BEFORE THE WASHINGTON 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 ANSWER OF QWEST CORPORATION TO PETITION OF LEVEL 3 COMMUNICATIONS, LLC

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ANSWER TO PETITION

1 Qwest Corporation ("Qwest"), by and through its attorneys, hereby responds to the petition filed by Level 3 Communications, LLC ("Level 3") for arbitration of certain terms, conditions, and prices for interconnection and related arrangements. This answer is filed pursuant to Section 252(b)(3) of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §252(b)(3), and Washington Administrative Code 480-07-630(6). Qwest respectfully requests that the Washington Utilities and Transportation Commission ("Commission") resolve each of the issues identified below by ordering Qwest and Level 3 (hereinafter collectively referred to as "the Parties") to incorporate Qwest's proposed contract language into an Interconnection Agreement to be executed by the Parties. Attached as Exhibit A to this answer is an interconnection agreement containing the correct language proposed by Qwest. The interconnection agreement filed by Level 3 with its petition is an outdated template agreement and does not contain the language proposed by Qwest to Level 3 in the negotiations of an interconnection agreement for the state of Washington.[1]

I. INTRODUCTION

2 In its petition, Level 3 advocates positions on interconnection and intercarrier compensation that are inconsistent with existing federal law. Level 3's position is based on four premises.

3 First, Level 3 creates a one way traffic flow from Qwest's network to Level 3's network by focusing almost exclusively on serving Internet Service Providers ("ISPs").[2] Under the Act, Level 3 is entitled to interconnect for the purpose of offering "telecommunications services." Under FCC Rule 51.100, Level 3 may also offer information services over Section 252(c) interconnection facilities, but only "so long as it is offering telecommunications services over

[1] For example, the agreement filed by Level 3 does not contain language reflecting the changes in law associated with the TRO and the TRRO decisions.

[2] ISPs are a type of enhanced service provider, or ESP.

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the same arrangement as well." The traffic flow over the interconnection facilities between Level 3 and Qwest is and will continue to be almost exclusively one way – from customers on Qwest's network who access the internet to the ISPs served by Level 3's network.

4 Second, Level 3 attempts to obtain the use of Qwest's state-wide network for free. It does this by requesting interconnection at only one point per LATA. Although Qwest does not contest a single point of interconnection in a LATA, it disagrees with Level 3 that it must bear all interconnection costs incurred on Qwest's side of the point of interconnection ("POI"). Under Section 252 of the Act, Qwest is entitled to just and reasonable compensation for the interconnection it provides. 47 U.S.C. §251(c)(2)(d). This is true regardless of where the interconnection costs are incurred. Under current FCC rules, ISP traffic is not "telecommunications traffic,"[3] and the cost of transporting such ISP traffic to Level 3 should be the financial responsibility of Level 3. Nevertheless, Level 3 asks the Commission to impose all of these costs on Qwest.

5 Third, Level 3 attempts to misuse the North American Numbering Plan ("NANP") by assigning telephone numbers (NPA/NXX) for local calling areas in which the ISP's customers are located to the ISPs located in distant local calling areas in Washington, or perhaps in another state. As a result, calls from a customer of the ISP to the ISP modem banks and servers appear to be, based on the number dialed, local calls. In fact, they are interexchange calls that do not fall under the FCC's ESP exemption.[4] Level 3 tries to stretch the ESP exemption beyond any reasonable interpretation of its terms in order to accommodate its manipulation of the NANP.

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[3] 47 C.F.R. § 51.701(b)(1).

[4] Under the FCC's ESP exemption, the point of presence ("POP") of an enhanced service provider is treated as if that point of presence is the location of a retail customer.

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6 Finally, Level 3 advances an intercarrier compensation scheme that exploits both the one way traffic flow from ISP traffic and Level 3's manipulation of the NANP in order to maximize its compensation from Qwest. Under this scheme, Level 3 contends that Qwest must pay Level 3 for termination of both local and nonlocal ISP traffic that it delivers to Level 3 and must also forego the collection of any compensation that is due to Qwest for use of its network where the ESP Exemption, properly interpreted, does not apply. In addition, Level 3 contends that no matter where Voice over Internet Protocol ("VoIP") traffic from Level 3 customers enters Qwest's network, Qwest bears an obligation to deliver that traffic to any end user in the LATA as though the traffic were local, even though Qwest would be transporting large quantities of traffic from one Washington local calling area ("LCA") to another LCA. Level 3 bases this and other aspects of its intercarrier compensation scheme on incorrect readings of the applicable FCC orders and rules.

7 It is against this backdrop that Qwest responds to each of the issues raised by Level 3. In its petition, Level 3 purports to describe the issues in dispute, but in most cases inaccurately characterizes the actual disputes in the language or omits Qwest's position altogether. In the remainder of this response, Qwest sets forth the real issues, repeats Level 3's description of the issue, and then provides Qwest's position.

II. QWEST POSITION ON PARTICULAR ISSUES

A. ***TIER 1***

1. ISSUE NO. 1

Qwest's Statement of the Issue: Whether Qwest is entitled to be compensated by Level 3 for costs incurred by Qwest to provide the use of its network in offering the interconnection services Level 3 has ordered.

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Level 3's Statement of the Issue: Whether Level 3 may exchange traffic at a single point of interconnection ("SPOI") within a LATA in a manner whereby each party bears the cost of interconnection on their side of the point of interconnection.

Qwest's Position:

8 This issue is not about single point of interconnection ("SPOI") within the LATA. Instead, it is about which party properly bears financial responsibility for (1) the use of Qwest's network for one-way ISP traffic delivered to a competitive local exchange carrier ("CLEC") that primarily serves ISPs and for (2) use of Qwest's network to terminate VoIP calls. Under the Act, 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.[5] 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."[6] As the FCC has recognized, these provisions make clear that CLECs must compensate incumbent LECs for the costs incumbent LECs incur to provide interconnection.[7]

9 In this case, Level 3 has requested interconnection at a single point in each LATA. That may not be technically feasible in some circumstances and Qwest will present evidence on this issue during the hearings. To the extent interconnection on that basis is technically feasible, Qwest does not contest the principle of interconnection at a single point per LATA. However, what is really in dispute is who bears the costs of the interconnection Level 3 has requested. Qwest contends that Level 3 is responsible for compensating Qwest for the interconnection costs that Qwest incurs to honor Level 3's request. This is true even when costs are incurred

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5 47 U.S.C. §251(c)(2)(D).

6 47 U.S.C. §252(d)(1)

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

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on Qwest's side of the point of interconnection.

10 The Courts are in agreement with Qwest's position. In *U S WEST Communications, Inc. v. Jennings*, for example, the Ninth Circuit expressly noted that "to the extent that AT&T's desired interconnection points prove more expensive to U S WEST, we agree that the [Arizona Corporation Commission] should consider shifting costs to AT&T."[8] Similarly, in *MCI Telecommunications Corporation v. Bell Atlantic-Pennsylvania*, the Third Circuit Court of Appeals noted that while WorldCom was entitled to choose interconnection at a single point per LATA, "to the extent…that WorldCom's decision on interconnection points may prove more expensive to Verizon, the PUC should consider shifting costs to WorldCom."[9] Ironically, Level 3 cites both of these cases to support its request for a single point of interconnection but then fails entirely to mention that both cases would support a decision to require Level 3 to compensate Qwest for the costs that Qwest incurs to provide interconnection.

