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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

IN THE MATTER OF THE PETITION FOR
ARBITRATION OF AN INTERCONNECTION
AGREEMENT BETWEEN

DOCKET No. UT-023042

LEVEL 3 COMMUNICATIONS, LLC.,

AND

QWEST CORPORATION

PURSUANT TO 47 U.S.C. § 252

**DIRECT TESTIMONY OF WILLIAM P. HUNT
ON BEHALF OF LEVEL 3 COMMUNICATIONS, LLC**

OCTOBER 9, 2002

1 **Q: PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS FOR**
2 **THE RECORD.**

3 A: My name is William P. Hunt, III. I am Vice President of Public Policy for Level
4 3 Communications, LLC (“Level 3”). My business address is 1025 Eldorado
5 Boulevard, Broomfield, CO, 80021.

6 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES FOR LEVEL 3.**

7 A: As Vice President of Public Policy, I am responsible for developing,
8 implementing and coordinating Level 3’s regulatory policy and government
9 affairs efforts in North America and Europe. I am also responsible for ensuring
10 the company’s regulatory compliance with state and federal regulations,
11 managing the company’s interconnection services group and renegotiating
12 municipal franchise and right of way agreements.

14 **Q: PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
15 **PROFESSIONAL EXPERIENCE.**

16 A: I received a Bachelor of Journalism from the University of Missouri in 1984. I
17 received my Juris Doctor from Western New England College School of Law in
18 1991. I joined Level 3 as Regulatory Counsel in February 1999 and was
19 promoted to Vice President in January, 2000. Subsequently, I was promoted to
20 Vice President of Public Policy when Level 3’s regulatory operations in Europe,
21 North America and Asia were combined. In my current role, I report to the
22 company’s General Counsel.

24 Prior to joining Level 3, I spent almost five years at MCI Communications
25 (“MCI”). I joined MCI’s Office of General Counsel in 1994 as a commercial
26 litigator. In March of 1996, I joined MCI’s state regulatory group in Denver,

1 Colorado, where I was responsible for securing state certifications in the western
2 United States, supporting arbitrations under the Communications Act of 1934, as
3 amended (“Act”), and prosecuting complaints against U S WEST
4 Communications, Inc. (“U S WEST”) in Washington and Minnesota.
5

6 **Q: HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE WASHINGTON
7 UTILITIES AND TRANSPORTATION COMMISSION?**

8 A: No. I have testified before the South Dakota Public Utilities Commission during
9 MCI’s state certification proceeding. While at Level 3, I have testified in
10 arbitration proceedings before the California Public Utilities Commission, the
11 Illinois Commerce Commission, the Michigan Public Service Commission, the
12 Texas Public Utilities Commission, the Colorado Public Utilities Commission,
13 the Arizona Corporation Commission, the North Carolina Utilities Commission
14 and filed pre-filed testimony before the Oregon Public Utilities Commission. I
15 have also testified before the Colorado PUC with respect Level 3’s Notice of
16 Intent to Expand its service territory to include those areas served by Centurytel.
17

18 In addition, I anticipate that I will testify before some or all of the
19 following state commissions this fall with respect to the interconnection
20 arbitrations pending between Level 3 and Centurytel Inc.: Washington Utilities
21 and Transportation Commission; Texas Public Utilities Commission; Colorado
22 Public Utilities Commission; and the Public Service Commission of Wisconsin.
23

24 I also expect to testify in some or all of the following arbitration
25 proceedings between Level 3 and Qwest Communications, Inc. (“Qwest”); the
26 Nebraska Public Service Commission; the Public Service Commission of Utah;

1 the Minnesota Public Utilities Commission and the New Mexico Public
2 Regulation Commission

3 **Q: PLEASE DESCRIBE THE OPERATIONS OF LEVEL 3.**

4 A: Level 3 operates the world's first international network optimized end-to-end for
5 IP packet switching technology, allowing information to be transmitted at a far
6 lower cost. The Level 3 network includes local loops in 36 cities in the U.S. and
7 Europe. The entire network includes an approximately 16,000-mile U.S. intercity
8 and 3,600-mile Pan-European network interconnected by a high-capacity
9 transoceanic cable system. Planned capacity in Europe will add an additional
10 1,150 miles to the Pan-European network during 2002.

11
12 Level 3's network employs a "softswitch" technology. A softswitch is a
13 software system running on commercially available servers that provides Level 3
14 with the ability to offer voice, data, fax and other services over the same Internet
15 Protocol network that carries broadband data services. Level 3's system has non-
16 proprietary interfaces intended to encourage the development of innovative new
17 services and applications by software and hardware developers, Level 3's
18 bandwidth customers, and other service providers.

