

**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

**REPLY TESTIMONY
OF LARRY B. BROTHERSON
ON BEHALF OF
QWEST CORPORATION**

September 15, 2006

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1 **I. IDENTIFICATION OF WITNESS**

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

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

7 **II. PURPOSE OF TESTIMONY**

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

9 A. The purpose of my testimony is to respond to the Direct Testimony filed by Mr. Greene
10 and Mr. Wilson on May 30, 2006 and to the Supplemental Direct Testimony filed by
11 Mr. Greene on August 18, 2006 in this case. Because the Level 3 testimony to which I
12 am responding was very general in nature and (with limited exceptions in Mr. Greene's
13 Supplemental Direct) was not tied to specific issue numbers, I have made an attempt to
14 identify the issues to which each section of my response to Level 3's testimony relates.
15 Specifically, I will discuss the Level 3 testimony as it relates to the following disputed
16 issues:

- 17 • ISSUE 3B: DEFINITION OF VNXX TRAFFIC
- 18 • ISSUE 3A: COMPENSATION FOR VNXX TRAFFIC
- 19 • ISSUE 3C: RATE OF COMPENSATION FOR ISP TRAFFIC
- 20 • ISSUE 16: DEFINITION OF VoIP
- 21 • ISSUE 1A: SECTION 7.1.1.1 (AUDITS OF VoIP TRAFFIC)
- 22 • ISSUE 1A: SECTION 7.1.1.2 (CERTIFICATION OF VoIP TRAFFIC)
- 23 • ISSUE 4: COMPENSATION FOR VOICE AND VoIP TRAFFIC

- 1 • ISSUE 15: DEFINITION OF TELEPHONE TOLL SERVICE
- 2 • ISSUE 19: SECTION 7.3.6.2
- 3 • ISSUE 7: DEFINITION OF BASIC EXCHANGE SERVICE
- 4 • NEW ISSUES: DEFINITION OF TRAFFIC AND PSTN-IP-PSTN TRAFFIC

5

6 **Q. PLEASE ADDRESS QWEST'S GENERAL CONCERNS WITH LEVEL 3'S**
7 **FAILURE TO EXPLAIN ITS NEW LANGUAGE.**

8 A. The original direct testimony filed by the parties related to the original language filed by
9 Level 3 with its Petition for Arbitration. After that testimony was filed, Level 3
10 proposed substantially altered language. On some issues, Level 3 accepted Qwest's
11 language (mostly on relatively minor issues), but on the major issues, Level 3 proposed
12 language that in several instances represents a major change in its language and the
13 underlying legal or factual basis for it.

14

15 Unfortunately, Level 3's opportunity to explain and justify its new language was
16 squandered, as the only direct testimony filed was that of Mr. Greene. It consists of six
17 pages, three of which are devoted to Mr. Greene's explanation of issues that were
18 resolved. He devotes barely more than a page to the new language proposed by Level 3,
19 and does not even mention, for example, the substantially re-written definitions of
20 VNXX and VoIP (Issues 3B and 16). On other issues involving new Level 3 language
21 (e.g., Issues 2C, 3C, 4, and 5), his Supplemental Direct Testimony provides at best a
22 thumbnail explanation of Level 3's language. As a consequence, Qwest is left with little
23 more than it had before, which is simply the language itself. In the Replacement Direct
24 Testimony that Messrs. Easton, Linse, and I filed on August 18, 2006, we responded to
25 that new language based solely on our effort to interpret Level 3's intent from language

1 that is often vague and contradictory. Unfortunately, Mr. Greene's testimony provides
2 little more for Qwest to rely upon. To the extent Mr. Greene's testimony adds any
3 clarity to Level 3 intentions, we will respond to that testimony.

4
5 **Q. WHY ARE YOU AND THE OTHER QWEST WITNESSES RESPONDING TO**
6 **THE ORIGINAL DIRECT TESTIMONY FILED BY MR. GREENE AND MR.**
7 **WILSON ON MAY 30, 2006?**

8 A. Because we were recently informed that, even though Level 3 made major changes to its
9 proposed language, Level 3 continues to rely on its original direct testimony. The fact
10 that Level 3 can engage in wholesale changes to its language and not change its
11 testimony demonstrates the generic nature of that testimony and the fact that it rarely
12 addresses specific proposed language.

13
14 **III. DISPUTED ISSUE 3B: DEFINITION OF VNXX TRAFFIC**

15 **Q. DID LEVEL 3 ADDRESS THE DEFINITION OF VNXX IN ITS TESTIMONY?**

16 A. No. Level 3's new definition of "VNXX traffic" represents essentially a complete
17 rewrite of that definition. And, of course, the definition of VNXX is central to many of
18 the contested issues in this docket. Yet, in his Supplemental Direct Testimony, Mr.
19 Greene does not even refer to, let alone explain, Level 3's new VNXX definition. It is
20 rare that contract language is completely self-explanatory, and Level 3's new VNXX
21 definition certainly is not. Yet, Level 3 provides nothing to assist the Commission in
22 understanding its language. Qwest understands that the role of the Commission in an
23 arbitration is to adopt the language that best expresses the obligations of the parties
24 under the Act, but a party bears at least some burden to explain the language it is

1 proposing. Level has not done so with regard to VNXX.