11 In an attempt to avoid its obligation to compensate Qwest for interconnection costs that Qwest incurs, Level 3 erroneously relies upon Section 51.703(b) of the FCC's interconnection rules. Section 51.703(b) provides that "a LEC may not assess charges on any other telecommunications carrier <u>for telecommunications traffic</u> that originates on the LEC's network." 47 C.F.R. § 51.703(b)(emphasis added). Section 51.703(b) is not applicable here, however, because the term "telecommunications traffic" has been defined by the FCC to exclude "information access" traffic. 47 C.F.R. §51.701(b)(1). In its *ISP Remand Order*, the FCC determined that ISP-bound traffic is "information access" traffic and is not

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8 304 F.3d 950, 961 (9th Cir. 2002).

9 271 F.3d 491, 518 (3rd Cir. 2003).

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"telecommunications traffic."[10]

12 For the same reason, none of the decisions applying Section 51.703(b) that Level 3 relies upon are on point.[11] The *Virginia Arbitration Order* simply did not address whether ISP-bound or VoIP traffic was included within the definition of "telecommunications traffic" for purposes of Section 51.703(b).[12] *Qwest v. Universal Telecom* is not pertinent because it involved interpretation of an interconnection agreement entered into before Section 51.703(b) was amended to exclude information access.[13] *TSR Wireless* is not on point because it involved wireless traffic that falls within the definition of "telecommunications traffic."[14] Finally, *MCIMetro* is not relevant because the treatment of ISP-bound traffic was not at issue.[15]

13 In short, there is no statutory provision or FCC rule that denies Qwest the right to recover from Level 3 the costs of interconnection that Qwest incurs to provide the interconnection Level 3 has requested. Qwest acknowledges that the Commission ruled in favor of Level 3 on this issue in its Fourth Supplemental Order dated February 5, 2003 in Docket No. UT-023042. However, since that time a federal court in Colorado has twice addressed the interrelationships between FCC Rules 701(b)(1), 703(b), and 709(b) and has concluded that ISP traffic, because it is not "telecommunications traffic" is not subject to Rules 703(b) and 709(b). *See* Level 3 Communications, LLC v. Public Utilities Commission of Colorado, 300 F.Supp.2d 1069 (Dist. Colorado, December 8, 2003). Qwest respectfully requests the Commission to take a fresh

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

[11] Level 3 Petition ¶¶ 38-40.

[12] Memorandum Opinion and Order, *In re Petition of WorldCom, et al., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection,* 17 FCC Rcd 27039 (2002).

[13] *Qwest v. Universal Telecom*, 2004 WL 2958421 (D. Ore. 2004).

[14] Memorandum Opinion and Order, *TSR Wireless, LLC v. US WEST Communications, Inc*., 15 FCC Rcd 11166 (2000).

[15] *MCIMetro Access Trans. Serv v. BellSouth Telecommunications,* 352 F.3d 872, 876-77 (4th Cir. 2003).

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look at this issue.

2. ISSUE NO. 2

Qwest's Statement of the Issue: Whether Level 3 is entitled to commingle switched access traffic with other types of traffic on local interconnection trunks established under the Agreement.

Level 3's Statement of the Issue: Whether Level 3 may exchange all traffic over the interconnection trunks established under the Agreement.

Qwest's Position:

14 Qwest has no obligation to permit Level 3 to commingle switched access traffic with other types of traffic on the interconnection trunks created under the Agreement. In fact, Qwest is required to provide interconnection for the exchange of switched access traffic in the same manner that it provided interconnection for such traffic prior to passage of the Act. Section 251(g) of the Act specifically provides:

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

(Emphasis added). As the FCC has stated, "[p]ursuant to section 251(g), LECs must continue to offer tariffed interstate access services just as they did prior to the enactment of the 1996 Act."[16]

15 Interconnection under Section 251(c)(2) of the Act is limited to interconnection for the

[16] *Local Competition Order* ¶ 1034 .

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transmission and routing of "telephone exchange service and exchange access" *provided by* the interconnecting CLEC.[17] When Level 3 delivers interexchange traffic to Qwest for termination, Level 3 is receiving, not providing, exchange access. Section 251(c)(2) does not require Qwest to provide interconnection for purposes of origination or termination of interexchange traffic. Instead, compensation and other interconnection terms for the exchange of interexchange traffic remain governed by the access charge regime that Section 251(g) of the Act expressly retains.[18]

16 Qwest has offered to let Level 3 separate its IXC traffic and its local traffic. In the alternative, Qwest has offered to permit Level 3 to exchange traffic types covered by the Agreement over the Feature Group D trunks that Qwest has, since times predating 1996, used to exchange long distance calls with interexchange carriers. Despite the fact that Level 3 essentially acts as a terminating interexchange carrier, it has rejected purchase of terminating Feature Group service, thereby facilitating its ability to mask interexchange calls.

17 Nothing in the Act or the FCC's rules gives Level 3 the right to mix switched access traffic with local traffic over the local interconnection trunks established pursuant to section 251(c)(2) of the Act between its network and Qwest's. The Act and the FCC's rules interpreting the Act speak to "interconnection at any technically feasible point within the incumbent LEC's network,"[19] but this instruction does not address the type or manner of interconnection. Any other interpretation would obviate Qwest's switched access tariffs and would allow Level 3 to avoid the tracking and measuring of IXC access traffic offered by Feature Group D trunks. Contrary to Level 3's unsupported assertion,[20] Section 251(c)(2) *does not* give Level 3 the

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17 *Id*, ¶¶186, 191.

18 47 U.S.C. § 251(g).

19 47 C.F.R. § 51.305(a)(2).

20 Level 3 Petition ¶ 49.

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right to choose the manner in which its long distance calls originate and terminate with other carriers. That is something that is described in Qwest's switched access tariffs, which were unaffected by the Act.

18 The legally binding practice between Qwest and CLECs is to route all interLATA switched access traffic and intraLATA switched access traffic not carried solely by LECs via Feature Group services. This is done according to industry based requirements for procedures to record and bill access traffic, including the industry guidelines for jointly provided switched access billing and records exchange processes, so that Qwest can use its systems that were previously developed to mechanize these processes. Level 3 seeks to combine Level 3 switched access, local and information access traffic over non-Feature Group interconnection trunks and, by implication, to force Qwest to abandon or materially retrofit its mechanized billing system, records handling procedures and switched access tariffs that have been in use by the telecommunications industry since prior to the Act.

19 Two important, and highly negative, consequences would result from the Level 3 approach. First, much of the billing and validation work would have to be performed manually because Qwest does not have a mechanized system to address Level 3's unique billing request. In fact, existing Qwest billing systems would declare Level 3's switched access traffic that is routed over LIS trunks as misrouted, disabling Qwest's ability to bill Level 3 for the traffic. Second, under section 51.305(a)(4) of the FCC's interconnection rules, Qwest would be required to offer the same terms and conditions to other requesting telecommunications carriers, but on a carrier-specific basis. Needless to say, Level 3 has not offered to pay for any of the costs Qwest would incur if forced to abandon or materially change its mechanized billing systems, procedures and tariffs.

