia and Seattle are both in LATA 674, but are in different LCAs. Level 3 has facilities in Seattle, including a Softswitch and a Media Gateway. On the other hand, I do not believe Level 3 has a POI or any other facilities in Olympia. Because Level 3 has no facilities in Olympia, the first sentence of Level 3's definition (the one that focuses on the LCA instead of the LATA) would mean that all ISP traffic originating in Olympia is VNXX traffic. However, because Olympia is in the same LATA as Seattle and Level 3 has facilities in Seattle, under the second sentence of the definition, no traffic originating in LATA 674 is VNXX traffic.

Thus, under Level 3's definition traffic originating in Olympia would be both VNXX traffic and non-VNXX traffic at the same time.

If Level 3 seriously contends that VNXX should be determined based on whether Level 3 has any facilities in a LATA, then all traffic to or from customers located in that LATA is non-VNXX traffic. The result is that "VNXX" would be a completely meaningless term. Because SPOP requires that a CLEC have at least one point of interconnection ("POI") in each LATA, any CLEC with a POI in a LATA has facilities in the LATA. Thus, under that definition of VNXX, it is inconceivable that any traffic could ever be classified as VNXX traffic. If, on the other hand, Level 3 really meant to use LCA in both sentences of its definition and its reference to LATA was an error, the definition is still inconsistent with proper call rating methods and should be rejected.

For the reasons stated above, Level 3's definition should be rejected. However, based on theories Level 3 has proposed on other states, I feel it is necessary to address some additional issues in this testimony. For the remainder of my testimony on this issue, I am going to assume that Level 3 really meant to use the LCA as the test in both sentences of its VNXX definition. However, all of the arguments I make hereafter would apply at least as strongly to a VNXX definition that uses the LATA as the frame of reference.

Q. ASSUMING THE INTERNAL CONTRADICTION IN LEVEL 3'S DEFINITION WERE RESOLVED, IS LEVEL 3'S VNXX DEFINITION CONSISTENT WITH THE STANDARD DEFINITION OF THAT TERM?

A. No. While the contradictions in the language are a good reason for the Commission to reject Level 3's definition, it is important to step back and analyze the language in light of the call rating rules that have applied for decades in Washington. Whether the test for VNXX is "facilities" in the LCA or "facilities" in the LATA, Level 3's language is inconsistent with the call rating rules that apply in Washington.[5]

Q. PLEASE ADDRESS WHAT YOU SEE AS THE FUNDAMENTAL FLAWS OF LEVEL 3'S PROPOSED VNXX DEFINITION.

A. The single most fundamental flaw in the VNXX definition is that it attempts to create a definition that abandons the call rating system that has governed the industry for decades in Washington and throughout the United States: that local and interexchange calls are defined by the relative locations of the parties to the call.

Another major flaw in Level 3's Washington language is its ambiguity. For example, it is far more ambiguous than the language Level 3 has proposed recently in Oregon. In Washington, Level 3's test for whether a call is VNXX or not is whether Level 3 has or does not have "facilities within" a LCA. The term "facilities" is undefined and therefore

[5] In this portion of my testimony I will discuss the VNXX definition only in the ISP context. I will address Level 3's definition of VNXX in the VoIP context in a later section.

ambiguous. In Oregon, Level 3 has proposed language that would make the existence or non-existence of a point of interconnection ("POI") within a LCA the test for VNXX. While Level 3's use of the ambiguous term "facilities" can be read more broadly than the Oregon language (and Level 3 should be required to explain what it really means), even if we were to assume that the Level 3 language refers to a POI in the LCA, it nevertheless violates the governing call rating rules in Washington.

Q. PLEASE ADDRESS WHETHER A POI OR FACILITIES IN A LCA IS AN APPROPRIATE TEST FOR CALL RATING.

A. Whether the test is a POI in the LCA or the existence of facilities in a LCA, Level 3's language is based on a novel, and insupportable, theory of how calls should be rated in Washington. The fundamental issue is whether rating a call as local or interexchange should be based on the location of the calling and called parties (Qwest's position) or whether it should be based on the location of the calling party and either the location of facilities or whether there is a POI between the switches of Qwest and Level 3 (Level 3's apparent position).

If Level 3 is, as it is in Oregon, relying on a POI theory in this docket, Level 3's position has no basis in law, has no historical validity, and would be extremely bad policy, with major potential negative consequences. If Level 3 really means that all it needs is some kind of undefined "facility" in a LCA, then its position is even more tenuous.

Q. WHAT IS THE PROPER TEST FOR CALL RATING?

A. The proper means test for rating or classifying calls in Washington is determined by *where the called and calling parties are physically located*. On the other hand, Level 3 proposal is, in my experience, unprecedented. Neither the location of a POI nor the location of a CLEC's "facilities" has ever been a relevant location for call rating purposes. The implications that such an approach may have to the entire call rating system applied to the telecommunications industry in Washington is profound.

Q. HAS THIS COMMISSION ADDRESSED THE SUBJECT OF VNXX TRAFFIC AND CALL RATING?

A. Yes. In the Commission's order in the last AT&T/Qwest arbitration, the Commission rejected language proposed by AT&T that would have defined "EAS/Local Traffic" on the basis of the NXXs assigned to the parties to the call. It approved Qwest's language, which defined the same term as "traffic that is originated and terminated within the same local calling area as determined for Qwest by the Commission."[6] In so ruling, the Commission noted with approval the Arbitrator's concern that AT&T's definition "is too sweeping in its potential effect and has potentially unacceptable consequences in terms of intercarrier compensation."[7] The Commission adopted the Arbitrator's decision, agreeing that

[6] Order No.05*, In the Matter of the Petition for Arbitration of AT&T Communications of the Pacific Northwest and TCG Seattle with Qwest Corporation Pursuant to 47 U.S.C. Section 252(b),* Docket UT-033035, ¶¶ 12-16 (WUTC, February 6, 2004).

[7] *Id.* ¶ 14.

"'AT&T's alternative simply goes too far—it is too sweeping in its implications—to be adopted on the record in this proceeding.'"[8] As I have described them, Level 3's proposals even go beyond those of AT&T. Thus, the concern expressed by the Commission in its order, and the potential sweeping impact, not just on Qwest but the entire industry, has not gone away.

Q. IS LEVEL 3'S NEW CALL RATING THEORY CONSISTENT WITH COMMISSION RULES?

A. No. For example, WAC 480-120-021 contains the following definitions:

> "Exchange" means a *geographic area* established by the a company for telecommunications service *within* that area.
>
> "Interexchange" means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another.
>
> "Local calling area" means one or more rates centers *within which* a customer can place calls without incurring long distance (toll) charges. (Emphasis added).

Each of these definitions make it clear that the distinction between local and interexchange calling is based on the location of customers (*i.e.,* whether the call is between exchanges or is it within an exchange or EAS area). The Commission's rule on the expansion of local calling areas (WAS 480-120-265) requires the Commission to focus on geographic issues, such as whether a long distance call must be made to access medical facilities, schools, and government. The rule specifically requires the Commission to "consider the overall

[8] *Id.* ¶ 15, quoting the Arbitrator's Report.

community-of-interest of the entire exchange;" an exchange, as noted above, is a "geographic area" established for "telecommunications *within* that area."

These rules demonstrate conclusively that the local/interexchange distinction is (1) geographic in nature and (2) focuses on the ability of customer to call other customers within certain geographic areas. There is nothing to suggest in any of these rules that a POI or the location of CLEC facilities has any bearing whatsoever on rating calls as local or interexchange. Qwest's Tariffs are consistent with the Commission's rules.[9] It would be difficult to conceive of a clearer expression of the geographic nature of local calling in Washington; it would likewise be difficult to find a more explicit description of the fact that call rating is related to customer locations. Nothing in the Commission's rules or Qwest's tariffs suggest that Level 3's proposed language is consistent in any manner with Washington law.[10]

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[9] *Qwest's Exchange and Network Services Tariff contains the following definitions:*

> "Exchange" is "[a] specified geographic area established for the furnishing of communication service. It may consist of one or more central offices together with the associated plant used in furnishing service *within that area*." (WN U-40 Exchange and Network Services, § 2.1, at original page 6; emphasis added).
>
> "Local exchange" is an "[e]xchange *in which the customer's premises* are located." (*Id.* at original sheet 11; emphasis added).
>
> "Local service" is "[e]xchange access service furnished *between customer premises located within the sale local service area*." (*Id.*; emphasis added).
>
> "Local service area" is "[t]he *area within which* exchange access service under specific rates. The area may include one or more exchanges without the application of toll charges." (*Id.*; emphasis added).

Consistent the Commission rules, the focus of these tariffs are on the geographic area defined as a local exchange area, and the relevant points for call rating are "between customer premises located with the same" LCA.

[10] It is my understanding that the recent decisions of the Commission in the Level 3 and Pac-West complaint

Q. ASSUMING LEVEL 3'S LANGUAGE IS MERELY ANOTHER WAY OF ARTICULATING THE POI THEORY IT IS ADVOCATING IN OREGON, PLEASE DESCRIBE THE MEANING OF A POINT OF INTERCONNECTION ("POI")?

A. A POI is simply the point where two telecommunications companies interconnect the facilities that link their respective switching equipment. POI is an undisputed term definition in the ICA at issue in this docket; it is defined as "a demarcation between the networks of two (2) LECs (including a LEC and CLEC). The POI is where the exchange of traffic takes place." (See Level 3 Petition, Appendix C, at 25). Thus, there is no disagreement in this case as to the meaning of POI. It is simply the physical point where the trunks connecting a Qwest switch and a CLEC switch are connected so traffic from each parties' network will flow to the network of the other carrier.

Q. IS IT COMMON FOR AN INTEREXCHANGE CARRIER ("IXC") TO HAVE A POI IN MULTIPLE LCAS IN AN ILEC'S TERRITORY?

A. Yes, it is very common for an IXC to establish POIs in multiple ICAs in the territory of a LEC.

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cases dealt with the interpretation of existing agreements, as opposed to the arbitration of a new agreement. Thus, it does not appear that those decisions would in any way prevent the Commission from adopting Qwest's language on VNXX issues.

Q. DOES THE EXISTENCE OF AN IXC'S POI IN A LCA CHANGE THE CALL RATING RULES AND THUS MAKE ALL TRAFFIC ORIGINATING IN THAT LCA LOCAL TRAFFIC?

A. No. The fact that an IXC establishes a POI where it picks up traffic within a particular LCA has never been relevant for call rating purposes. The fact that a calling party and an IXC's POI are in the same LCA does not transform calls originated in one LCA but delivered to a called party located in a different LCA into local calls. Based on the rating method that has existed for decades, such traffic is interexchange traffic, and it is treated as such for intercarrier compensation purposes.

Q. WOULD THE ACCEPTANCE OF LEVEL 3'S FACILITIES THEORY CHANGE THE DEFINITION OF A LOCAL CALL IN WASHINGTON?

A. Yes. The Level 3 model would represent a dramatic departure from decades of call rating history. The effect would be very simple. Level 3, through VNXX arrangements, would be able to arrange the functional equivalent to an incoming 1-800 toll service. But for any call where Level 3 has a POI or facilities in the LCA where the ISP call originates, Level 3's definition would treat all that traffic as if it were local traffic regardless where the called party is located. Yet in precisely the same circumstances (*i.e.,* where an IXC has a POI in one LCA, but arranges an incoming 800 service for a customer in a different LCA), the traffic is *not* local, and the IXC, pursuant to existing access charge rules, pays both originating and terminating access charges for that traffic. Furthermore, an IXC cannot charge reciprocal compensation nor can an IXC purchase TELRIC-rated transport from an

ILEC. A central tenet of the 1996 Act was to assure that competitors operated on "a level playing field." Yet the Level 3 proposal, if accepted, would be blatantly discriminatory in favor of Level 3. It sets up a system in which Level 3 would be able to operate in a manner that is highly advantageous to it, while IXCs would remain subject to the intra- and interLATA access charge regimes. At the same time, Qwest would be subject to wildly different intercarrier compensation schemes for traffic that is identical.

