

**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 WILLIAM R. EASTON

QWEST CORPORATION

AUGUST 18, 2006

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

TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	IDENTIFICATION OF WITNESS	2
III.	PURPOSE OF TESTIMONY	2
IV.	DISPUTED ISSUE NO. 1: COSTS OF INTERCONNECTION	3
V.	DISPUTED ISSUE NO. 2 (A-b): COMBINING TRAFFIC ON INTERCONNECTION TRUNKS	20
VI.	DISPUTED ISSUE NO. 13: LOCAL INTERCONNECTION SERVICE DEFINITION	27
VII.	DISPUTED ISSUE NO. 17: TRUNK FORECASTING	27
VIII.	DISPUTED ISSUE NO. 18: JURISDICTIONAL ALLOCATION FACTORS	28
IX.	DISPUTED ISSUE NO. 21: ORDERING OF INTERCONNECTION TRUNKS	32
X.	DISPUTED ISSUE NO. 22: COMPENSATION FOR SPECIAL CONSTRUCTION	33
XI.	MID-SPAN MEET INTERCONNECTION	33
XII.	CONCLUSION	37

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

I. EXECUTIVE SUMMARY

Despite the long list of issues, subparts and dueling language discussed in this testimony, ultimately the issues I address can be boiled down to just two issues: 1) Compensation for interconnection services provided by Qwest and; 2) the types of traffic that may be combined on interconnection trunks.

Although Level 3 has now changed some its proposed language related to compensation, Level 3’s language would still deny Qwest compensation to which it is entitled. Under the Telecommunications Act of 1996, Qwest has a duty to provide interconnection with its local exchange network “on rates, terms and conditions that are just, reasonable, and nondiscriminatory” and in accordance with the requirements of Section 252 of the Act.¹ Section 252 of the Act in turn provides that determinations by a state commission of the just and reasonable rate for the interconnection shall be “based on the cost...of providing the interconnection,” “nondiscriminatory” and “may include a reasonable profit.”² Despite the law, and despite the fact that Level 3 is ordering interconnection services so that it can serve its customers, Level 3 boldly claims that it has no obligation to compensate Qwest for these services. This assertion is unreasonable, unlawful, and should be soundly rejected by this Commission.

¹ 47 U.S.C. §251(c)(2)(D).
² 47 U.S.C. §252(d)(1)

1 As to the types of traffic that can be carried on interconnection trunk groups, Qwest
2 has attempted to be responsive to Level 3's desire to combine traffic on trunk
3 groups. Consistent with its practice with other carriers Qwest is willing to allow all
4 traffic types, with the exception of switched access traffic, to be carried over LIS
5 trunks. However, because of billing and systems issues, Qwest requires that
6 switched access traffic be carried over Feature Group interconnection trunks.
7 Nonetheless, Qwest has attempted to accommodate Level 3's desire for network
8 efficiencies by agreeing to let Level 3 combine all of its traffic over Feature Group
9 D interconnection trunks. This solution achieves the efficiencies sought by Level 3
10 while at the same time allowing Qwest to continue to use its existing billing
11 systems and processes. For these reasons, Level 3's proposed combining of traffic
12 on LIS trunks should be rejected.

13 II. IDENTIFICATION OF WITNESS

14 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS**
15 **ADDRESS.**

16 A. My name is William R. Easton. My business address is 1600 7th Avenue, Seattle
17 Washington. I am employed as Director – Wholesale Advocacy. I am testifying on
18 behalf of Qwest Corporation ("Qwest").

19 III. PURPOSE OF TESTIMONY

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

21 A. Level 3 is now proposing new language on many of the issues in this proceeding.
22 Level 3 has also introduced a new issue having to do with Mid-Span Meet

1 Interconnection. The purpose of this testimony is to highlight the differences
2 between Level 3's new language and Qwest's proposed language on certain issues
3 and to explain Qwest's positions and the regulatory policies underlying those
4 positions. Because of the numerous changes in Level 3's language, this testimony
5 should be treated as a complete replacement to my original direct testimony.

6 Specifically, my testimony will address the following issues from the revised Joint
7 Issues Matrix:

- 8 ▪ Issue 1: Costs of Interconnection
- 9 ▪ Issue 2: Combining Traffic on Interconnection Trunks
- 10 ▪ Issue 13: Local Interconnection Service Definition
- 11 ▪ Issue 17: Trunk Forecasting
- 12 ▪ Issue 18: Jurisdictional Allocation Factors
- 13 ▪ Issue 21: Ordering of Interconnection Trunks
- 14 ▪ Issue 22: Compensation for Construction

15 In addition, I will discuss the mid-span meet issue introduced by Level 3.

16 **IV. DISPUTED ISSUE NO. 1: COSTS OF INTERCONNECTION**

17 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 1.**

18 A. Issue No. 1 is comprised of 10 subparts (1A-1J), all of which have to do with local
19 interconnection. Although Level 3 characterizes this issue as being a question of
20 whether Level 3 may exchange traffic at a single point of interconnection ("POI")
21 in the LATA, this issue is actually about compensation for the use of Qwest's
22 network. In this case, Level 3 has requested interconnection at a single point in

1 each LATA. There is presently no dispute as to where the interconnection occurs
2 or how many points of interconnection there will be. Level 3's own exhibits show
3 its POI locations. I am unaware of any disputes related to these POIs. What is in
4 dispute is who bears the costs of the interconnection Level 3 has requested. Qwest
5 contends that Level 3 is responsible for compensating Qwest for the interconnection
6 costs that Qwest incurs to honor Level 3's request. Contrary to Level 3's claims,
7 this is true even when costs are incurred on Qwest's side of the point of
8 interconnection.

9
10 Under the Telecommunications Act of 1996, Qwest has a duty to provide
11 interconnection with its local exchange network "on rates, terms and conditions that
12 are just, reasonable, and nondiscriminatory" and in accordance with the
13 requirements of Section 252 of the Act.³ Section 252 of the Act in turn provides
14 that determinations by a state commission of the just and reasonable rate for the
15 interconnection shall be "based on the cost...of providing the interconnection,"
16 "nondiscriminatory" and "may include a reasonable profit."⁴ As the FCC has
17 recognized, these provisions make clear that CLECs must compensate incumbent
18 LECs for the costs incumbent LECs incur to provide interconnection.⁵

19

³ 47 U.S.C. § 251(e)(2)(D).

⁴ 47 U.S.C. § 252(d)(1)

⁵ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, ¶ 200,11 FCC Recd. 15499 (August 8, 1996), *aff'd in part and rev'd in part, Iowa Utils. Bd. v. FCC*, 525 U.S. 1133 (1999)(the "Local Competition Order").

1 Qwest has fulfilled its duty to provide interconnection by developing Local
2 Interconnection Service (LIS) for CLECs to interconnect with Qwest. LIS has
3 multiple intercarrier transport options. One option, the Mid-Span Meet POI option,
4 allows the CLEC to build to a mid-way point between the CLEC's switch and a
5 Qwest tandem or end office switch. Another option is collocation, which allows a
6 CLEC to put equipment in one of Qwest's serving wire centers and interconnect at
7 that collocation. Both of these options put some cost of establishing the POI on the
8 CLEC. Qwest also provides an entrance facility option for purchase for those
9 CLECs who do not want to incur capital expense by either laying fiber for a mid-
10 span meet POI or setting up a collocation. An entrance facility creates transport
11 between a CLEC building and the nearest Qwest building termed a Serving Wire
12 Center ("SWC"). In addition to interconnecting with Qwest at the SWC, the CLEC
13 will need to have Direct Trunk Transport ("DTT") to exchange traffic with the
14 Qwest network (or, in Level 3's case to receive traffic from Qwest's network). The
15 CLEC may also need to order multiplexing. There are multiple costs associated
16 with Qwest providing entrance facility, DTT and multiplexing. These costs have
17 been identified, discussed, and established in cost dockets with the Commission.
18 As stated earlier, Qwest is allowed to recover costs that are just and reasonable and
19 based on the cost of providing interconnection.

