

Docket No. UT-063006
Joint Issues Matrix (Exhibit 3)
Qwest Corporation/Level 3 Communications
Updated December 12, 2006

Level 3 Terms in Bold Underline (opposed by Qwest). *Qwest Terms in Bold Italics (opposed by Level 3.)*

Agreed terms in normal text.

Issue Number/ ICA Section	Issue Description	Disputed Terms	Qwest Position	Level 3 Position
TIER I ISSUES	POINT OF INTERCONNECTION			
Issue 1A Section 7.1.1 Section 7.1.1.1, 7.1.1.2, 7.1.1.3, 7.1.1.4, 7.1.1.4.1.	<p>Level 3's statement of issue: Does the federal Act permit Level 3 to establish a single point to interconnect its network to Qwest's network, and further require each party to bring its originated traffic to the SPOI without requiring the other carrier to pay the originating carrier's costs associated with its network design?</p> <p>Qwest's Statement of the Issue: Whether Qwest is entitled to be compensated by Level 3 for costs incurred by Qwest to provide interconnection services</p>	<p><u>7.1.1 This Section describes the Interconnection of Qwest's network and CLEC's network for the purpose of exchanging Telecommunications Including Telephone Exchange Service And Exchange Access traffic. Qwest will provide Interconnection at any Technically Feasible point within its network.</u></p> <p><u>7.1.1.1 Establishment of SPOI: Qwest agrees to provide CLEC a Single Point of Interconnection (SPOI) in each Local Access Transport Area (LATA) for the exchange of all telecommunications traffic. The SPOI may be established at any mutually agreeable location within the LATA, or, at Level 3's sole option, at any technically feasible point on Qwest's network. Technically feasible points include but are not limited to Qwest's end offices, access tandem, and local tandem offices.</u></p> <p><u>7.1.1.2 Cost Responsibility. Each Party is responsible for constructing, maintaining, and operating all facilities on its side of the SPOI,</u></p>	<p>Level 3's SPOI language is inappropriate from a network standpoint</p> <p>Level 3 mischaracterizes the issue as having to do with its right to interconnect at a single point in the LATA and Qwest's obligation on its side of the Point of Interconnection ("POI"). However, the real issue is whether Qwest should be required to provide interconnection where it is not technically feasible or to provision/build transport facilities to Level 3 without compensation.</p> <p>Qwest's proposed language does not prohibit SPOI; in</p>	<p>The federal Communications Act recognizes Level 3's right to interconnect its network with Qwest's network at a single point within a LATA in order to appropriately balance the inherent network efficiencies and business equities entailed when a legacy network and a competitive network are required to interconnect.. In balancing the interests of CLECs against the competitive advantages and legacy technology of the ILEC, the FCC has held that once that point is established, each party is responsible for routing its</p>

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	<p>to Level 3?</p> <p>Additional Issue Raised by Qwest: Should the Commission order operation verification audits related to VoIP traffic (7.1.1.1) and require CLEC certification of VoIP traffic prior to the use of Local Interconnection Services in Connection with VoIP traffic (7.1.1.2).</p>	<p><u>subject only to the payment of intercarrier compensation in accordance with Applicable Law. In accordance with FCC Rule 51.703(b), neither Party may assess any charges on the other Party for the origination of any telecommunications delivered to the other Party at the SPOI, except for Telephone Toll Service traffic outbound from one Party to the other when the other Party is acting in the capacity of a provider of Telephone Toll Service, to which originating access charges properly apply.</u></p> <p><u>7.1.1.3 Facilities included/transmission rates. Each SPOI to be established under the terms of this Attachment shall be deemed to include any and all facilities necessary for the exchange of traffic between Qwest's and Level 3's respective networks within a LATA. Each Party may use an Entrance Facility (EF), Expanded Interconnect Channel Termination (EICT), or Mid Span Meet Point of Interconnection (POI) and/or Direct Trunked Transport (DTT) at DS1, DS3, OC3 or higher transmission rates as, in that Party's reasonable judgment, is appropriate in light of the actual and anticipated volume of traffic to</u></p>	<p>fact it allows for SPOI under conditions that have been found acceptable by other similarly situated carriers and Commissions throughout Qwest's 14 state territory.</p> <p>Level 3's language, which allows interconnection "on" Qwest's network is ambiguous and creates the probability of future disputes, and thus should be rejected. Level 3's language on "technically feasible" interconnection is far too broad in identifying access and local tandems as technically feasible for all traffic. This fails to recognize the distinctly different functions performed by toll and local tandems and, if applied, literally could require substantial and unnecessary modification of</p>	<p>originating traffic to that single point of interconnection (SPOI). Each party is responsible for their own costs of interconnection and their own network-design costs to route their customers' traffic to the SPOI.</p> <p>Qwest's language tilts this balance by inappropriately imposing costs upon Level 3 and the competitive community by virtue of its mandate that the interconnection take place deep within Qwest's own network, at Qwest's end office switches and a various tandem switches.</p> <p>In addition, by rejecting the "technically feasible" standard embraced by the FCC, Qwest attempts to</p>

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		<p><u>be exchanged. If one Party seeks to establish a higher transmission rate facility than the other Party would establish, the other Party shall nonetheless reasonably accommodate the Party's decision to use higher transmission rate facilities.</u></p> <p><u>7.1.1.4 Each Party Shall Charge Reciprocal Compensation for the Termination of Traffic to be carried. All telecommunications of all types shall be exchanged between the Parties by means of from the physical facilities established at Single Point of Interconnection Per LATA onto its Network Consistent With Section 51.703 of the FCC's Rules:</u></p> <p><u>7.1.1.4.1 Qwest shall permit Level 3 to interconnect for the exchange of telecommunications Traffic at any technically feasible point on Qwest's network consistent with FCC and Commission Rules.</u></p> <p><i>7.1.1 This Section describes the Interconnection of Qwest's network and CLEC's network for the purpose of exchanging Exchange Service (EAS/Local traffic), IntraLATA Toll carried solely by local exchange carriers and not by an IXC (IntraLATA LEC Toll), ISP-Bound traffic,</i></p>	<p>Qwest's network. Because Level 3's language ignores current network architectures and their limitations, its language should be rejected.</p> <p>Level 3 also objects to Qwest's proposed sections 7.1.1.1 and 7.1.1.2 (both of which relate to VoIP). This issue is confusing because Level 3 removed Qwest's proposed language related to operation verification audits and certification and used contract sections 7.1.1.1 and 7.1.1.2 to introduce issues related to SPOI. Qwest objects to Level 3's versions of 7.1.1.1 and 7.1.1.2 for the reasons set forth above. That aside, Qwest's proposed sections 7.1.1.1 and 7.1.1.2 must be retained. It is critical to properly determine if traffic legitimately</p>	<p>throttle the efficiency of the Level 3's network architecture by limiting what type of traffic may be exchanged. For example, Qwest's proposal omits any references to Section 251(b)(5) for purposes of defining the type of traffic that may be exchanged at the POI. Qwest's proposed terms also omit any reference to interLATA and VoIP or other IP Enabled traffic as traffic that may be exchanged at the POI.</p> <p>Finally, Level 3 opposes Qwest's proposed language that would require Level 3 to verify the equipment of its end users (7.1.1.2.) First, Level 3 has no control – nor should it – over the</p>

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		<p><i>and Jointly Provided Switched Access (InterLATA and IntraLATA) traffic. Qwest will provide Interconnection at any Technically Feasible point within its network. Interconnection, which Qwest currently names "Local Interconnection Service" (LIS), is provided for the purpose of connecting End Office Switches to End Office Switches or End Office Switches to local or Access Tandem Switches for the exchange of Exchange Service (EAS/Local traffic); or End Office Switches to Access Tandem Switches for the exchange of IntraLATA LEC Toll or Jointly Provided Switched Access traffic. Qwest Tandem Switch to CLEC Tandem Switch connections will be provided where Technically Feasible. New or continued Qwest local Tandem Switch to Qwest Access Tandem Switch and Qwest Access Tandem Switch to Qwest Access Tandem Switch connections are not required where Qwest can demonstrate that such connections present a risk of Switch exhaust and that Qwest does not make similar use of its network to transport the local calls of its own or any Affiliate's End User Customers.</i></p> <p>7.1.1.1 CLEC agrees to allow Qwest to conduct</p>	<p>qualifies as VoIP traffic in order to assure that the ESP exemption and the proper intercarrier compensation regime is properly applied to traffic claimed to be VoIP. Given that these determinations rely upon correct reporting by the parties and the proper application of the definition of VoIP, it is essential that parties certify their levels of VoIP traffic and be subject to operation audits to verify the accuracy of their reporting. There are numerous examples in agreed-to language where the parties have agreed to auditing and certification in other contexts. There is no reason audits and certification should not be applied to VoIP traffic.</p>	<p>equipment and configurations used by 3rd party end-users. Indeed, end-users have been afforded the right pursuant to <i>Hush-A-Phone Corp. v. United States</i>, 238 F.2d 266 (D.C.Cir.1956) and <i>Carterphone v. AT & T</i>, 13 F.C.C.2d 420, <i>recon. Denied</i>, 14 F.C.C.2d 571 (1968), to provide all types of their own CPE to originate calls.</p> <p>Qwest's proposed language is aimed at impeding Level 3's ability to use interconnection trunks to transport VoIP traffic. Level 3's proposal to resolve Issue 2 would allow the parties to exchange all types of traffic over a common set of interconnection trunks</p>

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		<p><i>operational verification audits of those network elements controlled by CLEC and to work cooperatively with Qwest to conduct an operational verification audit of any other provider that CLEC used to originate, route and transport VoIP traffic that is delivered to Qwest, as well as to make available any supporting documentation and records in order to ensure CLEC's compliance with the obligations set forth in the VoIP definition and elsewhere in this Agreement. Qwest shall have the right to redefine this traffic as Switched Access in the event of an "operational verification audit failure". An "operational verification audit failure" is defined as: (a) Qwest's inability to conduct a post-provisioning operational verification audit due to insufficient cooperation by CLEC or CLEC's other providers, or (b) a determination by Qwest in a post-provisioning operational verification audit that the CLEC or CLEC's end users are not originating in a manner consistent with the obligations set forth in the VoIP definition and elsewhere in this Agreement.</i></p> <p>7.1.1.2 Prior to using Local Interconnection Service trunks to terminate VoIP traffic, CLEC</p>		<p>and rely upon jurisdictional factors to determine compensation.</p> <p>Qwest's proposed language seeks to make Level 3 the virtual guarantor of 3rd party activities over which it has no control – and contrary to Qwest's own tariffs in which it excuses itself from liability and damages arising from the acts of third parties.</p> <p>Qwest's proposal is calculated to tilt the balance in favor of Qwest and the enhancement of its revenue stream to the detriment of the competitive telecommunications community.</p>

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		<i>certifies that the (a) types of equipment VoIP end users will use are consistent with the origination of VoIP as defined in this Agreement; and (b) types of configurations that VoIP end users will use to originate calls using IP technology are consistent with the VoIP configuration as defined in this Agreement.</i>		In Section 7.1.1.1, Qwest seeks to gain the unilateral advantage of determining in what event and under what circumstances it is able to re-rate traffic to a higher revenue generating category irrespective of the dispute resolution process established in the interconnection agreement.
Issue No. 1B Sec. 7.1.2	<p>Level 3's Statement of Issue: Whether Qwest may compel Level 3 to later negotiate the method of interconnection, and whether Level 3 may establish a single point of interconnection.</p> <p>Qwest's Statement of the Issue: Whether Qwest is entitled to be compensated by Level 3 for costs incurred by</p>	<p><u>7.1.2 Qwest shall permit CLEC to establish a POI through: (1) a collocation site established by CLEC at a Qwest wire center, (2) a collocation site established by a third party at Qwest wire center, or (3) transport (and entrance facilities where applicable).</u></p> <p><u>CLEC shall establish one POI at any technically feasible point on Qwest's network within each LATA in which CLEC desires to exchange traffic directly with Qwest by any of the following methods:</u></p> <p><u>1. a collocation site established by CLEC at a Qwest Wire Center,</u></p>	Qwest's language defines four well-established facility arrangements for establishing interconnection that provide Level 3 the flexibility to have Qwest build facilities to Level 3, or have Level 3 build to Qwest's wire center (Collocation), or meet somewhere in the middle. Qwest also provides the flexibility to use an alternate technical feasible method not covered by the previous three	No. Qwest's proposed terms would require Level 3 to later negotiate the points of interconnection where Level 3 interconnects with Qwest's network, and whether Level 3 will have only a single point of interconnection, or multiple points of interconnection. Qwest's proposed terms do not make clear that Level 3 will be permitted to

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	Qwest to provide interconnection services to Level 3?	<p><u>2. a collocation site established by a third party at Qwest Wire Center;</u></p> <p><u>3. transport (and entrance facilities where applicable) ordered and purchased by CLEC from Qwest; or</u></p> <p><u>4. Fiber meet points.</u></p> <p><u>CLEC shall establish one POI on Qwest's network in each LATA. POIs may be established by CLEC through:</u></p> <p><u>1. a collocation site established by CLEC at a Qwest Wire Center,</u></p> <p><u>2. a collocation site established by a third party at Qwest Wire Center;</u></p> <p><u>3. transport (and entrance facilities where applicable) ordered and purchased by CLEC from Qwest at the applicable Qwest intrastate access rates and charges; or</u></p> <p><u>4. Fiber meet points.</u></p> <p><i>7.1.2 The Parties will negotiate the facilities arrangement used to interconnect their respective networks. CLEC shall establish at</i></p>	options.	<p>establish a single point of interconnection, and do not specify the manner of that interconnection.</p> <p>Qwest's proposal fails to recognize the well established rule that it is responsible for the costs of operating its network on its side of the POI, as is Level 3 on its side of the POI.</p> <p>Qwest's proposed terms are vague and ambiguous.</p>