Likewise Qwest has meet point facilities with many independent telephone companies that extend all the way into the independent's local calling area. But simply picking up the calls within the ILECs local calling area does not determine the nature of the call.

Q. TO YOUR KNOWLEDGE HAS POI OR THE EXISTENCE OF CLEC FACILITIES EVER BEEN USED AS A POINT FOR RATING CALLS AS LOCAL OR INTEREXCHANGE?

A. No. I have been in the telecommunications industry for nearly 30 years and a POI between telephone company switches or the existence of carrier facilities has never been used as the relevant point to rate a call between customers of the two companies. Even when the call itself was routed in circuitous routes, the final test has always been the locations of the calling and called parties to the call. Telephone consumers in Washington have a clear understanding (VNXX being the most obvious exception) of where they are calling in terms of the person they are attempting to reach. It is usually very clear to the caller whether a local or a long distance call is being made. However, it is unlikely that any end

user customers (unless they work in the network department for a telephone company) would have the slightest idea where a POI between Qwest and a CLEC or Qwest and an ILEC is located. Likewise, it is inconceivable that a customer would know where CLEC facilities are located or where a POI between two carriers' switches is located.

Q. WHAT DID THE *ISP REMAND ORDER* SAY ON THIS SUBJECT?

A. The FCC made it clear that in adopting its new regime for local ISP calls, it did not intend to eliminate or otherwise interfere with the access charge regimes that apply to interexchange traffic:

> Congress preserved the pre-Act regulatory treatment of all the access services enumerated under Section 251(g). These services thus remain subject to Commission jurisdiction under Section 201 (or, to the extent they are *intra*state services, they remain subject to the jurisdiction of state commissions), whether those obligations implicate pricing policies as in *Comptel* or reciprocal compensation. *This analysis properly applies to the access services that incumbent LECs provide (either individually or jointly with other local carriers) to connect subscribers with ISPs for Internet-bound traffic.*[11]

The FCC was focused upon problems unique to the compensation mechanism that applied to traffic where the ISP was located in the same LCA. Level 3, in its proposed language, would eliminate access charges on all of its ISP and VoIP traffic. Its argument is apparently premised on the assumption that the FCC in the *ISP Remand Order* changed the access charge structure and issued an exemption for "all" calls sent to the Internet, regardless of where the call originates and terminates. While the FCC has opened a docket

[11] *ISP Remand Order* ¶ 39 (emphasis added, footnote omitted).

to scrutinize these issues as a part of an overall examination of intercarrier compensation,[12] the applicable law has not changed. Until the FCC takes further action in its intercarrier compensation docket, expanding terminating compensation to include ISP calls from across the state or country would be unlawful.

Q. HAS THE ISSUE OF THE PROPER SCOPE OF THE *ISP REMAND ORDER* BEEN CLARIFIED BY RECENT DECISIONS?

A. Yes. I'm sure this issue will be addressed at length in briefs. Nonetheless, four decisions by federal circuit courts (two of which were issued in the last two months) establish that the *ISP Remand Order* applies only to local ISP traffic and that existing intrastate access charge regimes (including Qwest's intrastate access charges) remain subject to state commission jurisdiction.

The first statement on the question of the breadth of the *ISP Remand Order* comes in the D.C. Circuit's review of the *ISP Remand Order* in *WorldCom, Inc. v. FCC*[13] ("*WorldCom*") where the D.C. Circuit stated the *holding* of the *ISP Remand Order*: "In the order before us the [FCC] *held* that under § 251(g) of the Act it was authorized to 'carve out' from § 251(b)(5*)* calls made to internet service providers ("ISPs") *located within the caller's local calling area*."[14]

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[12] *In the Matter of Developing a Unified Intercarrier Compensation Regime,* 16 FCC Rcd 9610 (2001).

[13] 288 F.3d 429 (D.C. Cir. 2002).

[14] *Id.* at 430 (emphasis added).

The most definitive decision is the First Circuit's decision in *Global NAPs v. Verizon New England*[15]("*Global NAPs I*"), *WorldCom*, *Global NAPs I* decision, wherein the First Circuit ruled, based on the FCC's statements that the only issue addressed in the *ISP Remand Order* was local ISP traffic, that the scope of the preemption in the *ISP Remand Order* applies only to local ISP traffic, and that the FCC did not preempt the existing access charge rules applicable to interexchange calls placed to ISPs. 444 F.3d at 72-74.

In the last two months, the D. C. Circuit, in *In re Core Communications*,[16] and the Second Circuit, in *Global NAPs v. Verizon New England*[17] ("*Global NAPs II*"), have weighed in on this issue, and both confirm the conclusions reached in *WorldCom* and *Global NAPs I*. In *Core Communications*, the D. C. Circuit (the same court that decided *WorldCom*) upheld the FCC's order that removed the new markets rule and growth cap rule that were initially adopted in the *ISP Remand Order*. In the course of describing the history leading up to the order under consideration, the court described the *ISP Remand Order*:

> "[The FCC] *found* that calls made to *ISPs located with the caller's local calling area* fall within those enumerated categories—specifically, that they involve 'information access.' . . . *Those calls*, the FCC concluded, are not subject to § 251(b)(5), but are instead subject to the FCC's regulatory authority under § 201. . . ."[18]

[15] 444 F.3d 59 (1st Cir. 2006).

[16] 2006 WL 1789003 (D. C. Cir. June 30, 2006).

[17] 454 F.3d 91 (2nd Cir., July 5, 2006),

[18] 2006 WL 1789003, at *2 (citations *to ISP Remand Order* and other authorities omitted; emphasis added).

Finally, on July 5, 2006, the Second Circuit issued the *Global NAPs II* decision, wherein it affirmed the Vermont Board's decision to ban VNXX in Vermont. The court first noted that the FCC "has never directly addressed the issue of ISP-bound calls that cross local-exchange boundaries." 454 F.3d at 95. If the FCC has never addressed any issue other than local ISP traffic, it is impossible to say that the *ISP Remand Order* applies to all traffic—the order, by definition, cannot apply to an issue that it did not address. During the course of its decision, the Second Circuit cited *Global NAPs I* approvingly for the proposition that "{t]he ultimate conclusion of [*ISP Remand Order*] was that ISP-bound traffic *within a single calling area* is not subject to reciprocal compensation." *Id.* at 99.

In light of this series of decisions, it is Qwest's position that the *ISP Remand Order* applies only to local ISP traffic and that it did not interfere with either the state or federal access charge regimes.

Q. EARLIER YOU MENTIONED THAT THE FIRST PART OF LEVEL 3'S VNXX DEFINITION IS BASED ON A MISUNDERSTANDING OF THE FCC'S MIRRORING RULE. PLEASE EXPLAIN WHAT YOU MEANT.

A. The language in question is the first part of the first sentence of Level 3's VNXX definition, which is highlighted in italics as follows:

> "*VNXX traffic" is traffic that the Washington Utilities and Transportation Commission determines should be compensated at the WUTC approved local reciprocal compensation rate ($0.00161/MOU)* where Level 3 does not have facilities in the same Local Calling Area as the end user customer

> making an ISP-bound or VoIP call to or receiving a VoIP call routed over such Level 3 facilities**."**

As I stated earlier, the purpose for which Level has inserted this language into a definition of VNXX is baffling, since it has nothing to do with call rating and has no apparent logical connection the latter part of the same sentence. The relationship of this language to the VNXX issue is a mystery to me. However, in several other places in Level 3's new language it is clear that Level 3 misunderstands the mirroring rule established by the FCC in the *ISP Remand Order*. For example, Level 3's new language for section 7.3.6.3 (Issue 3A) suggests that Level 3 believes that Qwest is the party that makes the election under the mirroring rule. Level 3's language in section 7.3.6.1 (Issue 3C) states that unless Qwest "accepts the FCC's plan for a single rate for all local traffic" (*i.e.,* the mirroring rule) then all traffic, including ISP and VoIP traffic, will be exchanged at the voice rate of $.001178. Similar language is in Level 3's proposed section 7.3.4.1 (Issue 4), Level 3's definition of "VoIP" (Issue 16), and section 7.3.6.2 (Issue 19). The apparent intent of these various insertions of new language is a claim that if Qwest does not elect to exchange all traffic under the mirroring rule at $.0007 then all traffic must be exchanged at $.001178. Based on its obvious misunderstanding of the mirroring rule, Level 3 appears to be trying to suggest that it is entitled to a higher terminating compensation rate on ISP traffic.

Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF THE MIRRORING RULE.

A. In the *ISP Remand Order, t*he FCC described the mirroring rule in these terms:

> Finally, the rate caps for ISP-bound traffic (or such lower rates as have been imposed by states commissions for the exchange of ISP-bound

> traffic) apply only if an *incumbent LEC offers* to exchange all traffic subject to section 251(b)(5) at the same rate. An incumbent LEC that does not offer to exchange section 251(b)(5) traffic at these rates must exchange ISP-bound traffic at the state-approved or state-negotiated reciprocal compensation rates reflected in their contracts. (*ISP Remand Order* ¶ 8; emphasis added).

The mirroring rule is very simple. An ILEC (like Qwest) must offer a CLEC the option of (1) exchanging all appropriate local traffic[19] (whether ISP or voice traffic) at the $.0007 rate established for local ISP traffic or (2) exchanging ISP traffic at $.0007 and non-ISP traffic (e.g., voice traffic) at the voice rate established by the state commission ($0.001178 in Washington). If the ILEC must offer to exchange all appropriate traffic at $.0007 (and Qwest clearly makes that offer to Level 3), then it follows that the election is the CLEC's to make. In other states, Level 3 has similarly taken the odd position that it is the ILEC that must make the election under the mirroring rule, a position that is clearly at odds with the language of the mirroring rule and undisputed portions of the ICA in this docket.

Attachment J to the 2005 template agreement (which I have attached hereto as Exhibit LBB-3) does exactly that: it is a form whereby the CLEC (when it executes the ICA) makes its election under the mirroring rule. (The 2003 template likewise contained an identical Attachment J). But just so the record is clear and so there is no misunderstanding of Qwest's position, Qwest acknowledges that, at the election of the CLEC, the mirroring rule requires all local traffic to be exchanged at $.0007. Furthermore, so there is no misunderstanding as to whether Qwest has offered to exchange all appropriate traffic at

[19] "All appropriate traffic" means local ISP traffic subject to the $.0007 rate and all other local voice traffic

$.0007, Qwest hereby offers Level 3 the election under the mirroring rule as discussed above.

The only situation in which ISP traffic could be subject to the voice rate is if the ILEC refuses to make the offer that Qwest has repeatedly made and that I just made again on behalf of Qwest. If that offer is made, then ISP traffic is never compensated at the voice rate because the *ISP Remand Order* sets a cap on terminating compensation for local ISP traffic (the only traffic subject to the *ISP Remand Order*). That cap is now $.0007.

If Level 3 has some other purpose for inserting these mirroring rule provisions into the VNXX definition and into the other language identified above, it is not intuitively obvious to me what it is. In the absence of further explanation by Level 3, I can see no relationship between whether VNXX traffic and the voice rate. For Level 3, VNXX traffic is virtually all ISP traffic, so if this language is an effort to suggest that ISP traffic can never be VNXX traffic, the Commission should reject it out of hand. In any event, Level 3 should be required to explain its intentions on this issue.