20
21 As Dr. Fitzsimmons demonstrates, it makes sense that the cost causer compensates
22 Qwest for interconnection and transport costs. If the cost causer (Level 3) does not
23 pay, then Qwest end users would have to unfairly bear the cost, including customers

1 who have no interest in surfing the internet via dial-up service. Qwest's end users
2 should not have to bear the burden of paying for Level 3's ISP service.

3
4 With this as background, the next sections of my testimony will discuss each of the
5 disputed sub-issues (1A-1J).

6 **Issue No. 1A**

7 **Q. PLEASE DESCRIBE ISSUE NO. 1A.**

8 A. Issue 1A involves disputed language which Level 3 characterizes as having to do
9 with the right to interconnect at a single point in the LATA and obligations on the
10 respective sides of the point of interconnection. The real issue here is that Level 3
11 does not want to pay for the use of Qwest's network, a network that is absolutely
12 essential to Level 3 (since it does not appear to serve end user customers in
13 Washington other than ISPs).

14
15 **Q. WHAT IS THE LANGUAGE IN DISPUTE?**

16 A. The parties disagree about the language for Section 7.1.1 of the agreement. Exhibit
17 A of Qwest's Response to the Petition for Arbitration contains the interconnection
18 agreement language proposed by Qwest juxtaposed against the language proposed
19 by Level 3. Qwest proposes the following language for Section 7.1.1:

20 7.1.1 This Section describes the Interconnection of Qwest's network and
21 CLEC's network for the purpose of exchanging Exchange Service
22 (EAS/Local traffic), IntraLATA Toll carried solely by local exchange
23 carriers and not by an IXC (IntraLATA LEC toll), ISP-Bound traffic, and
24 Jointly Provided Switched Access (InterLATA and IntraLATA) traffic.
25 Qwest will provide Interconnection at any Technically Feasible point

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

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

17 A. Level 3 proposes the following:

18 7.1.1 This Section describes the Interconnection of Qwest's network and
19 CLEC's network for the purpose of exchanging [Telecommunications](#)
20 [Including Telephone Exchange Service And Exchange Access traffic](#).
21 Qwest will provide Interconnection at any Technically Feasible point
22 within its network.
23

24 7.1.1.1 **Establishment of SPOI:** Qwest agrees to provide CLEC a
25 Single Point of Interconnection (SPOI) in each Local Access Transport
26 Area (LATA) for the exchange of all telecommunications traffic. The
27 SPOI may be established at any mutually agreeable location within the
28 LATA, or, at Level 3's sole option, at any technically feasible point on
29 Qwest's network. Technically feasible points include but are not limited
30 to Qwest's end offices, access tandem, and local tandem offices.
31

32 7.1.1.2 **Cost Responsibility.** Each Party is responsible for constructing,
33 maintaining, and operating all facilities on its side of the SPOI, subject
34 only to the payment of intercarrier compensation in accordance with
35 Applicable Law. In accordance with FCC Rule 51.703(b), neither Party
36 may assess any charges on the other Party for the origination of any
37 telecommunications delivered to the other Party at the SPOI, except for
38 Telephone Toll Service traffic outbound from one Party to the other when
39 the other Party is acting in the capacity of a provider of Telephone Toll
40 Service, to which originating access charges properly apply.
41

1 7.1.1.3 Facilities included/transmission rates. Each SPOI to be
2 established under the terms of this Attachment shall be deemed to include
3 any and all facilities necessary for the exchange of traffic between
4 Qwest's and Level 3's respective networks within a LATA. Each Party
5 may use an Entrance Facility (EF), Expanded Interconnect Channel
6 Termination (EICT), or Mid Span Meet Point of Interconnection (POI)
7 and/or Direct Trunked Transport (DTT) at DS1, DS3 , OC3 or higher
8 transmission rates as, in that Party's reasonable judgment, is appropriate in
9 light of the actual and anticipated volume of traffic to be exchanged. If
10 one Party seeks to establish a higher transmission rate facility than the
11 other Party would establish, the other Party shall nonetheless reasonably
12 accommodate the Party's decision to use higher transmission rate
13 facilities.
14

15 7.1.1.4 Each Party Shall Charge Reciprocal Compensation for the
16 Termination of Traffic to be carried. All telecommunications of all types
17 shall be exchanged between the Parties by means of from the physical
18 facilities established at Single Point of Interconnection Per LATA onto its
19 Network Consistent With Section 51.703 of the FCC's Rules:
20

21 7.1.1.4.1 Qwest shall permit Level 3 to interconnect for the exchange of
22 telecommunications Traffic at any technically feasible point on Qwest's
23 network consistent with FCC and Commission rules.
24

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

26 A. Mr. Linse's testimony discusses why Qwest opposes Level 3's SPOI language and
27 details the options available to Level 3 to interconnect with Qwest. As far as the
28 remaining language is concerned, Level 3's Cost Responsibility language appears
29 to be misplaced in Section 7.1 of the agreement the subject of which is
30 interconnection facility options, not compensation. Qwest's proposals for
31 compensation, including reciprocal compensation, appear elsewhere in the
32 interconnection agreement and will be fully discussed as disputed issues later in this
33 testimony.
34

1 **Q. LEVEL 3 ALSO OBJECTS TO QWEST'S LANGUAGE FOR SECTION**
2 **7.1.1.1 AND SECTION 7.1.1.2. ARE THESE SECTIONS RELATED TO**
3 **THE ISSUES YOU HAVE JUST DISCUSSED?**

4 A. No. These two sections have to do with VoIP traffic and are discussed in the
5 testimony of Mr. Brotherson.

6

7 **Issue No. 1B**

8 **Q. PLEASE DESCRIBE ISSUE NO. 1B.**

9 A. Issue 1B concerns the methods by which the parties facilitate interconnection
10 between their respective networks. This issue is addressed in the testimony of Mr.
11 Linse.

12

13 **Issue No. 1C**

14 **Q. PLEASE DESCRIBE ISSUE NO. 1C.**

15 A. Issue 1C concerns section 7.2.2.1.1 of the agreement, which describes how
16 Exchange Service traffic will be terminated. Level 3's new proposal appears to
17 accept Qwest's proposed language.

18

19 **Issue No. 1D**

20 **Q. PLEASE EXPLAIN ISSUE NO. 1D.**

21 A. Issue No. 1D has to do with transport services to deliver Exchange Service
22 EAS/Local traffic from the POI to the terminating party's end office switch or
23 tandem switch for call termination.