2
3 **Q. PLEASE RESPOND TO MR. GREENE’S STATEMENTS IN HIS ORIGINAL**
4 **DIRECT TESTIMONY THAT THE CONCEPT OF VNXX IS SIMPLY AN**
5 **ISSUE OF INCREMENTAL COSTS FOR TRANSPORT.**

6 A. Mr. Greene states that with the concept of VNXX “nothing occurs that isn’t standard on
7 all circuit-switch networks – it is simply one of the incremental cost of transport
8 between certain local calling areas.” (Greene Original Direct at 19). Mr. Greene is
9 wrong. Mr. Greene’s statement ignores the application of proper Washington call rating
10 rules, which rate calls on the basis of the physical location of the parties to a call.
11 Further, Level 3’s original and newly-proposed definitions are both inconsistent with the
12 Commission’s definition of VNXX, which refers to the “carrier’s acquisition of a
13 telephone number for one local calling area (“LCA”) that is used in another geographic
14 area. The call appears to be local based on the telephone number.” (See discussion in
15 my Replacement Direct Testimony at 13-14). By improperly assigning NXX codes,
16 Level 3 avoids access charges that it would normally be required to pay Qwest for such
17 calls. And, to add insult to injury, Level 3 proposes to charge Qwest a rate (\$.0007 per
18 MOU) permitted by the FCC for terminating calls placed to ISPs located in the same
19 LCA as the calling party. In essence, Level 3 seeks to reverse the compensation flow
20 that should apply to VNXX calls. In the first round of testimony, Level 3 argued that
21 simply assigning a local number to a customer located in a different LCA turns an
22 interexchange call into a local call. Now Level 3 argues that having a POI in the LCA
23 makes the call local, without regard for where the parties to the call are located. As my
24 Replacement Direct Testimony established (see pages 10-37), and as Qwest briefs will
25 show, this does not make such calls local.

1 **Q. HOW DOES THE LOCATION OF A POI RELATE TO THE DEFINITION OF**
2 **VNXX TRAFFIC?**

3 A. Mr. Greene discussed in his original Direct Testimony filed on May 30, 2006, VNXX
4 traffic in relationship to its POIs. While the new Level 3 proposed language for the
5 definition of VNXX does not use the term “point of interconnection” (“POI”), the
6 language appears to be advocating that if Level 3 has a POI (or some undefined
7 “facilities”) in a particular LCA with Qwest, then all traffic originating in that LCA
8 should be treated as local. I addressed that issue at length in my Replacement Direct
9 Testimony (see pages 23, 27-33). Given the fact that Level 3 provided no testimony on
10 this issue in Mr. Greene’s Supplemental Direct Testimony, I simply reaffirm what I said
11 on this issue in my Replacement Direct Testimony.

12

13 **Q. PLEASE RESPOND TO MR. WILSON’S REFERENCE TO THE POI THEORY**
14 **IN HIS ORIGINAL DIRECT TESTIMONY.**

15 A. In his original direct testimony, Mr. Wilson simply states, without support or analysis,
16 that when a Qwest customer dials a Level 3 customer using a local number (and thus
17 does not use a 1+ dialing pattern) “the call should be considered a local call when Level
18 3 has a POI *within the LATA*.” (Wilson Direct at page 5, lines 15-17; emphasis added).
19 His apparent justification is a claim that the Washington commission “has ruled that
20 CLECs need only have a single POI in the LATA and that they do not need to duplicate
21 Qwest’s network in order for their customers to receive and originate *local calls with*
22 *Qwest customers*.” (*Id.* at page 5, lines 17-19).

23

24 Mr. Wilson confuses the concept of a single POI in the LATA, a concept with which
25 Qwest agrees and has incorporated into its interconnection agreements (it is commonly

1 referred to as SPOP, or single point of presence), with call rating rules. But the adoption
2 of SPOP was to allow a CLEC to be able to exchange “local traffic” at a single point in
3 a LATA. In other words, if a CLEC has local customers in Olympia, it can have a
4 single POI in Seattle. For local traffic, Qwest has the obligation to transport the traffic
5 to Seattle, and Level 3 would then have the responsibility to transport the traffic back to
6 its customer in Olympia. Mr. Wilson implies that this rule somehow abrogated existing
7 call rating rules, and that the SPOP concept somehow replaces Commission-approved
8 LCAs within the LATA. There is simply no support for those conclusions.