Q. PLEASE SUMMARIZE YOUR POSITION ON THE COMPETING VNXX DEFINITIONS.

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subject to section 251(b)(5) (and the voice rate).

A. Calls routed through a POI for termination **outside** of the originating LCA are interexchange calls. A call from Olympia to Seattle is an interexchange call. VNXX services that terminate traffic to an ISP who is not located within the same LCA as the originating caller are no different; they are interexchange calls and must remain treated as such for intercarrier compensation purposes. While Level 3's definition is largely incomprehensible, one thing is clear, and that is that Level 3 is attempting to say that such obviously interexchange traffic is really local traffic, a position that defies reality, common sense, and the law of Washington. Qwest's definition of VNXX traffic is clear, concise, accurate, and consistent with the VNXX definition used by the Commission, the FCC, other state commissions; Qwest's definition is likewise consistent with the Commission's rules. On the other hand, Level 3's definition represents an opportunistic attempt to shift costs to Qwest and should be rejected. Much of Level 3's Washington traffic is VNXX traffic; it is not "local traffic" in any meaningful sense of that term and Level 3 should not be permitted to bill Qwest terminating compensation on this traffic by creating the façade that these calls are really local calls. Qwest's definition of VNXX should, therefore, be adopted.

V. ISSUE 3A: COMPENSATION FOR VNXX TRAFFIC

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR ISSUE 3A, SECTION 7.3.6.3?

A. Qwest's proposal for Section 7.3.6.3 is as follows:

7.3.6.3 Qwest will not pay reciprocal compensation on VNXX traffic.

Q. WHAT IS LEVEL 3'S PROPOSED LANGUAGE FOR ISSUE 3A, SECTION 7.3.6.3?

A. Level 3 proposes the following new language for Section 7.3.6.3:

> **7.3.6.3 To the extent that Qwest elects to exchange all local traffic at the FCC-mandated rate, if CLEC designates different rating and routing points for ISP-bound and VoIP Traffic such that traffic that originates in one rate center terminates to a routing point designated by CLEC in a rate center that is not local to the calling party even though the called NXX is local to the calling party, such traffic ("Virtual Foreign Exchange" traffic) shall be rated in reference to the rate centers associated with the NXX prefixes of the calling and called parties' numbers.**

Q. PLEASE DESCRIBE ISSUE 3A AND WHAT THE PARTIES' DISPUTE IS RELATING TO THIS ISSUE.

A. Now that the distinction between a local call and VNXX has been established, issue 3A can be addressed in a meaningful manner. Qwest's position is clear. VNXX calls are not local calls subject to terminating compensation payments under the *ISP Remand Order*, nor are they subject reciprocal compensation under section 251(b)(5). Qwest's proposed language makes clear that Qwest will not treat VNXX calls as local and will not pay local terminating compensation on such VNXX traffic.

On the other hand, Level 3 studiously ignores any discussion of VNXX in its proposed section 7.3.6.3. In other words, after the all of the ambiguity of Level 3's definition, when it comes to the section that determines what compensation is due on what traffic, Level 3's VNXX definition is irrelevant; and, indeed, Level 3 now has flip flopped back to its NXX theory. Level 3 claims that if the NXX codes are the same, the call is a local call.

Q. DOES LEVEL 3'S PROPOSED LANGUAGE FOR SECTION 7.3.6.3 BRING ANY CLARITY TO THE VNXX ISSUE?

A. No. Ironically, as I stated, it represents yet another theory, in this case a return to the idea that call rating should be done on the basis of the telephone numbers of the parties to the call. In other words, while Level 3 abandoned the NXX theory in connection with its definition of VNXX, it revives the same theory in section 7.3.6.3. Its proposed language would mandate that call rating (and thus compensation) be based on NXX codes. In the prior section—dealing with the definition of VNXX—Level 3 proposed to define VNXX in terms whether Level 3 has "facilities in the LCA (or LATA)" where ISP calls originate or where VoIP calls terminate. In section 7.3.6.3, Level 3 does a complete theoretical turn around. Now instead of focusing on the location of facilities or the location of POIs, Level 3 creates a new term ("Virtual Foreign Exchange" traffic), which is based on the NXXs of the parties to the call. Thus, if the parties to the call have an NXX associated with the same LCA, Qwest should deliver the call to Level 3 as a local call and would owe terminating compensation to Level 3. Level 3's language merely demonstrates its incredibly opportunistic and scattergun approach to the issues in this case.

Q. PLEASE COMMENT ON LEVEL 3'S EFFORT TO CHARACTERIZE VNXX TRAFFIC AS "VIRTUAL FOREIGN EXCHANGE" TRAFFIC. IS VNXX THE SAME, OR EVEN SIMILAR, TO FX SERVICE?

A. No. Other than the fact that an FX call and a VNXX call are both answered in a different LCA, the two approaches could not be more different. A VNXX scheme is nothing like FX service in terms of their regulatory treatment (which, after all, is the issue in this case). The following chart illustrates the dramatic difference between Level 3's VNXX scheme and FX.

Comparison of Level 3 VNXX Service v. Qwest FX Service
For Calls Outside the Local Calling Area

Level 3 VNXX Service	**Qwest FX Service**
Local Origination Costs: Level 3, a CLEC, pays nothing to compensate Qwest for the use of Qwest's local network (loops, switches, etc.) within each local calling area.	**Local Origination Costs:** The FX customer buys local exchange service in the local calling area at the applicable tariffed rate.
Transport Costs: Level 3 asserts that it has no responsibility for any costs on Qwest's side of the POI and that is should pay nothing for transport.	**Transport Costs:** FX customer pays for transport to its location in another LCA at retail private line transport rates.
Termination Costs: Level 3 proposes to charge $.0007 to terminate all long distance ISP traffic (VNXX).	**Termination Costs:** An FX customer is an end user and as such may not charge terminating compensation.

In other words, Level 3's euphemistic use of the term "Virtual Foreign Exchange" is a misleading effort to suggest that VNXX and FX service are the same. As the foregoing chart demonstrates, VNXX and FX are dramatically different.

Q. PLEASE EXPLAIN THE PRINCIPAL DIFFERENCES.

A. There are three major differences. The difference that has been addressed most often in state commission orders and court decisions is the fact that FX customers are not only financially responsible for the transport of the FX traffic from the LCA where calls originate to the LCA where the calls are answered, but are also responsible to pay tariffed private line/special access rates for that transport. On the other hand, with VNXX, the CLEC's, as Level 3 does in this case, disclaim all responsibility to pay for any transport at all (and in other states, where the state commissions have mandated that the CLEC pay for transport, the CLEC asserts that it should only be required to pay for TELRIC-rated transport, at rates dramatically lower than the private line transport rates paid by FX customers).

The second major difference is critical, but is often overlooked. The FX customer is also required to purchase local exchange service in the originating LCA at the local exchange rates in that LCA (in other words, FX is really two services: local exchange service plus private line transport). Local exchange rates, of course, are the rates that allow customers to make local calls within the exchange, and are designed (at least in part) to compensate Qwest for the large investments it has made in loop, feeder, and distributions facilities in

each LCA, plus the cost of the switch in that LCA. In other words, the FX customer pays Qwest (at applicable tariff rates) for the use of the local network within the LCA. In the IXC context, an IXC, even if it has a POI in a LCA, pays originating access charges to Qwest. Thus, like the FX customer, an IXC compensates Qwest for the use of the loops and switches that are absolutely essential to the ability of its long distance customers to originate long distance calls. But in the VNXX situation, CLECs (even if they are compelled to pay TELRIC-based transport) pay absolutely nothing to compensate the LEC for the use of the local loops and switches that are just as necessary for them to provide the service to their ISP customers that allows for the origination of traffic within a LCA. In other words, it is just as essential for Level 3 and its ISP customers to have access to Qwest's local facilities and switching as it is for an FX customer or an IXC. The FX and IXC customers compensate Qwest for the use of these facilities, but a CLEC using VNXX pays nothing.

The third difference relates to termination of traffic. As an end user, an FX customer has no right to seek terminating compensation. Nor does an IXC—indeed, the IXC must also pay terminating access charges to the LEC that terminates the IXC's interexchange traffic. Yet here again Level 3 seeks a dramatic advantage. Not only does Level 3 disclaim any financial responsibility for origination and transport costs, but it also demands that the Qwest pay it $.0007 to terminate traffic for which the CLEC and its ISP customers are cost causers (see Dr. Fitzsimmons' testimony on this issue).

While Qwest believes strongly that VNXX traffic should be prohibited or subject to originating access charges (since it is identical to IXC traffic), if Qwest is not allowed to recover originating access charges it would be egregiously unfair to require it at the same time to provide LATA-wide transport and to pay terminating compensation to Level 3 on VNXX traffic.

Q. IS QWEST REFUSING TO PAY TERMINATING COMPENSATION TO LEVEL 3 ON LOCAL ISP TRAFFIC?

A. Not at all. Qwest's language makes clear that Qwest *will* pay terminating compensation, a charge for terminating local traffic, on traffic that actually originates and is delivered to an ISP at physical locations within the same LCA, as established by the Commission. For example, based on Level 3's representation that it maintains a Media Gateway (which is the location where Level 3 answers ISP calls on behalf of its ISP customers) in Seattle, Qwest will pay $.0007 on calls that originate from its customers and are delivered to Level 3's ISP customers in the Seattle LCA. But calls that originate in other LCAs and are delivered to Level 3's ISP customers in Seattle are not local calls and are not entitled to compensation. That is what Level 3 is attempting to circumvent with its language. For all the reasons set forth above (including my discussion of Issue 3B), the "VNXX" number is not and should not be determinative. And, of course, as stated earlier, if the VNXX call is an ISP call, no terminating compensation is due, just as it would not be due on a typical voice call. The fact that the call is to an ISP grants it no special status, legal or otherwise.

Q. DOES LEVEL 3 INTRODUCE A MIRRORING RULE ISSUE IN ITS PROPOSED SECTION 7.3.6.3?

A. Yes. The first clause of Level 3's language raises a mirroring rule issue. Level 3 has simply misconstrued the *ISP Remand* Order. For the reasons described in my discussion of this issue in connection with Issue 3B, Level 3's language is wrong and should be rejected.

Q. SHOULD VNXX BE BANNED IN WASHINGTON?

A. I believe that is the correct solution. For all of the reasons that I have stated, VNXX violates the public interest and should be banned. The Oregon Commission, in a recent order in an arbitration between Qwest and Universal Telecom (Order No. 06-190), ordered that the following language be inserted into the ICA: "Qwest and CLEC shall not exchange VNXX traffic."[20]

Last month the Second Circuit upheld a decision of the Vermont Board to ban VNXX in that state. In reaching that conclusion, the Second Circuit stated that "the FCC has been consistent and explicit that it will not permit CLECs to game the system and take advantage of ILECs *in* a purported quest to compete."[21] That is precisely what Level 3 is attempting to do through the use of VNXX. Qwest's language is consistent with proper

[20] Order No. 06-190, Appendix A, pp. 10, 16. (Oregon PUC, April 19, 2006). This order can be viewed at http://apps.puc.state.or.us/orders/2006ords/06-190.pdf.

[21] *Global NAPs v. Verizon New England*, 454 F.3d 91, 103 (2nd Cir. 2006).

cost causation principles and with the call rating rules that apply in Washington, and should therefore be adopted by the Commission.

VI. ISSUE 3C: RATE OF COMPENSATION FOR ISP BOUND TRAFFIC

Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES IN ISSUE 3C?