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		<p><i>least one (1) physical Point of Interconnection in Qwest territory in each LATA CLEC has local End User Customers. The Parties shall establish, through negotiations, at least one (1) of the following Interconnection arrangements, at any Technically Feasible point: (1) a DS1 or DS3 Qwest provided facility; (2) Collocation; (3) negotiated Mid-Span Meet POI facilities; or (4) other Technically Feasible methods of Interconnection, via the Bona Fide Request (BFR) process unless a particular arrangement has been previously provided to a third party, or is offered by Qwest as a product</i></p>		

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<p>Issue No. 1 D Sec. 7.2.2.1.2.2.</p>	<p>Level 3’s Statement of the Issue: Does the federal Act permit Level 3 to establish a single point to interconnect its network to Qwest’s network, and further require each party to bring its originating traffic to the SPOI without requiring the other carrier to pay the originating carrier’s costs associated with its network design?</p> <p>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 interconnection services</p>	<p>7.2.2.1.2.2. <u>For purposes of network management and routing of traffic to/from the POI</u> CLEC may <u>order purchase</u> transport services from Qwest or from a third party, including a third party that has leased the private line transport service facility from Qwest. Such transport provides a transmission path for the LIS trunk to deliver the originating Party’s Exchange Service EAS/Local traffic to the terminating Party’s End Office Switch or Tandem Switch for call termination. <u>To the extent CLEC requires dedicated transport for purposes other than the exchange of Traffic, transportTransport</u> may be purchased from Qwest as Tandem Switch routed (i.e., tandem switching, tandem transmission and direct trunked transport) or direct routed (i.e., direct trunked transport). This Section is not intended to alter either Party’s obligation under Section 251(a) of the Act <u>or under Section 51.703 or 51.709 of the FCC’s Rules.</u></p>	<p>Level 3’s addition of the words “For purposes of network management and routing of traffic to/from the POI” and “To the extent CLEC requires dedicated transport for purposes other than the exchange of “Traffic” have never been explained. Thus, it is not clear why they have been added or whether they impose legal obligations beyond those required by the law. They should not be adopted without explanation or a determination as to their legal meaning and implications.</p> <p>Level 3 mistakenly believes that removing the word “purchase” somehow relieves it of the obligation to compensate Qwest for the use of its network. Level 3 acknowledges this transport is</p>	<p>Consistent with the discussion above, Qwest’s proposal to include the term “purchase” is an improper attempt to obligate Level 3 to assume costs of operating the Qwest network on Qwest’s side of the POI. The term “purchase” connotes more than just ordering the facilities in question, but rather expresses Qwest’s view that Level 3 should bear these inappropriate costs.</p> <p>Level 3 and Qwest have been interconnected for years. Over that time Level 3 has invested and upgraded its network nationwide, including building deeper into Qwest territory. During that history Level 3 continues</p>

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	to Level 3?		<p>necessary, as it has not objected to the sentence which states, "Such transport provides a transmission path for the LIS trunk to deliver the originating Party's Exchange Service EAS/Local traffic to the terminating Party's End Office Switch or Tandem Switch for call termination." It also acknowledges that it needs to order transport services. Level 3's language is designed to relieve it of financial responsibility to compensate Qwest for uses of Qwest's facilities, apparently on the basis of its mistaken legal position that each party always bears full financial responsibility for all facilities on its side of the POI.</p> <p>Level 3 has also added language allowing it to</p>	<p>to honor Qwest's requirement that Level 3 route traffic off of Qwest tandem when the traffic from an end office consistently reaches a DS-1's level of capacity. Consistent with that practice, Level 3 agreed to language very similar to what the parties currently operate under. That language preserves this existing practice.</p> <p>This time, however, Qwest wants Level 3 to pay Qwest for transport from Qwest's switches as if Level 3 were purchasing a dedicated circuit to that switch. Qwest claims the word "purchase" has a technical meaning. Level 3 has proven that Qwest is wrong.</p>

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			purchase “transport for purposes other than the exchange of traffic.” It is not clear what Level 3 will be using the transport for nor whether this use would qualify it to purchase such transport at TELRIC prices. Level 3 should be required to explain the reason for this change and to demonstrate that the language does not require Qwest to provide transport beyond that required by law.	
Issue No. 1 E Sec. 7.2.2.1.4	Level 3’s Statement of the Issue: Does the federal Act permit Level 3 to establish a single	7.2.2.1.4 LIS ordered to a Tandem Switch will be provided as direct trunked transport between the Serving Wire Center of CLEC’s POI and the Tandem Switch. <u>To the extent CLEC requires</u>	As was the case in Issue 1D, Level 3 has added language allowing it to purchase transport “for purposes other	For the same reasons as above, Level 3 should not bear the cost of Qwest’s network operations on its

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	<p>point to interconnect its network to Qwest's network, and further require each party to bring its originating traffic to the SPOI without requiring the other carrier to pay the originating carrier's costs associated with its network design?</p> <p>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 interconnection services to Level 3?</p>	<p><u>dedicated transport for purposes other than the exchange of Traffic, tandem</u> <i>Tandem</i> transmission rates, as specified in Exhibit A of this Agreement, will apply to the transport provided from the Tandem Switch to Qwest's End Office Switch.</p>	<p>than the exchange of traffic" at TELRIC tandem rates. It is not clear what Level 3 will be using the transport for nor whether this use would qualify it to purchase such transport at TELRIC prices.</p> <p>Level 3 should be required to explain the reason for this change and to demonstrate that the language does not require Qwest to provide transport beyond that required by law.</p> <p>Level 3's addition also unlawfully limits Qwest's right to compensation for providing transport used for the exchange of traffic.</p>	<p>side of the POI.</p>
<p>Issue No. 1 G</p>	<p>Level 3's Statement of the Issue: Does the</p>	<p>7.3.1.1.3 <u>Each party is solely responsible for any and all costs arising from or related to</u></p>	<p>The basis for Level 3's language is its unsupportable</p>	<p>Yes. See discussion preceding. Contrary to</p>

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<p>Sec. 7.3.1.1.3 and Sec. 7.3.1.1.3.1</p>	<p>federal Act permit Level 3 to establish a single point to interconnect its network to Qwest's network, and further require each party to bring its originating traffic to the SPOI without requiring the other carrier to pay the originating carrier's costs associated with its network design?</p> <p>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 interconnection services Level 3 has ordered?</p>	<p><u>establishing and maintaining the interconnection trunks and facilities it uses to connect to the POI. Thus, neither party shall require the other to bear any additional costs for the establishment and operation of interconnection facilities that connect its network to its side of the POI.</u></p> <p><i>7.3.1.1.3. If the Parties elect to establish LIS two-way trunks, for reciprocal exchange of Exchange Service (EAS/Local) traffic, the cost of the LIS two-way facilities shall be shared among the Parties by reducing the LIS two-way entrance facility (EF) rate element charges as follows:</i></p> <p><i>7.3.1.1.3.1 Entrance Facilities The provider of the LIS two-way Entrance Facility (EF) will initially share the cost of the LIS two-way EF by assuming an initial relative use factor (RUF) of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the EF, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a</i></p>	<p>claim that Qwest is always responsible for all costs on its side of the POI.</p> <p>Ironically, in prior arbitrations, Level 3 has agreed to the use of a Relative Use Factor ("RUF") to apportion transport costs related to two-way trunking, although Level 3 did not agree with Qwest on the traffic that should be included in the RUF calculation. Level 3's language now completely abandons the RUF concept, instead reiterating its unsupported claim that each party bears all costs on its side of the POI.</p> <p>Qwest's position that the terminating carrier should be responsible for ISP traffic is consistent with Rules 701(b), 703(b), and 709(b). Furthermore, in arbitrations</p>	<p>Qwest's assertion as to Level 3's position, it has always been the case that Level 3 has objected to Qwest's position as it maintains in this case as being contrary to the law and sound public policy encouraging competition.</p> <p>The federal Communications Act permits Level 3 to interconnect its network with Qwest's network at a single point within a LATA. Once that point is established, each party is responsible for routing its originating traffic to that single point of interconnection (SPOI). Level 3's language is necessary to clarify that each party is responsible for their own costs of</p>

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		<p><i>minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data for non-ISP-bound traffic to substantiate a change in that factor. If a CLEC's End User Customers are assigned NPA-NXXs associated with a rate center different from the rate center where the End User Customers are physically located, traffic that does not originate and terminate within the same Qwest local calling area (as approved by the Commission), regardless of the called and calling NPA-NXXs, involving those Customers is referred to as "VNXX traffic". For purposes of determining the relative use factor, the terminating carrier is responsible for ISP-bound traffic and for VNXX traffic. If either Party demonstrates with traffic data that actual minutes of use during the first quarter justify a new relative use factor, that Party will send a notice to the other Party. The new factor will be calculated based upon Exhibit H. Once the Parties finalize a new factor, the bill reductions and payments will apply going forward, from the date the original notice was sent. ISP-bound traffic or traffic delivered to Enhanced Service</i></p>	<p>between Qwest and Level 3 and Qwest and AT&T in Colorado, the Colorado Commission determined that ISP traffic should be excluded from the RUF calculation. Qwest's proposed language is consistent with the Colorado Commission's decisions in those dockets and the two federal court decisions that have affirmed them. Several other state commissions have also adopted Qwest's language on this issue.</p> <p>Furthermore, VNXX traffic, which is interexchange in nature, should likewise be excluded from the RUF; otherwise Level 3 will be able to employ VNXX and impose all transport costs on Qwest, a situation that is both illegal and which would allow Level 3 to inappropriately shift costs to Qwest that should be</p>	<p>interconnection and their own network-design costs to route their customers' traffic to the SPOI.</p> <p>With respect to the financial responsibility for transporting originated traffic, the FCC adopted 47 CFR § 51.703(b). Rule 51.703(b) requires that the financial responsibilities for interconnection for originating traffic should be borne solely by each carrier, and prohibits carriers from shifting costs of transporting traffic to the POI to other carriers. Rule 51.703(b) also unequivocally prohibits LECs from levying charges for traffic originating on their own networks. The FCC has also expressly declined to</p>

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		<p><i>providers is interstate in nature. Qwest has never agreed to exchange VNXX Traffic with CLEC.</i></p>	<p>borne by Level 3 and its ISP customers.</p> <p>Qwest's position is consistent with recent Ninth Circuit authority that holds that neither VNXX traffic nor ISP traffic is "telecommunications traffic." <i>Verizon California v. Peevey</i>, 462 F.3d 1142, 1157-58 (9th Cir. Sept. 7, 2006).</p>	<p>allow an ILEC to shift the costs of transport and termination to the interconnecting CLEC. <i>See Local Competition Order, 11 F.C.C.R. at 15588-89, p. 176.</i> Thus, Qwest is responsible for the costs associated with transporting its originated traffic to the Level 3 POI, and Level 3 is responsible for the costs associated with transporting its originated traffic up to its POI.</p> <p>Qwest's proposed terms must be rejected because it attempts to shift to Level 3 Qwest's costs incurred in routing Qwest's traffic on Qwest's network.</p>

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<p>Issue No. 1 H Section 7.3.2.2 and Sec. 7.3.2.2.1</p>	<p>Level 3's Statement of the Issue: Does the federal Act permit Level 3 to establish a single point to interconnect its network to Qwest's network, and further require each party to bring its originating traffic to the SPOI without requiring the other carrier to pay the originating carrier's costs associated with its network design?</p> <p>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 interconnection services Level 3 has ordered?</p>	<p><u>7.3.2.2 Each party is solely responsible for any and all costs arising from or related to establishing and maintaining the interconnection trunks and facilities it uses to connect to the POI. Thus, neither party shall require the other to bear any additional costs for the establishment and operation of interconnection facilities that connect its network to its side of the POI.</u></p> <p><i>7.3.2.2 If the Parties elect to establish LIS two-way DTT trunks, for reciprocal exchange of Exchange Service (EAS/Local) traffic the cost of the LIS two-way DTT facilities shall be shared among the Parties by reducing the LIS two-way DTT rate element charges as follows:</i></p> <p><i>7.3.2.2.1 Direct Trunked Transport The provider of the LIS two-way DTT facility will initially share the cost of the LIS two-way DTT facility by assuming an initial relative use factor of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the DTT facility, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other</i></p>	<p>This issue relates to financial responsibility for Direct Trunked Transport (DTT), while Issue 1G relates to entrance facilities (EF). In all other respects, this issue is identical to Issue 1G. For the same reasons set forth in Qwest's position on Issue 1G, the Commission should adopt Qwest's language on Issue 1H and reject Level 3's language.</p>	<p>Yes. See preceding discussion as regards Qwest's improper attempt to allocate costs to Level 3 contrary to the law and sound public policy.</p> <p>Qwest's proposed terms must be rejected because it attempts to shift to Level 3 Qwest's costs incurred in routing Qwest's traffic on Qwest's network.</p>