9
10 **Q. IS IT CLEAR PRECISELY WHAT THEORY LEVEL 3 IS RELYING UPON IN**
11 **ITS ATTEMPT TO JUSTIFY VNXX?**

12 A. No. As I discussed in my Replacement Direct Testimony, Level 3’s VNXX definition
13 (Issue 3B) appears to be based on a theory that if Level 3 has a POI in a LCA, all traffic
14 from that LCA should be treated as local (the “POI” theory). However, in Level 3’s
15 new proposed section 7.3.6.3 (Issue 3A), Level 3 would base compensation for ISP and
16 VoIP traffic on the NXXs of the called and calling party. (See my Replacement Direct
17 Testimony at 38-39). Mr. Wilson’s testimony contains the same flip flop between
18 theories. For example, on page 5 (lines 15-19), Mr. Wilson relies on a POI theory. Yet,
19 two answers later, he state that local calls are determined by “the calling party’s number
20 and the called party’s number” (Wilson direct testimony, page 6, lines 8-9).

21 Aside from the fact that Level 3 cannot articulate a consistent theory, the fact is that
22 both approaches are inconsistent with Washington call rating rules (which rate calls
23 based on the physical location of the parties to a call). Neither of Level 3’s theories is
24 consistent with that principle, and should be rejected by the Commission. (See my
25 Replacement Direct Testimony, pages 22-33, 37-39, for a detailed discussion of these

1 issues).

2
3 **Q. LEVEL 3 COMPARES QWEST'S WHOLESALE VOICE TERMINATION**
4 **SERVICE TO LEVEL 3'S VOICE TERMINATION SERVICE (GREENE**
5 **ORIGINAL DIRECT AT 11). DO YOU AGREE WITH THAT COMPARISON?**

6 A. No. Qwest's Wholesale Voice Termination Service is not comparable to Level 3's
7 Voice Termination Service and is not used as an input to Qwest's Wholesale Dial
8 Service. QCC's Wholesale Voice Termination Service is a long distance service
9 provided by QCC Long Distance that may be purchased for the termination of voice
10 services. Subscribers of Voice Termination Service pay long distance rates for the
11 termination of their voice services. With Wholesale Voice Termination Service, traffic
12 destined for local incumbent networks terminates over tariffed access facilities
13 purchased by QCC Long Distance such as Feature Group D ("FGD"). This service does
14 not provide an IP to TDM conversion; it is a TDM based long distance service that
15 provides the functionality of a TDM interface to the subscriber of the service and
16 terminates the subscriber's voice traffic to the PSTN or directly to access customers in
17 TDM protocol.

18
19 **Q. DOES QCC INTERFACE WITH LOCAL INCUMBENT CARRIERS AS A**
20 **CLEC WHEN TERMINATING ITS WHOLESALE VOICE TERMINATION**
21 **SERVICE?**

22 A. No. QCC acts as a long distance carrier and purchases tariffed access services to
23 terminate its Wholesale Voice Termination Service. When QCC terminates service
24 within the QC territory, QC charges its tariffed rates to QCC for FGD service based on
25 FCC Tariff #1 and applicable state tariffed rates. The independent telephone companies

1 also charge their tariffed rates for FGD to QCC.

2
3 **Q. WHEN ASKED IF HE TOOK THE POSITION THAT THE SERVICES ARE**
4 **COMPARABLE SERVICES, MR. GREENE RESPONDED TO DATA**
5 **REQUEST #27 THAT “THE CHART ON PAGE 10-12 OF MR. GREENE'S**
6 **TESTIMONY SIMPLY ILLUSTRATES THAT QWEST AND LEVEL 3 ARE**
7 **COMPETITORS FOR THE PROVISION OF WHOLESALE VOICE**
8 **TERMINATION SERVICES...” PLEASE RESPOND TO MR. GREENE’S**
9 **STATEMENT.**

10 A. As previously stated, the provisioning of these two services is not comparable. Level 3
11 seeks to terminate its Voice Termination Services as a CLEC over Local
12 Interconnection Service (“LIS”), while, in the provision of Voice Termination Service,
13 QCC is acting as a long distance carrier and terminating its Voice Termination services
14 over Feature Group D access service. The provisioning and costs for terminating these
15 two services are not comparable. Level 3 attempts to avoid paying access charges when
16 a call is between two LCAs (*i.e.*, avoid access charges on calls that are clearly
17 interexchange in nature).

18
19 **Q. LEVEL 3 STATES THAT QCC’S WHOLESALE DIAL SERVICE AND LEVEL**
20 **3’S ISP SERVICE ARE THE SAME (GREENE ORIGINAL DIRECT, PAGES 9-**
21 **14, 48-50). DO YOU AGREE WITH THAT COMPARISON?**

22 A. No. The differences between Level 3 and QCC are fundamental. First, when QCC
23 provides its service to ISPs it does not purport to be doing so as a competitive local
24 exchange carrier (“CLEC”) and does not interconnect with Qwest as a CLEC under the
25 Act in order to provide its Wholesale Dial service. Because it is not operating as a