20 To support its position, Level 3 mistakenly relies upon the *Virginia Arbitration Order* to

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contend that the FCC's Wireline Competition Bureau ("Bureau") has rejected the use of separate trunk groups.[21] However, nowhere in the order does the Bureau determine that separate trunk groups could not be justified. Instead, it merely noted that Verizon had failed to show the harm that would result without separate trunk groups. Significantly, there is nothing in the Order that suggests that Verizon claimed that AT&T's proposal would disrupt Verizon's billing systems or cause Verizon to incur additional costs to bill access charges.[22] Here, in contrast, the additional cost and disruption of Qwest's switched access traffic recording, billing and validation justify either (1) the segregation of traffic onto separate LIS and Feature Group D trunk groups or (2) the use of Feature Group D trunking as the single trunk group that should support the full complement of combined terminating traffic types. CLECs interconnected with Qwest have Interconnection Agreements that either provide for the segregation of traffic onto separate trunk groups or the combining of terminating traffic onto a Feature Group D trunk group.

21 On this issue, Level 3 erroneously relies on the Minnesota Commission's decision in the 2003 arbitration between Level 3 and Qwest.[23] However, the only issue in that arbitration was financial responsibility for transporting ISP-bound traffic on Qwest's side of the POI. The language quoted by Level 3 goes only to that issue. There is not a single reference to commingling different types of traffic over a single trunk type, let alone a discussion of whether traffic should be carried over Feature Group D trunks or LIS trunks.

22 None of Level 3's authorities provides a valid reason to give Level 3 special treatment.

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21 Level 3 Petition ¶ 53.

22 *Virginia Arbitration Order* ¶ 57.

23 Level 3 Petition ¶ 55.

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3. ISSUE NO. 3

Qwest's Statement of Issue : Whether Qwest should be required to exchange VNXX traffic with Level 3 when by reason of Level 3's assignment of telephone numbers Qwest is deprived of the toll and access revenue that it is entitled to for delivering this traffic to Level 3.

Level 3's Statement of Issue: Whether Qwest may exclude ISP-bound traffic from compensation due under the *FCC's ISP Remand Order* through contract terms that seek to create artificial geographic designations of the ISP.

Qwest's Position:

23 Issue No. 3 concerns the treatment of so-called "VNXX" traffic.[24] "Virtual NXX" or "VNXX" is a shorthand way of describing the situation wherein a CLEC, such as Level 3, obtains local numbers from the North American Numbering Plan Administrator ("NANPA") in various parts of a state that are assigned to its ISP customers with no physical presence in the local calling areas ("LCAs") associated with those telephone numbers. The traffic directed to those numbers is routed to one of the "POIs" of the CLEC and is then delivered to the CLEC's ISP customer (at the ISP's "server" or its "modem bank") at a physical location in another LCA or even in another state. While VNXX issues typically come up in the context of ISP traffic, the concept is not strictly related to ISP traffic. A VNXX arrangement can exist for voice traffic as well.

24 By assigning telephone numbers associated with a specific local calling area to an ISP with no physical presence in the local calling area with which those telephone numbers are associated, Level 3 is thus able to receive those calls as if they were local calls when in fact they are long distance calls. As a result, Qwest is deprived of the toll and/or access revenues to which it is entitled. Moreover, Qwest incurs the cost of switching and transporting those calls so that they can be delivered to Level 3. The end result is that Qwest is deprived of cost recovery that the

[24] There appears to be an internal inconsistency in Level 3's treatment of ISP-bound and VoIP traffic between (1) sections 7.3.6.1 and the Level 3 definition of VNXX traffic (both of which state that all ISP-bound and VoIP traffic, without limitation, are subject to reciprocal compensation) and (2) section 7.3.4.1 (which states that reciprocal compensation is payable for ISP-bound and VoIP traffic only when the telephone numbers of the called and calling parties are associated with the same LCA). Level 3's petition does not clarify this inconsistency.

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Commission has determined is appropriate for long distance calls and that is set forth in Qwest's tariffs approved by the Commission.

25 Level 3's assignment of telephone numbers to ISPs with no physical presence in the calling areas with which those telephone numbers are associated violates industry numbering guidelines. It is also an unjust and unreasonable practice, and the Commission should prohibit it. In addition, the interconnection agreement the Commission approved in this arbitration should not permit the use of VNXX arrangements.

26 Qwest acknowledges that the Commission recently determined in Order No. 5 in Docket No. UT-053039, *Level 3 Communications, LLC, v. Qwest Corporation,* that the rate set forth in the *ISP Remand Order* applies to VNXX routed ISP traffic. The Commission also determined in that proceeding that the Commission had not previously approved of the use of VNXX arrangements for ISP-bound traffic or any other traffic in interconnection agreements in Washington. Accordingly, Qwest requests that the Commission prohibit Level 3 from using VNXX arrangements in its interconnection agreement with Qwest. In the alternative, Qwest requests that the Commission set a zero rate for VNXX-routed ISP-bound traffic. The rate set forth in the ISP Remand Order is a cap and state commissions are free to set a rate for ISP-bound traffic that is below the cap.[25]

27 Sound public policy counsels against permitting Level 3 to recover terminating intercarrier compensation on VNXX traffic. The customer who places the call to an ISP is acting as a customer of an ISP on Level 3's network. If Level 3 is allowed to collect intercarrier compensation for traffic that is properly thought of as Level 3's own toll traffic while being allowed to escape compensation obligations for originating and terminating access and

[25] *Southern New England Telephone Co. v. MCI WorldCom Communications, Inc*., 353 F.Supp.2d 287, 295 (D. Conn. 2005)

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transport of such calls, the end result is regulatory arbitrage in which Level 3 profits at Qwest's expense. Level 3 will collect revenue primarily from other carriers rather than its own customers. Such a result creates new incentives for inefficient entry of LECs intent on serving ISPs exclusively and not offering viable local telephone competition, as Congress had intended in the Act. Moreover, the large one-way flows of cash make it possible for LECs serving ISPs to afford to pay their own customers to use their services, driving ISP rates to consumers to uneconomical levels.[26] In short, as the FCC recognized, intercarrier payments for ISP traffic create severe market distortions."[27]

4. ISSUE NOS. 3 and 4 (VoIP issues)

Qwest's Statement of Issues: Whether Qwest and Level 3 are required to pay reciprocal compensation on VoIP traffic that does not originate and terminate at physical locations within the same LCA.[28]

Level 3's Statement of the Issue: Whether the Parties will compensate each other the rate of $0.0007 for the exchange of Voice over Internet Protocol ("VoIP") traffic.

Qwest's Position on VoIP issues (Issues 3 and 4):

28 In Issue No. 3, Level 3 raised issues relating to terminating compensation for two types of calls: ISP traffic and VoIP traffic. While Qwest's position is consistent on both issues, the underlying body of law for ISP-bound traffic and for VoIP is not the same. Therefore, in order to address the issues with some degree of clarity, Qwest limited its discussion of Issue No. 3 to the questions related to ISP-bound traffic and noted that it would address the VoIP issues in connection with its discussion of Issue No. 4. Issue No. 16 is also VoIP related, as it presents the parties' competing language for the definition of "VoIP Traffic." Qwest deals with that issue separately.

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[26] *ISP Remand Order*¶¶ 70-71, 74-76.

[27] *Id.* ¶ 76.

[28] The physical location of the VoIP provider Point of Presence ("POP") is treated as the location of one end of the call for purposes of the application of this issue.