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		<p><i>Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor,-based upon actual minutes of use data for non-ISP-bound traffic to substantiate a change in that factor. If a CLEC’s End User Customers are assigned a NPA-NXXs associated with a rate center other than the rate center where the End User Customers are physically located, traffic that does not originate and terminate within the same Qwest local calling area (as approved by the Commission), regardless of the called and calling NPA-NXXs, involving those Customers is referred to as “VNXX traffic”. For purposes of determining the relative use factor, the terminating carrier is responsible for ISP-bound traffic and for VNXX traffic. If either Party demonstrates with non-ISP-bound traffic data that actual minutes of use during the first quarter justify a new relative use factor, that Party will send a notice to the other Party. The new relative use factor will be based on Exhibit H. Once the Parties finalize a new factor, the bill reductions and payments will apply going</i></p>		

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		<i>forward, from the date the original notice was sent. ISP-bound traffic is interstate in nature. Qwest has never agreed to exchange VNXX Traffic with CLEC.</i>		
Issue No. 1 I Sec. 7.3.3.1	<p>Level 3's Statement of the Issue: Is each party responsible for the costs incurred in establishing its network on its own side of the point of interconnection?</p> <p>Qwest's Statement of the Issue: Whether Qwest is entitled to be compensated by Level 3 for costs incurred by Qwest to provide use of its network to Level 3 ?</p>	<p><u>7.3.3.1 Neither Party may charge (and neither Party shall have an obligation to pay) installation nonrecurring charges for LIS trunks.</u></p> <p><i>7.3.3.1 Installation nonrecurring charges may be assessed by the provider for each LIS trunk ordered. Qwest rates are specified in Exhibit A.</i></p>	<p>This issue is the same as those addressed above relating to cost responsibility on each party's side of the POI. The only difference is that this provision relates to non-recurring charges ("NRCs") rather than monthly recurring charges. For the same reasons set forth above, Qwest's language should be adopted.</p>	<p>As discussed in the foregoing Issues, federal rules require that each party bear the cost of establishing their network on their side of the point of interconnection. Qwest's proposed terms must be rejected because it would require Level 3 to assume the cost to establish and operate Qwest's network, a responsibility that the Act, FCC rules and case law clearly demonstrates is improper.</p>
Issue No. 1 J	<p>Level 3's Statement of the Issue: Is each party</p>	<p><u>7.3.3.2 Neither Party may charge (and neither Party shall have an obligation to pay)</u></p>	<p>This issue is the same as those addressed above</p>	<p>As discussed in the foregoing Issues, federal</p>

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Sec. 7.3.3.2	<p>responsible for the costs incurred in establishing its network on its own side of the point of interconnection?</p> <p>Qwest's Statement of the Issue: Whether Qwest is entitled to be compensated by Level 3 for costs incurred by Qwest to provide use of its network to Level 3?</p>	<p><u>any nonrecurring charges for rearrangement assessed for any LIS trunk rearrangement ordered for purposes of exchanging all ISP-Bound Traffic, 251(b)(5) Traffic, and VoIP Traffic that either Party delivers at a POI, other than the intercarrier compensation rates.</u></p> <p><i>7.3.3.2 Nonrecurring charges for rearrangement may be assessed by the provider for each LIS trunk rearrangement ordered, at one-half (1/2) the rates specified in Exhibit A.</i></p>	<p>relating to cost responsibility on each party's side of the POI. The only difference is that this provision relates to non-recurring charges ("NRCs") rather than monthly recurring charges. For the same reasons set forth above, Qwest's language should be adopted.</p>	<p>rules require that each party bear the cost of establishing their network on their side of the point of interconnection. Qwest's proposed terms must be rejected because it would require Level 3 to assume the cost to establish Qwest's network.</p>
TIER I	ISSUE 2 – ALL TRAFFIC ON INTERCONNECTION TRUNKS			
Issue No. 2 A	Level 3 Statement of the Issue: Is Level 3 obligated to build out	7.2.2.9.3.1 <u>Where CLEC exchanges Telephone Exchange Service, Exchange Access</u>	There are two general issues under Issue No. 2: (1) compensation for LIS	Qwest is obligated pursuant to Section 201 and Section 251 (c)(2)(B)

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Sec. 7.2.2.9.3.1	<p>separate interconnection trunks for local and non-local traffic?</p> <p>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?</p>	<p><u>Service, Telephone Toll Service, and ISP-bound Traffic and VoIP Traffic with Qwest over an LIS interconnection network, CLEC agrees to pay Qwest, on Qwest's side of the POI, state or federally tariffed rates applicable to the facilities charges for InterLATA and/or IntraLATA traffic in proportion to the total amount of traffic exchanged over such interconnection facility. Otherwise each party remains 100% responsible for the costs of its interconnection facilities on its side of the POI.</u></p> <p><u>Except as expressly provided in Section 7.3.1.1.3 Each party shall bear all costs of interconnection on its side of the network in accordance with 47 C.F.R. § 51.703. Accordingly, unless otherwise expressly authorized according to Section 7.3.1.1.3, neither Party may charge the other (and neither Party shall have an obligation to pay) any recurring and/or nonrecurring fees, charges or the like (including, without limitation, any transport charges), associated with the exchange of any telecommunications traffic including but not limited to Traffic, ISP-bound and VoIP Traffic on its side of the POI.</u></p>	<p>trunking on the Qwest side of the POI and (2) the types of traffic may be combined on LIS trunks. Qwest has discussed the first issue in connection with Issue 1 (and its subissues) and will not repeat them here.</p> <p>On the second issue, there are two other issues. The first is legal and the second is technical and practical.</p> <p>From a legal perspective, Qwest is willing to allow all traffic types, with the exception of switched access traffic, to be carried over LIS trunks; however, consistent with a practice that has governed for over two decades, switched access traffic must be carried over Feature Group D (FGD) trunks. Thus, as an</p>	<p>to provide Level 3 with interconnection "at any technically feasible point within its network". This section gives the requesting carrier, Level 3, the right to choose where and how the interconnection will take place. The ILEC, in turn, must provide the facilities and equipment for interconnection at that point. (Section 251(c)(2) Further, under the congressional mandates contained in Section 251(c)(2)(C), Qwest is obligated to provide interconnection to Level 3 that is at least equal in quality to that provided Qwest's affiliates or any other carrier. Qwest has been allowed to combine for itself and other CLECs</p>

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		<p><u>Section 7.3.9 of this Agreement applies for allocating compensation for differently rated traffic exchanged over an LIS interconnection network.</u></p> <p><i>7.2.2.9.3.1 Exchange Service (EAS/Local), ISP-Bound Traffic, IntraLATA LEC Toll, VoIP traffic and Jointly Provided Switched Access (InterLATA and IntraLATA Toll involving a third party IXC) may be combined in a single LIS trunk group or transmitted on separate LIS trunk groups.</i></p> <p><i>7.2.2.9.3.1.1. If CLEC utilizes trunking arrangements as described in Section 7.2.2.9.3.1, Exchange Service (EAS/Local) traffic shall not be combined with Switched Access, not including Jointly Provided Switched Access, on the same trunk group, i.e. Exchange Service (EAS/Local) traffic may not be combined with Switched Access Feature Group D traffic to a Qwest Access Tandem Switch and/or End Office Switch.</i></p>	<p>alternative to Level 3's approach, Qwest has agreed to allow all traffic types terminating to Qwest to be combined over FGD trunks.</p> <p>Qwest has no legal obligation to permit commingling of switched access traffic with other types of traffic on LIS trunks. 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.</p> <p>Nothing in the Act or the FCC's regulations give Level 3 the right to mix switched access traffic with local traffic over LIS trunks between its network and Qwest's established pursuant</p>	<p>a mix of local and non-local traffic over the same trunk groups. Under Section 251 (c)(2)(C), it must also do so for Level 3.</p> <p>Contrary to Qwest's assertion, the issue is not whether traditionally certain types of traffic have been allocated to specific facilities, but rather whether it is technically feasible to exchange traffic as Level 3 proposes and whether to not allow Level 3 to do so is discriminatory. Level 3 has obligated itself to pay for such traffic as is appropriate, and it is only Qwest's demand that its legacy systems be able to bill such traffic as opposed to adopting Level 3's</p>

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			<p>to Section 251(c)(2).</p> <p>Level 3's proposal would only allow Qwest to assess a per minute of use charge on switched access traffic. Qwest would still be denied the non-recurring charges that are a part of FGD charges. These are charges that are contained in Qwest's access tariffs and are charges that all IXCs are required to pay.</p> <p>In addition to legal issues, Level 3's proposal creates serious technical and practical issues.</p> <p>The Level 3 proposal, which relies on factors, not recordings of actual traffic information, would not allow Qwest to use its existing mechanized billing processes. Thus, Level 3's proposal would require investment and</p>	<p>proposal for billing that prevents Level 3 from realizing the network efficiencies it is entitled to under the law.</p> <p>Further, Qwest's seemingly reasonable offer of utilizing FGD trunks for this purpose completely misses the basis of Level 3's proposal, namely forgoing the need to establish unnecessary, redundant facilities merely for the unsupported billing enhancement convenience of Qwest.</p>

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			<p>significant reworking of Qwest systems and processes, forcing Qwest to expend significant resources to meet the special needs of one carrier.</p> <p>Level 3's use of billing factors would not allow Qwest to provide the industry standard records to the terminating LEC, wireless carriers, or CLEC carriers, thus creating serious billing issues. Imposition of Level 3's proposal would impact all CLECs that rely on Qwest to provide them with a jointly provided switched access record. Thus, Level 3's proposal would require other companies to change their systems and processes for billing their portion of switched access to the IXC. By offering Level 3 the</p>	

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			<p>ability to combine traffic on FGD (section 7.2.2.9.3.2), Qwest has offered Level 3 an approach which will allow the network efficiencies that Level 3 is seeking, while at the same time allowing for mechanized billing of the appropriate tariffed rates and the ability to produce the necessary jointly provided switched access records.</p> <p>There is no reason to grapple with the difficulties inherent in Level 3's proposal when a workable solution to combining all traffic on a single trunk group already exists.</p> <p>There is simply no valid reason to give Level 3 special treatment that other carriers are neither entitled to nor have demanded.</p>	

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<p>Issue No. 2 B Sec. 7.2.2.9.3.2 and 7.2.2.9.3.2.1</p>	<p>Level 3 Statement of the Issue: Should Level 3, who is a local exchange carrier that has a massive local interconnection network in place, be required to build out a second network to terminate Long Calls when any Long Distance Carriers with any size of Long Distance Network can originate and terminate Local calls over their Long Distance Network, without having to build out a long distance network?</p> <p>Qwest's Statement of the Issue: Whether Level 3 is entitled to commingle switched access traffic with other</p>	<p>7.2.2.9.3.2 CLEC may combine originating Exchange Service (EAS/Local) traffic, ISP-Bound Traffic, IntraLATA LEC Toll, VoIP Traffic and Switched Access Feature Group D traffic including Jointly Provided Switched Access traffic, on the same LIS or Feature Group D trunk group.</p> <p>7.2.2.9.3.2.1 CLEC shall provide to Qwest, each quarter, Percent Local Use (PLU) factor(s) that can be verified with individual call detail records or the Parties may use call records or mechanized jurisdictionalization using Calling Party Number (CPN) information in lieu of PLU, if CPN is available. Where CLEC utilizes an affiliate's Interexchange Carrier (IXC) Feature Group D or LIS trunks to deliver Exchange Service (EAS/Local) traffic with interexchange Switched Access traffic to Qwest, Qwest shall establish trunk group(s) to deliver Exchange Service (EAS/Local), Transit, and IntraLATA LEC Toll, to CLEC. Qwest will use or establish a POI for such trunk group in accordance with this Agreement Section 7.1.</p>	<p>Qwest's proposed language should for Issue No. 2B should be approved for the reasons given above in Issue 2A.</p>	<p>Combining all traffic on a single trunk facility is consistent with the Act and its overriding goal of promoting competition, advanced services and network efficiency. FCC Rules obligate ILECs to provide that methods of interconnection that are employed by other ILECs are not technically feasible when employed on the objecting ILEC's network. If the ILEC fails to meet this burden of proof, then the CLEC's requested method of interconnection must be approved. See 47 C.F.R. § 51.305</p> <p>Further, under the congressional mandates contained in Section 251(c)(2)(C), Qwest is</p>

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	types of traffic on local interconnection trunks established under the Agreement?			obligated to provide interconnection to Level 3 that is at least equal in quality to that provided Qwest's affiliates or any other carrier. Qwest has been allowed to combine for itself and other CLECs a mix of local and non-local traffic over the same trunk groups. Under Section 251 (c)(2)(C), it must also do so for Level 3.
Tier I Issue 3	COMPENSATION FOR ISP-BOUND TRAFFIC			
Issue No. 3A 7.3.6.3	<p>Level 3 Statement of the Issue: Is Level 3 obligated to build out separate interconnection trunks for local and non-local traffic?</p> <p>Qwest's Statement of</p>	<p><u>7.3.6.3 To the extent that Qwest elects to exchange all local traffic at the FCC-mandated rate, if CLEC designates different rating and routing points for ISP-bound and VoIP Traffic such that traffic that originates in one rate center terminates to a routing point designated by CLEC in a rate center that is not local to the calling party even though the called NXX is</u></p>	<p><i>Under the ISP Remand Order and until addressed by the FCC, compensation is capped on ISP calls that originate and terminate to locations within a local calling area (LCA) at \$.0007 per MOU. However, Level 3's contention that the</i></p>	<p>Following passage of the 1996 Act, ILECs such as Qwest advocated that reciprocal compensation should be very high because they were banking on the fact that they had</p>