1 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR THIS SECTION?**

2 A. Qwest proposes the following language:

3 7.2.2.1.2.2 CLEC may purchase transport services from Qwest or from a
4 third party, including a third party that has leased the private line transport
5 service facility from Qwest. Such transport provides a transmission path
6 for the LIS trunk to deliver the originating Party's Exchange Service
7 EAS/Local traffic to the terminating Party's End Office Switch or Tandem
8 Switch for call termination. Transport may be purchased from Qwest as
9 Tandem Switch routed (i.e., tandem switching, tandem transmission and
10 direct trunked transport) or direct routed (i.e., direct trunked transport).
11 This Section is not intended to alter either Party's obligation under Section
12 251(a) of the Act.
13

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

15 A. Level 3 proposes the following language:

16 7.2.2.1.2.2. **For purposes of network management and routing of**
17 **traffic to/from the POI** CLEC may **order** ~~purchase~~ transport services
18 from Qwest or from a third-party, including a third party that has leased
19 the private line transport service facility from Qwest. Such transport
20 provides a transmission path for the LIS trunk to deliver the originating
21 Party's Exchange Service EAS/Local traffic to the terminating Party's End
22 Office Switch or Tandem Switch for call termination. **To the extent**
23 **CLEC requires dedicated transport for purposes other than the**
24 **exchange of Traffic, Ttransport** may be purchased from Qwest as
25 Tandem Switch routed (i.e., tandem switching, tandem transmission and
26 direct trunked transport) or direct routed (i.e., direct trunked
27 transport). This Section is not intended to alter either Party's obligation
28 under Section 251(a) of the Act or **under Section 51.703 or 51.709 of the**
29 **FCC's Rules.**
30

31 **Q. WHY DOES QWEST OBJECT TO THE ADDITIONS LEVEL 3 HAS**
32 **MADE?**

33 A. It is not clear why Level 3 has added the clause at the beginning of the sentence
34 regarding network management and routing and without further explanation by
35 Level 3, their language remains obscure. However, Qwest does object to Level 3

1 changing the word “purchase” to “order” in the first sentence in the apparent belief
2 that this somehow relieves it of the obligation to compensate Qwest for the use of
3 the Qwest network. Level 3 acknowledges this transport is necessary, as it has not
4 objected to the sentence which states, “Such transport provides a transmission path
5 for the LIS trunk to deliver the originating Party’s Exchange Service EAS/Local
6 traffic to the terminating Party’s End Office Switch or Tandem Switch for call
7 termination.” Level 3 has even acknowledged that it needs to order transport
8 services. What Level 3 refuses to acknowledge is that it has an obligation to
9 compensate Qwest for providing the services which allow Level 3 to serve its ISP
10 end users.

11
12 Qwest also objects to Level 3’s added wording in the middle of the section. It is not
13 clear why Level 3 would require dedicated transport other than for the exchange of
14 traffic. To the extent the language can be interpreted to allow Level 3 to purchase
15 TELRIC-rated transport under any circumstance it wishes, Qwest opposes it. While
16 a CLEC has the right to purchase TELRIC-priced LIS services for the exchange of
17 local traffic, there are many instances in which CLECs must purchase transport
18 from Qwest’s retail private line tariff, from another provider, or self-provision it
19 themselves. To the extent this unexplained language is an attempt to undermine
20 historical pricing practices that are governed by tariffs or other provisions of the
21 ICA, it should be rejected.

1 **Issue No. 1E**

2 **Q. PLEASE EXPLAIN ISSUE 1E.**

3 A. Issue 1E concerns section 7.2.2.1.4 of the interconnection agreement which
4 discusses direct trunked transport. Qwest has proposed the following language:

5 7.2.2.1.4 LIS ordered to a Tandem Switch will be provided as direct
6 trunked transport between the Serving Wire Center of CLEC's POI and the
7 Tandem Switch. Tandem transmission rates, as specified in Exhibit A of
8 this Agreement, will apply to the transport provided from the Tandem
9 Switch to Qwest's End Office Switch.
10

11 **Q. WHAT POSITION IS LEVEL 3 TAKING ON THIS ISSUE?**

12 A. Level 3 has added the following highlighted words to the Qwest language:

13 7.2.2.1.4 LIS ordered to a Tandem Switch will be provided as direct
14 trunked transport between the Serving Wire Center of CLEC's POI and the
15 Tandem Switch. **To the extent CLEC requires dedicated transport for**
16 **purposes other than the exchange of Traffic,** Tandem transmission
17 rates, as specified in Exhibit A of this Agreement, will apply to the
18 transport provided from the Tandem Switch to Qwest's End Office Switch.
19

20 Again, as with Issue No. 1D, it is not clear why Level 3 would require dedicated
21 transport other than for the exchange of traffic. To the extent the language can be
22 interpreted to allow Level 3 to purchase TELRIC-rated transport under any
23 circumstance it wishes, Qwest opposes it for the reasons just cited.
24

25 **Issue No. 1F**

26 **Q. PLEASE EXPLAIN ISSUE NO. 1F.**

27 A. Issue 1 F concerns Section 7.2.2.9.6 of the agreement, which discusses Level 3's
28 ability to interconnect at tandem and end office switches. This issue does not

1 appear on Level 3's revised issues list. Apparently Level 3 has accepted the Qwest
2 proposed language.

3

4 **Issue No. 1G**

5 **Q. PLEASE DESCRIBE ISSUE 1G.**

6 A. Issue 1G concerns Sections 7.3.1.1.3 and 7.3.1.1.3.1 of the ICA, which discuss how
7 the cost of jointly used entrance facilities shall be shared by the parties.

8

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

10 A. Qwest proposes the following language:

11

12 7.3.1.1.3 If the Parties elect to establish LIS two-way trunks, for
13 reciprocal exchange of Exchange Service (EAS/Local) traffic, the cost of
14 the LIS two-way facilities shall be shared among the Parties by reducing
15 the LIS two-way entrance facility (EF) rate element charges as follows:

16

17 7.3.1.1.3.1 The provider of the LIS two-way Entrance Facility (EF) will
18 initially share the cost of the LIS two-way EF by assuming an initial
19 relative use factor (RUF) of fifty percent (50%) for a minimum of one (1)
20 quarter if the Parties have not exchanged LIS traffic previously. The
21 nominal charge to the other Party for the use of the EF, as described in
22 Exhibit A, shall be reduced by this initial relative use factor. Payments by
23 the other Party will be according to this initial relative use factor for a
24 minimum of one (1) quarter. The initial relative use factor will continue
25 for both bill reduction and payments until the Parties agree to a new factor,
26 based upon actual minutes of use data for non-ISP-bound traffic to
27 substantiate a change in that factor. If a CLEC's End User Customers are
28 assigned NPA-NXXs associated with a rate center different from the rate
29 center where the End User Customer are physically located, traffic that
30 does not originate and terminate within the same Qwest local calling area
31 (as approved by the Commission), regardless of the called and calling
32 NPA-NXXs, involving those End User Customers is referred to as
33 "VNXX traffic". For purposes of determining the relative use factor, the
34 terminating carrier is responsible for ISP-bound traffic and for VNXX
35 traffic. If either Party demonstrates with traffic data that actual minutes of
36 use during the previous quarter justify a new relative use factor, that Party

1 will send a notice to the other Party. The new factor will be calculated
2 based upon Exhibit H. Once the Parties finalize a new factor, the bill
3 reductions and payments will apply going forward from the date the
4 original notice was sent. ISP-bound traffic or traffic delivered to
5 Enhanced Service providers is interstate in nature. Qwest has never
6 agreed to exchange VNXX Traffic with CLEC.
7

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

9 A. Level 3 proposes the following:

10 7.3.1.1.3 Each party is solely responsible for any and all costs arising
11 from or related to establishing and maintaining the interconnection trunks
12 and facilities it uses to connect to the POI. Thus, neither party shall
13 require the other to bear any additional costs for the establishment and
14 operation of interconnection facilities that connect its network to its side
15 of the POI.
16