1 CLEC in order to provide services to ISPs, QCC must connect to the network as an end
2 user in order to offer its dial-up services to ISPs. In fact, ISPs like AOL or Earthlink do
3 not need to use the services of an enhanced service provider (“ESP”) like QCC or the
4 services of a CLEC like Level 3 at all. ISPs can purchase end user services directly
5 from Qwest or any other local telephone company. But some ISPs choose to use the
6 service of QCC, and in each instance where that occurs, Qwest (the ILEC) complies
7 with the regulatory rules and requires that an ESP like QCC be treated as an end user,
8 and not as a telephone company entitled to interconnection under section 251 of the Act.
9 When an ISP buys services directly from Qwest, it too is treated as an end user, and not
10 as a CLEC. Because neither the ISP nor QCC interconnects with Qwest under section
11 251 in order to provide ISP services, they are not entitled to any of the rights that come
12 along with interconnection, such as the right to reciprocal compensation, the right to
13 require an ILEC to transport local traffic to a single point of interconnection in each
14 LATA, or the right to purchase services at TELRIC rates.

15
16 In contrast, Level 3 (the CLEC) is the provider of Level 3’s Managed Modem Service.
17 Level 3 interconnects as a CLEC, and is thus entitled to demand that Qwest deliver
18 “local” calls to a single point of interconnection in each LATA over TELRIC-priced LIS
19 trunks, and may claim terminating compensation for *local* ISP traffic. Neither ISPs nor
20 ESPs like QCC are entitled to interconnect at a SPOI nor receive terminating
21 compensation from Qwest, and they do not claim such a right.

22
23 **Q. IS WHAT LEVEL 3 DOES AS A CLEC IN WASHINGTON REALLY THE**
24 **SAME AS WHAT QCC DOES AS AN ISP CUSTOMER IN WASHINGTON?**

25 **A.** No. If Level 3 wishes to be treated as an ESP it too would be required to buy local

1 service such as Primary Rate Service (which compensates the LEC for use of the local
2 exchange and switching facilities) and buy transport at tariffed private line rates. In
3 other words, if Level 3 wishes to actually make a connection in each LCA then it too
4 must pay for the local connection like QCC and other ISPs. But if the traffic is
5 delivered to an ISP end user in the LCA in which traffic is originated, then no
6 terminating compensation would be due because the call is delivered to an end user and
7 end users are not entitled to charge terminating compensation. If, however, the calls are
8 delivered to Level 3 acting as an ESP then it would not be entitled to purchase LIS
9 trunks at TELRIC pricing and the traffic should be placed on private lines either
10 provided by Level 3, leased from third parties, or leased from Qwest.

11
12 The truth of the matter is that, while Level 3 claims that it and QCC are doing the same
13 thing, Level 3 does not want to be treated as an end user like QCC. Instead, Level 3
14 seeks all the advantages of being a CLEC. But to obtain those rights, Level 3 must be a
15 CLEC, and the CLEC is not the end user whose physical location must be in the same
16 LCA as the calling party in order to qualify for terminating compensation.

17
18 The following chart illustrates that any technical similarities are overwhelmed by the
19 completely different regulatory regimes that apply to Level 3's Managed Modem
20 Service and Qwest's Wholesale Dial Service for calls outside the LCAs. Likewise, the
21 chart demonstrates that, unlike Level 3's Managed Modem Service provided via VNXX,
22 interexchange carriers also compensate Qwest for the use of Qwest's network and are
23 not able to seek compensation from Qwest for the termination of interexchange calls:

**Comparison of Level 3 VNXX Service/QCC Wholesale Dial/IXC Service
 For Calls Outside the Local Calling Area**

Level 3 Proposed VNXX QCC Wholesale Dial Service IXC Toll Service

<p>Local Origination Costs: Level 3 pays nothing to compensate Qwest for the use of Qwest's local network (loops, switches, etc.) within each LCA.</p>	<p>Local Origination Costs: QCC buys local exchange service in the LCA from Qwest and other local exchange carriers at the applicable tariffed rate.</p>	<p>Local Origination Costs: IXC pays originating access charges to compensate Qwest for originating the call.</p>
<p>Transport Costs: Level 3 asserts that it has no responsibility for any costs on Qwest's side of the POI and that it should pay nothing for transport.</p>	<p>Transport Costs: QCC pays Qwest and other local exchange carriers for transport to QCC's location in another LCA at retail private line transport rates.</p>	<p>Transport Costs: IXC self-provisions, purchases transport from another carrier, or purchases it from Qwest from the appropriate access tariff.</p>
<p>Termination Costs: Level 3 proposes to charge Qwest \$.0007 to terminate all long distance ISP traffic (VNXX).</p>	<p>Termination Costs: QCC is an ESP and under FCC rules is treated as an end user and as such may not charge Qwest terminating compensation.</p>	<p>Termination Costs: IXC pays terminating access charges to the LEC that terminates the call. The originating LEC (Qwest) is not charged for termination.</p>

Qwest Corporation does not terminate the call to itself. It delivers the call to QCC, an ESP end user, pursuant to tariffed services that are available to any end user, including Level 3. In fact, while Level 3 criticizes QCC's approach, Level 3 does not want to connect in the same manner as QCC because then it would be required to bear a portion of the costs in the local exchange that it now gets for free, would be required to pay tariffed transport rates, and would not be able to even claim the right to collect terminating compensation. Level 3's suggestion that Qwest somehow gives preference to QCC is simply false. Level 3 is not seeking "competitive parity." It is seeking a significantly more advantageous competitive situation than QCC.