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	<p>the Issue: Whether Qwest is required to pay intercarrier compensation on ISP traffic that does not originate and terminate at physical locations within the same local calling area (“LCA”) established by the Commission?</p>	<p><u>local to the calling party, such traffic ("Virtual Foreign Exchange" traffic) shall be rated in reference to the rate centers associated with the NXX prefixes of the calling and called parties' numbers.</u></p> <p><i>7.3.6.3 Qwest will not pay reciprocal compensation on VNXX traffic.</i></p>	<p><i>ISP Remand Order</i> requires terminating compensation on VNXX ISP traffic is contrary to the order itself and to other authorities. Nothing in the <i>ISP Remand Order</i> or <i>Core Order</i> requires that the Commission adopt ICA language that allows terminating compensation for VNXX ISP traffic.</p> <p>Level 3’s cost argument is a red herring and is completely irrelevant to the issues. The question before the Commission is not the cost of termination, but whether a CLEC, by serving ISPs, may gather traffic from multiple LCAs at no cost to itself and then be able to charge Qwest for terminating <i>all</i> of that traffic, whether it is local or not. Requiring compensation on non-local ISP traffic leads</p>	<p>more end users than did new entrants. They didn’t see the Internet coming, nor had they invested to upgrade their networks to handle ISP-bound traffic. During the period between 1996 and 2001 33 of 36 state public utility commissions determined that ISP-bound traffic was local and ordered ILECs to pay local reciprocal compensation. Chagrined that they had guessed wrong on traffic flows, ILECs continued to berate the FCC about CLEC “regulatory arbitrage”. The FCC capitulated a second time in 2001 and ordered that all ISP-bound traffic be subject to a specific rate plan that stepped down rates over time. They did so because</p>

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			<p>to the uneconomic arbitrage and windfall revenues articulated by the FCC in the <i>ISP Remand Order</i>.</p> <p>In seeking to receive compensation on VNXX services, Level 3 is attempting to redefine existing tariffed services and Commission-established local calling areas and categorize them in a unique way in an attempt to collect compensation and avoid access charges. VNXX numbers, and the facilities that would be used to connect to locations where such calls would be terminated, are interexchange in nature and are therefore not subject to terminating compensation. The Commission should adopt Qwest's language and thus prevent Level 3's</p>	<p>ILECs complained that they were hauling lots of ISP-bound traffic to CLEC locations at single points of interconnection per LATA. The FCC agreed and offset the rate. In return for that favor, however, the FCC said that ILECs who forced lower rates on CLECs had to exchange all ISP-bound traffic and any other traffic otherwise considered locally-rated at the FCC's mandated lower rates. This was called the mirroring rule.</p> <p>So setting aside Qwest's misleading game of cut and paste of dicta from orders to add up their illogical results – a topic that will be thoroughly dealt with in briefs –</p>

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			<p>assignment of VNXX telephone numbers from resulting in terminating compensation.</p> <p>Level 3's introductory language that suggests that Qwest has the obligation or right to make an election under the <i>ISP Remand Order's</i> mirroring rule is incorrect under the order and as demonstrated by Attachment J to the proposed agreement, under which Level 3 makes the election whether to exchange traffic that qualifies for terminating compensation at \$.0007 or whether Level 3 desires to exchange voice traffic (non-ISP-traffic) at the rate established by the Commission for voice traffic</p>	<p>Qwest's logic fails on its face. First, the FCC removed the word "local" from the compensation rules. They could hardly have meant VNXX when the term never appears in the rules or the order. Secondly, it hardly stands to reason that VNXX is possible if the FCC required that once the lower rate was set that all traffic be mirrored at that lower rate.</p> <p>The real result of Qwest's actions is that they've opted out of the FCC's plans. Therefore, any ISP-bound traffic that is picked up on a local basis must be rated at the state local reciprocal compensation rate; any traffic that is not local must be rated at the</p>

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				FCC's rate. There can be no other rate.
Issue No. 3 B Sec. 4 - Definitions	<p>Level 3 Statement of the Issue: Whether Qwest may use retail "local calling area definitions" as grounds to reduce compensation that the FCC has ordered apply to Information and/or Information Access Services?</p> <p>Qwest's Statement of the Issue: Whether Qwest is required to pay intercarrier compensation on ISP traffic that does not originate and terminate</p>	<p><u>"VNXX traffic" is traffic that the Washington Utilities and Transportation Commission determines should be compensated at the WUTC approved local reciprocal compensation rate (\$0.00161/MOU) where Level 3 does not have facilities in the same Local Calling Area as the end user customer making an ISP-bound or VoIP call to or receiving a VoIP call routed over such Level 3 facilities. ISP-bound and VoIP Traffic that is exchanged at a compensation rate of \$0.0007 is not VNXX so long as Level 3 facilities are located within the same LATA as the end user customer making an ISP-bound or VoIP call to or receiving a VoIP call from Level 3's facilities located in the same LATA as that customer.</u></p> <p><i>"VNXX traffic" is all traffic originated by the</i></p>	<p>Level 3's definition of "VNXX traffic" is incomprehensible. Qwest is unaware of any definition of VNXX used by any state commission that defines VNXX as the traffic that is subject to the local reciprocal compensation rate (also commonly known as the "voice rate"). A VNXX call originates in one LCA and terminates in another LCA.</p> <p>VNXX (or VNXX codes) is defined by the FCC as "central office codes that correspond with a particular</p>	<p>VNXX artificially mixes retail rate regulation with interconnection. VNXX describes a call routing mechanism that Qwest admits is and has been typical of ISP-bound calls for a very long time. To the extent Qwest seeks to impose asymmetrical rate structures on local traffic, it has opted out of the FCC's requirement that ILECs exchange all local traffic at the same rate. Thus Qwest must pay for truly local traffic –</p>

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	at physical locations within the same local calling area (“LCA”) established by the Commission?	<i>Qwest End User Customer that is not terminated to CLEC’s End User Customer physically located within the same Qwest Local Calling Area (as approved by the state Commission) as the originating caller, regardless of the NPA-NXX dialed and, specifically, regardless of whether CLEC’s End User Customer is assigned an NPA-NXX associated with a rate center in which the Qwest End User Customer is physically located.</i>	geographic area that are assigned to a customer located in a different geographic area.” (ISP NPRM ¶ 115, footnote 188). Every other commission that has addressed VNXX has similarly defined it in similar terms (i.e., in terms of the use of “local” numbers for customers not located in the local calling area associated with the NXX used). Level 3’s attempt to define it as voice traffic makes no sense whatsoever. Level 3’s attempt to define VNXX in terms of the location of facilities is likewise inconsistent with the definitions of VNXX commonly used in other jurisdiction, where the term is uniformly defined (consistent with the FCC definition	i.e. traffic that is exchanged on a local basis – at state-approved, not FCC-approved rates. This is because the FCC has long rejected (and the DC Circuit twice specifically rejected, not to mention recently re-affirming the Core Order, again) the concept that the physical location of the calling or called party to define VoIP or ISP enabled traffic – is relevant. So to the extent that the Commission finds that Qwest’s has rejected the FCC’s single rate plan for all local traffic, then it must rate the traffic local according to the physical location of the equipment. There is no other alternative, as not only has Qwest’s proposed methods been illegal since 1999,

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			<p>above) in terms of the location of customers and not the location of carrier facilities.</p> <p>Although this section's purpose is only to define VNXX traffic, Level 3 inappropriately adds "compensation" language into the definition on the assumption that reciprocal compensation applies to VNXX traffic.</p> <p>Qwest's definition of VNXX is consistent with accepted definitions of that term and, although the compensation issues are dealt with elsewhere, Qwest makes no attempt in its definition of VNXX to resolve that issue.</p> <p>Level 3's definition is misleading and incorrect and</p>	<p>but their state-approved local tariffs cannot logically or legally apply to interstate traffic.</p> <p>Level 3's definition of "VNXX traffic" addresses what is undoubtedly a complicated issue but in as clear and simple a way as possible. Level 3's definition is entirely consistent with how Level 3 proposes to treat ISP-bound and VoIP traffic for compensation purposes. More importantly, and as discussed at length during the technical conference on August 24, Level 3's definition takes into consideration the technical nature of the parties' interconnection architecture in the State of Washington. Qwest's</p>

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			<p>attempts to create distinctions where none exist in order to avoid the existing intercarrier compensation requirements. In effect, Level 3 is attempting to avoid costs that other carriers pay and replace them with revenues. Qwest's proposed definition of VNXX is consistent with Washington statutes, rules, and tariffs, as well as the use of that term by courts, other state commissions, and the FCC.</p>	<p>does not. It is consistent with compensation requirements under Washington law which essentially boil down to the fact that where an ILEC agrees to the FCC's rules on exchange of ISP-bound traffic, all of that traffic is subject to \$0.0007 per MOU. If they do not, then the state reciprocal compensation rate applies. The Washington reciprocal compensation rate applies to all traffic rated as local regardless of whether voice communications occur or not. Moreover, Level 3's definition simply states that ISP-bound and VoIP traffic will not be considered VNXX traffic for compensation purposes under the parties'</p>

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				agreement. Lastly, Level 3's language is consistent with other provisions in the agreement and with Level 3's positions on other issues.
Issue No. 3 C Section 7.3.6.1	<p>Level 3 Statement of the Issue: Once Qwest opts into the ISP Remand compensation regime for the exchange of traffic, may Qwest lower that rate based on a state commission approved rate for reciprocal compensation that applies to non-information services?</p> <p>Qwest's Statement of the Issue: Whether Qwest is required to pay intercarrier compensation on ISP</p>	<p><u>7.3.6.1 Intercarrier compensation for ISP-bound traffic, and VoIP traffic exchanged between Qwest and CLEC will be billed and paid, without limitation as to the number of MOU ("minutes of use") or whether the MOU are generated in "new markets" as that term has been defined by the FCC. To the extent that Qwest accepts the FCC's plan for a single rate for all local traffic, compensation for ISP-bound and VoIP traffic will be at \$0.0007. Otherwise, compensation for ISP-bound calls made by Qwest customers to Level 3 facilities that are local to the end user making the call as well as compensation for VoIP calls, are subject to WUTC approved rate of \$0.00161 per MOU.</u></p>	<p>Level 3's language would subject all ISP and VoIP traffic to terminating compensation without consideration for whether that traffic is interexchange (VNXX) traffic, a position that is inconsistent with Washington and federal law. Qwest's also objects to Level 3's insertion of VoIP traffic into the paragraph 7.3.6.1, for which it wants to receive reciprocal compensation at the rate of \$.0007, since, absent Level 3's election under the mirroring rule, the \$.0007 rate applies only to</p>	<p>Qwest agrees that it will compensate Level 3 at the rate of \$0.0007 per minute of use for ISP-Bound traffic. However, Qwest's proposal would reduces that rate for locally rated traffic to zero. Again, to the extent that Qwest opts out of the FCC's plan to force CLECs to vastly lower than access rates, locally delivered traffic should be locally rated under the state's local reciprocal compensation rate of \$0.00161.</p>

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	traffic that does not originate and terminate at physical locations within the same local calling area ("LCA") established by the Commission?	<p><i>7.3.6.1 Subject to the terms of this Section, intercarrier compensation for ISP-bound traffic exchanged between Qwest and CLEC (where the end users are physically located within the same Local Calling Area) will be billed as follows, without limitation as to the number of MOU ("minutes of use") or whether the MOU are generated in "new markets" as that term has been defined by the FCC.</i></p> <p><i>\$.0007 per MOU or the state ordered rate, whichever is lower</i></p>	local ISP traffic. Further, the assumption in Level 3's language that Qwest has the election under the mirroring rule is incorrect and misstates the FCC's <i>ISP Remand Order</i> . Finally, Level 3's language that rates calls on the basis of the location of facilities as opposed to customer locations is unlawful under state and federal law. On the other hand, Qwest's language correctly defines the traffic that is subject to the \$.0007 terminating compensation rate as being only local ISP traffic..	<p>Secondly, Qwest's proposal is an attempt to impose asymmetrical compensation rates for traffic that the FCC has mandated must be compensated at \$.0007 at a minimum. Otherwise, they've elected the state rate of \$0.00161.</p> <p>Lastly, by clearly defining the statutory basis for the traffic in question, Level 3's definition will avoid future disputes between the parties.</p>
TIER I	IP ENABLED COMPENSATION			