19
20 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21 The purpose of my testimony is to support Level 3's proposed language for
22 sections that remain in dispute in the Qwest/Level 3 Interconnection Agreement
23 and to address arguments made by Qwest in its Response to Level 3's Petition for
24 Arbitration. In brief, there are two areas of contention between Qwest and Level
25 3. First, Qwest is proposing that "Internet Related" traffic originated by Qwest
26

1 end users not be counted when determining the relative use factor of the facilities
2 carrying that traffic. That is important because the relative use factor determines
3 the ultimate financial responsibility for the facilities. Second, Qwest is proposing
4 to set a default relative use factor of 50% for the first quarter under the new
5 Agreement irrespective of whether a relative use factor has been established under
6 a prior agreement and that once the relative use is determined under this new
7 Agreement, require a retroactive “true-up” of the first quarter charges. Level 3
8 opposes both proposals.
9

10 **Q. PLEASE EXPLAIN THE CONCEPT OF RELATIVE USE AND HOW**
11 **THAT CONCEPT RELATES TO THE DISPUTE IN THIS CASE.**

12 A: Level 3 and Qwest have agreed upon a network architecture that provides for a
13 single point of interconnection (“POI”) in each Local Access and Transport Area
14 (“LATA”). The POI is the financial and operational demarcation point for each
15 carrier’s network. The parties have agreed to a slight variation of this basic rule
16 in recognition of the fact that they will employ “two-way” facilities to exchange
17 traffic. While generally, each party’s financial responsibilities are agreed to be
18 determined by the demarcation point of each other’s facilities (*i.e.* the POI), the
19 fact that the same facility may be used for both originating and terminating traffic
20 means that, consistent with federal law, the parties should consider the “relative
21 use” of those two-way facilities to identify financial responsibility for them.
22 “Relative use” is determined by establishing the proportion of the traffic
23 originated on each carrier’s network. (*See* Level 3 proposed Section 7.3.1.1.3.1.)
24
25 The dispute in this case arises because Qwest wants to carve out an unjustified
26

1 exception to the “relative use” requirement and avoid responsibility for taking
2 certain calls placed by its own customers across its own network for hand-off to
3 Level 3. Specifically, Qwest is attempting to artificially differentiate “Internet
4 Related” traffic (and possibly Exchange Access and Jointly Provided Switched
5 Access traffic as well) from the otherwise agreed upon relative use treatment for
6 EAS/Local traffic.
7

8 An example of how the relative use factor would work is helpful in
9 considering Level 3’s concern. Attached to my testimony as WPH-2 is a diagram
10 that illustrates the facilities that are at issue in this proceeding. If Qwest were
11 originating 75% of the traffic going over a Direct Trunk Transport (“DTT”)
12 facility on the Qwest network, Level 3 would only be responsible for 25% of the
13 charge for DTT. However, Qwest has said that if any of the traffic it is
14 originating is “Internet Related,” those minutes will not count in determining
15 relative use of the DTT facility. Thus, in the example I’ve just provided, if the
16 traffic is “Internet Related,” even though 75% of the minutes going over the
17 facility are originated by Qwest customers, Level 3 could bear 100% of the cost
18 of that facility because of Qwest’s arbitrary rule.
19

20 So, while appearing to allow Level 3 interconnection at a single POI per
21 LATA and appearing to apply the principle of relative use, Qwest undercuts both
22 of these vital requirements of federal law by carving out Internet Service Provider
23 (“ISP”) bound traffic from this treatment. There is no debate that ISP-bound
24 traffic travels over Qwest’s local facilities in the same manner as other local calls
25 placed by Qwest customers do. Qwest simply doesn’t want to bear the cost of
26

1 originating these calls placed by its customers. In other words, Qwest is saying
2 that – even though it acknowledges and agrees that Internet Related traffic will go
3 over the facilities in question – Internet Related traffic originated by Qwest’s end
4 users and terminated by Level 3 should not count as originating traffic when
5 determining Qwest’s relative use of facilities on the Qwest side of the POI.
6

7 Pretending that certain minutes of traffic do not exist is contrary to both
8 common sense and federal law, which dictates that a local exchange carrier
9 (“LEC”) may not assess charges on another LEC for traffic (or facilities) that
10 originates on the first LEC’s network.¹ Charging for these facilities would result
11 in Qwest’s double recovery of its costs, and compel Level 3 to take responsibility
12 for traffic originated by Qwest customers going over the Qwest network from
13 Qwest end offices. Qwest’s basis for departing from these rules has little merit –
14 it argues that by treating ISP-bound traffic differently for purposes of *terminating*
15 compensation, the Federal Communications Commission (“FCC”) also meant to
16 let Qwest off the hook for originating ISP-bound traffic on its own network. This
17 is contrary to both well-established distinctions between origination and
18 termination functions and the FCC’s express directive that even as it was
19 establishing a new *terminating* intercarrier compensation structure for ISP-bound
20 traffic, carriers like Qwest should not take that as an excuse to throw out other
21 rules governing interconnection.
22
23

24 _____
25 ¹ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket
26 No. 96-98, First Report and Order, 11 FCC Red 15499, ¶209 (1996) (“*Local Competition Order*”) (subsequent history
omitted); see also *TSR Wireless, LLC, et al. v. U S West Communications, Inc., et al.*, File Nos. E-98-13, E-98-15, E-
98-17, E-98-18, Memorandum Opinion and Order, ¶34 (rel. June 21, 2000) (“*TSR Order*”), *aff’d*, *Qwest Corp. et al. v. FCC et al.*, 252 F.3d 462 (D.C. Cir. 2001).