Q. MR. WILSON ARGUES THAT BECAUSE A PRIVATE LINE TRUNK IS

1 **TECHNICALLY SIMILAR TO A LIS TRUNK, THEY SHOULD BE TREATED**
2 **THE SAME (WILSON ORIGINAL DIRECT AT 10-12). PLEASE RESPOND.**

3 A. Mr. Linse can discuss the technical issues. From my perspective, however, Mr.
4 Wilson's testimony misses the point. The question is not one of technical similarity; the
5 question is really one of applying the proper call rating rules to the type of traffic being
6 carried, and then applying the proper intercarrier compensation plan to that type of
7 traffic. Qwest has never claimed that, for example, a DS3 LIS trunk and a DS3 private
8 line trunk have major technical differences. But the fact is that under certain
9 circumstances (*e.g.*, when exchanging local traffic that originates and terminates in the
10 same LCA between Qwest and Level 3) a LIS trunk is appropriate. However, as I will
11 discuss below, if the service is one like Wholesale Dial, where the customer is not a
12 CLEC, the transport is provided via tariffed private line service. And in the case of an
13 IXC, the transport would be provided at the rates from the appropriate access transport
14 tariff.

15
16 In each case, the trunks are similar, and each is designed to carry traffic at a DS3 level,
17 but the appropriate service to buy and the pricing for that service is defined by the type
18 of traffic involved, which in turn is determined by the application of the call rating rules
19 that have applied for decades. Mr. Wilson's testimony completely misses that critical
20 point.

21
22 I have stated elsewhere (and Qwest is on record) that intercarrier compensation rules
23 should be reformed. The FCC has had a docket open for over five years on that subject
24 and all interested parties, including Level 3 and Qwest, have had many opportunities to
25 comment. But in the meantime the industry operates under a set of rules that cannot

1 (and should not) simply be ignored by one player because it does not like them. Level 3
2 wants the Commission to adopt language in the interconnection agreement at issue in
3 this case that would effectively allow it to operate under rules that do not apply to the
4 rest of the industry. Qwest strongly believes that Level 3's approach is unlawful. Qwest
5 also believes that it violates the concept of competitive equity and would place Level 3
6 in a competitively advantageous position to the rest of the industry. Such an approach is
7 not only unlawful, it is bad public policy.

8
9 **Q. MR. GREENE AND MR. WILSON STATE THAT CIRCUIT SWITCHES HAVE**
10 **NO WAY OF KNOWING THE GEOGRAPHIC LOCATION OF THE CALLING**
11 **OR CALLED PARTY END USER (GREENE ORIGINAL DIRECT AT PAGES**
12 **46-48; WILSON ORIGINAL DIRECT AT PAGE 6). PLEASE COMMENT ON**
13 **THEIR STATEMENTS.**

14 A. The fact is that historically, telephone companies have routinely assigned telephone
15 numbers based upon the geographic location of the end user purchasing service. Thus,
16 to imply that the PSTN knows nothing about the physical location of the called and
17 calling parties is simply untrue. It was not until certain CLECs began obtaining
18 numbers associated with LCAs that were assigned to customers with absolutely no
19 physical presence in that LCA that geographical information related to calls became
20 suspect. That is not the fault of the network, nor does it represent an effort by carriers or
21 regulatory commissions to redefine local calls. It is Level 3, and certain other CLECs
22 like it, that disregard the geographical nature of calls mandated by state law and which
23 has been inherent in federal law for decades. The telephone numbers that Level 3 uses
24 in Washington are all Geographic NPA numbers. In other words, they are telephone
25 numbers that should, according to the Central Office Code Administration Guidelines

1 (“COAG”), correspond to discrete geographic areas. Level 3’s numbers do not
2 correspond to discrete geographic areas, and Level 3 proposes that the Commission
3 sanction this misuse of numbering resources. The Commission should reject Level 3’s
4 practice.