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29 Level 3's basic position on VoIP traffic is that all VoIP traffic, without regard to the LCA in which the VoIP provider purchases service or the location of the terminating party to the call, is subject to terminating compensation as opposed to access charges. However, Level 3 has also articulated a second inconsistent proposal. Under Section 7.3.4.1, Level 3 proposes that intercarrier compensation for VoIP calls should be based on the telephone numbers of the called and calling parties. Thus, if the called and calling numbers are associated with the same LCA—no matter the physical location of the customers[29]—terminating compensation would be paid to the carrier terminating the call. Although Level 3 does not specify the compensation regime that should govern VoIP calls where the telephone numbers are not associated with the same LCA, the position it has taken in other states is that terminating compensation at $.0007 per minute of use should apply, and that access charges should never be applied to a VoIP call, no matter where the call enters the Public Switched Telephone Network ("PSTN") or where the ILEC must transport the call to in order to terminate it. Level 3's VoIP proposal is inconsistent with Commission rules regarding the proper definition of local and interexchange traffic.

30 In contrast, Qwest's proposed language maintains the existing distinctions between local and interexchange calls. Thus, local VoIP calls would be subject to terminating compensation, while non-local calls would remain subject to existing compensation mechanisms that govern interexchange calls. Consistent with the ESP exemption, the location of the VoIP Provider POP would be the relevant physical location for determining whether a call is or is not local.

31 In its Petition, Level 3 states that Qwest takes the position that under no circumstances should Qwest be "obligated to compensate Level 3 to terminate that [VoIP] call."[30] This statement is

[29] The physical location of the customer may be an end user premises or the end user's POP such as a VoIP Provider's POP.

[30] Level 3 Petition ¶ 83.

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simply untrue. Qwest agrees that under circumstances explained below, it should pay reciprocal compensation to Level 3 for a VoIP call that is delivered by Qwest to Level 3 for termination with a Level 3 end-user customer. Likewise, under certain circumstances, Level 3 should pay reciprocal compensation for VoIP traffic that is delivered from Level 3 that terminates on Qwest's network. However, Qwest adamantly opposes Level 3's proposed language that would mandate (1) that reciprocal compensation must be paid for *all* VoIP traffic or (2) that reciprocal compensation be paid based on the telephone numbers of the calling and called parties when the geographic locations of the called and calling parties are in different LCAs.

32 Qwest proposes that the end points of a VoIP call should be the factor that determines whether a VoIP call is local. As an example, for a VoIP call where the VoIP provider is served by Level 3, the end point should be the physical location of the VoIP provider POP. On the Qwest side of the same call, the end point should be the physical location of the Qwest end user receiving the call. If the physical end points of a VoIP call are located within the same LCA, as defined by the Commission, the traffic is local and reciprocal compensation should be paid to the carrier terminating the call. If the physical end points of the VoIP call are in different LCAs but the telephone numbers of the called (i.e., the Qwest end user receiving the call) and calling (i.e., the VoIP Provider POP) parties are associated with the same LCA, the call is a VNXX call and reciprocal compensation should not be paid. If the physical end points of the call are in different LCAs, the call would be an interexchange call and the proper intercarrier compensation should be based on appropriate state or federal tariffs. The Iowa Utilities Board recently addressed this same issue, ruling that:

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> [A] voice call between separate LCAs is a toll call and must be treated as such. The Board finds that this rule applies equally to all calls regardless of the technology used, including VoIP.[31]

a) Level 3 Is Actually Proposing that the Commission Dramatically Change the Existing Intercarrier Compensation Regime Applicable to VoIP Traffic.

33 Level 3's definition of "VoIP VNXX traffic" characterizes it as "telecommunications over which the FCC has exercised exclusive jurisdiction under section 201 of the Act." Nowhere in Level 3's discussion of Issues Nos. 3 or 4 does Level 3 provide any citation or support for that contention.[32] In section 7.3.6.1, Level 3 proposes language that suggests that VoIP traffic is in some manner related to the *ISP Remand Order*, although it provides no citation of authority for that proposition either. With regard to Issue No. 4, Level 3 appears to propose that reciprocal compensation be paid on VoIP traffic on the basis of telephone numbers rather than the physical location of the called (i.e., Qwest end user) and calling (i.e., VoIP Provider POP) parties, yet elsewhere it suggests that all VoIP traffic be subject to reciprocal compensation. The result is a confusing and inconsistent set of contract language

34 Level 3's VoIP language implies that intercarrier compensation for VoIP traffic should bear no relationship to the historical connection between reciprocal compensation and the physical end points of a call (that is, reciprocal compensation has traditionally been allowed only where the physical end points of a call are within the same LCA). Either of Level 3's proposals would abandon that relationship and require reciprocal compensation in situations far broader than the application of reciprocal compensation for most traffic. By proposing to substantially broaden the circumstances in which reciprocal compensation would apply, Level 3 is implicitly suggesting that, not only should reciprocal compensation apply to VoIP traffic in situations far

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[31] Iowa Level 3 Order, p. 33.

[32] In fact, Level 3's entire nine-page discussion of Issue 3 relates solely to ISP-bound traffic, and the issues related to that type of traffic.

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broader than for other traffic but, at the same time, Level 3 is suggesting that it should be allowed to avoid the intercarrier compensation system that has been created by the existing regulatory structure to govern compensation for calls that are interexchange in nature (i.e., that do not physically originate or terminate in the same LCA). For its own financial gain and contrary to established industry practices, Level 3 proposes an end run around the existing compensation rules for VoIP traffic.

b) Level 3's Position is Inconsistent with the ESP Exemption.

35 The FCC has a long history of determining the appropriate treatment of traffic bound for enhanced service providers (providers of communications that modify content). In 1983, the FCC issued an order creating the so-called ESP exemption.[33] The ESP Exemption" was an FCC decision, based on a number of policy considerations, that enhanced service providers were entitled to connect their points of presence through tariffed local retail services (rather than through tariffed Feature Group access services that other carriers were required to purchase) even though the facilities were really being used for services classified as interstate.[34] The FCC assigned the same status to private systems (e.g. PBX systems) that accessed local exchange systems for connecting interstate calls.[35] In other words, the FCC treats the point of presence of an enhanced service provider as if that point of presence is the location of a retail customer.

36 The FCC applied the same approach under the Act when it dealt with traffic routed to the

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[33] *See* Third Report and Order, *In the Matter of MTS and WATS Market Structure*, , 93 FCC 2d 241, 254-55 ¶ 39 and n.15, 320 ¶ 269 (1983); modified on recon., 97 FCC 2d 682 (1984) ("*First Order on Reconsideration*"), further modified on recon., 97 FCC 2d 834 (1984) ("*Order on Further Reconsideration*"), aff'd in principal part and remanded in part sub nom., *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

[34] *See, e.g.*, First Report and Order, *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, , 12 FCC Rcd 15982, 16131-34 ¶¶ 341-48 (1997); *see also, generally*, Order, *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631 (1988).

[35] *See* Memorandum Opinion and Order, *In the Matter of WATS-Related and Other Amendments of Part 69 of the Commission's Rules*, 2 FCC Rcd 7424, 7425 ¶¶ 13-15 (1987).

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Internet. The FCC determined that ISPs, one of the heirs to the old "enhanced service provider" designation, were entitled to the same treatment for compensation purposes. Thus, when an ISP or a VoIP Provider is served by a CLEC like Level 3, the same analysis applies under section 251(g) of the Act. The VoIP provider's POP is treated as an end user location for the purposes of compensation.