1 **Q: BEFORE PROCEEDING ANY FURTHER, CAN YOU EXPLAIN WHAT**
2 **IS A POI (OR POINT OF INTERCONNECTION)?**

3 A: Yes. While I'm not an engineer or network planner, I can describe generally the
4 POI. It is a demarcation point between networks. It is a point at which one
5 party's network ends and the other's begins. It is also a financial demarcation
6 point. If one looks at FCC orders and other documents in which it considers the
7 significance of the POI, the FCC expresses concern about the cost to competitive
8 LECs ("CLECs") of having to build out or lease facilities to multiple points of
9 interconnection in a LATA.² The FCC's rules and orders require each party to
10 bear its own cost of trunks and facilities on its side of the POI, except where one
11 carrier provides the transport and termination of the other party's originated
12 traffic – hence, the concept of "relative use" measurements on two-way facilities.

14 **Q: AND CAN YOU EXPLAIN WHAT "DTT" OR "DIRECT TRUNK**
15 **TRANSPORT" IS?**

16 A: Again, I can do so only at the highest level because I am not an engineer or a
17 planner. DTT are the facilities used to route traffic on a direct or dedicated basis
18 between Level 3's POI with Qwest and various Qwest end offices. These
19 facilities are set up for the mutual benefit of the parties. In fact, Qwest clearly
20 recognizes their value, as it includes a standard provision in all of its
21 interconnection agreements to require that CLECs establish DTT whenever the
22 traffic volumes reach a certain level with respect to any Qwest end office. These
23

25 ² See *Local Competition Order* at ¶209; See Also *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of*
26 *the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding*
Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration, CC Docket No. 00-218,
Memorandum Opinion and Order (Wireline Comp. Bureau, rel. July 17, 2002) ("*Federal Arbitration Order*").

1 facilities take traffic off of Qwest's common transport network between end
2 offices and tandems, thereby saving "room" on the Qwest network and devoting a
3 dedicated path to the parties' exchange of traffic. Thus, it is clear that Qwest
4 benefits from the establishment of DTT – it cannot reasonably paint these
5 facilities as being deployed solely at Level 3's choice or exclusively for Level 3's
6 benefit. In fact, when one considers the thresholds in the Agreement that provide
7 for the installation of additional trunks where traffic volumes grow (*See* Section
8 7.2.2.1.3 of the Agreement) and then considers Qwest's position here, the end
9 result of adopting Qwest's position would be that the more calls Qwest customers
10 choose to place to ISPs served by Level 3, the more cost that *Level 3* would bear
11 for facilities on the Qwest network.
12

13
14 **Q: THERE IS A SIMILAR DISPUTE OVER "ENTRANCE FACILITIES."
15 CAN YOU GIVE A HIGH LEVEL BACKGROUND ON WHAT THOSE
16 ARE?**

17 A: Yes. Entrance facilities represent one means of interconnecting with Qwest. At a
18 high level, an entrance facility is dedicated transport used to exchange traffic
19 between a Level 3 location and a Qwest tandem. Because these facilities are two-
20 way in nature, the same "relative use" requirement that applies in the case of DTT
21 applies to entrance facilities as well.

22 **Q: WHAT PURPOSE DO THESE FACILITIES SERVE?**

23 A: The interconnection trunks and facilities used to handle calls originated by Qwest
24 customers are just as valuable to Qwest as they are to Level 3 or any CLEC. They
25 are used by Qwest to ensure that calls between its customers and Level 3
26 customers are completed; without such trunks, Qwest would not be able to

1 provide the level of services demanded by its own customers. Second, it is not as
2 if Level 3 bears no cost in interconnecting with Qwest. To the contrary, for every
3 trunk that Qwest sets up to handle Level 3 traffic, Level 3 must ensure that the
4 appropriate level of capacity is available on its own side of the POI so that calls
5 coming over the Qwest trunks can then flow over the Level 3 network to their
6 intended destination (and vice versa). Thus, it is in both carriers' interest (or at
7 least in both carriers' customers' interest) to have an adequate amount of co-
8 carrier trunks in place.
9

10 **Q: WHAT IS LEVEL 3 ASKING THE COMMISSION TO DO IN THIS**
11 **ARBITRATION?**

12 **A:** First, the Commission should affirm that sending "Internet Related" traffic across
13 DTT and entrance facilities constitutes "use" of those trunks and facilities such
14 that the carrier originating the traffic should bear its relative share of
15 responsibility for trunks and facilities. The Commission should reject Qwest's
16 proposal because its argument is based in large part on a fundamental
17 misapplication of the FCC's rules, a patent disregard for the express language of
18 the FCC in its *ISP Order on Remand*, and an outright misreading of Rule
19 51.709(b). Even if the Commission were to agree with Qwest that the FCC's
20 reciprocal compensation rules apply to this dispute and that Rule 51.709(b)
21 incorporates the definition of "telecommunications traffic," Qwest still cannot
22 prevail because it cannot show that ISP-bound traffic is excluded from the
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1 definition of “telecommunications traffic” in 51.701(b) following the U.S. Court
2 of Appeals for the D.C. Circuit’s decision in *WorldCom v. FCC*.³