5
6 **Q. CAN YOU PROVIDE AN EXAMPLE THAT ILLUSTRATES AN UNINTENDED**
7 **CONSEQUENCE THAT COULD RESULT FROM ABANDONING CUSTOMER**
8 **LOCATION AS A RELEVANT FACTOR IN ASSIGNING NUMBERS?**

9 A. Yes. On page 46 of Mr. Greene’s original testimony he discusses the Local Exchange
10 Routing Guide (LERG), and in particular, the routing and delivery of interexchange
11 calls. The LERG is a database that identifies switches and telephone numbers
12 associated with those switches, based on the NPA/NXX codes assigned by NANPA. Of
13 course, the entire basis for whether to assess toll charges to a call relate to the specific
14 physical locations at which traffic bound for particular switches may be delivered. To
15 the extent that telephone numbers lose any geographic significance, then next-door
16 neighbors calling each other could each have telephone numbers assigned to different
17 LCAs, and parties on opposite ends of the state could in theory be in the same LCA (in
18 both circumstances, of course, the concept of a LCA becomes meaningless). The point
19 is that there are compelling policy reasons (completely aside from legal mandates,
20 telephone numbering rules, or technical capabilities) to maintain the system of rating
21 calls based on physical location; telephone numbers must retain their geographic
22 associations. Finally, if a LATA boundary becomes essentially an LCA boundary, LEC
23 rates would need to be significantly increased.

24
25 **Q. HAS THIS ISSUE BEEN ADDRESSED RECENTLY BY A FEDERAL CIRCUIT**

1 **COURT?**

2 A. Yes. In a decision issued in April, *Global NAPs v. Verizon New England*, the First
3 Circuit Court of Appeals described the significance of NXXs and their historical
4 relationship to specific geographic areas:

5 The “NXX” has generally been associated with a particular “switch” (that
6 is, the equipment that routes phone calls to their destination) physically
7 located within a local calling area; *NXXs have thus served as proxies for*
8 *geographic location.* This means that if the NXX numbers of the caller
9 and the recipient were within the same local calling area, *one could*
10 *assume that the caller and recipient were actually physically within the*
11 *same calling area and bill the call as a local call.*¹
12

13 As the court states, NXXs have always been geographically significant, indeed, they
14 “served as proxies for geographic locations.” This, of course, depends on carriers
15 following proper numbering rules, and not, as Level 3 has been doing, assigning local
16 telephone numbers to customers that have absolutely no geographical connection to the
17 LCA with which the telephone number is associated.

18

19 **Q. PLEASE ADDRESS THIS ISSUE FROM A LAYPERSON’S PERSPECTIVE.**

20 A. From a purely common sense perspective, the Level 3 argument does not make sense
21 and it ignores a fundamental building block of telecommunications in Washington and
22 in every other state (*i.e.*, the concept of the LCA). As I understand it, this Commission
23 has consistently taken an active role in the definition of LCAs based primarily on the
24 existence or non-existence of a community of interest among the residents and
25 businesses of specific geographical locations. A good example of this would be the
26 Seattle metro LCA, which is quite large and which covers most of the Seattle

¹ 444 F.3d 59, 64 (1st Cir. 2006) (emphasis added).

1 metropolitan area.

2
3 The language used to distinguish among different types of calls likewise is focused on
4 geography. For example, the use of the word “local” by telephone companies and state
5 commissions is not an accident: the concept of calling *within* a certain specified
6 geographical area where the residents and businesses share a geographically-based
7 community of interest has been plainly distinguished from calls *between* geographical
8 areas, often hundreds of miles apart, where no such community of interest exists.

9 Historically, this Commission has treated local calls (i.e., where the parties to the call
10 are in the same geographical area) different from toll calls. State commissions have
11 recognized the community of interest within certain narrowly-defined rural areas, or
12 even within large metropolitan areas, and have therefore required that telephone
13 companies provide service *within* these defined geographical areas on a flat-rated basis.
14 These requirements have been based on the idea that calls to and from neighbors and
15 local businesses within an area of community of interest should not be constrained by
16 per-minute charges. Thus, prices for local service in those areas traditionally have been
17 flat-rated so that no extra charges apply no matter how much time a customer spends on
18 the telephone calling others located in the same LCA. To suggest, as both Mr. Wilson
19 and Mr. Greene do, that the concept of local service and local calls is based purely on
20 telephone numbers, and not on geographical proximity, is incorrect and historically
21 inaccurate.

22
23 **Q. DO THE RECOGNIZED DISTINCTIONS BETWEEN LOCAL AND TOLL**
24 **HAVE PRICING DIFFERENCES AS WELL?**

25 A. Yes. Consistent with the underlying logic of creating geographically-based LCAs, state

1 commissions and telephone companies have also historically based the pricing of toll
2 calls on the relative lack of geographical proximity. Thus, telephone companies,
3 regulatory commissions, and the public refer to such calls as “long distance” calls. The
4 phrase “long distance” (like the word “local”) has a direct geographical component
5 inherent in its name. Likewise, another synonym for long distance calls—interexchange
6 calls—suggests that the calls originate in one exchange and terminate in another distant
7 exchange. The same is true with the word “toll”, yet another synonym for long distance
8 calls, which recognizes that a toll charge, or additional charges, apply to such long
9 distance calls. Given the lack of a general community of interest that justifies flat-rate
10 pricing, long distance calls have traditionally been priced on a per-minute basis.