A. In Issue 3B the definition of VNXX traffic was discussed. Issue 3A dealt with Level 3's claim that VNXX traffic should be subject to terminating compensation. There was no distinction made by Level 3 between a voice call and an ISP call; Level 3's language tried to include VNXX traffic in the category of calls entitled to compensation under rules that apply only to local traffic. Qwest's proposed language made clear that VNXX traffic was not local traffic subject to terminating compensation. In Issue 3C the language addresses the payment of compensation for ISP traffic generally. Qwest's language makes clear that terminating compensation is due for local ISP traffic but is not owed if the call is not local.

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR ISSUE 3C, SECTION 7.3.6.1?

A. Qwest proposal for Section 7.3.6.1 is as follows:

> 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 as follows, without limitation 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.

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR ISSUE 3C, SECTION 7.3.6.1, INTERCARRIER COMPENSATION FOR VNXX TRAFFIC?

A. Level 3's counter-proposal for the definition of Section 7.3.6.1 is as follows:

> 7.3.6.1 **Intercarrier compensation for ISP-bound traffic, and VoIP traffic exchanged between Qwest and CLEC will be billed and paid, without limitation 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. To the extent that Qwest accepts the FCC's plan for a single rate for all local traffic, compensation for ISP-bound and VoIP traffic will be at $0.0007. Otherwise, compensation for ISP-bound calls made by Qwest customers to Level 3 facilities that are local to the end user making the call as well as compensation for VoIP calls, are subject to WUTC approved rate of $0.00161 per MOU.**

Q WHY DOES QUEST OBJECT TO LEVEL 3'S PROPOSED LANGUAGE IN 7.3.6.1?

A. Qwest's major objections are expressed in my comments on Issues 3A and 3B. The Level 3 language is based on the assumptions as to what traffic is compensable that it set forth in its VNXX definition and its proposed section 7.3.6.3, which would make all traffic, whether VoIP or ISP, compensable in Washington. For the reasons described above, Level 3's language should be soundly rejected. Finally, its proposed language to section 7.3.6.1, Level 3 once again demonstrates its misunderstanding of the mirroring rule. In this language its goal is finally disclosed, which is that Qwest should not only pay terminating compensation on all ISP traffic, but that it should pay it at $.001178 instead of $.0007. Qwest has met its obligation under the mirroring rule and the Commission should reject

Level 3's transparent effort to recover terminating compensation on VNXX ISP traffic, but to recover it at the voice rate.

Q. PLEASE ADDRESS THE ISSUE RELATED TO ADDING VOIP TRAFFIC TO THE ISP COMPENSATION RATE THAT LEVEL 3 HAS INSERTED INTO ITS LANGUAGE.

A. Level 3 is proposing language that includes "VoIP traffic" in the traffic subject to the rate ordered by the FCC for ISP traffic. By proposing this definition, Level 3 is attempting to expand the capped ISP rate to include VoIP traffic, something the FCC did not address. Of course, if Level 3 elects to have all local traffic (including traffic that would be billed at the voice rate) mirror the ISP rate, it has that right and this issue is moot. But by inserting this VoIP reference into its proposed section 7.3.6.1, Level 3 is attempting to make VoIP traffic subject to $.0007 as a matter of law, and that is simply incorrect.

Q. WHY SHOULD THE COMMISSION REJECT LEVEL 3'S LANGUAGE FOR SECTION 7.3.6.1?

A. Level 3's proposed language again misconstrues the ISP mirroring rule and should be rejected for that alone. It also attempts to expand the ISP-bound termination rate to VoIP traffic, something the *ISP Remand Order* did not do. Of course, if Level 3 accepts Qwest's mirroring offer, local voice calls and local VoIP calls will also be compensated at the $.0007 rate, but not because local voice calls or local VoIP calls were ever part of the capped ISP termination rate. And, of course, when read in conjunction with the other

language in Issue 3, Level 3 is attempting to expand the compensation beyond local calls. The effect of Level 3's language would be a dramatic deviation from existing intercarrier compensation in Washington. It would result in the elimination of access charges on all interexchange traffic exchanged by Qwest and Level 3. It violates call rating rules, ignores the existing access charge tariffs of Qwest, and would give Level 3 the free use of Qwest's network, while at the same time requiring Qwest to pay to terminate all ISP traffic. The result is precisely the kind of regulatory arbitrage and market distortions the FCC criticized so heavily in the *ISP Remand Order.* The Commission should reject Level 3's language for section 7.3.6.1 and adopt Qwest's language.

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

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 4.

A. At its core, this is also a dispute over VNXX calls. Qwest recognizes the ESP Exemption and will treat local VoIP terminations as local calls. Qwest agrees to pay reciprocal compensation on local VoIP calls where both end user customers are physically located in the same LCA, but not if they are located in different LCAs. While the disputed language in section 7.3.6 deals with ISP traffic, the language in dispute in Issue 4, section 7.3.4, deals with the exchange of local voice and VoIP traffic. Again, VNXX is the central issue because Level 3 proposes in its language that the compensation for local voice and VoIP calls apply as long as the a POI or Level 3 facilities are present in the LCA, with no requirement that the end users actually be physically located within the same LCA. I have addressed these issues at length earlier in my testimony. For the same reasons, Level 3's

language should be rejected, as it attempts to have the Commission amend the access charge regime, ignore its call rating rules, and impose reciprocal compensation for VNXX calls that are from outside the LCA.

Q. WHAT IS QWEST'S PROPOSED LANGUAGE RELATING TO ISSUE 4?

A. Qwest proposes the following language for Section 7.3.4.1 and 7.3.4.2 relating to compensation for Voice and VoIP traffic:

> 7.3.4.1 Intercarrier compensation for Exchange Service (EAS/Local) and VoIP traffic exchanged between CLEC and Qwest (where the end users are physically located within the same Local Calling Area) will be billed at $.001178 per MOU.
>
> 7.3.4.2 The Parties will not pay reciprocal compensation on traffic, including traffic that a Party may claim is ISP-Bound Traffic, when the traffic does not originate and terminate within the same Qwest local calling area (as approved by the state Commission), regardless of the calling and called NPA-NXXs and, specifically regardless of whether an End User Customer is assigned an NPA-NXX associated with a rate center different from the rate center where the customer is physically located (a/k/a "VNXX Traffic"). The parties shall not exchange VNXX traffic.

Q. WHAT IS LEVEL 3'S PROPOSED LANGUAGE?

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

> **7.3.4. Compensation for ISP-Bound and VoIP Traffic**
>
> **7.3.4.1 So long as Qwest elects the FCC's single rate plan and subject to the terms of this Section, intercarrier compensation for ISP-bound and VoIP Traffic where originating and terminating NPA-NXX codes correspond to rate centers located within Qwest defined local calling areas will be exchanged between Qwest and CLEC will be billed as follows, without limitation 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.**

7.3.4.2 ISP-Bound and any IP-TDM or TDM-IP VoIP Traffic will be compensated at the FCC mandated rate of $.0007 per MOU, on a per LATA basis, so long as such traffic is exchanged between the Parties at a single POI per LATA.

7.3.4.1 Provided Qwest rejects the FCC's single rate for local traffic, Intercarrier compensation for Exchange Service (EAS/Local) and VoIP traffic exchanged between CLEC and Qwest (where Level 3's facilities are physically located within the same Local Calling Area) will be billed at $.00161 per MOU.

Q. IF A VNXX CALL IS PLACED TO AN ISP OR TO A PSTN END USER AS A VOIP TERMINATION, DOES THE CALL CLASSIFICATION CHANGE TO A LOCAL CALL?

A. No, it does not. NXX codes are associated with LCAs and thus with specific geographic areas. The type of business of an end user customer does not determine whether a call is local or not. If a Qwest end user is located in Olympia (but calls an ISP whose modems and routers are physically located in Seattle, and whose number is a Olympia NPA NXX), the call to the ISP telephone number is not a local call because it originates in Olympia and delivered to the ISP in Seattle, which are in different LCAs. It makes no difference if the call is to an ISP, a hardware store, or a restaurant in Seattle because it is a call that originates in Olympia and delivered to an ISP in Seattle. The location of the calling and called parties determines the nature of the call, not the business type. A toll call is a toll call. The existence of an ISP, a VoIP provider, or a circuit based VNXX call, do not change a long distance call into a local call. This language attempting to differentiate long distance calls based on who is called does not belong anywhere in the agreement, including in the definition of VNXX.

If VoIP traffic is being terminated to local calling areas where Level 3 has no facilities and no end user customer the traffic by necessity must be delivered by an IXC who has arrangements to reach the LCA.

In the case of VoIP calls, where a VoIP Provider's point of presence is in one LCA, say Seattle, and the VoIP Provider's CLEC, for example Level 3, wants to deliver a call on behalf of its end user (the VoIP Provider) to an end user in Blain, Level 3's end user should hand that call to an "intraLATA" long distance provider for termination, just like other end users in Washington do.

Q. IS THERE ALSO A DISPUTE ABOUT THE RATE THAT IS PAID?

A. Yes. The Qwest proposed rate in my testimony reflects the rate of $.001178 established by the Commission for voice traffic. The FCC did nothing to take away the state commissions' right to set the voice rate for reciprocal compensation. However, Qwest acknowledges that this is subject to Level 3's election under the mirroring rule. If Level 3 elects to have all qualifying local traffic exchanged at $.0007, that is its right, and the language would be changed accordingly.

Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE OVER THE LEVEL 3 LANGUAGE?

A. I will not repeat the arguments on this issue. I have addressed them in the prior sections of this testimony. Just as I have discussed earlier, Level 3's language for the sections covered by Issue 4 is a continuation of its effort to validate its view of VNXX for voice and VoIP calls. Qwest's language makes clear that VNXX traffic, including voice and VoIP VNXX traffic, is not local and is not subject to reciprocal compensation rules for local traffic. Not only is VNXX traffic not subject to reciprocal compensation, Level 3's proposal would further compound the improper non-payment of access charges by also having Qwest *pay* Level 3 a $.0007 charge per minute of use. The Commission should adopt Qwest's proposed language.

I will also not repeat the arguments I have made previously on the mirroring rule. Here again, in each of its three sections under Issue 4, Level 3 inserts language that merely demonstrates its misunderstanding of the mirroring rule. Level 3's language should be rejected and Qwest's should be adopted.

VIII. DISPUTED ISSUE 16: DEFINITION OF VOIP

Q. BEFORE DEALING WITH THE DEFINITIONAL DISPUTES RELATING TO VOIP, PLEASE PROVIDE A BRIEF GENERIC DESCRIPTION OF VOIP.

A. I will begin by describing the manner in which voice communications have taken place on the public switched telephone network (PSTN) for decades. The PSTN is a circuit based, switched network that employs a protocol called Time-Division Multiplexing ("TDM") to transmit voice messages. When one customer calls another customer under these circumstances, an actual circuit (physical connection) must be established between the two callers and that circuit remains in place for the duration of the call. Thus, when such a call is made, each party's loop is used for the duration of the call, as are the switches, interoffice trunks and other facilities through which the call is routed. Such calls, because of the physical circuit that must be connected from end to end, are often referred to as "circuit-switched."

Both physically and conceptually, VoIP is different. Rather than being based on an actual physical circuit, VoIP is based on digital packets that are created in a digital format known as Internet Protocol or "IP." Thus, a VoIP call must be initiated by an end user in IP through the use of IP compatible equipment,[22] which converts the conversation into

[22] The FCC, in its recent VoIP 911 order, described "IP Compatible" equipment:

multiple digital IP packets of information (each of which represents a small digitized portion of the voice call between the parties). Instead of passing over a single circuit, each packet is capable of independently traveling a different route than other packets. Once the packets are created by the IP-compatible customer premises equipment ("CPE"), they are individually addressed and forwarded onto the Internet by routers. As noted, because no specific circuit must be established, a traditional circuit switch is not necessary to establish a circuit and the packets do not necessarily follow the same path (this is one of the reasons the Internet is often depicted as a cloud rather than a physical connection from one point to another).