3 Second, regardless of what types of traffic the Commission determines
4 should be included in the relative use factor, it should direct the parties to apply
5 the relative use factor prospectively only and not allow for a confusing retroactive
6 true-up process as Qwest proposes.
7

8 **Q: HAS THE WASHINGTON COMMISSION ADDRESSED THIS ISSUE**
9 **PREVIOUSLY?**

10 A: I understand that the Washington Commission considered the relative use issue in
11 Docket UT-003013. In that docket, the Commission determined that because
12 Internet traffic is interstate, not local, it should be excluded from ILEC/CLEC
13 allocations of financial responsibility for interconnection facilities:

14 [C]ost sharing for interconnection facilities will be determined
15 according to the relative *local* traffic flow over that facility.
16 Whereas the FCC has concluded that ISP-bound traffic is interstate
17 traffic, this traffic should be excluded from the consideration of
18 interconnection facilities cost-sharing. We may revisit our decision
excluding ISP-bound traffic as further judicial and federal
regulatory review occurs.⁴

19 **Q: DO YOU AGREE WITH THIS DETERMINATION?**

20 A: No. I disagree both with the determination and the reasoning advocated by Qwest
21 and adopted by the Commission. As part of this arbitration proceeding, Level 3 is
22 requesting that the Commission decide the dispute between the parties based on
23 the facts and legal and policy arguments presented in this case.
24

25 ³ *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *reh’g denied*.
26

1 **Q: PLEASE EXPLAIN THE PROBLEM WITH THE REASONING**
2 **UNDERLYING THE COMMISSION’S DETERMINATION AND**
3 **QWEST’S POSITION.**

4 A: The problem with Qwest’s argument is that it misapplies and misreads FCC rules.
5 Qwest is applying a rule for reciprocal compensation when reciprocal
6 compensation is not at issue. And even if this rule applied, in order to make the
7 rule support its position, Qwest has to rewrite the rule and ignore the subsequent
8 decision of the U.S. Court of Appeals for the D.C. Circuit in *WorldCom v. FCC*.
9 Because it appears that the Commission likewise relied upon the FCC’s reciprocal
10 compensation rules instead of its interconnection rules, its determination in
11 Docket UT-003013 should be re-examined.

12 **Q: CAN YOU PLEASE EXPLAIN WHY RULE 51.709(b) DOES NOT APPLY**
13 **TO THE PARTIES’ DISPUTE IN THIS CASE?**

14 A: Yes. When Rule 51.709(b) is considered in its proper context, Level 3 has no
15 financial obligation for the portion of transport facilities on the Qwest side of the
16 POI that carry only traffic originated by Qwest customers.

17 Section 251(b)(5) imposes on all local exchange carriers the duty “to
18 establish reciprocal compensation arrangements for the transport and termination
19 of telecommunications traffic.”⁵ One may consider “transport” and “termination”
20 to be separate functional elements, but compensation for “transport and
21 termination” under Section 251(b)(5) is paid only to the terminating carrier.
22 Thus, the question of who should bear financial responsibility for traffic that
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25 ⁴ *Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination*,
26 Docket No. UT-003013, Thirty-Second Supplemental Order, etc., ¶113 (Wa. UTC June 21, 2002)
(footnote omitted) (emphasis in original).

1 originates on the Qwest network is separate and distinct from any question related
2 to intercarrier compensation for any Section 251(b)(5) traffic. It is well
3 established that the originating carrier is paid nothing by the terminating carrier to
4 bring traffic to the POI, meaning all financial obligations for the transport
5 facilities for originating traffic on the originating carrier's side of the POI lie with
6 the originating carrier.⁶
7

8 The FCC has interpreted the "transport and termination" language of
9 Section 251(b)(5) as applying *only* to services and facilities provided by the
10 terminating carrier on its side of the POI. For the purposes of Section 251(b)(5),
11 "transport" is defined as "the transmission and any necessary tandem switching of
12 telecommunications traffic subject to section 251(b)(5) of the Act from the
13 interconnection point between the two carriers to the terminating carrier's end
14 office switch that directly serves the called party, or equivalent facility provided
15 by a carrier other than an incumbent LEC."⁷ "Termination" is defined as "the
16 switching of telecommunications traffic at the terminating carrier's end office
17 switch, or equivalent facility, and delivery of such traffic to the called party's
18 premises."⁸ Both definitions refer to functions provided by a "terminating
19 carrier" "from the interconnection point" "to the called party's premises." There
20 is nothing in these definitions that refers to functions provided by originating
21 carriers for facilities or services *up to the interconnection point*.
22
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25 ⁵ 47 U.S.C. § 251(b)(5).