37 FCC precedent requires that a computer (such as the equipment in a VoIP provider's POP) be treated exactly the same as other end user customers in determining whether a call to the computer is a long distance call. In other words, a call from one LCA to a computer located in another LCA is treated as a long distance call. Level 3's position is directly contrary to this requirement. Implicit in its proposed language is a claim by Level 3 that the FCC, without analysis or even intent, has accidentally changed the entire landscape of access charges and issued a blanket exemption for all calls to and from all computers, no matter where located (as long as they send the call to the Internet). However, Level 3 provides no support for the proposition that the FCC has made such a major policy shift.

38 Once again, the Iowa Utilities Board addressed this precise issue and agreed with Qwest's interpretation of the scope of the ESP exemption:

> [W]hen a call is originated in IP format on IP-compatible equipment and is handed off to Qwest within a LCA where the ESP is located, but the call is being sent for termination to another LCA, the provider is not entitled to free transport to the terminating LCA under the ESP exemption or on any other basis, nor is it allowed to connect to the terminating LCA as an end user under the ESP exemption if it does not have a physical presence in that LCA. The Board also agrees that the VoIP Provider POP is the relevant point to measure the end point of traffic since the VoIP provider is treated as the end user under the ESP exemption.[36]

The Board thus adopted Qwest's proposed language.

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[36] *Iowa Level 3 Order*, at 33.

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5. LCAs Established by the Commission are the Appropriate Geographical Areas for the Purpose of Determining the Application of Reciprocal Compensation.

39 In its description of Issue No. 3, Level 3 states that the issue is whether Qwest may exclude compensation for ISP-bound traffic (and VoIP traffic as well, since Level 3 proposes that they be treated the same) from compensation "through contract terms that seek to *create artificial geographic designations* of the ISP."[37] (emphasis added) A closer examination of Level 3's petition discloses that these "artificial geographic designations" are what the rest of the industry and regulators commonly refer to as local calling areas, or LCAs.

40 LCAs have a long history in the industry. They represent communities or other geographical areas where the residents and businesses share some form of community of interest, such that the state's commission found it to be in the public interest to designate the calling within the LCA as local and to require the provider to provide it on a flat-rated basis. LCAs thus were and continue to be the dividing line between local and long distance (toll) calling. The local/toll distinction has likewise served as a critical frame of reference for intercarrier compensation. LCAs have traditionally been the criteria that determine whether reciprocal compensation potentially applies to a call between carriers.

41 The vast majority of state commissions that have addressed the issue have firmly concluded that local calling (defined by the physical location of the parties and not the telephone numbers) will remain the relevant criterion for the application of reciprocal compensation or bill and keep. Level 3 has presented nothing to suggest that the Commission must abandon LCAs for determining compensation for VoIP calls.

[37] Level 3 Petition, at p. 25.

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6. ISSUE NO. 5

Qwest's Statement of the Issue: Whether state-specific language approved by the Commission should be used in the agreement instead of Qwest's template language.

Level 3's Statement of the Issue: Whether the Agreement should incorporate by reference, interconnection terms and conditions that conflict with the specific terms of the Interconnection Agreement at issue in this proceeding.

Qwest's Position:

42 Level 3 has misinterpreted the cross-references that Qwest included in its template interconnection agreement. The references in the template agreement to Qwest's Statement of Generally Available Terms ("SGAT") indicate those instances in which the Commission has approved state-specific language that is different than the generic language used in the fourteen state template. Thus, for example, the state commissions in Colorado, Minnesota, and South Dakota have each prescribed language for Section 5.8.1 that is different than Section 5.8.1 in the fourteen-state template. The interconnection agreement submitted this response contains the state specific language ordered by the Commission in its review of Qwest's SGAT. It contains no cross-references to the SGAT.

B. ***TIER II ISSUES***

43 The Tier II issues primarily concern definitions. Qwest has proposed definitions that are for the most part standard definitions used in Qwest's interconnection agreements. Qwest's proposed definitions have also typically been approved by state commissions for inclusion in Qwest's Statement of Generally Available Terms and Conditions ("SGAT"). Level 3 has not justified a departure from the definitions that have already been approved by the Commission. Level 3's proposed definitions should also be rejected for the reasons given in the following discussion.

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1. ISSUE NO. 6

Qwest's Statement of the Issue: Whether the Agreement should contain the standard definition of "Automated Message Accounting" (or, "AMA") approved for Qwest's SGATs.

Level 3's Statement of the Issue: Because Level 3 does not have "Switch Technology", should the Agreement provide that AMA records are inherent in the parties' network?

Qwest's Position:

44 Contrary to Level 3's objection, nothing in the definition of "Automated Message Accounting" or "AMA" links it to circuit switch technology. In fact, the definition of "switch" in the Agreement includes packet switches. AMA is the fundamental telecommunications standard for recording switch messages. Qwest's proposed definition should be accepted.

2. ISSUE NO. 7

Qwest's Statement of the Issue: Should the Parties use the Commission approved definition of "Basic Exchange Telecommunications Service"?

Level 3's Statement of the Issue: Whether the Agreement should provide that End User Customers are those customers that are on the public switched telecommunications network, and that end users only exchange calls to or from the public switched telecommunications network.

Qwest's Position:

45 Qwest's proposed definition of "Basic Exchange Telecommunications Service" has been approved by every commission in Qwest's region in Qwest's SGAT proceedings. Qwest's definition, by its terms, is used only if the Commission does not have a different definition for "Basic Exchange Telecommunications Service." Contrary to Level 3's assertion, the term "end user" in the definition does not exclude IP enabled services.

3. ISSUE NO. 8

Qwest's Statement of the Issue: What minimum information should a "call record" include?

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Level 3's Statement of the Issue: Should the Parties be permitted to agree on the types of call record information?

Qwest's Position:

46 Level 3's definition of a call record does not require the basic information that is necessary to properly rate and bill a call. It does, however, require information that is not today required by industry standards and that other carriers who interconnect with Qwest do not provide. Level 3's proposed definition also uses terms that are not defined in the agreement, by the telecommunications industry, or are defined differently by the industry. In contrast, Qwest's definition contains the information necessary to properly rate and bill a call and is consistent with industry standards and terminology.

47 Level 3's proposed language stating expressly that the parties can agree to include other information in a "call record" is implied in any definition. The parties are always free to agree to something different than what is included in the interconnection agreement. All they have to do is amend the agreement. However, Level 3's proposed language might be interpreted to permit agreement other than through a written interconnection agreement amendment signed by both parties.

48 The Commission should adopt Qwest's definition of a call record.

4. ISSUE NO. 9

Qwest's Statement of the Issue: Whether a separate definition of "exchange access" is necessary in Section 7 of the Agreement.

Level 3's Statement of the Issue: What is the proper definition of "exchange access"?

Qwest's Position:

49 Qwest and Level 3 now propose the same definition of "exchange access" for all sections of the Agreement. However, for purposes of Section 7, Qwest has replaced the reference "Exchange Access (IntraLATA Toll carried solely by local exchange carriers)" with

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"IntraLATA Toll carried solely by local exchange carriers" or "IntraLATA LEC Toll." This refinement is necessary so that the remaining terms and conditions in Section 7 are properly limited to exchange access involving IntraLATA Toll carried solely by local exchange carriers. The limitations contained in Section 7 are the limitations that Level 3 seeks to eliminate with its proposal for Issue No. 2. Qwest seeks to continue to maintain the distinction between intraLATA traffic carried solely by a LEC and IXC carried toll traffic. Qwest's proposed refinements within this issue maintain this distinction and avoid any confusion over the terms.