Thus, the first distinguishing characteristic of VoIP is that it must be initiated at the end user's premise (which can be anywhere the end user has access to a broadband connection) in IP packets using IP-compatible CPE. The second characteristic is that the VoIP call must be initiated over a broadband connection such as cable modem or DSL that does not pass through the traditional PSTN local switch. Since a telephone switch cannot recognize or pass on IP packets a call originated on traditional phones that travels through a telephone company switch by definition cannot be a VoIP call.

"The term 'IP-compatible CPE' refers to end-user equipment that processes, receives, or transmits IP packets. Users may in some cases attach conventional analog telephones to certain IP-compatible CPE in order to use an interconnected VoIP service. For example, IP-compatible CPE includes, but is not limited to, (1) terminal adapters, which contain an IP digital signal processing unit that performs digital-to-audio and audio-to-digital conversion and have a standard telephone jack connection for connecting to a conventional analog telephone; (2) a native IP telephone; or (3) a personal computer with a microphone and speakers, and software to perform the conversion (softphone)."

First Report and Order and Notice of Proposed Rulemaking*, In the Matters of IP-Enabled Services E911 Requirements for IP-Enabled Service Providers*, FCC 05-116, ¶ 24, n. 77 (June 3, 2005) (citations omitted)..

There are two types of VoIP calls that meet these two defining characteristics of VoIP. One of the types is irrelevant to this case, while the other type of VoIP call is at the very center of the VoIP issues before the Commission in this docket.

The first type of VoIP call takes place between two VoIP customers, both served by a broadband connection and connected directly to the Internet via a DSL or cable modem service. The call is, of course, initiated in IP over a broadband connection. When the called party is also a VoIP customer on a broadband connection, the call is never converted into TDM (the language of the circuit-switched PSTN). Instead, the packets are transported over the Internet from the calling party directly to the called party, then delivered to the called party's home over a high speed connection, where the called party's IP-compatible equipment reassembles the IP packets in the proper order so they become a voice conversation again. The breakdown into IP packets, the transmission of the individual packets, and the reassembly of the IP packets into voice sounds all take place on the Internet or a private IP network. If, as in the foregoing example, a call goes from one IP-compatible piece of equipment to another IP-compatible piece of equipment, over broadband connections through transmission IP packets, the call is completed without ever touching the circuit switched PSTN. This type of call is a VoIP call, but it does not interconnect with the PSTN in any manner. Because such calls originate and terminate in IP format, they are often referred to as "IP-IP" calls. They occur entirely over the Internet, are not exchanged between telecommunications carriers, and therefore there are no

intercarrier compensation or other interconnection issues that result from IP-IP traffic. No ICA is involved. Such calls are therefore completely irrelevant to the issues in this case.

The second type of VoIP is central to the VoIP issues in this docket. This is a call that is initiated through IP-compatible CPE over a broadband connection, but the called party is not a VoIP customer who is connected to the internet via broadband. Instead, the called party is a typical customer served on the PSTN by an ordinary voice loop attached to a circuit switch and whose CPE is not IP-compatible, for example a typical kitchen wall phone. In this situation, the exchange of traffic is completely different than in the first type of call. In order to complete the call, the IP packets created by the equipment of the calling party must at some point be converted into a TDM voice format, transferred to the PSTN on a connection that will route through circuit switches to the end office serving the customer, and finally sent over the loop to the called customer. The function of converting the Internet call to a PSTN call is typically done by the VoIP provider such as Vonage or Skype, or by a company like Level 3, which performs this function on behalf of the VoIP provider. This type of call, which is often referred to as an "IP-TDM" call because it was originated in IP format on broadband and terminated to the PSTN in TDM format, is a VoIP call because it meets the criteria of originating in IP format using IP-compatible CPE over a broadband connection. It is terminated, however, as a voice call using local switching and loops. This type of call creates intercarrier compensation and other issues that are covered in the ICA and must be dealt with in this docket.

There is a third type of call that is originated in TDM format, but the carrier (most likely for network efficiency reasons) decides to transport the call from two points in IP before reconverting it into TDM for delivery. Although this call was in IP format for part of the transmission, it both originates and terminates in TDM. Such calls are often referred to as "TDM-IP-TDM calls" or as "IP in the middle" calls. Both Level 3 and Qwest agree that these calls are not VoIP calls and are subject to access charges.[23]

Q. NOW THAT YOU HAVE GIVEN A GENERAL DESCRIPTION OF VOIP PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 16.

A. Issue 16 focuses on the appropriate definition of VoIP in the context of the second type of call described above, traffic originating from a VoIP customer in IP that is terminated over the PSTN in TDM. It is this type of traffic that raises issues in this docket. The first type (IP-IP), because it never enters the PSTN, is not addressed by the ICA. As previously discussed, the third type of call (TDM-IP-TDM), does not meet the criteria for VoIP, and both patties agree to that point.

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR THE DEFINITION OF VOIP?

A. Qwest's proposal for the definition of VoIP is as follows:

> "VoIP" (Voice over Internet Protocol) traffic is traffic that originates in Internet Protocol at the premises of the party making the call using IP-Telephone handsets,

[23] *See* Level 3's proposed language in the definition of "VoIP": "PSTN-IP-PSTN as defined herein shall not constitute VoIP traffic."

end user premises Internet Protocol (IP) adapters, CPE-based Internet Protocol Telephone (IPT) Management "plug and play" hardware, IPT application management and monitoring hardware or such similar equipment and is transmitted over a broadband connection to the VoIP provider."[24]

Q. WHAT IS LEVEL 3'S PROPOSED LANGUAGE FOR THE DEFINITION OF VOIP?

A. In this case, Level 3 has now unveiled a definition of VoIP with dramatically altered language. To this point, Level 3 has not explained these changes, so my analysis is based on my understanding of the language.

All of Level 3's proposed additions to Qwest's definition are in bold face underlined type and the language Level 3 proposes to be deleted is shown as a strikethrough language. Level 3's proposal for the definition of VoIP is as follows:

> **"**VoIP" (Voice over Internet Protocol) traffic is traffic that originates **or terminates** in Internet Protocol ~~**at the premises of the party making the call using IP-Telephone handsets, end user premises Internet Protocol (IP) adapters, CPE-based Internet Protocol Telephone (IPT) Management "plug and play" hardware, IPT application management and monitoring hardware or such similar equipment and is transmitted over a broadband connection to the VoIP provider**~~**. A VoIP call can originate over a device capable of converting audible voice communication into IP packets and routing them over the Internet to facilities that convert the call to Time Division Multiplexing format used by circuit switched networks. From there the call is terminated to the circuit**

[24] The following two additional sentences that were originally contained in the Qwest proposed VoIP definition were moved from the VoIP definition and inserted into Section 7.2.2.12 of the ICA: "VoIP is treated as an Information Service, and is subject to interconnection and compensation rules and treatment accordingly under this Agreement based on treating the VoIP Provider Point of Presence ("POP") is an end user premise for purposes of determining the end point for a specific call. Thus, CLEC is permitted to utilize LIS trunks to terminate VoIP traffic under this Agreement only pursuant to the same rules that apply to traffic from all other end users, including the requirement that the VoIP Provider POP must be in the same Local Calling Area as the called party."

switched network end user. Alternatively, a circuit switched end user can make a telephone call to a VoIP customer. If the circuit switched network end user (here a Qwest customer) dials a local telephone number, Level 3 will pick up that call in the local calling area or LATA where the call originates and terminate it to the VoIP customer. Because VoIP equipment works wherever the VoIP customer can connects to sufficient Internet bandwidth, the call could terminate anywhere on the planet where such a connection is possible. But if the landline customer dials a 1+ number, the call will be routed to a long distance carrier who will hand that call to Level 3, at which point Level 3 will terminate the call to the VoIP customer wherever they may find a connection to the Internet. This means that all locally-dialed VoIP calls and all VoIP calls terminated within the LATA to the appropriate Qwest Tandems are treated as subject to the FCC's local reciprocal compensation rate of $0.0007 or, if Qwest opts out of the FCC's mirroring regime for information services traffic, the state ordered reciprocal compensation rate of $0.00161 ~~at the premises of the party making the call using IP-Telephone handsets, end user premises Internet Protocol (IP) adaptors, CPE-based Internet Protocol Telephone (IPT) Management "plug and play" hardware, IPT application management and monitoring hardware or such similar equipment and is transmitted over a broadband connection to the VoIP provider~~.

Q. WITH THAT BACKGROUND, PLEASE DESCRIBE THE ISSUES THAT ARE RAISED BY THE COMPETING VOIP DEFINITIONS.

A. The ultimate VoIP issues relate to intercarrier compensation and the ESP exemption. This is addressed in the body of the agreement at 7.2.2.12 and 7.2.2.12.1 which I will address later but the definition of VoIP directly impact those terms in the agreement. It is, therefore, important to address the definition before dealing with compensation issues.

Qwest's definition is simple and straightforward. It simply describes VoIP: namely calls that originates in IP and travel over broadband to the Internet rather than going through a PSTN switch. If the traffic is being sent to a PSTN customers, the VoIP provider then

takes responsibility for the IP-TDM conversion needed to allow the parties to the call to communicate. Level 3, on the other hand, goes far beyond defining a VoIP call. Level 3 includes calls that originate in TDM, but terminate in IP packets to a VoIP end user; such calls that originate on the circuit switched network cannot be originated in IP because the PSTN switch cannot switch them. Level 3 also includes 1+ long distance calls to VoIP providers; these are traditional long distance telephone calls and not VoIP calls. Finally, in the guise of a definition. Level 3 attempts to insert contractual terms and conditions such as determining the compensation rate and adding language related to the mirroring rule. Thus, Level 3's purported VoIP definitions actually reads like a paragraph from a brief.

Q. WHY DOES THE QWEST DEFINITION REQUIRE THAT A VOIP CALL ONLY ORIGINATE IN IP OVER A BROADBAND FACILITY USING IP EQUIPMENT IN ORDER TO BE ENTITLED TO TERMINATION THROUGH A LOCAL NETWORK CONNECTION?

A. The first reason is simply that this definition is consistent with the way the FCC has thus far defined VoIP. More directly, however, a call that *terminates* in IP cannot, by definition, pass through the Qwest switch. The switch would not recognize IP protocol nor would it process the call. Thus the ICA which deals with the connection of the Level 3 switch to the Qwest switch would not and could not exchange such calls. If a call is terminating in IP it must pass over a broadband connection directly from the Internet to the end user and is not involved in this ICA. True it may share the same loop to get to the called parties premises

but the broadband portion is split off (line splitting) and connects directly to the Internet. It is not delivered to the Qwest switch through any interconnection trunks, nor does it trigger any interconnection related issues.

Q. WHAT IS THE EFFECT OF LEVEL 3'S DELETIONS FROM QWEST'S PROPOSED LANGUAGE OF THE TERMS "AT THE PREMISES OF THE PARTY MAKING THE CALL" AND "END USER PREMISES"?