26 ⁶ *Id.* See also *TSR Order* at ¶34; *Federal Arbitration Order* at ¶67.

⁷ 47 C.F.R. §51.701(c) (emphasis added).

⁸ 47 C.F.R. §51.701(d).

1 **Q: WHAT ABOUT THE FACT THAT QWEST IS PROVIDING DEDICATED**
2 **TRANSPORT BETWEEN ITS NETWORK AND LEVEL 3'S?**

3 A: First, we should be clear that it is not as if Qwest is "providing" these facilities for
4 Level 3's use. As the term "relative use" implies, these facilities are being
5 provided for *both parties'* benefit, and one must take account how much each
6 party is using those facilities for its originating traffic to define how much "use"
7 each party is making of those facilities.

8
9 Second, the fact that Qwest and Level 3 use dedicated transport facilities
10 does not change the conclusion that Rule 51.709(b) or reciprocal compensation
11 obligations generally do not apply to the routing of traffic originated by Qwest
12 over the Qwest network to the POI. In fact, Rule 51.709(b) was intended to
13 capture financial responsibility for the transport and termination of traffic when
14 dedicated facilities are used. Because dedicated facilities are used both to
15 originate traffic (which is not compensable under Section 251(b)(5)) and
16 terminate traffic (which is compensable under Section 251(b)(5)), the FCC
17 devised a system to take that distinction into account. The FCC ruled that the
18 reciprocal compensation obligations for dedicated transport facilities would be
19 owed only for that "portion" of the facility used to handle traffic that is headed
20 toward the terminating carrier, thereby leaving the originating carrier financially
21 responsible for the remainder of the facility.
22

23 In other words, the two-way trunks on Qwest's side of the POI represent
24 two transport obligations performed by Qwest: (1) transport for the origination of
25 traffic, for which Qwest would be solely responsible for the costs; and (2)
26

1 transport for the termination of traffic on Qwest's side of the POI, for which
2 Level 3 would pay Qwest in the form of reciprocal compensation. The "relative
3 use" factor simply reflects the relative distribution of those financial obligations.

4 **Q: HAS THE FCC PROVIDED ANY GUIDANCE ON THE RELATIVE USE**
5 **PRINCIPLE?**

6 **A:** Yes. The FCC discussed the topic of reciprocal compensation for dedicated
7 transport facilities in the *Local Competition Order*:

8 For example, if the providing carrier [i.e., Qwest] provides
9 one-way trunks that the interconnecting carrier [i.e., Level
10 3] uses exclusively for sending terminating traffic to the
11 providing carrier, then the interconnecting carrier is to pay
12 the providing carrier a rate that recovers the full forward-
13 looking economic cost of those trunks. *The*
14 *interconnecting carrier [i.e., Level 3], however, should not*
15 *be required to pay the providing carrier [i.e., Qwest] for*
16 *one-way trunks in the opposite direction, which the*
17 *providing carrier owns and uses to send its own traffic to*
18 *the interconnecting carrier.*⁹

19 The FCC stated that a different approach would be applicable to the sharing of
20 costs for two-way trunks:

21 These two-way trunks are used by the providing carrier to
22 send terminating traffic to the interconnecting carrier, as
23 well as by the interconnecting carrier to send terminating
24 traffic to the providing carrier. Rather, the interconnecting
25 carrier shall pay the providing carrier a rate that reflects
26 only the proportion of the trunk capacity that the
interconnecting carrier uses to send terminating traffic to
the providing carrier.¹⁰

21 The FCC incorporated both of these concepts in Rule 51.709(b). When traffic
22 flows in only one direction – as would be the case with interconnection between
23 Qwest and Level 3 – there is no need to consider each carrier's relative use of the
24 transport facility. Level 3 uses no capacity on these dedicated trunks to send
25

26 ⁹ *Local Competition Order* at ¶1062.

1 traffic to Qwest for termination; therefore, Level 3 owes Qwest no compensation
2 for these trunks under Rule 51.709(b).

3 **Q: YOU MENTIONED EARLIER THAT QWEST ALSO MISREADS FCC**
4 **RULES IN ORDER TO SUPPORT ITS POSITION. PLEASE EXPLAIN.**

5 A: Qwest's argument is also based on a misinterpretation of FCC Rule 47 C.F.R.
6 § 51.709(b), which provides that:

7 The rate of a carrier providing transmission facilities
8 dedicated to the transmission of *traffic* between two
9 carriers' networks shall recover only the costs of the
10 proportion of that trunk capacity used by an interconnecting
11 carrier to send *traffic* that will terminate on the providing
12 carrier's network. (Emphasis added.)