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<p>Issue No. 4 Sec. 7.3.4.1 and 7.3.4.2</p>	<p>Level 3 Statement of Issue: Once Qwest opts into the ISP Remand compensation regime for the exchange of traffic, may Qwest lower that rate based on a state commission approved rate for reciprocal compensation that applies to non-information services? If Qwest does not opt-into the FCC’s rate, should ISP-bound calls to Level 3 facilities that are local to the end user making the call be exchanged at the state approved reciprocal compensation rate?</p> <p>Qwest’s Statement of the Issue: Whether Qwest and Level 3 are required to pay</p>	<p><u>7.3.4 Compensation for ISP-Bound and VoIP Traffic</u></p> <p><u>7.3.4.1 So long as Qwest elects the FCC’s single rate plan and subject to the terms of this Section, intercarrier compensation for ISP-bound and VoIP Traffic where originating and terminating NPA-NXX codes correspond to rate centers located within Qwest defined local calling areas will be exchanged between Qwest and CLEC will be billed as follows, without limitation as to the number of MOU (“minutes of use”) or whether the MOU are generated in “new markets” as that term has been defined by the FCC:</u></p> <p><u>\$.0007 per MOU.</u></p> <p><u>7.3.4.2 ISP-Bound and any IP-TDM or TDM-IP VoIP Traffic will be compensated at the FCC mandated rate of \$.0007 per MOU, on a per LATA basis, so long as such traffic is exchanged between the Parties at a single POI per LATA.</u></p> <p>7.3.4.1 <u>Provided Qwest rejects the FCC’s</u></p>	<p>The Qwest proposed Washington voice rate of \$.001178 was established by the Commission for voice traffic. The FCC did nothing to take away the state commissions’ right to set the voice rate for reciprocal compensation. Level 3 takes the position that a different rate, \$.0007 should apply. Level 3’s language, which assumes the election with regard to voice traffic under the mirroring rule is Qwest’s to make is wrong. The election lies with Level 3.</p> <p>Level 3’s language in section 7.3.4.1 suggests that the test for application of terminating compensation is based on NPA-NXX. That proposal is an unlawful effort to allow VNXX in Washington, and violates both state and federal</p>	<p>Qwest agrees that it will compensate Level 3 at the rate of \$0.0007 per minute of use for VoIP.</p> <p>To the extent that Qwest asserts that locality matters, then it has rejected the FCC’s single rate and returned to what existed prior to the ISP-Remand Order – that ISP-bound traffic is rated as local on a state by state basis. To the extent that Level 3’s facilities or transport are local to the party calling the ISP, then rating the traffic as local is at least in accord with the costs imposed upon Qwest and the nature of the network facilities employed in making the call. To the extent that Qwest seeks to impose</p>

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	reciprocal compensation on VoIP traffic that does not originate and terminate at physical locations within the same LCA.	<p><u>single rate for local traffic, Intercarrier compensation for Exchange Service (EAS/Local) and VoIP traffic exchanged between CLEC and Qwest (where Level 3's facilities are physically located within the same Local Calling Area) will be billed at \$.00161 per MOU.</u></p> <p><i>7.2.4.1 Intercarrier compensation for Exchange Service (EAS/Local) and VoIP Traffic exchanged between CLEC and Qwest (where the end users are physically located within the same Local Calling Area) will be billed at \$.001178 per MOU.</i></p> <p><i>7.3.4.2 The Parties will not pay reciprocal compensation on traffic, including traffic that a Party may claim is ISP-Bound Traffic, when the traffic does not originate and terminate within the same Qwest local calling area (as approved by the state Commission), regardless of the calling and called NPA-NXXs and, specifically regardless of whether an End User Customer is assigned an NPA-NXX associated with a rate center different from the rate center where the</i></p>	<p>law. Likewise, Level 3's effort in Level 3's final paragraph (which should be designated as section 7.3.4.3) to determine the application of terminating compensation on the basis of facilities location as opposed to customer location is likewise unlawful under state and federal law.</p> <p>Qwest's language is consistent with the <i>ISP Remand Order</i>, as well as Washington and federal law and should be adopted.</p>	<p>originating access charges on ISP-bound calling, it is illegally seeking a subsidy for locally dialed and locally transported traffic. This is illegal and calls into question the validity of Qwest's tariffs. No state tariff can simultaneously apply to local end users for traffic that Qwest contends is under federal jurisdiction.</p>

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		<i>customer is physically located (a/k/a "VNXX Traffic"). The Parties shall not exchange VNXX Traffic.</i>		

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Issue No. 5	<p>Level 3 Statement of 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.</p> <p>Qwest Statement of the Issue: Whether state-specific language approved by the Commission should be used in the Agreement instead of Qwest's template language?</p>	<p><u>To the extent that terms contained in the Washington SGAT vary from the terms of this Agreement, the terms of this Agreement shall control.</u> Each reference by Qwest in the Agreement to Qwest's Statement of Generally Available terms. See for example, Qwest's attempt to adopt terms defined in its SGAT in the definitions section, and Sections 5.8.1, 5.8.2, 5.12.1, 5.12.2, 5.13, 5.15.1, 5.16.9.1.1, 5.16.10, 5.18.3, 5.18.9, 5.23.1, 5.27.1, 5.30.1., 6.2.2.5, 6.2.2.6, 6.2.2.7, 6.2.2.9.2, 6.2.3.1a, 6.2.3.1c, 6.2.3.1c, 6.2.3.1d, 6.2.3.2a, 6.2.3.2d, 6.2.14, 6.4.1, 7.1.2.1, etc.</p>	<p>Qwest's intent in referencing the state SGATs in the template was to signify that the state-specific language was to be substituted for the template language in those cases. The interconnection agreement that was submitted with Qwest's response in this docket contains the state specific language that Qwest proposes and no longer contains cross-references to the SGAT. Thus, Qwest believes it has resolved this issue.</p>	<p>Qwest attempts to incorporate by reference, without consent by Level 3, varying and undefined terms into this Interconnection Agreement by making reference to the SGAT on file with the Commission. While Qwest may make interconnection available to Level 3 through the terms and conditions of its SGAT, Qwest may not modify the terms of this Agreement with unknown and undefined references to the agreement.</p> <p>The parties have already agreed in Section 5.2.2.1 that Level 3 may obtain Interconnection services under the terms and conditions of a then-</p>

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				existing SGAT or agreement to become effective at the conclusion of the term or prior to the conclusion of the term if CLEC so chooses. Qwest may not pick and choose contradictory terms and conditions from the SGAT to modify its obligations under the Agreement.
TIER II ISSUES	Issues that require a decision to be consistent with the conclusions reached by the Commission in Level 3's Tier I issues.			
Issue No. 7 Sec. 4 -Definitions	Level 3 Statement of Issue: Should the agreement define telecommunications for	<u>Telephone Exchange Service is as defined in the Act.</u> <i>"Basic Exchange Telecommunications Service"</i>	Qwest's proposed definition has been included in its SGATs throughout its	Level 3 provides multiple services over its network including wholesale VoIP and wholesale ISP-dialup

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	<p>purposes of cost-based interconnection according to the act or by reference to Qwest's retail local calling areas?</p> <p>Qwest's Statement of the Issue: Should the Parties use the Commission approved definition of "Basic Exchange Telecommunications Service"?</p>	<p><i>means, unless otherwise defined in Commission rules and then it shall have the meaning set forth therein, a service offered to End User Customers which provides the End User Customer with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such End User Customer to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.</i></p>	<p>fourteen state region.</p>	<p>service. Qwest is using its unregulated affiliate QCC for back door deregulation by attempting to impose retail rates on an interconnecting facilities based carrier.</p> <p>Qwest's proposed definition, moreover, describes the services subject to this agreement as only those circumstances where an end user that obtains service from the public switched telecommunications network, place calls to, or receive calls from, other stations on the public switched telecommunications network. This definition is unnecessary and limiting, and seeks to</p>

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				exclude the types of IP Enabled traffic that is exchanged with Level 3.
Issue No. 10 Sec. 4 - Definitions	<p>Level 3 Statement of Issue: Should the definition of “Interconnection” preclude the Level 3 from using its co-carrier network for VoIP calls and to terminate (but not originate) Long Distance traffic solely to Qwest end users?</p> <p>Qwest’s Statement of the Issue: Should the parties use a definition of “Interconnection” that most closely conforms to the Commission-approved definition?</p>	<p>"Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, IntraLATA Toll carried <i>solely</i> by local exchange carriers, ISP-Bound traffic, <i>VoIP traffic</i>, and Jointly Provided Switched Access traffic.</p>	<p>Level 3 mischaracterizes this issue as a Qwest attempt to exclude traffic from being exchanged.</p>	<p>Qwest’s proposed definition of “Interconnection” describes the types of traffic that may be exchanged by the Parties. However, Qwest’s definition excludes VoIP traffic. Qwest’s proposed definition is improper and contrary to law and policy. It is a back-door attempt to stymie VoIP competition. Level 3’s definition of Interconnection identifies all forms of traffic that may be exchanged between the Parties, and most closely matches the terms of the Act</p>

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<p>Issue No. 14 Sec. 4 Definitions</p>	<p>Level 3 Statement of Issue: Whether the Agreement should define traffic using terms defined in the federal Communications Act?</p> <p>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 same Local Calling Area as determined by the Commission"? In addition to that, should the Commission also adopt a definition of "Telephone Exchange</p>	<p><u>Telephone exchange service - The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.</u></p> <p><i>"Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the Local Calling Area as determined by the Commission.</i></p>	<p>Level 3's language deletes the term "Exchange Service" and attempts to replace it with the term "Telephone Exchange Service." Qwest's definition for "Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within a LCA as determined by the Commission. This is a necessary and critical definition. Exchange Service is used in paragraphs throughout the agreement (most of which Level has not disputed). Qwest objects to the removal of Qwest's definition for "Exchange Service" as it is used repeatedly throughout the agreement and is therefore necessary.</p>	<p>Yes. Level 3's contract defines the term "Telephone Exchange Service" using the definition contained in the federal Act. This is the proper definition of Telephone Exchange Service. Qwest's proposed redefinition of the term should be rejected.</p>

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	Service” that is substantially the same as the definition of that term proposed by Level 3?			
Issue No. 15. Sec. 4 – Definitions	Level 3 Statement of Issue: Whether the Agreement should define traffic using terms defined in the federal Communications Act? Qwest’s Statement of the Issue: Is it necessary to have a separate definition of “Telephone Toll Service”?	<u>Telephone toll service - the term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.</u> [Qwest opposes Level 3’s language, but does not propose other language]	The “telephone toll service” definition is not in itself controversial. What is controversial is Level 3’s attempt to avoid access charges on telephone toll elsewhere in the agreement. The real issue regarding this definition is Level 3’s attempt to exempt “telephone toll service” from access charges and instead treat this traffic as local, and therefore subject to reciprocal compensation. The attempt to use this term in this manner was recently rejected by the Second Circuit Court of Appeals, in <i>Global NAPs v. Verizon New England</i> , 454 F.3d 91 (2 nd Cir. July 5, 2006) and in the	Level 3’s contract defines the term “Telephone Toll Service” using the definition contained in the federal Act. This is the proper definition of Telephone Toll Service.

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			Iowa Board's July 19, 2006 Order on Reconsideration in the Iowa Level 3/Qwest arbitration.	
Issue No. 16 Sec. 4 – Definitions and 7.2.2.12	<p>Level 3 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?</p> <p>Qwest’s Statement of the Issue: Whether “VoIP Traffic” should</p>	<p>“VoIP” (Voice over Internet Protocol) traffic is traffic that originates <u>or terminates</u> in Internet Protocol. <u>A VoIP call can originate over a device capable of converting audible voice communication into IP packets and routing them over the Internet to facilities that convert the call to Time Division Multiplexing format used by circuit switched networks. From there the call is terminated to the circuit switched network end user. Alternatively, a circuit switched end user can make a telephone call to a VoIP customer. If the circuit switched network end user (here a Qwest customer) dials a local telephone number, Level 3 will pick up that call in the local calling area or LATA where the call originates and terminate it to the VoIP customer. Because VoIP equipment works wherever the VoIP customer can connects to sufficient Internet bandwidth,</u></p>	<p>Following the filing of Level 3’s initial petition, Qwest moved a portion of its original definition of “VoIP” into section 7.2.2.12 because the language moved was more appropriately included in the terms and conditions and not in a definition. The move did not otherwise represent a substantive change.</p> <p>Level 3’s new VoIP definition represents a dramatic departure from its definition used in other states. Level 3 has never explained the new language in testimony and it thus remains</p>	<p>Level 3 is agreeable to identifying a definition of VoIP traffic that is reasonably related to the FCC’s <i>Vonage Order</i>. Qwest’s proposed definition not only does not match the definition of VoIP adopted by the FCC, it goes far beyond just defining the traffic. Qwest’s proposed definition of VoIP directly controls the substantive rights and obligations to exchange traffic based on the physical geographic location of the originating caller. A key and</p>

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	<p>be defined according to the 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?</p>	<p><u>the call could terminate anywhere on the planet where such a connection is possible. But if the landline customer dials a 1+ number, the call will be routed to a long distance carrier who will hand that call to Level 3, at which point Level 3 will terminate the call to the VoIP customer wherever they may find a connection to the Internet. This means that all locally-dialed VoIP calls and all VoIP calls terminated within the LATA to the appropriate Qwest Tandems are treated as subject to the FCC’s local reciprocal compensation rate of \$0.0007 or, if Qwest opts out of the FCC’s mirroring regime for information services traffic, the state ordered reciprocal compensation rate of \$0.00161. at the premises of the party making the call using IP-Telephone handsets, end user premises Internet Protocol (IP) adapters, CPE-based Internet Protocol Telephone (IPT) Management “plug and play” hardware, IPT application management and monitoring hardware or such similar equipment and is transmitted over a broadband connection to the VoIP provider.</u></p> <p><i>7.2.2.12 VoIP traffic. VoIP traffic as defined in this agreement shall be treated as an</i></p>	<p>unclear.</p> <p>Qwest applies the ESP exemption in a consistent manner, treating the ESP POP as the relevant location for the determination whether VoIP traffic is local or interexchange in nature.</p> <p>VoIP traffic should be treated consistently with the treatment accorded other traffic and should be subject to the same regulatory regimes that properly apply.</p> <p>Level 3 proposes that all VoIP traffic should be subject to terminating compensation at \$.0007 per MOU and likewise that no VoIP traffic be subject to access charges. Neither position is supported by the law. Level 3 takes the unsupported position that the ESP exemption gives ESPs complete exemption from</p>	<p>fundamental component of the FCC’s definition of VoIP service is that the location of the end users are not generally known. Therefore, Qwest’s proposed definition fails. Fundamental to Qwest’s view on IP-enabled traffic is its strained interpretation of the ESP exemption and the manner in which such interpretation guarantees Qwest substantially enhanced revenues. However, a pivotal flaw to Qwest’s advocacy with regards to the ESP exemption is both the public policy and the technology that under girds it. Qwest fails to recognize the fact that the facilities used to deliver and transport an IP-</p>