5. ISSUE NO. 10

Qwest's Statement of the Issue: Should the Parties use a definition of "Interconnection" that most closely conforms to the Commission-approved definition?

Level 3's Statement of the Issue: Should the definition of "Interconnection" include terms that would exclude the Parties from exchanging VoIP traffic, and certain ISP-bound traffic?

Qwest's Position:

50 Level 3 argues that Qwest's proposed language is a "back-door attempt to regulate the types of traffic that may be exchanged between the parties" and specifically complains that "Qwest's definition excludes VoIP traffic."[38] There is no merit to this argument. The specific service types set forth in Qwest's language are those that are defined in SGATs throughout Qwest territory. There is no reason to add VoIP traffic to the definition. As IP-enabled voice traffic, VoIP traffic, like the voice traffic carried by other carriers, will fit into one of the categories already listed, depending on the nature of the specific VoIP traffic. Even Level 3's approach, which Qwest opposes, would effectively treat all VoIP traffic as Exchange Service traffic.

51 Level 3's proposed language should be rejected because it is confusing and uses a statutory reference, "section 251(b)(5) traffic," as part of the definition, adding no clarity and begging

[38] Level 3 Petition, ¶104.

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the question of what the definition includes. It will thus lead to later disputes between the parties. The same reference to "section 251(b)(5)" traffic occurs in other portions of Level 3's proposed contract language,[39] and is likewise vague and imprecise. It should be removed.

6. ISSUE NO. 11

Qwest's Statement of the Issue: Should the Parties use a definition of "Interexchange Carrier" that is identical to the Commission-approved definition?

Level 3's Statement of the Issue: Should the definition of "Interexchange carrier" be defined by relying on a type of traffic that is defined by the federal Communications Act?

Qwest's Position:

52 Level 3 makes two points: (1) the terms "InterLATA or IntraLATA Toll services" are ambiguous terms not found in the Act; and (2) the Level 3 definition uses the term Telephone Toll Service, which is defined in the Act. On the first point, Level 3 is simply wrong. The term "interLATA service" is defined in section 153(21) of the Act. Moreover, the term "intraLATA" can hardly be characterized as ambiguous or ill-defined. Given that LATA is a well-defined term and that interLATA service refers to telecommunications "between a point located in a [LATA] and a point outside such area," "intraLATA service" obviously refers to telecommunications between two points "within" the same LATA. The Qwest definition is easily understandable and commonly used.

53 On the second point, Level 3's desire to use "telephone toll service" is a transparent effort to attempt to inject a definition into the agreement that (because it defines "toll service" as a call for which a separate bill is rendered) would require the payment of intercarrier compensation for ISP VNXX traffic. It also facilitates Level 3's attempt to disguise FGD traffic and avoid the payment of access charges. Consistent with Qwest's arguments above, this attempt should

[39] *See, e.g.*, paragraphs 7.2.2.9.3.1 (Issue 2A), 7.3.3.2. (Issue 1J), 7.3.4.1 (Issue 4) , 7.3.6.1 (Issue 3C), and 7.3.6.3 (Issue 3A)

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be rejected.

7. ISSUE NO. 12

Qwest's Statement of the Issue: Should the Parties use a definition of "IntraLATA Toll Traffic" that is identical to the Commission-approved definition?

Level 3's Statement of the Issue: Whether the Agreement should define the term "IntraLATA Toll Traffic" using terms defined by the federal Communications Act.

Qwest's Position:

54 Level 3's arguments are the same as in Issue No. 11. Qwest's response is likewise the same as in its response to Issue No. 11.

8. ISSUE NO. 13

Qwest's Statement of the Issue: Setting aside who bears particular costs of interconnection, should the Agreement contain a definition of the trunk facility that connects Qwest's network to Level 3's network?

Level 3's Statement of the Issue: Whether the Agreement should contain a definition of a term that is used by Qwest to shift to Level 3 the costs of Qwest's facilities on Qwest's side of the point of interconnection.

Qwest's Position:

55 The definition of "Local Interconnection Service or 'LIS' Entrance Facility" is nothing more than a definition of a facility that connects Qwest's network to Level 3's network. The definition does not contain any language that determines who bears the cost of this facility. Level 3 provides no legitimate reason for rejecting this definition. Level 3's concern about the allocation of the costs of interconnection is addressed in Issue No. 1.

9. ISSUE NO. 14

Qwest's Statement of the Issue: Should the Commission adopt a definition of "Exchange Service" or "Extended Area Service (EAS)/Local Traffic" that means "traffic that is originated and terminated within the Local Calling Area as determined by the Commission"? In addition to that, should the Commission also adopt a definition for "Telephone Exchange Service" that is substantially the same as the definition for that term proposed by Level 3?

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Level 3's Statement of the Issue: Should the definition of "Telephone Exchange Service" be defined based on the unknown geographic physical location of the originating and terminating caller, or should it mirror the terms of the Act?

Qwest's Position:

56 The issue here has nothing to do with the definition of "Telephone Exchange Service." The Level 3 and the Qwest definitions of that term are nearly identical. Level 3 adds the terms "(A)" and "(B)" to separate two portions of the definition. This is not a substantive change. Also, where Qwest uses the term "End User Customers," Level 3 uses the term "subscribers." Qwest submits that the term "End User Customers" is clearer and more understandable than the term "subscribers." Furthermore, it is a defined term in the agreement (that Level 3 does not challenge), while the term "subscriber" is not a defined term in the agreement. Furthermore, Qwest's proposed definition of "Telephone Exchange Service" has been approved by the Commission. Therefore, as between the two definitions, Qwest believes its definition should be adopted.

57 The real issue here is Level 3's attempt to strike Qwest's proposed definition of "Exchange Service" or "Extended Area Service (EAS)/Local Traffic." This is another attempt to eliminate language from the agreement that defines local/EAS service in the way it has been defined for decades—as service originated and terminated within the LCAs established by the Commission. Level 3 erroneously asserts that Qwest is making a back-door attempt to regulate the type of traffic being exchanged between the parties.[40] That argument is without merit. This issue has nothing to do with whether the traffic will be exchanged. It has everything to do with whether the traffic will be subject to intercarrier compensation.

10. ISSUE NO. 15

Qwest's Statement of the Issue: Is it necessary to have a separate definition of "Telephone Toll Service?"

[40] Level 3 Petition ¶ 108.

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Level 3's Statement of the Issue: Should the definition of "Telephone Toll Service" be defined based on the Act's definition?

Qwest's Position:

58 In none of Qwest's SGATs has a definition of "Telephone Toll Service" been included and, given the existing definition of IntraLATA toll traffic, all this definition will do is create confusion. There is no need for such a definition. Moreover, as Qwest explained in its response to Issue No. 11, Level 3 proposes to inject a definition into the agreement that it can use to attempt to justify intercarrier compensation for VNXX calls, to avoid access charges and to inappropriately require Qwest to allow the termination of separately tariffed Switched Access services via local interconnection trunks. The Commission should reject Level 3's proposed definition.

11. ISSUE NO. 16 Definition of VoIP Traffic[41]

Qwest's Statement of Issue: Whether "VoIP Traffic" should be defined according to a standard industry definition that specifies the types of equipment involved, requires that the call originate in Internet Protocol ("IP"), and requires that the call be transmitted over a broadband connection to the VoIP Provider.