11 In its Response (¶13), Qwest inexplicably replaces the word "traffic" with the
12 phrase "telecommunications traffic." Although the FCC used the phrase
13 "telecommunications traffic" in Rule 51.709(a), it did not use that phrase in Rule
14 51.709(b). Basic principles of statutory construction therefore provide that Qwest
15 may not substitute the phrase "telecommunications traffic" for the word "traffic."
16

17 **Q: WHY IS THE DISTINCTION BETWEEN "TRAFFIC" AND**
18 **"TELECOMMUNICATIONS TRAFFIC" IMPORTANT?**

19 A: Because it is the bedrock foundation on which Qwest rests its entire argument that
20 "interstate access" or "interstate" traffic must be excluded from the relative use
21 factor that determines the originating carrier's responsibility to pay for the
22 facilities used to deliver its originating traffic. Qwest cannot exclude "interstate"
23 traffic from the relative use calculation unless this Commission agrees to rewrite
24 the FCC's rule.
25

26

¹⁰ *Id.*

1 **Q: IF THE COMMISSION WERE TO ACCEPT QWEST’S ARGUMENT**
2 **THAT RULE 51.709(b) APPLIES ONLY TO “TELECOMMUNICATIONS**
3 **TRAFFIC,” DO YOU SEE ANY OTHER PROBLEMS WITH QWEST’S**
4 **ARGUMENT?**

5 A: Yes. Qwest maintains that ISP-bound traffic is excluded from Rule 51.709(b)
6 because it is “interstate access” and therefore excluded by Rule 51.701 as revised
7 by the *ISP Order on Remand*.¹¹ Response at ¶¶13-14. Under Rule 51.701(b),
8 however, the only traffic excluded from “telecommunications traffic” is
9 “interstate or intrastate exchange access, information access, or exchange services
10 for such access.” The restriction applies to interstate “exchange access,” not just
11 “interstate access.” Qwest nowhere demonstrates that this traffic is “exchange
12 access” or “exchange services for such access,” and the FCC declined to draw
13 such a conclusion in the *ISP Order on Remand*.¹² Indeed, it would be improper to
14 treat ISP-bound traffic as exchange access given that the FCC’s Enhanced Service
15 Provider (“ESP”) exemption excludes ISP-bound traffic from payment of access
16 charges. Therefore, even if the rule applied, there is no basis to exclude ISP-
17 bound traffic originated by Qwest customers from the relative use calculation
18 under § 51.709(b) of the FCC’s rules.
19

20 **Q: BUT WHAT ABOUT QWEST’S ARGUMENT THAT UNDER THE *ISP***
21 ***ORDER ON REMAND*, ISP-BOUND TRAFFIC IS INTERSTATE**
22 **TRAFFIC THAT IS NOT PROPERLY INCLUDED IN ITS LOCAL**
23 **INTERCONNECTION OBLIGATIONS?**

24
25 ¹¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No.
26 96-98, Order on Remand, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Report and Order,
n.149 (rel. Apr. 27, 2001) (“*ISP Order on Remand*”) (emphasis in original), *remanded sub nom. WorldCom v. FCC*,
288 F.3d 429 (D.C. Cir. 2002), *reh’g denied*.

¹² *ISP Order on Remand* at ¶ 42, n.76.

1 A: This argument is also flawed because the FCC eliminated the local/non-local
2 distinction for reciprocal compensation obligations. In the *ISP Order on Remand*
3 itself, the FCC eliminated all references to “local telecommunications traffic” in
4 Rules 51.701 *et seq.* The local/non-local distinction, which the FCC prior to the
5 *ISP Order on Remand* had interpreted to be a non-interstate/interstate distinction,
6 was repudiated. Thus, the FCC rewrote Rule 51.701 so that the definition of
7 “telecommunications traffic” no longer turned on whether traffic was “local,” but
8 only on whether the traffic was subject to 251(g).
9

10 There is another reason to reject the Qwest approach. The U.S. Court of
11 Appeals for the District of Columbia Circuit (“D.C. Circuit”) rejected the FCC’s
12 legal analysis regarding reciprocal compensation for ISP-bound traffic.¹³ The
13 D.C. Circuit rejected the FCC’s conclusion that ISP-bound traffic was
14 “information access” under section 251(g) and therefore excluded from section
15 251(b)(5) By doing so, the Court overturned the basis on which Qwest relies for
16 excluding ISP-bound traffic from 51.709(b).
17

18 Further, the *ISP Order on Remand* addresses only compensation for the
19 termination of traffic, not compensation for the origination of traffic or other
20 interconnection responsibilities. The FCC made this point absolutely explicit.
21 Footnote 149 categorically refutes the argument that the *ISP Order on Remand*
22 applies to originating traffic on the originating carrier’s side of the POI: “This
23 interim regime affects only the intercarrier *compensation* (*i.e.*, the rates)
24 applicable to the delivery of ISP-bound traffic. It does not alter carriers’ other
25
26