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

18 A. Level 3 again denies that it has an obligation to compensate Qwest for the use of its
19 network.
20

21 **Q. IN PREVIOUS ARBITRATIONS WITH QWEST IN 2002, DID LEVEL 3
22 MAKE THIS SAME ARGUMENT?**

23 A. No. In the previous arbitrations, Level 3 agreed to use a relative use factor to
24 apportion transport cost associated with two-way trunking, but disagreed as to the
25 type of traffic that should be included in the calculation.
26

1 **Q. IS THERE A FORM OF INTERCONNECTION THAT LEVEL 3 CAN**
2 **EMPLOY WHICH WOULD ALLOW IT TO AVOID PAYING FOR THE**
3 **RELATIVE USE OF AN ENTRANCE FACILITY?**

4 A. Yes. Under the provisions of the interconnection agreement, there are several ways
5 in which Level 3 can choose to interconnect with the Qwest network. One of these
6 options, explained in Section 7.1.2.3 of the agreement, is a Mid-Span Meet POI.
7 The relative use calculations which apply to an entrance facility purchased from
8 Qwest do not apply to the interconnection facility used in a Mid-Span Meet POI.
9 As noted in Section 7.1.2.3, under this option “[e]ach Party will be responsible for
10 its portion of the build to the Mid-Span Meet POI.” Thus, to the extent that Level 3
11 seeks to avoid any financial responsibility for the interconnection facility on the
12 Qwest side of the Mid-Span POI, it is free, under this agreement, to negotiate a
13 Mid-Span Meet POI under which both parties would construct facilities to the
14 agreed to meet point. Level 3 can also choose to provide collocation, which would
15 also not entail the purchase of an entrance facility to connect with Qwest’s network.
16
17 There are, however, sound reasons for Level 3 to choose the entrance facility
18 options, instead of the Mid-Span Meet POI. By so choosing, Level 3 is able to
19 avoid the initial, and often substantial, investment associated with building its own
20 facilities to the POI. By choosing the entrance facility option, Level 3 pays a
21 nominal non-recurring charge to “turn-on” the Qwest facilities and then pays a
22 monthly recurring charge that is subject to a credit based on Qwest’s relative use of
23 the facilities. Level 3 is clearly avoiding significant capital expenditures by

1 ordering the LIS entrance facility, yet is unwilling to compensate Qwest for this
2 facility.

3

4 **Q. WHY IS IT APPROPRIATE TO EXCLUDE ISP-BOUND AND VNXX**
5 **TRAFFIC FROM THE RELATIVE USE CALCULATION?**

6 A. The FCC rule I just cited appears in Subpart H of the FCC's rules which is titled
7 "Reciprocal Compensation for Transport and Termination of Telecommunications
8 traffic." In Section 51.701(b)(1) the FCC defines "telecommunications traffic" as
9 traffic "exchanged between a LEC and a telecommunications carrier other than a
10 CMRS provider, *except for telecommunications traffic that is interstate or*
11 *intrastate exchange access, information access, or exchange services for such*
12 *access.*" (Italics added). In the *ISP Remand Order*,⁶ the FCC determined that ISP
13 bound traffic (traffic destined for a local ISP server) is information access. As such,
14 this traffic is expressly excluded from the traffic referred to in Rule 51.709(b).
15 Similarly, VNXX (or interexchange) traffic must be excluded, for, as Mr.
16 Brotherson makes clear in his testimony, VNXX calls that do not originate and
17 terminate in the same local calling area are not subject to the reciprocal
18 compensation obligations of 251(b)(5).

19

20 **Q. HAVE FEDERAL COURTS REVIEWED THE ISSUE OF EXCLUDING ISP**

⁶ Order on Remand, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCCR 9151 (2001) ("ISP Remand Order") ¶ 42.

1 **BOUND TRAFFIC?**

2 A. Yes. Qwest's exclusion of ISP traffic has been subject to federal court review in
3 both Oregon and Colorado, and both courts upheld Qwest's language.⁷

4
5 **Q. IN ITS PETITION, LEVEL 3 CITES THE FCC'S RULE 51.703(B) AND**
6 **ARGUES THAT ILECS ARE PROHIBITED FROM LEVYING CHARGES**
7 **FOR TRAFFIC ORIGINATING ON THEIR OWN NETWORKS. DO YOU**
8 **AGREE?**

9 A. No. Rule 51.703(b) applies to "telecommunications traffic." As was just discussed,
10 ISP bound traffic (traffic destined for a local ISP server) is "information access"
11 and is specifically excluded from the definition of telecommunication traffic.
12 Clearly, Rule 51.703(b) does not apply in the case of such ISP bound traffic.

13

14 **Issue No. 1H**

15 **Q. PLEASE EXPLAIN THE DISPUTE RELATED TO ISSUE NO. 1H.**

16 A. Issue 1H is the same as Issue 1G, except that, where 1G concerned allocating the
17 cost of a two-way entrance facility, 1H deals with allocating the cost of two-way
18 DTT facilities.

19

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

⁷ Order and Memorandum of Decision, *Level 3 Communications, LLC v. Pub. Utils. Comm'n of Colorado*, 300 F. Supp. 2d 1388 (D. Colo. 2003) ("*Colorado Level 3 Order and Memorandum of Decision*"); Opinion and Order, *Level 3 Communications, LLC v. Public Utils. Comm'n of Oregon*, CV 01-1818 (D. Or. Nov. 25, 2002) (slip op.).

1 A. Qwest is proposing the following language:

2 7.3.2.2 If the Parties elect to establish LIS two-way DTT trunks, for
3 reciprocal exchange of Exchange Service (EAS/Local) traffic the cost of
4 the LIS two-way DTT facilities shall be shared among the Parties by
5 reducing the LIS two-way DTT rate element charges as follows:
6

7 7.3.2.2.1 The provider of the LIS two-way DTT facility will initially
8 share the cost of the LIS two-way DTT facility by assuming an initial
9 relative use factor of fifty percent (50%) for a minimum of one (1) quarter
10 if the Parties have not exchanged LIS traffic previously. The nominal
11 charge to the other Party for the use of the DTT facility, as described in
12 Exhibit A, shall be reduced by this initial relative use factor. Payments by
13 the other Party will be according to this initial relative use factor for a
14 minimum of one (1) quarter. The initial relative use factor will continue
15 for both bill reduction and payments until the Parties agree to a new factor,
16 based upon actual minutes of use data for non-ISP-bound traffic to
17 substantiate a change in that factor. If a CLEC's End User Customers are
18 assigned a NPA-NXXs associated with a rate center other than the rate
19 center where the End User Customers are physically located, traffic that
20 does not originate and terminate within the same Qwest local calling area
21 (as approved by the Commission), regardless of the called and calling
22 NPA-NXXs, involving those End User Customers is referred to as
23 "VNXX traffic". For purposes of determining the relative use factor, the
24 terminating carrier is responsible for ISP-bound traffic and for VNXX
25 traffic. If either Party demonstrates with non-ISP-bound traffic data that
26 actual minutes of use during the first quarter justify a new relative use
27 factor, that Party will send a notice to the other Party. The new factor will
28 be calculated based upon Exhibit H. Once the Parties finalize a new
29 factor, the bill reductions and payments will apply going forward, from the
30 date the original notice was sent. ISP-bound traffic is interstate in nature.
31 Qwest has never agreed to exchange VNXX Traffic with CLEC.
32

33 **Q. WHAT IS LEVEL 3'S PROPOSED LANGUAGE?**

34 A. Level 3 proposes the following language:

35 7.3.2.2 Each party is solely responsible for any and all costs arising from
36 or related to establishing and maintaining the interconnection trunks and
37 facilities it uses to connect to the POI. Thus, neither party shall require the
38 other to bear any additional costs for the establishment and operation of
39 interconnection facilities that connect its network to its side of the POI.