Level 3's Statement of Issue: Assuming that the Agreement will define "Voice over Internet Protocol" or "VoIP", should the definition of "VoIP" contain substantive terms that limit the circumstances in which the Parties will exchange traffic, and the compensation that will be derived from the exchange of VoIP traffic?

Qwest Position:

59 The first portions of Qwest's and Level 3's definitions of "VoIP Traffic" are substantially the same with three exceptions:

1. Qwest states that VoIP traffic is traffic that "originates in Internet Protocol," while Level 3 states that VoIP is traffic that "originate *or terminates* in Internet Protocol."

[41] Please note that Qwest has proposed new language to the definition of VoIP traffic to clarify its proposal.

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2. Qwest states that VoIP traffic must be "transmitted over a broadband connection to the VoIP provider," while Level 3 states that it must be "transmitted over a broadband connection to *or from* the VoIP provider."

3. Qwest proposes that the origination point for the Level 3 side of the call be the "end user premises." Level 3's language removes that reference.

60 In addition, Qwest also proposes additional language to address the following definitional issues related to the definition of "VoIP traffic":

1. VoIP traffic is an "information service";

2. VoIP traffic is subject to interconnection and compensation based on the VoIP Provider's POP being treated as the premises of the end user; and

3. LIS trunks may be used to terminate VoIP traffic based on rules that apply to other end users, including the requirement that the VoIP Provider POP be physically located in the same LCA as the called party.

a) A VoIP Call Must Originate with the Party Making the Call in IP Protocol and Must be Transmitted to the VoIP Provider over a Broadband Connection.

61 Consistent with common industry usage, it is Qwest's position that only calls that are originated by the calling party in IP and that are transmitted over a broadband connection to the VoIP provider are properly classified as VoIP calls. Level 3's attempt to include traffic that originates in TDM but which terminates in IP is inconsistent with the proper definition of a VoIP call.

62 In addition, Level 3's language indicates that the call must be transmitted over a broadband connection "to *or from*" the VoIP provider. Once again, Level 3 provides no explanation for this language. However, by eliminating the requirement that a VoIP call must originate on a broadband connection, Level 3's language has the potential of broadening the definition of VoIP traffic from traffic originated on a broadband connection to traffic originated on an

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analog dial-up connection, so long as it is translated into IP either going to the VoIP provider or coming from the VoIP provider. The precise implications of Level 3's proposed language are not entirely clear (and Level 3 does not explain it), but it certainly has the potential of transforming traffic that no one would consider VoIP traffic under the proper definition of that term into VoIP traffic for compensation purposes. Until Level 3 provides an explanation of the meaning of this language, Qwest opposes including it in the definition of VoIP traffic.

b) The Additional Language Proposed by Qwest Should Be Adopted.

63 Level 3's petition agrees that VoIP traffic is an information service. Therefore, Qwest's language should be adopted. Qwest's language provides that the VoIP Provider POP is to be treated as the "end user premises" for interconnection and intercarrier compensation purposes. Qwest's proposal is consistent with the manner the VoIP provider's POP is treated for purposes of the ESP exemption. Given the fact that Level 3 proposes that compensation for VoIP calls be based either on telephone numbers of the parties to the call or that all VoIP calls be subject to reciprocal compensation, Level 3's omission of this language appears to be part of that proposal. For the reasons set forth in Qwest's discussion of Issue No. 4, the local/long distance distinction should be retained for VoIP calls; thus, Qwest's language should be adopted.

64 Qwest's language proposes that LIS trunks may only be used to terminate VoIP traffic based on rules that apply to other end users, including the specific requirement that the VoIP Provider's POP be physically located in the same LCA as the called party. Level 3 apparently opposes this language on the basis of its compensation proposals for VoIP calls. For the reasons set forth in Qwest's discussion of Issue No. 4, LIS services should only be used in the same manner and under the same circumstances that other CLECs are able to use them. Likewise, consistent with Qwest's compensation proposal for VoIP calls, it is important to include the language that requires the VoIP provider POP to be in the same LCA as the called

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party in order to use LIS services. Thus, Qwest's additional language should be adopted.

12. ISSUE NO. 17

Qwest's Statement of the Issue: Should Level 3 be required to provide forecasts to Qwest and if so, should Level 3 be responsible for costs Qwest incurs to provide capacity to meet erroneous forecasts?

Level 3's Statement of the Issue: Is Level 3 required to forecast and manage the capacity requirements of Qwest's network facilities and trunks on the Qwest side of the Point of Interconnection?

Qwest's Position:

65 Level 3 does not dispute that it is appropriate to require Level 3 to provide forecasts. Forecasts are necessary so that Qwest can plan for future demands for its network. However, Level 3 has an incentive to overstate its need for capacity so that Qwest will have capacity to handle Level 3's most optimistic needs. Qwest's proposed language allows Qwest to adjust Level 3's forecasts downward when Level 3 has historically overestimated its needs. Level 3's criticisms of Qwest's proposed language address an earlier version of proposed language. Qwest's current proposed language does not require Level 3 to assume costs. Nor does it impose financial penalties or security deposit requirements.

13. ISSUE NO. 18

Qwest's Statement of the Issue: Whether Qwest's mechanized billing systems and procedures should be replaced by a manual system based upon jurisdictional allocation factors.

Level 3's Statement of the Issue: May the Parties rely upon jurisdictional allocation factors to identify the compensation for the types of traffic exchanged?

Qwest's Position:

66 Level 3 has proposed the creation of several new jurisdictional allocation factors. These factors presuppose that the Commission adopts Level 3's traffic definitions and interconnection proposal whereby switched access traffic is commingled with other types of traffic on the same interconnection trunks. Thus, Level 3's proposed jurisdictional allocation

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factors should be rejected for the same reasons that Level 3's traffic definitions and commingling proposals should be rejected. Furthermore, the jurisdictional factors serve no purpose if the Commission adopts Qwest's traffic definitions and proposed trunking arrangements.

67 To use Level 3's jurisdictional allocation factors, Qwest would have to create a large manual process that is completely dependent upon data supplied by Level 3. To verify that the data supplied by Level 3 is accurate would require creation of a manual audit process. As stated above, Level 3 has not provided a reasonable basis for the extensive disruptions to Qwest's mechanized billing systems that Level 3's proposal would cause. Moreover, the use of jurisdictional allocation factors in other contexts is largely beside the point. Allocation factors are typically used only when there is no better mechanized way to record and bill for traffic. In this proceeding, Level 3 seeks to replace an established mechanized system with a manual system based on factors. This is a step in the wrong direction.

14. ISSUE NO. 19

Qwest's Statement of the Issue: Whether the parties should use a Commission-approved method by which Qwest tracks ISP-bound traffic as the method for such tracking under the agreement and, in the alternative, whether the FCC's 3:1 ratio should be used in the event the Commission has not approved an alternative method.

Level 3's Statement of the Issue: Whether the parties should use the FCC's 3:1 ratio to determine what traffic is ISP-bound traffic or whether they should use Qwest's method for tracking ISP-bound traffic where the Commission has previously ruled that Qwest's method is sufficient.

Qwest's Position:

68 This issue is simple. Level 3's language would mandate the use of the FCC's 3:1 ratio as the level at which a presumption is made that all traffic exceeding that level is ISP-bound. Qwest, on the other hand, contends that, if the Commission rules that an alternate method of tracking ISP-bound traffic is sufficient, then that method should be employed.