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		<p><i>Information Service, and is subject to interconnection and compensation rules and treatment accordingly under this Agreement based on treating the VoIP Provider Point of Presence (“POP”) as an end user premise for purposes of determining the end points for a specific call.</i></p> <p><i>7.2.2.12.1 CLEC is permitted to utilize LIS trunks to terminate VoIP traffic under this Agreement only pursuant to the same rules that apply to traffic from all other end users, including the requirement that the VoIP Provider POP must be in the same Local Calling Area as the called party.</i></p>	<p>access charges under all circumstances, a position neither supported by the language of the exemption nor historical practice in its application. Level 3 erroneously contends that the ESP exemption in effect gives ESPs LATA-wide ability to originate and terminate traffic.</p> <p>Level 3’s request is, in essence, a request that it be given regulatory preference, a position that violates the Act’s requirement of competitive neutrality and sound public policy.</p>	<p>Enabled call are not those utilized in the legacy circuit based network upon which access charges have been applied. Furthermore, the ESP exemption was adopted by the FCC for the very reason that Qwest is seeking to impose access charges – namely that the unwarranted imposition of access costs on the IP based network and business would thwart its full development for public welfare – and prevent its highest and best use.</p> <p>Moreover, Qwest’s proposed definition seeks to establish compensation terms and conditions, and routing obligations and</p>

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				prohibits, as part of the definition. The Commission should reject Qwest's proposed definition of VoIP in its entirety
Issue No. 18 Sec. 7.3.9	<p>Level 3 Statement of Issue: May the Parties rely upon jurisdictional allocation factors to identify the compensation for the types of traffic exchanged?</p> <p>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.</p>	<p>7.3.9 <u>To the extent a Party combines ISP-bound Traffic, VoIPTraffic, Exchange Service (EAS/Local), IntraLATA LEC Toll, and Jointly Provided Switched Access (InterLATA and IntraLATA calls exchanged with a third party IXC) traffic on a single trunk group, the originating Party, at the terminating Party's request will declare monthly PLU(s), PIU(s), and PIPU(s), collectively "Jurisdictional Factors."</u> Such Jurisdictional Factors will be verifiable with either call summary records utilizing Call Record information for jurisdictionalization or call detail samples. The terminating Party should apportion per minute of use (MOU) charges appropriately.</p> <p>7.3.9.1 <u>The Jurisdictional Factors - PLU, PIU and PIPU - are defined as follows:</u></p> <p>7.3.9.1.1 <u>PIPU – Percent IP Usage: This</u></p>	<p>Qwest's language proposes a PLU for use in limited situations: to apportion billing for traffic that does not contain a calling party number and therefore, cannot be jurisdictionalized based on a comparison of the calling and called parties' numbers. Qwest's proposed PLU would only be applied to the bucket of these "unidentified" calls to determine what percent should be billed at the local rate.</p> <p>Level 3's proposal, however, goes along with its desire to commingle all of its traffic on LIS trunks. For the reasons</p>	<p>Level 3's Section 7.3.9 of the Agreement allows the Parties to accurately measure and exchange compensation based on allocation factors that rely upon call records. Unlike Qwest's vague and ambiguous proposed terms, Level 3's contract establishes clear instructions on how the Parties will measure and report Interexchange, ISP-bound and IP-Enabled traffic, irrespective of the rate of compensation to be established by the</p>

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		<p><u>factor represents the traffic that is IP Enabled as a percentage of ALL traffic. CLEC has introduced this factor to identify IP-Enabled Services traffic for billing purposes to Qwest on an interim basis until an industry standard is implemented. IP-Enabled traffic includes all IP to TDM and TDM to IP traffic that is exchanged directly between the parties.</u></p> <p><u>7.3.9.1.2 PIU – Percent Interstate Usage: This factor represents the end-to-end circuit switched traffic (i.e. TDM-IP-TDM) that is interstate for services that are billed at tariffed rates on a per Minute Of Use (MOU) basis as a percentage of all end-to-end circuit switched traffic, i.e. all interstate traffic after IP-Enabled traffic has been excluded. This factor does not include IP-Enabled Services Traffic.</u></p> <p><u>7.3.9.1.3 PLU – Percent Locally Rated Traffic (ISP-bound and VoIP Traffic Usage): This factor does not include IP-Enabled Services traffic.</u></p> <p><u>7.3.9.2 Unless otherwise agreed to by the parties: (1) factors will be calculated and</u></p>	<p>set forth in Issue No. 2, Qwest opposes that proposal. The only reason for introducing the factors proposed by Level 3 is to allow for billing when switched access traffic is commingled with all other traffic on a LIS trunk group. As Qwest noted in its discussion of Issue No. 2, these factors would not be necessary if switched access traffic were carried over a FGD trunk group, as opposed to a LIS trunk group. There is simply no reason to go to a system of factors, with all the difficulties they present, when a workable solution to combining all traffic on a single trunk group already exists. In addition, the existing FGD solution is superior to Level 3’s proposal in that it relies on actual</p>	<p>Agreement.</p> <p style="text-align: center;">Allocation factors are regularly used to apportion compensation for the exchange of traffic. Qwest’s own proposal would rely upon allocation factors to apportion the costs of facilities and trunks on Qwest’s side of the Point of Interconnection.</p> <p style="text-align: center;">Jurisdictional allocation factors are not new. For decades, the FCC has relied on these factors to track and bill for compensation. In the 1989 <i>Joint Board Recommended Decision and Order</i>, the federal-state Joint Board on Universal Service created a reporting process to</p>

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		<p><u>exchanged on a monthly basis. Percentages will be calculated to two decimal places (for example 22.34%); (2) each party will calculate factors for all traffic that they originate and exchanged directly with the other Party; and (3) the party responsible for collecting data will collect all traffic data, including but not limited to Call Detail Records (this includes CPN), from each trunk group in the state over which the parties exchange traffic during each study period. The parties will calculate the factors defined in Section 7.9.1, above, as follows:</u></p> <p><u>7.3.9.2.1 PIPU: The PIPU is calculated by dividing the total IP-Enabled Services MOU by the total MOU. The PIPU is calculated on a statewide basis.</u></p> <p><u>7.3.9.2.1.1 Upon ILEC request, CLEC will provide a PIPU factor for all minutes of usage exchanged directly between the Parties over the Interconnection Trunk Groups in each state. CLEC will provide separate PIPU factors for CLEC Terminating IP-enabled Traffic and CLEC Originating IP-enabled Traffic, which terms are defined in sections</u></p>	<p>traffic information to determine accurate jurisdiction of recorded calls, not estimates which may, or may not, be accurate and at the very least will require continual updating. Further, as there is no industry standard method of determining IP-enabled services at this time, the PIPU factor proposed by Level 3 is unverifiable by Qwest, and includes traffic that does not conform to the definition of VOIP. Finally, as discussed previously, the system of factors proposed by Level 3 does not allow for the creation of jointly provided access records which are relied upon by CLECs and LECs who terminate jointly provided switched access traffic.</p>	<p>track what percent of usage of the ILEC's network was interstate and what percent was intrastate for billing purposes. It is referred to as the "Percent Interstate Usage" or "PIU" method. The core of the PIU method is that compensation is based upon the jurisdictional percentage of the traffic that is exchanged over the trunks. Audits confirm the allocation so that charges may be properly allocated.</p> <p>Ultimately, allocation factors and the processes as Level 3 proposes represent a sound business-like approach to ensuring that Qwest receive its appropriate</p>

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		<p><u>7.8.4.3.1.1 and 7.8.4.3.1.2, respectively, below. Accordingly, the PIPU factor is based upon CLEC's actual and verifiable Call Detail Records of IP-originated traffic</u></p> <p><u>7.3.9.3 Exchange of Data:</u></p> <p><u>7.3.9.3.1 The party responsible for billing will provide the PIPU, PLU and PIU factors to the non-collecting party on or before the 15th of each month, via email (or other method as mutually agreed between the parties), to designated points of contact within each company.</u></p> <p><u>7.3.9.4 Maintenance of Records</u></p> <p><u>7.3.9.4.1 Each company will maintain traffic data on a readily available basis for a minimum period of one year (or however long as required by state and federal regulations) after the end of the month for which such date was collected for audit purposes.</u></p> <p><u>7.3.9.5 Audits</u></p> <p><u>7.3.9.5.1 Each company will have the</u></p>		<p>compensation without unnecessarily inhibiting Level 3 and other IP-enabled traffic providers. Qwest would have Level 3 and similarly situated carriers undergo the unnecessary delay and unnecessary expense of either creating a redundant network structure in the form of FGD trunks or, alternatively awaiting such time as Qwest decides to enhance its legacy billing system – a decision for which no incentive exists should Qwest prevail. In fact, Qwest has the opposite incentive – to force carriers such as Level 3 to incur these unnecessary costs and to create this redundant network to</p>

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		<p><u>ability to audit the other company's traffic factors up to a maximum of twice per year. A party seeking audit must provide notice of their intent to audit and include specific dates, amounts and other detail necessary for the party receiving the request to process the audit. Notice must be provided in writing and postmarked as mailed to the audited party within one year after the end of each month(s) for which they seek audit.</u></p> <p><u>7.3.9.5.2 The audited party must provide in a mutually agreeable electronic format traffic data for the months requested according to Section 7.3.9.5.1 above.</u></p> <p><u>7.3.9.6 True-Up</u> <u>In addition to rights of audit, the Parties agree that where a factor is found to be in error by more than 2%, they will automatically true up the factors and pay or remit the resulting amounts to correct such errors.</u></p> <p><u>7.3.9 To the extent a Party combines Exchange Service (EAS/Local), IntraLATA LEC Toll and Jointly Provided Switched Access</u></p>		<p>enable Qwest to delay their market entry and at the same time enhance their revenues.</p> <p>The balance as regards to this issue needs to fall on the side of competitive, advanced services and not on the side of the unsupported, unsubstantiated, averred fears of Qwest.</p>

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		<i>(InterLATA and IntraLATA calls exchanged with a third party IXC) traffic on a single LIS trunk group, the originating Party, at the terminating Party's request will declare quarterly PLU(s). Such PLUs will be verifiable with either call summary records utilizing Calling Party Number information for jurisdictionalization or call detail samples. The terminating Party should apportion per minute of use (MOU) charges appropriately.</i>		
Issue No. 19 7.3.6.2	Level 3 Statement of 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	7.3.6.2 Identification of ISP-Bound Traffic – Qwest will presume traffic delivered to CLEC that exceeds a 3:1 ratio of terminating (Qwest to CLEC) to originating (CLEC to Qwest) traffic is ISP-Bound traffic. Either Party may rebut this presumption by demonstrating the factual ratio to the state Commission. <u>Traffic exchanged that is not ISP-Bound traffic will be considered to be local traffic unless the Commission determines that Qwest has affirmatively opted out of the FCC's mirroring rule.</u>	Level 3 removed language in earlier versions of its proposed language that resolved issues as to that language, and which allows either party to rebut the 3:1 presumption by demonstrating to the state commission that a different ratio should apply Level 3's addition of a new last sentence to Section 7.3.6.2 is unlawful because it	If Qwest has voluntarily opted into the FCC's ISP-bound compensation framework then all traffic is exchanged at the \$0.0007 rate. If not, then local traffic (which Level 3 says is traffic exchanged where Level 3's facilities are local to Qwest customers making ISP-bound and VoIP calls to Level 3's customers or where Level 3 terminates

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	<p>sufficient?</p> <p>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.</p>		<p>would recategorize long distance traffic subject to access charges as local traffic. There is nothing about the mirroring rule or the election under it that would authorize such a recategorization of traffic. The additional sentence proposed by Level 3 is based on its misinterpretation of the mirroring rule and would unlawfully recategorize traffic.</p> <p>The issue addressed in the new language proposed by Level 3 to section 7.3.6.2 was not raised in either Level 3's Petition or in Qwest's response to the Petition. Thus, under 47 USC §252(b)(4), it may not be decided in this arbitration.</p>	<p>a VoIP call over to a Qwest customer within the same local calling area as the Level 3 facility) is compensated at the higher local rate.</p>

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<p>Issue No. 21 Section 7.4.1.1</p>	<p>Level 3 Statement of Issue: Whether, when ordering Interconnection, Level 3 could be deemed to implicitly agreeing to pay the costs of the trunks and facilities on Qwest's side of the POI?</p> <p>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 allocated responsibility for the cost of interconnection.</p>	<p><u>7.4.1.1 Nothing in this section 7.4 shall be construed to in any way affect the Parties' respective obligations to pay each other for any activities or functions under this Agreement. All references in this section 7.4 to 'ordering' shall be construed to refer only to the administrative processes needed to establish interconnection and trunking arrangements and shall have no effect on either Party's financial obligations to the other.</u></p>	<p>Qwest opposes this proposed language for two reasons. First, for all the reasons set forth elsewhere, Level 3's contention that it has no financial obligation on Qwest's side of the POI is legally misplaced and should be ignored by the Commission.</p> <p>Second, even if Level 3's argument were valid, Section 7.4 of the agreement relates only to the ordering of local interconnection service and does not purport to address allocation of responsibility for the cost of interconnection. 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</p>	<p>As noted in Issue 1, Level 3 is not required to pay the costs of the trunks and facilities on the Qwest side of the POI. However, Qwest's proposed agreement contains terms that imply that Level 3 is obligated to pay for a portion of Qwest's costs incurred on the Qwest side of the POI. This language is necessary to clarify and confirm that Level 3 is not required to pay these costs.</p>