1 Qwest is opposed to this language for all of the reasons cited in the discussion of
2 issue 1G.

3 **Issue No. 1I**

4 **Q. PLEASE DESCRIBE ISSUE 1I**

5 A. Issue 1I again involves compensation, in this case, non-recurring charges for the
6 installation of LIS trunks. Qwest proposes the following language:

7 7.3.3.1 Installation nonrecurring charges may be assessed by the provider
8 for each LIS trunk ordered. Qwest rates are specified in Exhibit A.

9

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

11 A. Level 3 proposes the following language:

12 7.3.3.1 Neither Party may charge (and neither Party shall have an
13 obligation to pay) installation nonrecurring charges for LIS trunks.

14

15 **Q. ARE QWEST'S OBJECTIONS TO THIS LANGUAGE THE SAME AS FOR**
16 **THE OTHER INTERCONNECTION COMPENSATION ISSUES?**

17 A. Yes. Qwest opposes this language because it denies Qwest compensation for work
18 performed on behalf of Level 3. Qwest performs work to install LIS trunks and
19 those LIS trunks are for the direct benefit of Level 3.

20 **Issue No. 1J**

21 **Q. PLEASE DESCRIBE ISSUE 1J.**

1 A. Like issue 1H, issue 1J involves the assessment of non-recurring charges related to
2 LIS trunking, in this case non-recurring charges related to trunk rearrangements.
3 Qwest proposes the following language:

4 7.3.3.2 Nonrecurring charges for rearrangement may be assessed by the
5 provider for each LIS trunk rearrangement ordered, at one-half (1/2) the
6 rates specified in Exhibit A.

7

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

9 A. Level 3 proposes the following language:

10 7.3.3.2 Neither Party may charge (and neither Party shall have an
11 obligation to pay) any nonrecurring charges for rearrangement assessed
12 for any LIS trunk rearrangement ordered for purposes of exchanging all
13 ISP-Bound Traffic, 251(b)(5) Traffic, and VoIP Traffic that either Party
14 delivers at a POI, other than the intercarrier compensation rates.

15 Again, Qwest opposes this language because it denies Qwest compensation for
16 work performed on behalf of Level 3 and adds language regarding the exchange of
17 traffic which is more appropriately addressed elsewhere in the agreement.

18

V. DISPUTED ISSUE NO. 2 (A-B):

19

COMBINING TRAFFIC ON INTERCONNECTION TRUNKS

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

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

24

25 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR SECTION 7.2.2.9.3?**

1 A. Qwest is proposing the following language:

2 7.2.2.9.3.1 Exchange Service (EAS/Local), ISP-Bound Traffic,
3 IntraLATA LEC Toll, VoIP traffic and Jointly Provided Switched Access
4 (InterLATA and IntraLATA Toll involving a third party IXC) may be
5 combined in a single LIS trunk group or transmitted on separate LIS trunk
6 groups.

7 7.2.2.9.3.1.1 If CLEC utilizes trunking arrangements as described in
8 Section 7.2.2.9.3.1, Exchange Service (EAS/Local) traffic shall not be
9 combined with Switched Access, not including Jointly Provided Switched
10 Access, on the same trunk group, i.e. Exchange Service (EAS/Local)
11 traffic may not be combined with Switched Access Feature Group D
12 traffic to a Qwest Access Tandem Switch and/or End Office Switch.

13 7.2.2.9.3.2 CLEC may combine originating Exchange Service
14 (EAS/Local) traffic, ISP-Bound Traffic, IntraLATA LEC Toll, VoIP
15 Traffic and Switched Access Feature Group D traffic including Jointly
16 Provided Switched Access traffic, on the same Feature Group D trunk
17 group.

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

28

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

30 A. Level 3 proposes the following language:

31 7.2.2.9.3.1 Where CLEC exchanges Telephone Exchange Service,
32 Exchange Access Service, Telephone Toll Service, and ISP-bound Traffic
33 and VoIP Traffic with Qwest over a LIS interconnection network, CLEC
34 agrees to pay Qwest, on Qwest's side of the POI, state or federally tariffed
35 rates applicable to the facilities charges for InterLATA and/or InterLATA
36 traffic in proportion to the total amount of traffic exchanged over such
37 interconnection facility. Otherwise each party remains 100% responsible

1 for the costs of its interconnection facilities on its side of the POI.

2 Except as expressly provided in Section 7.3.1.1.3, each party shall bear all
3 costs of interconnection on its side of the network in accordance with 47
4 C.F.R. § 51.703. Accordingly, unless otherwise expressly authorized
5 according to Section 7.3.1.1.3, neither Party may charge the other (and
6 neither Party shall have an obligation to pay) any recurring and/or
7 nonrecurring fees, charges or the like (including, without limitation, any
8 transport charges), associated with the exchange of any
9 telecommunications traffic including but not limited to Traffic, ISP-bound
10 and VoIP traffic on its side of the POI.

11
12 Section 7.3.9 of this Agreement applies for allocating compensation for
13 differently rated traffic exchanged over an LIS interconnection network.

14
15 7.2.2.9.3.2 CLEC may combine originating Exchange Service
16 (EAS/Local) traffic, ISP-Bound Traffic, IntraLATA LEC Toll, VoIP
17 Traffic and Switched Access Feature Group D traffic including Jointly
18 Provided Switched Access traffic, on the same **LIS or** Feature Group D
19 trunk group.

20 7.2.2.9.3.2.1 CLEC shall provide to Qwest, each quarter, Percent Local
21 Use (PLU) factor(s) that can be verified with individual call detail records
22 or the Parties may use call records or mechanized jurisdictionalization
23 using Calling Party Number (CPN) information in lieu of PLU, if CPN is
24 available. Where CLEC utilizes an affiliate's Interexchange Carrier (IXC)
25 Feature Group D **or LIS** trunks to deliver Exchange Service (EAS/Local)
26 traffic with interexchange Switched Access traffic to Qwest, Qwest shall
27 establish trunk group(s) to deliver Exchange Service (EAS/Local), Transit,
28 and IntraLATA LEC Toll to CLEC. Qwest will use or establish a POI for
29 such trunk group in accordance with **this Agreement**.

30

31 **Q. PLEASE SUMMARIZE THE POSITIONS OF THE TWO PARTIES ON**
32 **THIS ISSUE.**

33 A. As I noted previously, there are two issues here: 1) compensation for LIS trunking
34 on the Qwest side of the POI and; 2) what types of traffic may be combined on LIS
35 trunks. With regard to the first issue, Level 3 takes the position that, with the

1 exception of reciprocal compensation charges, it is not responsible for any
2 interconnection charges on the Qwest side of the POI. Qwest believes that it is
3 entitled to recover costs it incurs to provide interconnection to Level 3. These
4 arguments were covered at length in the discussion of Issue No. 1 and need not be
5 repeated here.

6
7 **Q. WHAT ARE THE PARTIES' POSITIONS AS TO WHAT TRAFFIC IS**
8 **ALLOWED OVER LIS TRUNKS?**

9 A. Level 3 believes it should be allowed to combine all traffic, including switched
10 access traffic, over LIS trunks. Although Qwest is willing to allow all traffic types,
11 with the exception of switched access traffic, to be carried over LIS trunks, Qwest
12 requires that switched access traffic be carried over Feature Group D (FGD) trunks.
13 Qwest has required this since 1984 and nothing since then has changed this
14 requirement. Qwest has agreed to allow all traffic types terminating to Qwest to be
15 combined over FGD trunks, an option that allows for the trunking efficiencies that
16 Level 3 is seeking.