11
12 Thus, a simple analysis of the language used to describe the two types of service (“local
13 calls” versus “long distance calls”) demonstrates the underlying error of Level 3’s
14 testimony. The defining and distinguishing factor for local and long distance calling has
15 been geographical proximity (or the lack thereof). (I discuss this issue at length in my
16 Replacement Direct Testimony at pages 13 and 22-33).

17
18 **Q. DID MR. GREENE’S SUPPLEMENTAL DIRECT TESTIMONY CLARIFY THE**
19 **“MIRRORING RULE” ISSUE THAT YOU RAISED UNDER ISSUE 3B?**

20 A. No. As I stated, Mr. Greene never even mentioned Level 3’s new VNXX definition. As
21 such, he did not address the mirroring rule issue that arises under that language.

22 However, in connection with other issues that I’ll discuss below (Issues 3A, 3C, and 4),
23 Mr. Greene made statements that simply confirm my conclusion that Level 3 does not
24 understand the mirroring rule, as I discussed in my Replacement Direct Testimony at
25 pages 33-36. My testimony on that issue remains the same.

1 **IV. ISSUE 3A: COMPENSATION FOR VNXX TRAFFIC**

2 **Q. DOES MR. GREENE’S SUPPLEMENTAL TESTIMONY EXPLAIN LEVEL 3’S**
3 **NEW LANGUAGE FOR SECTION 7.3.6.3?**

4 A. No. Nothing in his one paragraph discussion (Greene Supplemental Direct, page 5,
5 lines 13-22) causes me to change any of the testimony I submitted on that issue in my
6 Replacement Direct Testimony (see pages 37-45). In fact, all Mr. Greene really
7 discusses in his testimony is that all traffic should be exchanged at a \$.0007 rate. As I
8 discussed in my Replacement Direct Testimony (pages 33-36), Qwest agrees that under
9 the mirroring rule Level 3 may elect (which its testimony suggests it has done) to
10 exchange all appropriate traffic at the ISP rate of \$.0007. We disagree with Level 3 as
11 to the scope of the traffic that should be subject to the \$.0007 rate (for all the reasons
12 stated in my testimony neither ISP nor VoIP VNXX traffic should be subject to
13 terminating compensation). Qwest is in full compliance with the mirroring rule for all
14 the reasons previously stated.

15
16 On the other hand, Level 3’s new section 7.3.6.3 should not be accepted for the reasons
17 stated in my previous testimony because it is based on the erroneous belief that if the
18 parties to a call have telephone numbers with the same NXX the call is local no matter
19 where the called and calling parties are really located. That theory is wrong.

20
21 **V. ISSUE 3C: RATE OF COMPENSATION FOR ISP TRAFFIC**

22 **Q. DOES MR. GREENE’S SUPPLEMENTAL TESTIMONY EXPLAIN LEVEL 3’S**
23 **NEW LANGUAGE FOR SECTION 7.3.6.1?**

24 A. No. In his testimony on this issue (page 5, lines 23-36), Mr. Greene makes it even

1 clearer that Level 3 misunderstands the mirroring rule, and that it is attempting to extract
2 a higher level of compensation for appropriate terminating compensation than is lawful
3 under the *ISP Remand Order*. Nothing in his testimony causes me to alter my
4 Replacement Direct Testimony on this issue (see pages 45-49).

5
6 **Q. DOES MR. GREENE RAISE AN ISSUE IN HIS ORIGINAL DIRECT THAT IS**
7 **RELEVANT TO THIS ISSUE?**

8 A. Yes. In his original direct testimony, Mr. Greene emphasizes that neither Level 3 nor its
9 ISP customers charge the ISP end users long distance charges for dial-up access.
10 Instead, access is “offered as a local service on a local basis. Most ISPs charge *very low*
11 *flat rates or give away connectivity* for accessing the Internet worldwide.” (Greene
12 original direct testimony, page 5; emphasis added).

13
14 This language raises two issues. First, it merely underlines my point that simply calling
15 a service a “local service” does not make it one. None of the Level 3 traffic outside of
16 the Seattle LCA is “local” in any sense of the word. Second, Mr. Greene’s statement
17 that most ISPs charge “low flat rates or give away connectivity” is an inadvertent
18 admission that the pricing distortions the FCC described in its *ISP Remand Order* are
19 the direct result of Level 3’s attempts to shift the cost of Internet connectivity from
20 Level 3, the ISPs, and the ISP customers who cause the costs to Qwest. Connectivity to
21 the Internet is not free. It comes at very real costs. But if Level 3 and its ISP customers
22 can either provide the service at low prices or even give it away, then someone else is
23 bearing those costs. It is clear that Level 3 believes that Qwest should bear the costs.
24 As Dr. Fitzsimmons describes, this violates the most basic principles of cost causation
25 and illustrate the arbitrage and price distortions the FCC described in the *ISP Remand*

1 **VII. ISSUE 1A: AUDITS AND CERTIFICATION OF VOIP TRAFFIC**

2 **Q. DOES LEVEL 3 ADDRESS SECTION 7.1.1.1, OPERATION AUDITS, IN ITS**
3 **TESTIMONY?**

4 A. No. Level 3 provided no testimony in either its original direct or in Mr. Greene's
5 Supplemental Direct regarding its dispute with the language contained in section 7.1.1.1.
6 Thus, the Commission should adopt Qwest's proposed language on this issue.