A. Level 3 attempts to remove the requirement that the call originate at the premises of the party making the call, and to strike the words "end user premises" when referring to "end user premises IP adapters." as well as striking the requirement that the call be transmitted "over a broadband connection." Origination *at the end user premises* in IP is a critical requirement that must remain in the agreement. The rationale for Level 3's effort to delete this requirement from the definition is far from clear (it certainly did not make it clear in its Petition nor has it ever explained its new language), but it is an essential piece of the definition of VoIP. A call that does not originate over broadband in IP but rather originates in TDM over the PSTN and passes through a telecommunications company switch is not a VoIP call, it is simply a traditional telephone call. The FCC made this perfectly clear in 2004 in its Phone-to-Phone IP exemption decision (the "*AT&T Declaratory Order*"), where the FCC determined that a service that begins on the PSTN and ends on the PSTN, even though it may use the Internet for a portion of the transport of that service, offers no net protocol conversion, and is therefore a telecommunications service (as opposed to an information service):

> "The service at issue in AT&T's petition consists of an interexchange call that is initiated in the same manner as traditional interexchange calls—by and end user who dials 1+ the called number from a regular telephone. When the call reaches AT&T's network, AT&T converts it from its existing format into an IP format and transports it over AT&T's Internet backbone. AT&T then converts the call back from the IP format and delivers it to the called party local exchange carrier (LEC) local business lines. We clarify that, under the current rules, the service that AT&T describes is a telecommunications service upon which interstate access charges may be assessed. We emphasize that our decision is limited to the type of service described by AT&T in this proceeding, i.e. an interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates over the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the providers use of IP technology."[25]

The origination of a call in IP packets must occur at the caller's premises and not after the call passes through the telephone switch. Because the call delivered to Qwest for termination is always in TDM protocol, it *must* originate in IP at the originating end user premises in order to be a VoIP call. Originating in IP can only occur at the place where the call is originated over a broadband connection. If a call is converted to IP after it passes through the Qwest switch, it originates in TDM. If a call both originates and terminates in the PSTN protocol it is not an enhanced or information service under the FCC's rules. It is not a VoIP call as that term is used in this agreement. Qwest's definitional language makes it clear that VoIP:

> "originates in Internet Protocol **at the premises of the party making the call** using IP-Telephone handsets, **end user premises** Internet Protocol (IP) adapters, CPE-based Internet Protocol Telephone (IPT) Management "plug and play" hardware, IPT application management and monitoring hardware or such similar equipment and is transmitted over a broadband connection to the VoIP provider."

[25] *AT&T Declaratory Order,* ¶ 1.

Qwest's language requiring that the call originate at the end user's premises in broadband is also an absolute necessity if the call is to be treated as an enhanced or information service and thus entitled to the ESP exemption. Any attempt by Level 3 to remove this requirement from the agreement will, in effect, modify the ESP exemption and authorize it to do what the FCC said AT&T could not do: take simple calls that originate on the PSTN, deliver them to Qwest, terminate the call on the PSTN, and claim the call is an information service (*i.e.,* a VoIP call). Thus Level 3's first two strikethrough proposals must be rejected. The call must originate over broadband in IP in order to be an enhanced or information services VoIP call. To illustrate the points I have made above, please refer to Exhibit LBB-4.

Q. WHY IS THE QWEST DEFINITION OF VOIP RELEVANT TO THE ESP EXEMPTION? PLEASE EXPLAIN.

A. In terms of how a VoIP call is terminated, Qwest has proposed language in Section 7.2.2.12 of the ICA: "VoIP is treated as an Information Service, and is subject to interconnection and compensation rules and treatment accordingly under this Agreement based on treating the VoIP Provider Point of Presence ("POP") is an end user premise for purposes of determining the end point for a specific call." The requirement that uses the VoIP provider's premises as the relevant point to rate the call is a restatement of the FCC ruling that the ESP will be treated as an end user and is supported by the call rating rules discussed earlier in my testimony that whether a call is local is determined by the location of the end users. In the FCC's words, the ESP is treated as an end-user customer, and "thus

may use *local* business lines for access for which they pay *local* business rates and subscriber line charges."[26] That rule did not change with the passage of the 1996 Act, and Qwest is not proposing a change in this case.

The ESP exemption is not directly in dispute in this arbitration. What is in dispute is the requirement that the call originate at the end user's premises on broadband in order to be an Enhanced Service (the VoIP definition dispute) and that the premises of the ESP be used as one end point of the call (the VNXX dispute). The real issue is not whether VoIP traffic will be exchanged and terminated, but whether a VoIP provider customer of Level 3 can obtain LATA-wide call termination for VoIP calls without the obligation to pay access charges or whether it must abide by the local/interexchange distinctions that other Washington end user customers abide by.

Q. DO YOU AGREE WITH LEVEL 3'S PROPOSAL TO ADD LANGUAGE REGARDING TRAFFIC DIRECTION TO THE VOIP DEFINITION?

A. No. Level 3 proposes some perplexing language to the VoIP definition regarding traffic direction. Level 3 has proposed language that states that VoIP may be "transmitted over a broadband connection to **or from** the VoIP provider." What these additional terms mean is not clear. For example, calls delivered to Qwest from a VoIP provider for termination will go through a Qwest switch and over a loop connected to that switch for termination on the

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

PSTN to a traditional telephone. However, a call **from** the VoIP provider to an end user that transits directly to a VoIP end user customer over broadband will not go through a public network switch and thus, the PSTN is not used to complete the call.[27] As such, Qwest would not be involved in switching the call on the PSTN and Level 3's proposed language is inappropriate. I am unaware of any other situation or scenario in which a call would come *from* the VoIP provider in broadband to an end user that would involve the Qwest switch, interconnection or the PSTN. Qwest's language is critical to the definition and accurately limits the VoIP calls used in ICA to only qualified situations. It should be adopted.

Q. YOU STATED THAT THE IMPACT OF THE VOIP DEFINITION IS REFLECTED IN THE BODY OF THE AGREEMENT. WHAT SECTIONS DEAL WITH HOW VOIP TRAFFIC SHOULD BE HANDLED AND IS THAT LANGUAGE IN DISPUTE?

A. Section 7.2 of the ICA addresses exchange of traffic. A subset of that section, section 7.2.2, discusses the terms and conditions for the exchange of traffic. The terms and conditions describing the exchange of VoIP traffic are located in section 7.2.2.12. Qwest proposed the language dealing with the compensation of VoIP be inserted under sections 7.2.2.12 and 7.2.2.12.1.[28]

[27] The call may use Qwest facilities, but not for termination; for example, if the end user leases a direct broadband connection to the VoIP provider.

[28] In Qwest's initial contract filing, section 7.2.2.12 was included as part of Qwest's "VoIP" definition. Because it went beyond definitional language and contained substantive terms, Qwest then proposed to move it into the body

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR SECTION 7.2.2.12?

A. Qwest's proposal for Section 7.2.2.12 is as follows:

> 7.2.2.12 VoIP traffic as defined in this agreement shall be treated as an Information Service, and is subject to interconnection and compensation rules and treatment accordingly under this Agreement based on treating the VoIP Provider Point of Presence ("POP") is an end user premise for purposes of determining the end point for a specific call.
>
> > 7.2.2.12.1 CLEC is permitted to utilize LIS trunks to terminate VoIP traffic under this Agreement only pursuant to the same rules that apply to traffic from all other end users, including the requirement that the VoIP Provider POP must be in the same Local Calling Area as the called party.

Q. DOES LEVEL 3 PROPOSE LANGUAGE FOR SECTION 7.2.2.12?

A. No. Level 3 does not propose language for this section. Qwest's language was originally included in the definition of VoIP in the 2003 agreement, but was later moved to the body of the agreement. I am assuming, therefore, that Level 3 opposes Qwest's proposed section 7.2.2.12 and 7.2.2.12.1 in the 2005 agreement as well.

Q. LEVEL 3 OBJECTS TO THE REQUIREMENT THAT THE VOIP PROVIDER POINT OF PRESENCE (POP) BE CONSIDERED AN END USER FOR PURPOSES OF DETERMINING THE END POINTS OF A CALL. PLEASE COMMENT?

A. The language requiring that the VoIP provider POP be treated as an end user customer is critically important due to the ESP Exemption, and must be included in the agreement.

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of the agreement (into section 7.2.2.12). Level 3 proposes changes to that language which must be resolved in this matter, but agrees that it is more appropriately dealt with in the body of the agreement instead of in a definition.

Since both Level 3 and Qwest agree that the traffic that is handed off to the public network from the VoIP provider POP arrived over the Internet and is unlike traditional IXC traffic, the only real question is whether or not the VoIP provider must purchase FGD to terminate its calls. In answer to that question, the FCC has said no but only in limited circumstances (*i.e.,* to terminate traffic within the LCA where the VoIP provides purchases local exchange service as an end user). *If* the VoIP provider is acting as an ESP, it is entitled to purchase its connection as a local exchange service and obtain local service *within the LCA where it is physically located*. In this respect, the ESP is treated as any other end user. A simple example would be if Vonage, a VoIP provider, purchases local service in Seattle to terminate VoIP traffic. It does not matter whether they buy their local service from Qwest or Level 3; as an ESP, under the ESP Exemption, it can purchase local business service in Seattle and terminate VoIP calls in the Seattle local calling area as if it was an end user, (*i.e*., no access charges apply to terminate the traffic in the Seattle LCA). But a Seattle end user customer is not entitled to terminate calls throughout the rest of the LATA by virtue of purchasing local service. By purchasing local service, the ESP's exemption to terminate traffic without incurring access charges is limited to the Seattle local calling area.

Q. BASED UPON THESE FACTS WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE 16, DEFINITION OF VOIP AND WITH PARAGRAPHS 7.2.2.12 AND 7.2.2.12.1?

A. For all the reasons stated above, the Commission should adopt Qwest's proposed definition of VoIP that includes the requirement that the call must originate at the premises of the

party making the call, through the use of IP-compatible CPE, over a broadband circuit in IP to avoid the scenario of calls the both originate and terminate as PSTN calls. Further, consistent with the proper criteria for VoIP and with the FCC's ESP Exemption, PSTN to PSTN calls are not VoIP and are not entitled to the ESP exemption under FCC decisions. Qwest's proposed language for sections 7.2.2.12 and 7.2.2.12.1 make clear that VoIP traffic ***as defined in this agreement*** will be treated as an information service, will be entitled to the ESP Exemption, and the VoIP provider's POP will be treated as an end user premise for purpose of determining the end points of a call. Level 3's language goes beyond the FCC 's definition of enhanced services and thus attempts to broaden the FCC's exemption. Under Qwest's definition, the VoIP provider's POP will be treated as an end user premise for purposes of determining the end points of a call. This will ensure that the intrastate access regime as currently adopted and approved by this Commission is not changed at this time. Exhibit LBB-5 illustrates proper and improper routing of VoIP calls. The Commission, therefore, should adopt Qwest's proposed language.

Q. YOU INDICATED EARLIER THAT YOU WOULD ADDRESS THE VNXX ISSUE AS IT RELATES TO VOIP IN THE VOIP SECTION OF YOUR TESTIMONY. PLEASE ADDRESS THAT ISSUE.

A. All of the confusion in Level 3's definition of VNXX that I discussed at length in my discussion of Issue 3B applies equally to VoIP traffic; thus my criticisms of the baffling introductory clause to Level 3's definition, its obvious misunderstanding of the mirroring rule, and the internal contradiction between the first sentence (which uses the LCA as the

relevant point of reference) and the second sentence (which uses the LATA) all apply equally in the context of VoIP traffic.

Q. DO YOU HAVE ANY OTHER SPECIFIC COMMENTS ON THE LANGUAGE PROPOSED BY LEVEL 3 UNDER ISSUES 3A, 3B, 3C, AND 4 AS IT RELATES TO VOIP TRAFFIC?