1 obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection
2 agreements, *such as obligations to transport traffic to points of interconnection.*”
3 (First emphasis in original, second emphasis added). If the FCC had intended to
4 change carriers’ originating responsibility with respect to ISP-bound traffic as part
5 of the *ISP Order on Remand* as Qwest suggests, this footnote in the FCC’s order
6 would make no sense whatsoever. Indeed, if the FCC had intended to excuse
7 carriers from their obligation to bring originating ISP-bound traffic to a POI, there
8 would have been no reason for it to include this cautionary statement about the
9 scope of its ruling. Qwest cannot apply the *ISP Order on Remand* to the issue of
10 compensation obligations for transport provided by Qwest up to the point of
11 interconnection without squarely contradicting this directive from the FCC.
12

13 **Q: IS THE CHARACTERIZATION OF TRAFFIC AS “LOCAL” OR**
14 **“INTERSTATE” RELEVANT TO A CARRIER’S INTERCONNECTION**
15 **OBLIGATIONS?**

16 A: No. First, the FCC has recognized that virtually all ISP-bound traffic is locally
17 dialed. That is, in order to call their local ISPs, customers make a local and not a
18 long-distance call. Second, based on discovery responses we received from
19 Qwest in Minnesota, we believe that discovery in this case will show that Qwest
20 treats calls to ISPs as local for most regulatory purposes – it characterizes the
21 services it sells to ISPs as local exchange telecommunications services, permits its
22 customers to use basic local services for dial-up Internet access, and books
23 revenues from its sale of these services as intrastate revenues.
24

25
26

¹³ *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *reh’g denied*.

1 Finally, and perhaps most importantly for this case, the FCC has exempted
2 ISPs from the payment of certain interstate access charges.¹⁴ ISPs are treated as
3 end users for the purpose of applying access charges and are, therefore, entitled to
4 pay local business rates for their connections to LEC central offices and the public
5 switched telephone network.¹⁵
6

7 The fact is that ISP-bound traffic does not fit neatly into either local or
8 interstate categories. Indeed, the FCC has wrestled for years with the issue of
9 how to treat ISP traffic under the Act. However, despite the fact that the FCC
10 seems to have found that ISP traffic is interstate for purposes of setting an interim
11 intercarrier compensation regime, it has continued to treat ISP traffic as local for
12 most regulatory purposes. Thus, it is a fallacy to maintain that somehow the *ISP*
13 *Order on Remand* has rendered ISP traffic interstate for all regulatory purposes,
14 especially interconnection obligations.
15

16 **Q: QWEST ALSO ARGUES (RESPONSE AT ¶16) THAT THE POLICY**
17 **CONSIDERATIONS UNDERLYING THE FCC'S *ISP ORDER ON***
18 ***REMAND* SUPPORT REACHING THE SAME CONCLUSION FOR**
19 **INTERCONNECTION FACILITIES USED TO REACH THE POI AS FOR**
TRANSPORT AND TERMINATION FROM THE POI TO THE CALLED
PARTY. DO YOU AGREE?

20 **A:** No. In the *ISP Order on Remand*, the FCC was concerned about what a
21 *terminating* carrier might charge an *originating* carrier for transport and
22 termination – as footnote 149 makes clear, it was not concerned with (and
23 therefore did not modify) the obligation of the originating carrier to take traffic
24

25 ¹⁴ *MTS and WATS Market Structure*, CC Docket 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 711
26 (1983) (“MTS/WATS Market Structure Order”).

1 over its own network to a POI. To be more specific, in the *ISP Order on Remand*,
2 the FCC expressed concern that carriers serving ISPs were recovering their costs
3 of delivering traffic from the POI to the ISP “not only from their end user
4 customers, but from other carriers” serving other end users.¹⁶ Because LECs were
5 paying reciprocal compensation on a per-minute basis, the FCC was concerned
6 that carriers had an incentive to seek out customers with high volumes of
7 incoming traffic, for which reciprocal compensation would be charged to other
8 carriers on a per-minute basis.¹⁷ The FCC thus imposed a series of declining caps
9 on the amount of reciprocal compensation that a carrier serving an ISP could
10 charge to originating carriers, and in some cases mandated that the carrier serving
11 the ISP do so on a “bill-and-keep” basis.¹⁸ Contrary to Qwest’s effort to label
12 Level 3 a prime culprit of regulatory arbitrage, it is important to note that the
13 interim intercarrier compensation regime that the FCC adopted in the *ISP Order*
14 *on Remand* specifically relies upon the rates that Level 3 established for ISP-
15 bound traffic in its interconnection agreements with all the major RBOCs besides
16 Qwest.¹⁹

17
18
19 The costs of the dedicated interconnection facilities that are at the core of
20 the dispute here, however, are not volume sensitive, either on a per minute or per
21 call basis. The carrier serving the ISP, such as Level 3, cannot generate more
22 revenue from the carrier serving the originating caller by increasing the traffic
23

24
25 ¹⁵ *Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Services Providers*,
CC Docket 87-215, Order, 3 FCC Rcd 2631, 2633 (1988) (“*ESP Exemption Order*”).

26 ¹⁶ *ISP Order on Remand* at ¶68.

¹⁷ *Id.*

¹⁸ *Id.* at ¶¶77-88.