17
18 **Q. THE QWEST LANGUAGE IN SECTION 7.2.2.9.3.1 ALLOWS JOINTLY**
19 **PROVIDED SWITCHED ACCESS TRAFFIC TO BE CARRIED OVER LIS**
20 **TRUNKS. WHAT IS THE INTENT OF ALLOWING JOINTLY PROVIDED**
21 **SWITCHED ACCESS TRAFFIC TO BE CARRIED OVER LIS TRUNKS?**

22 A. Because IXCs generally connect at the Qwest access tandem rather than directly to
23 the CLEC, this language, which appears in all of Qwest's SGATs, is needed to

1 allow traffic to and from a CLEC end user's Presubscribed Interexchange Carrier
2 ("PIC") to be carried over LIS trunks. Thus, CLEC end users are able to reach their
3 Presubscribed Interexchange Carriers and the IXCs are able to get calls to CLEC
4 end users. This traffic is referred to as Jointly Provided Switched Access because
5 both Qwest and the CLEC are involved in providing access to the IXC.

6
7 **Q. IS QWEST REQUIRED TO COMBINE SWITCHED ACCESS ON LIS**
8 **TRUNKS?**

9 A. No. Qwest has no obligation to permit Level 3 to commingle switched access
10 traffic with other types of traffic on the interconnection trunks created under the
11 Agreement. Nothing in the Act or the FCC's regulations give Level 3 the right to
12 mix switched access traffic with local traffic over the local interconnection trunks
13 between its network and Qwest's established pursuant to section 251(c)(2) of the
14 Act. All other carriers have worked within these requirements for over two
15 decades. Only Level 3 feels it is entitled to greater rights.

16
17 **Q. DOES LEVEL 3'S OFFER TO PAY QWEST STATE AND FEDERAL**
18 **TARIFF RATES FOR INTERLATA TRAFFIC IN PROPORTION TO THE**
19 **TOTAL AMOUNT OF TRAFFIC GOING OVER THE LIS TRUNK FULLY**
20 **COMPENSATE QWEST FOR SWITCHED ACCESS TRAFFIC?**

21 A. No. Under Level 3's proposal Qwest would be denied the non-recurring charges
22 that are a part of FGD charges. These are charges that are contained in Qwest's
23 access tariffs and are charges that all IXCs are required to pay.

1

2 **Q. ARE THERE OTHER PROBLEMS WITH THE LEVEL 3 PROPOSAL?**

3 A. Yes. The Level 3 proposal creates serious recording and billing issues.

4

5 **Q. WHAT ARE THE BILLING ISSUES THE LEVEL 3 PROPOSAL**
6 **PRESENTS?**

7 A. Today, IXCs are required to route all interLATA switched access traffic and
8 intraLATA switched access traffic over FGD. Qwest's mechanized billing systems
9 are able to use the actual traffic information recorded by its end office switch from
10 the FGD trunks, allowing Qwest to accurately and efficiently produce switched
11 access bills. The Level 3 proposal, on the other hand, would rely on factors, not
12 recordings of actual traffic information, and would not allow Qwest to use its
13 existing mechanized billing processes. In fact, implementing the Level 3 proposal
14 would require investment and significant reworking of Qwest systems and
15 processes, forcing Qwest to expend significant resources to meet the special needs
16 of one carrier.

17

18 **Q. LEVEL 3'S NEW LANGUAGE (ISSUE 2C) STATES THAT LEVEL 3 WILL**
19 **ONLY ROUTE TRAFFIC OVER THE INTERCONNECTION TRUNKS**
20 **THAT WOULD ROUTE TO NPA-NXX CODES HOMED TO QWEST**
21 **SWITCHES. DOES THIS LANGUAGE ALLEVIATE QWEST'S**
22 **CONCERNS ABOUT ALLOWING SWITCHED ACCESS TRAFFIC ON LIS**
23 **TRUNKS?**

1 A. No. Level 3's offer does not reduce the systems changes required of Qwest to
2 apply the proposed factors, and the appropriate tariffed rates, to traffic on LIS
3 trunks. Nor does it eliminate the issue of third parties' needs for access billing
4 records.

5
6 Qwest offers a service called Qwest Platform Plus (QPP) which is the replacement
7 for certain Unbundled Network Elements-Platform (UNE-P) products that Qwest is
8 no longer required to offer under the ICA. As a part of the QPP product offering,
9 Qwest provides switched access billing records to allow CLECs to bill for switched
10 access related to their QPP lines. Under the Level 3 proposal to route switched
11 access over LIS trunks, Qwest would be unable to provide these records and CLECs
12 using the QPP services would therefore be unable to bill for switched access.

13

14 **Q. HOW DO YOU RESPOND TO LEVEL 3'S ARGUMENTS THAT**
15 **COMBINING ALL TRAFFIC OVER A SINGLE TRUNK GROUP IS MORE**
16 **EFFICIENT?**

17 A. Qwest has offered Level 3 an approach which will allow the network efficiencies
18 that Level 3 is seeking. Qwest's proposed language for Section 7.2.2.9.3.2 offers
19 Level 3 the capability to combine all traffic over a FGD interconnection trunk
20 group. Combining all of the traffic over FGD not only allows for the efficiencies
21 Level 3 claims to need, it also allows for mechanized billing of the appropriate
22 tariffed rates. There is simply no reason to grapple with the difficulties inherent in

1 Level 3's proposal when a workable solution to combining all traffic on a single
2 trunk group already exists.

3

4 **Q. HAS QWEST ALLOWED OTHER CARRIERS TO USE LIS TRUNKS IN**
5 **THE MANNER THAT LEVEL 3 IS PROPOSING HERE?**

6 A. No. All CLECs interconnected with Qwest have interconnection agreements that
7 either provide for the segregation of traffic onto separate trunk groups or the
8 combining of terminating traffic onto a FGD trunk group. There is simply no valid
9 reason to give Level 3 special treatment that would cause great expense and
10 disruption for Qwest and other carriers.

11

12

VI. DISPUTED ISSUE NO. 13:

13

LOCAL INTERCONNECTION SERVICE DEFINITION

14 **Q. PLEASE DESCRIBE ISSUE NO. 13.**

15 A. Issue No. 13 relates to the definition of local interconnection service. Level 3's
16 new proposal appears to accept Qwest's proposed language.

17

VII. DISPUTED ISSUE NO. 17: TRUNK FORECASTING

18 **Q. PLEASE EXPLAIN ISSUE NO 17.**

19 A. Issue 17 has to do with Section 7.2.2.8 of the agreement which discusses the
20 forecasting of LIS trunks. Level 3's new proposal appears to accept Qwest's
21 proposed language.

1 **VIII. DISPUTED ISSUE NO. 18:**

2 **JURISDICTIONAL ALLOCATION FACTORS**

3 **Q. PLEASE EXPLAIN ISSUE NO. 18.**

4 A. Issue 18 concerns jurisdictional allocation factors for billing purposes. Level 3's
5 proposed language introduces several new jurisdictional allocation factors which
6 Qwest opposes.