A. Yes. While the Level 3 VNXX definition is confusing, it is flawed in that, as it does with VNXX, it makes the existence of Level 3 facilities the test for whether a VoIP call is VNXX in nature. For all the reasons that this is wrong for ISP calls, it is wrong for VoIP calls. But there is another reason it is wrong, and that is because, with VoIP, in order for the ESP Exemption to apply, the location of the VoIP Provider POP must be the relevant location for call rating purposes. That is because and ESP can avoid paying access charges under the ESP Exemption only in the LCA where it purchases local exchange service (*i.e.* where it maintains a Point of Presence). Much as Level 3 wants to avoid that issue, that is the way the ESP Exemption works. The ESP Exemption is not, as Level 3 argued unsuccessfully in both Iowa and Arizona, a license for it to obtain the ability to terminate traffic on the PSTN LATA-wide without paying access charges, which appears to be the purpose of its confusing VoIP language in sections 7.3.6.3 (Issue 3A), section 7.3.6.1(Issue 3C), and sections 7.3.4.1 and 7.3.4.2 (Issue 4). In any event, Level 3 should be required to explain all of its new language in these sections.

Q. IF A VNXX CALL IS PLACED TO A PSTN END USER AS A VOIP TERMINATION, DOES THE CALL CLASSIFICATION CHANGE TO A LOCAL CALL?

A. No, it does not. Level 3's rationale for that claim is that the ESP Exemption requires it. But, as I have explained, that is not how the ESP Exemption works, and Level 3 has never been able to cite any authority for the proposition that the ESP Exemption gives an ESP LATA-wide termination without the necessity of paying access charges. The existence of a VoIP provider does not change a long distance call into a local call. While Level 3's language is confusing, it appears that that it is still its intent to avoid access charges on all VoIP traffic, no matter what Qwest must do to terminate it on the PSTN. If it is, totally aside from the other frailties of Level 3's language on Issues 3A, 3B, 3C, 4, and 16, the language should be rejected for that reason alone. This language does not belong anywhere in the agreement, including in the definition of VNXX.

Q. PLEASE ADDRESS THE MIRRORING RULE LANGUAGE THAT LEVEL 3 HAS INSERTED INTO ITS VOIP DEFINITION.

A. I have already addressed this issue in my discussion of Issue 3B. Level 3's language related to the mirroring rule in its VoIP definition makes no more sense there than it does in the other provisions. Thus, for the reasons outlined above, that language is wrong, and has no place in the definition of VoIP traffic.

IX. DISPUTED ISSUE 1A: SECTION 7.1.1.1, OPERATION AUDITS OF VOIP

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 1A?

A. This dispute highlights the reason that I am addressing the issues in a different order than that presented by Level 3. In its Petition and Matrix, Level 3 lists issue 1A as the first of its Tier 1 issues. This single issue number, 1A, has three Qwest proposed paragraphs, and six Level 3 proposed paragraphs, even though in some instances they have the same number; for example Qwest's section 7.1.1.1 and Level 3's section 7.1.1.1 are totally unrelated and deal with totally different issues. My testimony in this section will deal with two of the Qwest proposed paragraphs, section 7.1.1.1 (Verification audits), and section 7.1.1.2 (VoIP certification). Although this is listed as the first issue on Level 3's Matrix, an understanding of the parties disagreement over what VoIP is, which I discussed above in Issue 16, necessary to understand the dispute about the language of section 7.1.1.1. The third Qwest proposed paragraph in issue 1A is section 7.1.1, which deals with points of interconnection. Mr. Easton and Mr. Linse will address that in their testimony along with the six Level 3 proposed paragraphs in issue 1A. Mr. Easton's testimony will address the SPOI issue. In addressing the dispute with Level 3 over the SPOI, he will address the second proposed paragraph numbered 7.1.1.1 (Level 3's SPOI language).

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR SECTION 7.1.1.1?

A. Qwest's proposed language for Section 7.1.1.1 is as follows:

> 7.1.1.1 CLEC agrees to allow Qwest to conduct operational verification audits of those network elements controlled by CLEC and to work cooperatively with Qwest to conduct an operational verification audit of any other provider that CLEC used to originate, route and transport VoIP traffic that is delivered to Qwest, as well as to

make available any supporting documentation and records in order to ensure CLEC's compliance with the obligations set forth in the VoIP definition and elsewhere in this Agreement. Qwest shall have the right to redefine this traffic as Switched Access in the event of an "operational verification audit failure". An "operational verification audit failure" is defined as: (a) Qwest's inability to conduct a post-provisioning operational verification audit due to insufficient cooperation by CLEC or CLEC's other providers, or (b) operational verification audit that the CLEC or CLEC's end users are not originating in a manner consistent with the obligations set forth in the VoIP definition and elsewhere in this Agreement.

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.1.1.1?

A. This is somewhat confusing. Apparently because Level 3 does not believe there should be any provision in the contract for audits to assure the traffic is VoIP, Level 3 offers no changes to Qwest's proposed language and simply wants it stricken. Since Level 3 presumably believes the Qwest language will be stricken, Level 3 went ahead and used the same paragraph number, 7.1.1.1, to introduce an unrelated issue dealing with single point of interconnection (SPOI). My testimony will address the *Qwest* proposed 7.1.1.1 dealing with verification audits of VoIP traffic and which will require Commission resolution and a decision on the situations in which Qwest's proposed language in 7.1.1.1 is acceptable.

Q. WHAT IS THE DISPUTE WITH REGARD TO QWEST'S PROPOSED PARAGRAPH 7.1.1.1?

A. Level 3 seeks to strike Qwest language that is necessary so that Qwest can verify that the traffic that Level 3 identifies as VoIP traffic is valid VoIP traffic entitled to the ESP exemption. Determining whether the traffic is proper VoIP traffic has implications for a determination of whether it qualifies as an enhanced service and whether it is local or interexchange for the application of the appropriate intercarrier compensation regime.

Thus, the proper classification of traffic impacts the compensation obligations of both Qwest and Level 3. Only traffic that qualifies as an Enhanced Service is entitled to the FCC's ESP exemption. Only VoIP traffic that originates on broadband in IP can be terminated on the PSTN in TDM protocol under the ESP Exemption. Thus, verification is critical.

First, the Qwest proposed language gives Qwest the right to do a verification audit to assure that the VoIP traffic being delivered to Qwest for termination complies with the definition and obligations of VoIP in this agreement. As discussed above, the definition of VoIP is strongly disputed. Second, the contract makes clear that when traffic does not qualify for the ESP Exemption, an exemption that alleviates the requirement to purchase switched access connections to the local network, that Qwest has the right to redefine the non-qualifying traffic as Switched Access. If the traffic does not qualify for the ESP exemption, then the only other connection to the PSTN available is a Feature Group connection such as FGD.

Q. WHAT IS THE FUNDAMENTAL DISPUTE RELATED TO THIS LANGUAGE?

A. Qwest and Level 3 are not in agreement regarding intercarrier compensation for VoIP traffic that does not originate and terminate at physical locations within the same LCAs. The VoIP compensation issue will be discussed in more detail in Issues 3B and 16 of my testimony. Level 3 apparently does not agree that Qwest has the right to recognize VoIP

traffic as Switched Access in the event of an "operational verification audit failure," because Level 3 takes the position that Switched Access rates should never apply to VoIP traffic, no matter where it originates or terminates.

Q. DOES QWEST BELIEVE THAT OPERATIONAL AUDITS ARE NECESSARY?

A. Absolutely. Qwest believes that audits are necessary to verify the jurisdiction of a call by ensuring that a VoIP call is properly classified for billing purposes according to the location of the originating and terminating points of the PSTN portions of the call. Qwest also believes that audits are necessary to ensure that calls that are classified as VoIP are properly identified as VoIP calls in compliance with the FCC's definition of VoIP, which is the basis of Qwest's proposed definition of VoIP. Again, as discussed above, Level 3's definition of VoIP does not conform to the definition provided by the FCC.

Q. DOES LEVEL 3 OFFER ANY OTHER SOLUTION THAT WOULD ENABLE QWEST TO IDENTIFY VOIP TRAFFIC?

A. No. While Level 3 does not address audits for VoIP traffic, it does state in its Petition that approval of Level 3's proposed definition of "call record" would allow the Parties to identify and account for the exchange of such traffic in a relatively easy process. I can only assume that Level 3 believes such call records are sufficient verification. As Mr. Linse addresses in his testimony, there is no technical way today to distinguish VoIP traffic from other traffic, and reliance on an optional parameter input by Level 3 is not a solution. Qwest has also found with CLECs in the past, through sampling, that even though some

call records indicate a local call, the call in fact has been a toll call, and the records did not indicate that access charges were applicable.

Q. HAVE THE PARTIES AGREED TO AUDIT PROVISIONS ELSEWHERE IN THIS CONTRACT?

A. Yes. As a matter of fact, an entire section, Section 18, of the agreement is devoted to the procedures for auditing "books, records, and other documents used in providing services under this Agreement."[29] In addition to the provisions of Section 18, the parties have agreed to audit provisions for safety audits,[30] service eligibility audits for high capacity combination or commingled facilities,[31] Qwest's loop information,[32] and a comprehensive audit of Qwest's use of CLEC's Directory Assistance Listings.[33]

Q. HAS LEVEL 3 PROPOSED OTHER AUDIT PROVISIONS?

A. Yes. In Level 3's proposed Section 7.3.9, which is covered under Disputed Issue 18, Level 3 includes proposed section 7.3.9.5.1 for auditing of company factors. As a matter of principle, and as evidenced by the provisions the parties have agreed to, Qwest does not oppose the inclusion of audit provisions, and the audit provision included in disputed Issue

[29] See Section 18.1.1 of the agreed to language in the proposed contract.

[30] See Section 8.2.3.10 of the agreed to language in the proposed contract.

[31] See Section 9.1.1.10.5 et seq. of the agreed to language in the proposed contract.

[32] See Section 9.2.2.8 of the agreed to language in the proposed contract.

[33] See Section 10.5.2.10.1 of the agreed to language in the proposed contract.

18 is not the reason that Qwest opposes Level 3's proposed language, as Mr. Easton will explain. It is apparent from Level 3's proposal and from the agreed upon language elsewhere in this contract Level 3 does not oppose audits in general. But for reasons yet to be explained, Level 3 opposes the audit provision proposed by Qwest in section 7.1.1.1 dealing with the origination and routing of VoIP calls.

Q. SHOULD THE COMMISSION ADOPT QWEST'S LANGUAGE FOR SECTION 7.1.1.1?

A. Yes. To ensure fair and accurate billing for VoIP traffic, the Commission should approve Qwest's proposed language for section 7.1.1.1.

X. DISPUTED ISSUE 1A: SECTION 7.1.1.2, CERTIFICATION OF VOIP TRAFFIC

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR SECTION 7.1.1.2?

A. Qwest proposes the following language:

> 7.1.1.2 Prior to using Local Interconnection Service trunks to terminate VoIP traffic, CLEC certifies that the (a) types of equipment VoIP end users will use are consistent with the origination of VoIP as defined in this Agreement; and (b) types of configurations that VoIP end users will use to originate calls using IP technology are consistent with the VoIP configuration as defined in this Agreement.

Q. WHAT IS LEVEL 3'S PROPOSED LANGUAGE FOR SECTION 7.1.1.2?

A. Level 3 apparently proposes to strike this language.

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO 7.1.1.2 VOIP CERTIFICATION.

A. The disagreement identified in section 7.1.1.2 is similar to section 7.1.1.1. Level 3's Petition is silent on Level 3's opposition to proposed section 7.1.1.2. Qwest's proposed 7.1.1.2 addresses VoIP certification consistent with the VoIP configurations as defined in the agreement. Instead of addressing Qwest's proposed language, Level 3 remains silent on the VoIP certification process and proposes an entirely new section 7.1.1.2 relating to SPOI.