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			<p>facilities on Qwest's side of the point of interconnection so that Level 3 can serve its own ISP customers.</p> <p>Section 7.4.1.1 is simply unnecessary.</p>	
<p>Issue No. 23 Sec. 4 - Definitions</p>		<p><u>“Meet Point Interconnection Arrangement” is an arrangement between state certificated LECs whereby each telecommunications carrier constructs, leases or pays for network facilities to a meet point.</u></p> <p>[Qwest opposes Level 3's language but does not propose other language]</p>	<p>The issue addressed in this proposed definition of “Meet Point Interconnection Arrangement” was not raised in either Level 3's Petition or in Qwest's response to the Petition. Thus, under 47 USC §252(b)(4), it may not be decided in this arbitration.</p> <p>To the extent Level 3 believes a Meet Point Interconnection Arrangement definition is necessary, the FCC's definition in 47 CFR 51.5 should be used: “A meet</p>	<p>See Level 3's position statement for Issue No. 1A and 1C above. Level 3's language clarifies the well-established rule that Qwest is responsible for the costs of operating its network on its side of the POI, as is Level 3 on its side of the POI. Qwest's proposed terms are vague and ambiguous.</p> <p>Level 3's language also clarifies that Level 3's "built" network may</p>

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			<p>point interconnection arrangement is an arrangement by which each telecommunications carrier builds and maintains its network to a meet point.”</p> <p>By including the words “leases or pays for network facilities” Level 3 has expanded the FCC’s definition, which requires each party building it own facilities to the meet point. Level 3’s definition serves only to muddle the distinction between an entrance facility, where Qwest provides a facility between a CLEC building and a Qwest building, and a true meet point, where each party constructs facilities to the meet point approximately half way between the two buildings. Level 3’s</p>	<p>consist not only of facilities it physically constructs, but also facilities that it leases from third parties. There is no rule or regulation requiring that meet-point arrangements require "physical construction" of facilities, and Qwest can not deny that "building out" a network may include lease of third party facilities.</p> <p>Finally, the disputed language in this provision is a part of, and encompassed within, Level 3's Tier 1 Issue No. 1 (and its sub-issues) described herein and as raised in its Petition. There are no new issues raised by the disputed language in this</p>

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			definition should be rejected.	provision. Thus, Qwest's assertions that the disputed language is not subject to resolution in this proceeding is simply without merit.
Issue No. 25 Sec. 4 - Definitions		<p><u>“PSTN-IP-PSTN Traffic” PSTN-IP-PSTN Traffic is defined as traffic that (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates from and terminates to landline customers that draw dial tone from a circuit switch; (3) originating customer dials 1 plus the called party’s number, just as in any other circuit-switched long distance call; and (4) the call undergoes no net protocol conversion and provides no enhanced functionality to such landline customers due to the intermediate provider’s use of IP technology.</u></p> <p>[Qwest opposes Level 3’s language but does not propose other language]</p>	Qwest opposes this definition because the term is not used in the agreement. Further, the issue addressed in this proposed definition was not raised in either Level 3’s Petition or in Qwest’s response to the Petition. Thus, under 47 USC §252(b)(4), it may not be decided in this arbitration.	Level 3's proposed definition describes a specific type of traffic which the FCC has determined does not come within the definition of IP-enabled traffic and is subject to access charges. Level 3 proposes this definition to differentiate it from the VoIP Traffic as defined under the Agreement, and to clarify that Level 3 does not intend to classify this type of traffic as "VoIP" traffic for rating purposes under this Agreement.

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				Further, the disputed language in this provision is a part of, and encompassed within, Level 3's Tier 1 Issue No. 4 described herein and as raised in its Petition. Level 3's proposed definition is simply an attempt to clarify a specific type of traffic that the FCC has declared is still subject to access charges. There are no new issues raised by the disputed language in this provision. Thus, Qwest's assertions that the disputed language is not subject to resolution in this proceeding is simply without merit.
Issue No. 26 Sec. 4 – Definitions		<u>“Traffic” is not a term defined in the 1996 Act nor in FCC rules. For purposes of this Agreement “Traffic” includes “Telecommunications” and “Information</u>	Qwest opposes this definition because the term is not used in the agreement and is so	See Level 3's position statements above as to Issue No. 2A. Because different types of traffic

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		<p><u>Services” traffic as such are defined in the 1996 Act at 47 U.S.C. § 153. ISP-bound Traffic and VoIP calls are Information Services Traffic.</u></p> <p>[Qwest opposes Level 3’s language but does not propose other language]</p>	<p>broad as to make other more specific references to traffic meaningless. Thus, its use could cause dramatic, unintended changes to the meaning of the agreement.</p> <p>Further, the issue addressed in this proposed definition was not raised in either Level 3’s Petition or in Qwest’s Response. Thus, under 47 U.S.C. § 252(b)(4), it may not be decided in this arbitration.</p>	<p>may be exchanged under the Agreement, including VoIP and ISP-bound traffic, defining "Traffic" generally to encompass these types of traffic is necessary to avoid ambiguity and potential for disputes between Qwest and Level 3 as that term may be used throughout the Agreement in a manner of general applicability.</p> <p>Finally, the disputed language in this provision is a part of, and encompassed within, Level 3's Tier 1 Issue No. 2 (and its sub-issues) described herein and as raised in its Petition. There are no new issues raised by the disputed language in this</p>

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				provision. Thus, Qwest's assertions that the disputed language is not subject to resolution in this proceeding is simply without merit.
Issue No. 27 Section 4- Definitions		<p>"Unbundled Network Element" ("UNE") is a Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access or for which unbundled access is provided under this Agreement. Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.</p>	<p>In its proposed definition, Level 3 seeks to give the Commission authority to define UNEs. However, under Section 251, there is no unbundling obligation absent an <i>FCC</i> requirement to unbundle and an FCC impairment finding. Section 251(d)(2) provides that unbundling may be required <i>only if the FCC</i> makes an impairment determination. The Supreme Court and D.C. Circuit have held that the Section 251(d)(2) requirements reflect Congress's decision to place a real upper bound on the level of unbundling regulators may</p>	<p>Level 3 seeks to preserve the independent state rights to require unbundling separate and apart from that dictated by the FCC. In the event the state does not avail itself of such independent authority, the inserted text causes no harm to Qwest. However, without such language, Level 3 would be barred from availing itself of such state based rights.</p>

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			order; one of the ways it did so was to assign the task of applying the Section 251(d)(2) impairment test solely to the FCC. In its <i>Triennial Review Order</i> , the FCC reaffirmed this principle. Level 3's UNE definition should be rejected.	
Issue No. 28 Sections 7.1.2.3 and 7.1.2.3.1		<u>7.1.2.3 Mid-Span Meet POI. A Mid-Span Meet POI is a negotiated Point of Interface, limited to the Interconnection of facilities between one (1) Party's Switch and the other Party's Switch. The actual physical Point of Interconnection and facilities will be technically feasible. New methods of interconnection, not previously determined to be technically feasible according to 47 C.F.R. 51.305 will be subject to negotiations between the Parties. These Mid-Span Meet POIs will consist of facilities used for the transmission and routing of telephone exchange service, exchange access and such other traffic as mutually agreed by the Parties or required by the Commission provided in this Agreement.</u>	Level 3's changes represent a significant departure from the Mid-Span Meet POI offering that CLECs currently provision today. Level 3 has substituted technical feasibility language for the negotiation language proposed by Qwest. Negotiation between the parties is critical to ensuring that each party is responsible for approximately 50% of the facility. Level 3's language would allow Level 3 to unilaterally pick any	This case should never have had to gone to arbitration at all. The issues and rights involved are not new, but Qwest labors mightily to make it appear as if Level 3 has changed the world. But over the course of the past year and a half of litigating this case on a state by state basis, after countless days in hearing and after very revealing technical conferences, Level 3 understands

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		<p><u>This includes but is not limited to provisioning of one-way or two-way trunks. Where specific types of trunks are technically required, such as Mass Calling Trunks, OS/DA, 911 or Jointly Provided Switched Access Trunks (for the exchange of traffic with third party Interexchange Carriers), the parties will establish such trunks. The Parties further agree to establish additional direct trunking where required to migrate traffic off of the Tandem as consistent with the technical requirements of this Agreement.</u></p> <p><i>7.1.2.3 Mid-Span Meet POI. A Mid-Span Meet POI is a negotiated Point of Interface, limited to the Interconnection of facilities between one (1) Party's Switch and the other Party's Switch. The actual physical Point of Interface and facilities used will be subject to negotiations between the Parties. Each Party will be responsible for its portion of the build to the Mid-Span Meet POI. CLEC may not use remaining capability in an existing Mid-Span Meet POI to gain access to Unbundled Network Elements. These Mid-Span Meet POIs will</i></p>	<p>technically feasible point and potentially require Qwest to pay for significantly more than 50% of the facility. Level 3's addition of language regarding the new methods of interconnection is misplaced in this section and is already addressed in Qwest's proposed language for Section 7.1.2, interconnection arrangement number four.</p> <p>Level 3 has also stricken language requiring each party to be responsible for building facilities to the meet-point, undermining the mid-span meet concept. In addition, Level 3 has also stricken the prohibition on using this form of interconnection to access UNEs, which is contrary to FCC statements in the First Report and Order, paragraph</p>	<p>Qwest's objections far better than it did when the petition was first filed. Accordingly, Level 3 has not only provided updated language in an effort to narrow disputes, but it has agreed to much of Qwest's languages. Level 3's efforts are consistent with federal rules obligating the parties to continuing efforts to settle interconnection cases, sound public policy and in many cases, specific state requirements directing as much.</p> <p>Turning to the substantive portions of Level 3's proposal:</p> <p>Consistent with the discussion above,</p>

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		<p><i>consist of facilities used for the Provisioning of one-way or two-way local/intraLATA and Jointly Provided Switched Access Interconnection trunks, as well as miscellaneous trunks such as Mass Calling Trunks, OS/DA, 911 and including any dedicated DS1, DS3 transport trunk groups used to provision originating CLEC traffic.</i></p>	<p>553.</p> <p>The parties had previously agreed to use Qwest's language. The issue addressed in Level 3's new proposed section 7.1.2.3 was not raised in either Level 3's Petition or in Qwest's response to the Petition. Thus, under 47 U.S.C. §252(b)(4), it may not be decided in this arbitration.</p>	<p>Qwest's proposed terms would require Level 3 to later negotiate the points of interconnection where Level 3 interconnects with Qwest's via a mid-span meet POI, and potentially whether Level 3 will have only a single point of interconnection or multiple points of interconnection. Level 3 has the right to interconnect with Qwest at any technically feasible point, and Level 3's right to choose the POI means Level 3 has the right to choose the location of a mid-span meet.</p> <p>Level 3's contract allows for joint planning and negotiation of the technical aspects of the interface to establish a</p>

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				<p>mid-span meet while preserving Level 3's right to choose the location of the POI. And, the method of interconnection does not negate the well-established rule that each party is responsible for the costs of its network on its side of the POI. For example, FCC Rule 51.5 defines meet-point arrangements as those by which "each carrier <i>builds and maintains its network to a meet-point.</i>"</p> <p>Accordingly, Qwest's reliance on paragraph 553 of the First Report and Order is as inaccurate as it is anachronistic. It is inaccurate because the paragraph is simply a savings clause referring</p>

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				<p>IXCs as of August 1996 – a time at which IXCs were the only form of competition. Since that time the major IXCs – who provided the competitive impetus that drove the passage of the 1996 Act in the first place – have been absorbed by ILECs and most CLECs eliminated. RBOCs have not only been approved for entry into the IXC market but they have succeeded remarkably. Qwest reports over 35% adoption rate in-territory. More fundamentally, however, it is an error of numbers. Qwest counts three carriers where there are two: Qwest and Level 3. Qwest’s mathematical error results from legal gymnastics that can only</p>

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				<p>be recounted in 100 pages of briefing, but suffice it to say Qwest's positions have no basis in fact.</p> <p>Setting aside Qwest's lack of factual basis for its objections, as a legal matter, Qwest's language divorces Level 3 of its right to implement mid-span interconnection. This is related to the Issue 1B, above, where Qwest <i>appears</i> to consent to interconnection but <i>actually does not</i>.</p> <p>Moreover, contrary to Qwest's assertion, the FCC has not prohibited the use of meet-point arrangements for access to UNEs.</p> <p>Finally, the disputed language in this provision</p>

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				is a part of, and encompassed within, Level 3's Tier 1 Issue No. 1 (and its sub-issues) described herein and as raised in its Petition. There are no new issues raised by the disputed language in this provision. Thus, Qwest's assertions that the disputed language is not subject to resolution in this proceeding is simply without merit.
Issue No. 29 Sec. 7.2.2.3.5	Transit Limitation Definition	<p><u>7.2.2.3.5. “Transit Limitation: For Telephone Toll and IP/TDM (i.e. VoIP) traffic that Level 3 terminates to Qwest, Level 3 agrees to route over the local interconnection trunks only such Telephone Toll and IP/TDM (i.e. VoIP) traffic that would route to NPA-NXX codes homed to Qwest switches.</u></p> <p>[Note: Qwest opposes Level 3’s language;</p>	Level 3’s language fails to resolve Level 3’s creation of phantom traffic that will route to other carriers. Level 3’s language still inappropriately permits Level 3 to route its long distance traffic through Qwest to third parties under circumstances in which Qwest will not be able to	Ironically Qwest’s witnesses raised this as an issue very early in the litigation – over a year ago. Level 3 proposed a remedy that ensured all traffic from Level 3’s network would route directly to Qwest so that no additional traffic