7
8 **Q. DOES LEVEL 3 ADDRESS SECTION 7.1.1.2, CERTIFICATION, IN ITS**
9 **TESTIMONY?**

10 A. No. As with section 7.1.1.1, Level 3 provided no testimony regarding its dispute with
11 the language contained in section 7.1.1.2. Qwest's proposed language requests that
12 Level 3 certify that the connections it sells to its customers will comply with the ESP
13 exemption, and comply with the terms of the ICA. Level 3, however, wants to remove
14 any obligation from the ICA.

15
16 **Q. DOES QWEST'S LANGUAGE IN ANY WAY PROHIBIT LEVEL 3 FROM**
17 **PERMITTING ESPs TO CONNECT TO LEVEL 3'S NETWORK?**

18 A. Absolutely not. Qwest is not attempting to prevent VoIP providers from obtaining
19 connection to the PSTN through local service from Level 3, or to prevent them from
20 receiving the benefit of the ESP exemption. But, as we have seen, and as Level 3 seems
21 to agree, not every call that once was in IP is entitled to the ESP exemption. And it is
22 for this reason that Qwest is requesting that Level 3 certify that the connections it sells
23 to its customers will comply with the ESP exemption, and comply with the terms of the
24 ICA. Level 3, however, wants to remove any obligation from the ICA by striking the
25 certification language. Qwest simply is requesting assurance that Level 3 will enforce

1 the ESP exemption for its customers on the same basis that other LECs, like Qwest,
2 apply the exemption to its ESP customers. The Commission should adopt Qwest's
3 proposed certification language.

4
5 **VIII. ISSUE 4: COMPENSATION FOR VOICE AND VOIP TRAFFIC**

6 **Q. DOES MR. GREENE'S SUPPLEMENTAL TESTIMONY EXPLAIN LEVEL 3'S**
7 **NEW LANGUAGE FOR SECTIONS 7.3.4.1, 7.3.4.2, AND 7.3.4.3?**

8 A. Other than one sentence that says this language should be included for the same reasons
9 as set for in Issue 3C, Mr. Greene provides no explanation of the new Level 3 language.
10 As noted at pages 49-52 of my Replacement Direct Testimony, this language suffers
11 from the same call rating and mirroring rule errors as Level 3's other language and
12 should be rejected for the same reasons. Qwest's proposed language should be adopted.

13
14 **IX. ISSUE 15: DEFINITION OF TELEPHONE TOLL SERVICE**

15 **Q. DOES MR. GREENE'S SUPPLEMENTAL TESTIMONY ADDRESS ISSUE NO.**
16 **15?**

17 A. No. Nor was this issue addressed by Level 3 in its original direct testimony. I address
18 this issue at pages 79-81 of my Replacement Direct Testimony.

19
20 **X. ISSUE 19: SECTION 7.3.6.2**

21 **Q. DOES MR. GREENE'S SUPPLEMENTAL TESTIMONY ADDRESS ISSUE NO.**
22 **19?**

23 A. No. Nor was this issue addressed by Level 3 in its original direct testimony. I address

1 this issue at pages 81-82 of my Replacement Direct Testimony.

2
3 **XI. ISSUE NO. 7: DEFINITION OF “BASIC EXCHANGE**
4 **TELECOMMUNICATIONS SERVICE.”**

5 **Q. IS QWEST’S PROPOSED DEFINITION OF “BASIC EXCHANGE**
6 **TELECOMMUNICATIONS SERVICE” STILL AT ISSUE IN THIS DOCKET?**

7 A. It’s not clear to me whether Level 3 opposes Qwest’s language. While it is still listed in
8 the DPL as disputed, Level 3 has provided no testimony in opposition to Qwest’s
9 proposed definition, which is a standard definition included in Qwest SGATs, including
10 the Washington SGAT, throughout its fourteen-state region. See (Qwest Washington
11 SGAT, Eighth Revision, page 9).

12
13 **XII. NEW ISSUES: DEFINITION OF TRAFFIC**
14 **AND PSTN-IP-PSTN TRAFFIC**

15 **Q. DOES MR. GREENE’S SUPPLEMENTAL TESTIMONY EXPLAIN LEVEL 3’S**
16 **POSITION ON ITS PROPOSED DEFINITION OF “TRAFFIC” AND “PSTN-IP-**
17 **PSTN TRAFFIC?**

18 A. No, nor were these issues addressed by Level 3 in its original direct testimony. I
19 address these issues at pages 83-85 of my Replacement Direct Testimony.

20
21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 A. Yes, it does.
23