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.1.1.2?

A. As was the case with section 7.1.1.1, this gets a bit confusing. Apparently Level 3 opposes any provision in the contract for certification of VoIP traffic. Therefore, Level 3 offers no changes to Qwest's proposed language and instead seeks to eliminate it completely. Since again Level 3 presumably assumes the Qwest language will be stricken, Level 3 has used the 'available' number 7.1.1.2 to introduce additional language dealing with single point of interconnection (SPOI). My testimony will address the Qwest proposed 7.1.1.2 dealing with certification of VoIP traffic and which will require Commission resolution one way or the other. Mr. Easton will address the SPOI issue in his testimony.

Q. DOES QWEST BELIEVE THAT CERTIFICATION IS NECESSARY?

A. Yes. As discussed above, Qwest and Level 3 have a fundamental disagreement regarding what qualifies as a VoIP call. Level 3 should be willing (and the Commission should

require Level 3) to certify that VoIP traffic that it sends to Qwest meets the definition established by the FCC and this Commission.

Q. HAVE THE PARTIES AGREED TO CERTIFICATION LANGUAGE ELSEWHERE IN THIS CONTRACT?

A. Yes. There are many certification provisions included in the agreed upon language in this contract. For example, numerous provisions are included in section 12 requiring Level 3 to certify that its OSS can properly communicate with and submit orders to Qwest's OSS. In addition, Level 3 must certify that it is entitled to certain high capacity loops or transport UNEs per the Triennial Review Remand Order;[34] Level 3 must certify that it meets service eligibility criteria for high capacity EELs;[35] both parties must certify their service management systems;[36] and Qwest must certify Right of Way ("ROW") agreements to Level 3.[37] Clearly, both parties have agreed to certification obligations elsewhere in this agreement.

Q. SHOULD THE COMMISSION ADOPT QWEST'S PROPOSED LANGUAGE FOR SECTION 7.1.1.2?

A. Yes. The Commission should adopt Qwest's proposed language for section 7.1.1.2.

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[34] See Section 9.1.1.4 of the agreed to language in the proposed contract.

[35] See Section 9.1.1.10 et. seq. of the agreed to language in the proposed contract.

[36] See Section 10.2.3 et. seq. of the agreed to language in the proposed contract.

[37] See Section 10.8.2.26 et. seq. of the agreed to language in the proposed contract.

XI. DISPUTED ISSUE 10: DEFINITION OF INTERCONNECTION

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR ISSUE 10?

A. Qwest's proposed language for the definition of interconnection:

> "Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, IntraLATA Toll carried solely by local exchange carriers, ISP-Bound traffic and Jointly Provided Switched Access traffic.

Q. WHAT IS LEVEL 3'S PROPOSED LANGUAGE?

A. Level 3 proposes the following language:

> "Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, IntraLATA Toll carried ***solely*** by local exchange carriers, ISP-Bound traffic, **VoIP traffic,** and Jointly Provided Switched Access traffic.

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 10.

A. Level 3 mischaracterizes this issue as Qwest's attempt to exclude traffic from being exchanged. That is not the issue at all. In fact, this is simply another version of Level 3's inappropriate effort to reclassify all traffic (including all VoIP interexchange traffic) to its benefit. VoIP traffic can in fact be local (Telephone Exchange Service) or it can be IntraLATA Toll, or, when carried by and IXC, ride Jointly Provided Switched Access. But by creating VoIP traffic as separate category Level 3 wants to carve out VoIP for unique treatment. VoIP calls that are handed off for termination are either local or toll and are not a distinct category entitled to different treatment. The Commission should reject Level 3's definition of "interconnection" and its attempt to obtain an interconnection definition that

would include toll, access, and information services create a new category of PSTN traffic in Washington.

XII. DISPUTED ISSUE 15: DEFINITION OF "TELEPHONE TOLL SERVICE"

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 15.

A. This issue relates to Level 3's inclusion of a definition for "telephone toll service" It is Qwest's position that it is not necessary to include a separate definition for "telephone toll service."

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR THE DEFINITION OF TELEPHONE TOLL SERVICE?

A. Level 3's proposal is as follows:

> Telephone toll service - the term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

Q. WHAT IS THE EXISTING DEFINITION FOR SWITCHED ACCESS SERVICE THAT INCLUDES TELEPHONE TOLL SERVICE?

A. The definition that has been agreed upon by both parties for "Switched Access Service" states that Switched Access is the service that an IXC orders for originating and terminating 'telephone toll service.' Switched Access enables access customers (IXCs) to complete end user customer requests for intrastate or interstate long-distance calls. The

terms and conditions for access services are in compliance with the rules and regulations for telephone toll service. The definition reads as follows:

> **"Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of *telephone toll service*. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, 8XX access, and 900 access and their successors or similar Switched Access Services.**

Q. DOES QWEST HAVE A PROBLEM WITH THE DEFINITION OF TOLL SERVICE ITSELF?

A. No. The definition is from the FCC and is not controversial. What is controversial is Level 3's attempt to avoid access charges on VNXX service. Although this argument has been rejected elsewhere, Level 3 has attempted to use the "telephone toll service" language to argue erroneously that if Level 3 does not impose a per minute on VNXX calls they cannot be subject to access charges. Thus, the real issue regarding this definition is Level 3's attempt to exempt "telephone toll service" from access charges and instead treat this traffic as local, and therefore subject to reciprocal compensation.

Q. DOES QWEST HAVE A PROBLEM WITH THE DEFINITION ITSELF?

A. No. As long as the Commission remains mindful of Level 3's improper use of the term in other paragraphs involved in this arbitration.

XIII. ISSUE 19: SECTION 7.3.6.2 (3:1 RATIO)

Q. PLEASE DESCRIBE THE DISPUTE ON ISSUE 19.

A. This issue relates to the application of the 3:1 ratio for determining ISP-bound traffic. In other states, Qwest and Level 3 have been able to resolve this issue by agreeing to the language proposed by Qwest in this case, which states:

> 7.3.6.2 Identification of ISP-Bound Traffic –Qwest will presume traffic delivered to CLEC that exceeds a 3:1 ratio of terminating (Qwest to CLEC) to originating (CLEC to Qwest) traffic is ISP-Bound traffic. Either Party may rebut this presumption by demonstrating the factual ratio to the state Commission.

The problem in Washington is that Level 3, while agreeing to that language, proposes to add the following sentence to the foregoing language in section 7.3.6.2:

> **Traffic exchanged that is not ISP-Bound traffic will be considered to be local traffic unless the Commission determines that Qwest has affirmatively opted out of the FCC's mirroring rule.**

Q. DOES QWEST OPPOSE THIS LANGUAGE?

A. Yes. As I have discussed in several other issues, Level 3 has attempted to insert language related to the mirroring in several disputed provisions, most of which have nothing to do with the rule. As I explained in my discussion of this issue in Issue 3B, Level 3 does not understand the mirroring rule, and Qwest is in full compliance with it, having made the offer required by the FCC to exchange appropriate traffic at the ISP rate of $.0007. This language is yet another example of Level 3's misunderstanding of the rule. The language has no place in this provision. If it is removed, I believe the parties will be able to close this issue out.

XIV. NEW ISSUES: NEW DEFINITION OF "TRAFFIC"

AND "PSTN-IP-PSTN TRAFFIC"

Q. PLEASE DESCRIBE THE NEW ISSUES LEVEL 3 INTRODUCED WITH THE MOST RECENT JOINT ISSUES MATRIX?

A. Level 3 introduced two new definitions in its most recent Joint Issues Matrix that have not been included in any negotiations, nor did Level 3 identify these issues prior to filing this most recent issues matrix.

Q. WHAT IS LEVEL 3'S PROPOSAL FOR A NEW DEFINITION FOR "TRAFFIC"?

A. Level 3's new definition for traffic is as follows:

> **"Traffic" is not a term defined in the 1996 Act nor in FCC rules. For purposes of this Agreement "Traffic" includes "Telecommunications" and "Information Services" traffic as such are defined in the 1996 Act at 47 U.S.C. § 153. ISP-bound Traffic and VoIP calls are Information Services Traffic.**

Q. WHAT ARE QWEST'S CONCERNS REGARDING LEVEL 3'S PROPOSED NEW DEFINITION OF TRAFFIC?

A. Qwest's primary concern is that the implications and purpose of this new term are completely unclear. The term "traffic" is used throughout the interconnection agreement, in most cases modified by another term (e.g., ISP-bound traffic, EAS/Local Traffic, VoIP traffic, and so on). In most cases, these terms are defined (indeed, in some cases the definitions are the subject of vigorous dispute). The addition of this definition will overlay a second definition on top of other defined terms. At the very least, it will create confusion and, at worst, could dramatically change the meaning of the agreement in completely unintended ways. Finally, the definition appears to be based on an intent to interpret

existing FCC rules. Qwest agrees that FCC rules are relevant. Qwest also agrees that certain types of traffic, for example, fall into the category of "information services traffic." But those are issues that are addressed in FCC rules and, if not, in FCC orders. To the extent the parties disagree on these issues, they should look to those rules and orders for clarification instead of injecting such an ambiguous and potentially divisive issue into the ICA.

The proposed definition should be rejected for the reasons stated above. In any event, Level 3 should be required to provide some explanation for what it believes this definition accomplishes.

Q. WHAT IS LEVEL 3'S PROPOSAL FOR A NEW DEFINITION FOR "PSTN-IP-PSTN TRAFFIC"?

A. Level 3's new definition for PSTN-IP-PSTN traffic is as follows:

> **"PSTN-IP-PSTN Traffic" PSTN-IP-PSTN Traffic is defined as traffic that (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates from and terminates to landline customers that draw dial tone from a circuit switch; (3) originating customer dials 1 plus the called party's number, just as in any other circuit-switched long distance call; and (4) the call undergoes no net protocol conversion and provides no enhanced functionality to such landline customers due to the intermediate provider's use of IP technology.**

Q. WHAT ARE THE ISSUES RELATING TO LEVEL 3'S PROPOSAL FOR A NEW DEFINITION FOR "PSTN-IP-PSTN TRAFFIC"?

A. Level 3 introduces this new definition for PSTN-IP-PSTN traffic. However, this term is not used anywhere within the agreement except in one of Level 3's definitions. Furthermore, as I discussed above in Issue 16, neither party disputes the fact that the FCC has ruled PSTN-IP-PSTN traffic (or what I referred to as TDM-IP-TDM traffic) is not VoIP traffic. That FCC order was very clear in describing the nature of that traffic and its regulatory treatment. This traffic would be treated as any other PSTN originated or PSTN terminated traffic, and would be subject to the terms and conditions of the appropriate traffic type (e.g. Exchange Access Service, Information Service, IntraLATA and InterLATA Toll traffic, or Jointly Provided Switched Access). Given that there is no dispute on this issue and given that there is a clear FCC order dealing with the proper treatment of this type of traffic, no useful purpose is served by adding this definition.

Finally, by using this term in one of its definitions, this traffic would be treated as any other PSTN originated or PSTN terminated traffic, and would be subject to the terms and conditions of the appropriate traffic type (*e.g.*, Exchange Access Service, Information Service, IntraLATA and InterLATA Toll traffic, or Jointly Provided Switched Access). No unique definition is necessary. However on top of that the definition is simply wrong. In addition the definition appears to limit PSTN-IP-PSTN calls to 1 + dialed calls, which is simply not correct. PSTN-IP-PSTN calls can exist without dialing 1 + and this definition may have the effect of exempting this kind of traffic. But since the term is not used in the body of the contract the proposed definition should be stricken in any event.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes it does.

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