7
8 **Q. WHAT LANGUAGE IS LEVEL 3 PROPOSING?**

9 A. Level 3 proposes the following:

10 7.3.9 To the extent a Party combines ISP-bound Traffic, VoIP Traffic,
11 Exchange Service (EAS/Local), IntraLATA LEC toll, and Jointly
12 Provided Switched Access (InterLATA and IntraLATA calls exchanged
13 with a third party IXC) traffic on a single trunk group, the originating
14 Party, at the terminating Party's request will declare monthly PLU(s)
15 PIU(s), and PIPU(s), collectively "Jurisdictional Factors." Such
16 Jurisdictional Factors will be verifiable with either call summary records
17 utilizing Call Record information for jurisdictionalization or call detail
18 samples. The terminating Party should apportion per minute of use
19 (MOU) charges appropriately.

20 7.3.9.1 The Jurisdictional Factors - PLU, PIU and PIPU - are defined as
21 follows:

22
23 7.3.9.1.1 PIPU – Percent IP Usage: This factor represents the traffic that
24 is IP Enabled as a percentage of ALL traffic. CLEC has introduced this
25 factor to identify IP-Enabled Services traffic for billing purposes to Qwest
26 on an interim basis until an industry standard is implemented. IP-Enabled
27 traffic includes all IP to TDM and TDM to IP traffic that is exchanged
28 directly between the parties.

29
30 7.3.9.1.2 PIU – Percent Interstate Usage: This factor represents the end-
31 to-end circuit switched traffic (*i.e.* TDM-IP-TDM) that is interstate for
32 services that are billed at tariffed rates on a per Minute Of Use (MOU)
33 basis as a percentage of all end-to-end circuit switched traffic, *i.e.* all
34 interstate traffic after IP-Enabled traffic has been excluded. This factor
35 does not include IP-Enabled Services Traffic.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

7.3.9.1.3 PLU – Percent Locally Rated Traffic (ISP-bound and VoIP Traffic Usage): This factor does not include IP-Enabled Services traffic.

7.3.9.2 Unless otherwise agreed to by the parties: (1) factors will be calculated and exchanged on a monthly basis. Percentages will be calculated to two decimal places (for example 22.34%); (2) each party will calculate factors for all traffic that they originate and exchanged directly with the other Party; and (3) the party responsible for collecting data will collect all traffic data, including but not limited to Call Detail Records (this includes CPN), from each trunk group in the state over which the parties exchange traffic during each study period. The parties will calculate the factors defined in Section 7.9.1, above, as follows:

7.3.9.2.1 PIPU: The PIPU is calculated by dividing the total IP-Enabled Services MOU by the total MOU. The PIPU is calculated on a statewide basis.

7.3.9.2.1.1 Upon ILEC request, CLEC will provide a PIPU factor for all minutes of usage exchanged directly between the Parties over the Interconnection Trunk Groups in each state. CLEC will provide separate PIPU factors for CLEC Terminating IP-enabled Traffic and CLEC Originating IP-enabled Traffic, which terms are defined in sections 7.8.4.3.1.1 and 7.8.4.3.1.2, respectively, below. Accordingly, the PIPU factor is based upon CLEC’s actual and verifiable Call Detail Records of IP-originated traffic

7.3.9.3 Exchange of Data:

7.3.9.3.1 The party responsible for billing will provide the PIPU, PLU and PIU factors to the non-collecting party on or before the 15th of each month, via email (or other method as mutually agreed between the parties), to designated points of contact within each company.

7.3.9.4 Maintenance of Records

7.3.9.4.1 Each company will maintain traffic data on a readily available basis for a minimum period of one year (or however long as required by state and federal regulations) after the end of the month for which such date was collected for audit purposes.

7.3.9.5 Audits

7.3.9.5.1 Each company will have the ability to audit the other company’s traffic factors up to a maximum of twice per year. A party

1 seeking audit must provide notice of their intent to audit and include
2 specific dates, amounts and other detail necessary for the party receiving
3 the request to process the audit. Notice must be provided in writing and
4 postmarked as mailed to the audited party within one year after the end of
5 each month(s) for which they seek audit.
6

7 7.3.9.5.2 The audited party must provide in a mutually agreeable
8 electronic format traffic data for the months requested according to
9 Section 7.3.9.5.1 above.
10

11 7.3.9.6 True-Up

12 In addition to rights of audit, the Parties agree that where a factor is found
13 to be in error by more than 2%, they will automatically true up the factors
14 and pay or remit the resulting amounts to correct such errors.
15

16 **Q. WHY IS QWEST OPPOSED TO LEVEL 3'S PROPOSED FACTORS?**

17 A. The only reason for introducing these factors is to allow for billing when switched
18 access traffic is commingled with all other traffic on a LIS trunk group. As was
19 noted in the discussion of Issue No. 2, these factors would not be necessary if
20 switched access traffic is carried over a FGD trunk group, as opposed to a LIS trunk
21 group. There is simply no reason to go to a system of factors, with the difficulties
22 they present, when a workable solution to combining all traffic on a single trunk
23 group already exists. In addition, the existing FGD solution is superior to Level 3's
24 proposal in that it relies on actual traffic information to determine accurate
25 jurisdiction of recorded calls, not estimates which may or may not be accurate and
26 at the very least will require continual updating. Further, as there is no industry
27 standard method of determining IP-enabled services (or even complete agreement
28 on the meaning of the term) at this time, the PIPU factor proposed by Level 3 is
29 unverifiable by Qwest, and includes traffic that does not conform to the definition
30 of VoIP proposed by Qwest and discussed in Mr. Brotherson's testimony.

1

2 **Q. IT APPEARS THAT THE LEVEL 3 PROPOSED LANGUAGE REQUIRES**
3 **QWEST TO PROVIDE FACTORS TO LEVEL 3. ARE SUCH FACTORS**
4 **NECESSARY?**

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

7

8 **Q. DOES THE LEVEL 3 PROPOSAL INCLUDE A FACTOR FOR ALL TYPES**
9 **OF TRAFFIC?**

10 A. No. Level 3's proposed language does not include a factor for intrastate toll traffic.
11 It is unclear to Qwest how this type of traffic will be handled under Level 3's
12 proposal.

13

14 **Q. DO YOU HAVE ANY ADDITIONAL COMMENT ON LEVEL 3'S**
15 **PROPOSED FACTORS?**

16 A. Yes. Section 7.3.9.1.3 would require that all ISP-bound and VoIP calls be treated
17 as local. As Mr. Brotherson notes in his testimony, not all ISP-bound or VOIP calls
18 are local. In addition, the first clause in the section is in direct conflict with the last
19 sentence of 7.3.9.1.3 which states that the PLU factor "does not include IP-Enabled
20 Services traffic.

21

1 **IX. DISPUTED ISSUE NO. 21:**

2 **ORDERING OF INTERCONNECTION TRUNKS**

3 **Q. PLEASE EXPLAIN THE NATURE OF THE DISPUTE ON THIS ISSUE.**

4 A. Issue No. 21 concerns language that Level 3 is attempting to insert in section 7.4 of
5 the agreement which discusses the ordering of local interconnection service.

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

7 A. Level 3 is proposing to insert the following language into Section 7.4, page of the
8 ICA:

9 7.4.1.1 Nothing in this section 7.4 shall be construed to in any way affect
10 the Parties' respective obligations to pay each other for any activities or
11 functions under this Agreement. All references in this section 7.4 to
12 'ordering' shall be construed to refer only to the administrative processes
13 needed to establish interconnection and trunking arrangements and shall
14 have no effect on either Party's financial obligations to the other.
15

16 **Q. WHY IS QWEST OPPOSED TO THE INSERTION OF THIS LANGUAGE?**

17 A. In addition to the fact that Qwest disagrees with Level 3's contention that it has no
18 financial obligation on Qwest's side of the POI, Level 3's language is misplaced.
19 Section 7.4 of the agreement has to do with the ordering of local interconnection
20 service and does not address allocation of responsibility for the cost of
21 interconnection.