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		Qwest’s proposed section 7.2.2.9.3.2 (Issue 2B) addresses this issue and represents Qwest’s language].	provide billing records these third parties require in order to properly bill Level 3.	would transit. Here Qwest raises an additional and completely unrelated issue – “phantom” traffic, which describes a situation where a carrier has stripped NPA-NXX and other identifying information from the call stream. No network architecture prevents phantom traffic, not even Qwest’s. But both Level 3 and Qwest have agreed to honor industry accepted methods for routing and rating of traffic. Moreover, Level 3’s billing systems capture all traffic records and under Section 7.3.9, will provide that information to Qwest. So there is no increase in

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				phantom traffic at all. And if this really were a problem, one might think that SBC, Verizon or BellSouth would be concerned, but they've indicated no such concern. Again, there is no factual basis to Qwest's claims.
Issue No. 30 Sections 7.2.2.6.1, 7.2.2.6.1.1, 7.2.2.6.1.2, 7.2.2.6.1.3		7.2.2.6.1 SS7 Out-of-Band Signaling. SS7 Out-of-Band Signaling is available for LIS trunks. SS7 Out-of-Band Signaling must be requested on the order for new LIS trunks. Common Channel Signaling Access Capability Service may be obtained through the following options: (a) under Qwest Intrastate Access Tariffs; (b) as defined in the Qwest FCC Tariff # 1; or (c) from a third party signaling provider. Each of the Parties, Qwest and CLEC, will provide for Interconnection of their signaling network for the mutual exchange of signaling information in accordance with the industry standards as described in Telcordia documents, including but not limited to GR-905 CORE, GR-954 CORE,	Level 3's language is unnecessary and should be rejected because it conflicts with section 7.2.2.6.1, language the parties agreed to.	Level 3's proposed language preserves Level 3's right to efficiently establish a single set of links necessary for interconnection of SS7 networks between facilities-based providers. These links are necessary to control traffic flowing between interconnection trunk groups. The FCC has stated clearly that although

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		<p>GR-394 CORE and Qwest Technical Publication 77342.</p> <p><u>7.2.2.6.1.1</u> <u>Either party may choose to provide its own SS7 signaling (via a single set of Quad links) for its facility-based services, or to the extent available, it may purchase SS7 signaling from the other party under the terms and conditions of that party's tariff offering. Alternatively, either party may choose to obtain SS7 signaling from a third-party provider.</u></p> <p><u>7.2.2.6.1.2</u> <u>In the event that LEVEL 3 constructs Quad Links, the point at which Level 3's single set of Quad Links physically link to Qwest's STP shall establish a meet point demarcating each Party's respective legal and financial responsibilities for their respective network and traffic exchanged between those networks.</u></p> <p><u>7.2.2.6.1.3</u> <u>To the extent that Qwest and Level 3 establish a mid-span meet or alternative form of establishing physical linking of SS7 Quad links, they will negotiate</u></p>		<p>Qwest may no longer be required, pursuant to section 251(c)(3), to provide unbundled access to their signaling networks, there is a clear obligation on Qwest, pursuant to sections 251(a), 251(c)(2) and FCC rules implementing these requirements, to provide for interconnection between its signaling network and Level 3's signaling network. <i>Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced</i></p>

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		<p><u>mutually agreeable terms and conditions for the apportioning facilities costs.</u></p> <p>[Note: Qwest opposes the addition of Level 3’s language; Qwest does not propose alternative language].</p>		<p><i>Telecommunications Capability</i>, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, para. 548 (2003). The FCC concluded that such interconnection is clearly technically feasible and that nothing in this Order should be interpreted as altering those interconnection obligations.</p>
<p>Issue No. 31 Section 9.1.1.4</p>		<p><u>9.1.1.4 To submit an order to obtain a high capacity Loop or transport UNE, CLEC must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements discussed in Sections IV, V, and VI of the Triennial Review Remand Order and that it is therefore entitled</u></p>	<p>Issues 31 and 32 address non-impairment determinations under the FCC’s <i>Triennial Review Remand Order</i> (“TRRO”). Under the TRRO, Qwest is not required to provide unbundled transport or loops in wire centers that</p>	<p>The Qwest proposed language presumes that Qwest has the unilateral right as an initial matter to designate which rte centers are non-impaired and shifts the burden of proof to the CLEC to</p>

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		<p><u>to unbundled access to the particular Network Elements sought pursuant to section 251(c)(3) of the Act. As part of such reasonably diligent inquiry, CLEC shall ensure that a requested unbundled DS1 or DS3 Loop is not in a Wire Center identified on the list provided by Qwest of Wire Centers that meet the applicable non-impairment thresholds as specified in Section 9.2, and that a requested unbundled DS1, DS3 and/or dark fiber transport circuit UNE is not between Wire Centers found identified on the list of Wire Centers that meet the applicable non-impairment threshold as specified in Section 9.6. Qwest shall make available to CLEC a list of Non-Impaired Wire Centers (see Qwest’s web site located at http://www.qwest.com/wholesale/clecs/sgatswireline.html#nonimp). CLEC shall provide a letter or other mutually agreed upon form to document its compliance. CLEC will maintain appropriate records that document what CLEC relied upon to support its certification.</u></p> <p><i>9.1.1.4 To submit an order to obtain a high capacity Loop or transport UNE, CLEC must undertake a reasonably diligent inquiry</i></p>	<p>are not impaired under the TRRO’s prescribed standards. Qwest proposes language in Section 9.1.1.4 (Issue 31) that allows the Commission to resolve disputes concerning whether the FCC’s non-impairment standards have been met in Washington.</p>	<p>dispute such designation post facto. It is improper to shift the burden to the CLEC to challenge such designations; rather it is incumbent upon Qwest that when it seeks a non-impairment designations go through the appropriate process, allowing all parties to be informed and challenge prior to the designation being affirmed or denied. By maintaining the burden on Qwest, CLECs will have the ability to appropriately plan their network congratulation, most importantly in the context of making competitive customer bids vis-à-vis Qwest.</p>

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		<p><i>and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements discussed in Sections IV, V, and VI of the Triennial Review Remand Order and that it is therefore entitled to unbundled access to the particular Network Elements sought pursuant to section 251(c)(3) of the Act. As part of such reasonably diligent inquiry, CLEC shall ensure that a requested unbundled DS1 or DS3 Loop is not in a Wire Center identified on the list provided by Qwest of Wire Centers that meet the applicable non-impairment thresholds as specified in Section 9.2, and that a requested unbundled DS1, DS3 and/or dark fiber transport circuit UNE is not between Wire Centers found identified on the list of Wire Centers that meet the applicable non-impairment threshold as specified in Section 9.6. Qwest shall make available to CLEC a list of Non-Impaired Wire Centers (see Qwest's web site located at http://www.qwest.com/wholesale/clecs/sgatswireline.html#nonimp). CLEC shall provide a letter or other mutually agreed upon form to document its compliance. CLEC will maintain appropriate records that document what CLEC relied upon</i></p>		

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		<i>to support its certification. CLEC reserves the right to dispute a determination by Qwest that any Wire Center meets the applicable non-impairment thresholds through the dispute resolution provisions of the Agreement or in any appropriate Commission or FCC proceeding.</i>		
Issue No. 32 Section 9.1.1.4.1		<p><u>9.1.1.4.1 Upon receiving a request for access to a dedicated transport or high-capacity loop UNE that indicates that the UNE meets the relevant factual criteria discussed in sections V and VI of the Triennial Review Remand Order, and CLEC's self-certification as described above, Qwest must immediately process the request. To the extent that Qwest seeks to challenge any request for such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in this Agreement.</u></p> <p><i>9.1.1.4.1 Upon receiving a request for access to a dedicated transport or high-capacity loop UNE that indicates that the UNE meets the relevant factual criteria discussed in sections V and VI of the Triennial Review Remand Order, and</i></p>	<p>See Qwest's discussion of Issue No. 31.</p> <p>Qwest has proposed language in Section 9.1.1.4.1 (Issue 32) that provides that Qwest is not required to provide UNEs where the non-impairment thresholds have been met as determined by the Commission. Level 3's proposed language for these sections attempts to divorce the Commission from any role in enforcing the FCC's prescribed standards. The Commission presently has a proceeding pending to determine which wire centers</p>	<p>The Level 3 language, as opposed to Qwest's, provides an obligation on the part of Qwest to immediately fulfill orders if a center has not been appropriately deemed non-impaired. Similar to the prior issue, Qwest's language takes the view that it has the unilateral right to designate a center as non-impaired based upon its sole opinion, in which event it assume no right to process the orders. Again, from a competitive viewpoint this unfairly places the</p>

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		<p><i>CLEC's self-certification as described above, Qwest must immediately process the request, if the UNE is in a location that does not meet the applicable non-impairment thresholds as specified in Section 9.2 or Section 9.6. To the extent that Qwest seeks to challenge any other such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in this Agreement.</i></p> <p><i>9.1.1.4.2 Additional Non-Impaired Wire Centers. If additional Qwest Wire Centers are found to meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order under which Qwest is no longer required to offer Unbundled DS1 or DS3 Loops, and/or if additional Qwest Wire Centers are reclassified as Tiers 1 or 2, thus impacting the availability of Unbundled DS1, DS3, or Dark Fiber transport, Qwest shall provide notice to CLEC of its intent to reclassify such Wire Centers. Thirty (30) Days after notification from Qwest, CLEC</i></p>	<p>are not impaired. Level 3's proposed language would render that proceeding meaningless.</p>	<p>burden on the CLEC and prevents them from appropriately planning competitive bids to customers, i.e. in a bid to a customer they rely upon a center being impaired but at the time of ordering are informed by Qwest that in its opinion the center is non-impaired. As order fulfillment is so critical in the telecommunications arena, Qwest's proposal is unfair an anti-competitive.</p>

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		<p><i>will no longer order impacted high capacity or Dark Fiber UNEs in or between those additional Wire Centers subject to CLEC's rights under Section 9.1.1.4 above. CLEC will have ninety (90) Days to transition existing DS1 and DS3 UNEs to an alternative service. CLEC will have one hundred eighty (180) Days to transition Dark Fiber transport to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such change. Absent CLEC transition of impacted UNEs within the transition period above, Qwest will convert facilities to month-to-month service arrangements in Qwest's Special Access Tariff or begin the disconnect process of Dark Fiber facilities. CLEC is subject to back billing for the difference between the UNE and Tariff rates beginning on the ninety-first (91st) Day as well as for all applicable nonrecurring charges associated with such conversions.</i></p>		
Issue 33		<p>9.1.1.5.1 In the event that (1) <i>Qwest designates <u>CLEC believes that</u></i> a wire center</p>	<p>Section 9.1.1.5.1 is intended to address the circumstance in</p>	<p>Similar to Level 3's prior objections to Qwest's</p>

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Section 9.1.1.5.1		<p><i>as is</i> non-impaired, (2) CLEC converts existing UNEs to other services or orders new services as services other than UNEs, (3) CLEC otherwise would have been entitled to UNEs in such wire center at the time alternative services were provisioned, and (4) Qwest acknowledges through voluntary agreement or otherwise or the Commission, FCC or court of competent jurisdiction determines that, at the time <i>Qwest designated such wire center as non-impaired, CLEC converted existing UNEs to other services or ordered new services as services other than UNEs</i>, such wire center did not meet the FCC's non-impairment criteria, then upon request of CLEC, the Agreement will be modified, <u>if necessary</u>, within thirty (30) days to reflect such change, and Qwest will transition to UNEs any alternative services in such wire center that were established after such wire center was <i>designated as believed to be</i> non-impaired, including pre-existing UNEs that were converted to alternative services. In such instances, Qwest shall</p>	<p>which Qwest incorrectly designates a center as non-impaired and it is subsequently determined that that is not the case. Accordingly, Qwest's proposed language links the steps that need to be made pursuant to Section 9.1.1.5.1 to situations in which Qwest has incorrectly designated a wire center as non-impaired. Level 3's proposed changes to this section do not make sense because they call for a conversion from alternative services to UNEs regardless of whether Qwest designated a wire center as non-impaired.</p>	<p>proposal in this context, Qwest takes the view that it has the unilateral right to designate a center as non-impaired based upon its sole opinion, in which event it shifts the burden to prove that such center is impaired to Level 3 and the CLEC community. From a competitive viewpoint this unfairly places the burden on the CLEC. There is no cost to Qwest to declare a wire center as non-impaired, while there is a significant cost to the CLEC to undertaking the process to disprove the designation. Additionally, the process Qwest proposes takes the tact that the designation need not be subject to prior investigation and</p>

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		within ninety (90) days refund CLEC the difference between the rate paid by CLEC for such services and the applicable UNE rate, including but not limited to any charges associated with the unnecessary conversion from UNE to other wholesale services.		admisntrative review whereby all the facts can be brought forward in a public forum. In effect, it is a stealth process that Qwest embraces, requiring CLECs to shoulder the burden of unmasking the “stealth”.

END