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69 To support its position, Level 3 asserts that Qwest has opted into the FCC's ISP-bound compensation framework and therefore should not be allowed to suggest that an alternative method should be used. Although Qwest follows the interim regime of the *ISP Remand Order* to the extent applicable, Qwest is not precluded from suggesting alternative methods for determining and tracking ISP-bound traffic. For example, the Colorado Commission has approved a method proposed by Qwest that is more accurate than the 3:1 ratio assumption. It is important to remember that the 3:1 ratio is really nothing more than an assumption used in a rough way to determine levels of ISP-bound traffic. The Commission should leave open the possibility that Qwest or another party will demonstrate a more accurate way to measure the volume of ISP-bound traffic. Qwest's proposed language gives the Commission this flexibility. Level 3's proposed language does not.

15. ISSUE NO. 20

Qwest's Statement of the Issue: What signaling information should the Agreement require the parties to provide each other?

Level 3's Statement of the Issue: In identifying IP enabled traffic, should the parties allow for call records that will include information other than calling Party number?

Qwest's Position:

70 The parties should provide industry standard signaling information that is needed to issue bills in a complete and timely fashion. The intent of this section of the interconnection agreement is to establish the signaling requirements between telecommunications networks. Level 3's proposed language adds confusion to Section 7.3.8 by using terms that are not signaling protocol terms defined by this contract or by telecommunications signaling standards. Qwest however, provides specific language addressing the exchange of signaling information using industry defined signaling parameters.

71 Section 7.3.8 addresses specific signaling parameters that are included in the SS7 signaling

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stream. Level 3 introduces a generalization referred to only as "calling record information" that may or may not be included in the signaling stream that is required to set up a call through the Public Switched Telephone Network. Also, Level 3's proposed language requires the population of signaling parameters that are not required to be populated by industry standards. To populate these additional parameters would require Qwest and potentially other carriers to upgrade each of their switches at considerable expense. This is not the appropriate forum to require industry wide changes. Nor is it appropriate in this proceeding to require just one carrier to make changes when the rest of the industry is not required to make them.

72 Finally, Level 3's proposed modifications to Section 7.3.8 do not provide flexibility that does not already exist. As circumstances and industry standards change, the parties will always be free to agree to changes in the signaling information exchanged.

16. ISSUE NO. 21

Qwest's Statement of the Issue: Whether Level 3's proposed Section 7.4.1.1 is necessary when no provision in Section 7.4 allocates responsibility for the cost of interconnection.

Level 3's Statement of the Issue: Whether, when ordering interconnection, Level 3 could be deemed to be implicitly agreeing to pay the costs of the trunks and facilities on Qwest's side of the POI.

Qwest's Position:

73 Level 3's proposed Section 7.4.1.1 only underscores why its position on allocation of the costs of interconnection is wrong. The fact that Level 3 requests (or orders) facilities on Qwest's side of the network demonstrates that the interconnection is done for Level 3's benefit. Level 3 makes requests for Qwest facilities on Qwest's side of the point of interconnection so that Level 3 can serve its own ISP customers.

74 Section 7.4.1.1 is completely unnecessary. The Commission will determine who pays the costs of interconnection in the Sections of the Agreement that are related to Issue No. 1.

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Accordingly, since nothing in Section 7.4 requires Level 3 to pay interconnection costs, Level 3's proposed Section 7.4.1.1 should be rejected.

17. ISSUE NO. 22

Qwest's Statement of the Issue: Whether Level 3's proposed Section 19.1.1 is appropriate when nothing in Section 19 allocates responsibility for payment for construction of facilities.

Level 3's Statement of the Issue: Whether Qwest may compel Level 3 to incur special construction charges for work completed on Qwest's facilities and network on Qwest's side of the POI.

Qwest's Position:

75 Level 3's proposed Section 19.1.1 should be rejected because it is unnecessary. Nothing in Section 19 allocates responsibility for paying for the costs of constructing interconnection or other facilities. Thus, a disclaimer as to responsibility for paying the cost of new construction serves no purpose.

76 Furthermore, proposed Section 19.1.1 again underscores that Level 3 overreaches when it argues that it should not have to pay any of the interconnection costs Qwest incurs on its side of the point of interconnection. When Level 3 requests that Qwest build additional facilities for network interconnection, these costs are incurred to benefit Level 3. Under the Act, Qwest is entitled to just and reasonable compensation for the costs that it incurs.

III. INFORMATION REQUIRED BY WAC 480-07-630(7) AND OTHER PROCEDURAL ISSUES

77 Dates Relating to Request for Negotiation. Qwest does not dispute that Level 3 made its request for negotiation on August 19, 2005. Qwest does not dispute any of the subsequent dates alleged by Level 3 in paragraph 16 of its petition.

78 Statements of Unresolved Issues. The disputed issues in this proceeding include two

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categories of issues: (1) those issues identified in Level 3's petition, in this response or in the agreement attached as Exhibit A to this response as disputed issues and (2) those issues relating to language in the agreement attached as Exhibit A to this response that is not marked as disputed because Level 3 has not objected to it but to which Level 3 may object subsequent to the date of this response. Qwest sets forth its position on the issues Level 3 has identified as disputed issues in Sections I and II of this response.

79 Level 3 has attached as Appendices B and C to its petition, respectively, a Disputed Points List ("DPL") and an interconnection agreement. Both of these documents were based on a template interconnection agreement that Level 3 knew was not current and was not being proposed for Washington. Neither of these documents is accurate. In particular, since Level 3 did not use the template agreement that Qwest proposed to Level 3 for the state of Washington, these documents do not contain the correct agreed upon language. Qwest requests that the Commission set a date by which Level 3 must identify the provisions in the Agreement attached as Exhibit A to which Level 3 objects.

80 Proposed Rates and Charges. Qwest proposes that the Commission use the rates that are in effect as of result of the cost docket proceedings conducted by the Commission.

81 Conditions that Qwest Requests Be Imposed. Qwest recommends that the Commission adopt all of the language in Exhibit A to this response to which Level 3 has not objected. In addition, for the disputed issues identified in Level 3's petition, Qwest recommends that the Commission impose the language Qwest has proposed for each disputed issue.

82 Information Arbitrator Should Request from the Parties**.** Qwest anticipates that discovery will be required in this proceeding. Qwest will issue its discovery requests in accordance with the schedule adopted by the Commission.

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83 Relevant Documentation. Attached as Exhibit A to this Response is an Interconnection Agreement containing the language that Qwest proposes be adopted by the Commission. Qwest's Legal Brief is contained in Sections I and II above. Qwest intends to present testimony in support of its positions. Qwest requests that it be permitted to submit pre-filed written direct and rebuttal testimony in support of its position consistent with a procedural schedule to be established. Qwest proposes that it submit any other documents relevant to this dispute as part of its prefiled testimony or through cross-examination of Level 3's witnesses.

84 Respondents' Procedural Recommendations**.** Qwest proposes that a schedule be set under which the Parties would submit simultaneous prefiled direct and rebuttal testimony. In addition, Qwest proposes that a discovery cutoff be set and that there be a limit on the number of data requests that each party may serve. Qwest also proposes that the Commission enter a protective order that would govern the exchange of confidential or proprietary information. Qwest proposes that the parties negotiate an appropriate protective order and present it to the Commission.

85 Consolidation. There is no need to consolidate this proceeding with any other proceeding.

DATED this 21st day of February, 2006.

QWEST CORPORTATION

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