22
23 Level 3's proposed Section 7.4.1.1 only underscores why its position on allocation
24 of the costs of interconnection is wrong. The fact that Level 3 requests (or orders)
25 facilities on Qwest's side of the network demonstrates that the interconnection is

1 done for Level 3's benefit. Level 3 makes requests for Qwest facilities on Qwest's
2 side of the point of interconnection so that Level 3 can serve its own ISP customers.

3
4 Section 7.4.1.1 is simply unnecessary. The Commission will determine who pays
5 the costs of interconnection in the Sections of the Agreement that are related to
6 Issue No. 1. Accordingly, since nothing in Section 7.4 requires Level 3 to pay
7 interconnection costs, Level 3's proposed Section 7.4.1.1 should be rejected.

8 **X. DISPUTED ISSUE NO. 22:**

9 **COMPENSATION FOR SPECIAL CONSTRUCTION**

10 **Q. PLEASE EXPLAIN ISSUE NO. 22.**

11 A. Issue 22 has to do with construction charges. Level 3's new proposal appears to
12 accept Qwest's proposed language.

13 **XI. MID-SPAN MEET INTERCONNECTION**

14 **Q. HAS LEVEL 3 NOW PROPOSED REVISED LANGUAGE RELATED TO**
15 **MID-SPAN MEET INTERCONNECTION?**

16 A. Yes. Level 3 has now proposed a definition for "Meet Point Interconnection
17 Arrangement" which was not previously in the agreement and has proposed
18 wording changes to two previously undisputed sections of the agreement related to
19 Mid-Span Meet interconnection.

20

1 **Q. WHAT IS LEVEL 3'S PROPOSED DEFINITION FOR "MEET POINT**
2 **INTERCONNECTION ARRANGEMENT"?**

3 A. Level 3 proposes the following definition:

4 "Meet Point Interconnection Arrangement" is an arrangement between
5 state certificated LECs whereby each telecommunications carrier
6 constructs, leases or pays for network facilities to a meet point.
7

8 **Q. DOES QWEST AGREE WITH THE NEW DEFINITION?**

9 A. No. To the extent Level 3 believes a Meet Point Interconnection Arrangement
10 definition is necessary, the FCC's definition in 47 CFR 51.5 should be used:

11 A meet point interconnection arrangement is an arrangement by which each
12 telecommunications carrier builds and maintains its network to a meet point.

13 By including the words "leases or pays for network facilities" Level 3 has
14 expanded the FCC's definition, which requires each party building its own facilities
15 to the meet point. Level 3's definition serves only to muddle the distinction
16 between an entrance facility, where Qwest provides a facility between a CLEC
17 building and a Qwest building, and a true meet point, where each party constructs
18 facilities to the meet point approximately half way between the two buildings.

19 Level 3's definition should be rejected.
20

21 **Q. HAS LEVEL 3 MODIFIED THE PREVIOUSLY AGREED TO DEFINITION**
22 **FOR MID-SPAN MEET?**

23 A. Yes. Level 3's is now proposing the following changes to the originally agreed to
24 definition:
25

1 "Mid-Span Meet" ~~means an~~ is a type of Meet Point Interconnection
2 Arrangement where interconnection between two (2) networks, designated
3 by two Telecommunications Carriers, whereby each provides its own cable
4 and equipment up to the a Meet Point, of the cable facilities.
5

6 **Q. DOES QWEST AGREE WITH THE CHANGES?**

7 A. No. This language was previously agreed to by both parties. It is not entirely clear
8 why Level 3 has made the changes it is now proposing. Looking at the words that
9 have been stricken, it appears that Level 3 is objecting to the provision that each
10 carrier provides "its own cable." As was just discussed, the FCC definition of a
11 Meet Point Interconnection Arrangement, specifically calls for each party to build
12 and maintain its facilities. Level 3's change to the definition appears to relieve it of
13 the obligation to build to the meet point, thus entirely undermining the meet point
14 concept.

15
16 **Q. WHAT IS THE OTHER SECTION OF THE AGREEMENT RELATED TO**
17 **MID-SPAN MEET THAT LEVEL 3 IS REVISING?**

18 A. The changes Level 3 is proposing to the previously undisputed Section 7.1.2.3 are
19 noted below:

20
21 7.1.2.3 Mid-Span Meet POI. A Mid-Span Meet POI is a negotiated Point
22 of Interface, limited to the Interconnection of facilities between one (1)
23 Party's Switch and the other Party's Switch. The actual physical Point of
24 Interface Interconnection and facilities will be technically feasible. New
25 methods of interconnection, not previously determined to be
26 technically feasible according to 47 C.F.R. 51.305 will be used will be
27 subject to negotiations between the Parties. ~~Each party will be responsible~~
28 ~~for its portion of the build to the Mid-Span Meet POI. A CLEC may not~~
29 ~~use remaining capability in an existing Mid-Span Meet POI to gain access~~
30 ~~to Unbundled Network Element. These Mid-Span Meet POIs will consist~~
31 of facilities used for the transmission and routing of telephone

1 **exchange service, exchange access and such other traffic as mutually**
2 **agreed by the Parties or required by the Commission provided in this**
3 **Agreement. This includes but is not limited to** Provisioning of one-
4 way or two-way local/IntraLATA and Jointly Provided Switched Access
5 ~~Interconnection~~ trunks. **Where specific types of trunks are technically**
6 **required,** as well as miscellaneous trunks such as Mass Calling Trunks,
7 OS/DA, 911 **or Jointly Provided Switched Access Trunks (for the**
8 **exchange of traffic with third party Interexchange Carriers), the**
9 **parties will establish such trunks. The Parties further agree to**
10 **establish additional direct trunking where required to migrate traffic**
11 **off of the Tandem as consistent with the technical requirements of this**
12 **Agreement.** and including any dedicated DS1, DS3 transport trunk
13 groups used to provision originating CLEC traffic.

14
15 **Q. DOES QWEST AGREE WITH LEVEL 3'S PROPOSED CHANGES?**

16 A. No. Level 3's changes represent a significant departure from the Mid-Span Meet
17 POI offering that CLECs currently provision today. Level 3 has substituted
18 technical feasibility language for the negotiation language proposed by Qwest.
19 Negotiation between the parties is critical to ensuring that each party is responsible
20 for approximately 50% of the facility. Level 3's language would allow Level 3 to
21 unilaterally pick any technically feasible point and potentially require Qwest to pay
22 for significantly more than 50% of the facility. Level 3's addition of language
23 regarding the new methods of interconnection is misplaced in this section and is
24 already addressed in Qwest's proposed language for Section 7.1.2, interconnection
25 arrangement number four.

26
27 Level 3 has again stricken language requiring each party to be responsible for
28 building facilities to the meet-point, undermining the mid-span meet concept . In
29 addition, Level 3 has also stricken the prohibition on using this form of

1 interconnection to access UNEs, which is contrary to FCC statements in the 1st

2 Report and Order. At paragraph 553 the FCC states:

3 We believe that, although the Commission has authority to require
4 incumbent LECs to provide meet point arrangements upon request, such
5 an arrangement only makes sense for interconnection pursuant to section
6 251(c)(2) but not for unbundled access under section 251(c)(3).
7

8 For these reasons, Level 3's proposed Mid-Span Meet POI changes should be
9 rejected.

10 **XII. CONCLUSION**

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY.**

12 A. Yes.