1 volume. There is no “reciprocal compensation windfall.” Level 3 is not seeking
2 to have Qwest pay Level 3 for the costs of transporting a call from the POI back
3 to Level 3’s customer, but simply to have Qwest bear its own costs of delivering a
4 call originating on its network to the POI with Level 3. Level 3 will bear the costs
5 of transporting a call from the POI and delivering it to its own customers.
6

7 **Q: ON THIS PARTICULAR ISSUE, WE ARE TALKING ABOUT TRUNKS**
8 **AND FACILITIES USED TO INTERCONNECT THE TWO NETWORKS.**
9 **HAS THE FCC ISSUED ANY RULINGS ON THE RESPONSIBILITIES**
10 **OF THE CARRIERS IN THIS REGARD?**

11 A: Yes, it has. There has been some debate about FCC Rule 51.703(b), which states,
12 “A LEC may not assess charges on any other telecommunications carrier for
13 telecommunications traffic that originates on the LEC’s network.” In a case
14 before the FCC, several incumbent LECs argued that this rule would apply only to
15 “traffic,” and would not prevent a carrier from charging an interconnecting carrier
16 for the cost of “facilities” used in originating traffic. The FCC flatly rejected that
17 argument:

18 Defendants argue that section 51.703(b) governs only the charges
19 for “traffic” between carriers and does not prevent LECs from
20 charging for the “facilities” used to transport that traffic. We find
21 that argument unpersuasive given the clear mandate of the *Local*
22 *Competition Order*. The Metzger Letter correctly stated that the
23 Commission’s rules prohibit LECs from charging for facilities
24 used to deliver LEC-originated traffic, in addition to prohibiting
25 charges for the traffic itself. Since the traffic must be delivered
26 over facilities, charging carriers for facilities used to deliver traffic
results in those carriers paying for LEC-originated traffic and
would be inconsistent with the rules. Moreover, the Order requires
a carrier to pay for dedicated facilities only to the extent it uses
those facilities to deliver traffic that it originates. Indeed, the
distinction urged by Defendants is nonsensical, because LECs
could continue to charge carriers for the delivery of originating
traffic by merely re-designating the “traffic” charges as “facilities”

¹⁹ *ISP Order on Remand* at n.158.

1 charges. Such a result would be inconsistent with the language and
2 intent of the Order and the Commission's rules.²⁰

3 It is clear from this decision that each LEC bears the responsibility of operating
4 and maintaining the facilities used to transport and deliver traffic on its side of the
5 POI. This responsibility extends to both the facilities as well as the traffic that is
6 transported over those facilities. Likewise, an interconnecting LEC will bear
7 responsibility for the facilities on its side of the POI, but then recover the costs of
8 transporting and terminating traffic over those facilities from the originating LEC.

9 **Q: DID THE FCC FURTHER EXPLAIN ITS LOGIC FOR REQUIRING THE**
10 **ORIGINATING CARRIER TO BEAR THE COSTS OF DELIVERING**
11 **ORIGINATING TRAFFIC TO THE TERMINATING CARRIER?**

12 **A:** Yes. In the *TSR Order* the FCC further clarified its logic as follows:

13 According to Defendants, the *Local Competition Order's*
14 regulatory regime, which requires carriers to pay for facilities used
15 to deliver their originating traffic to their co-carriers, represents a
16 physical occupation of Defendants property without just
17 compensation, in violation of the Takings Clause of the
18 Constitution. We disagree. The *Local Competition Order* requires
19 a carrier to pay the cost of facilities used to deliver traffic
20 originated by that carrier to the network of its co-carrier, who then
21 terminates that traffic and bills the originating carrier for
22 termination compensation. In essence, the originating carrier holds
23 itself out as being capable of transmitting a telephone call to any
24 end user, and is responsible for paying the cost of delivering the
25 call to the network of the co-carrier who will then terminate the
26 call. Under the Commission's regulations, the cost of the facilities
used to deliver this traffic is the originating carrier's responsibility,
because these facilities are part of the originating carrier's network.
The originating carrier recovers the costs of these facilities through
the rates it charges its own customers for making calls. This regime
represents "rules of the road" under which all carriers operate, and
which make it possible for one company's customer to call any

²⁰ *TSR Order* at ¶25 (footnotes omitted) (emphasis in original).

1 other customer even if that customer is served by another
2 telephone company.²¹

3 Based upon these statements by the FCC, Qwest cannot require Level 3 to pay
4 Qwest for the interconnection trunks that transport Qwest-originated traffic to
5 Level 3 for termination.

6 **Q: QWEST ARGUES (RESPONSE AT ¶¶22-24) THAT THE *TSR ORDER***
7 **DOES NOT APPLY TO THIS CASE. PLEASE RESPOND.**

8 A: Qwest's argument against applying the *TSR Order* is a confusing mish-mash that
9 in fact proves Level 3's point—the proper inquiry is not one under Rule
10 51.709(b), but under a carrier's general interconnection obligations. Qwest
11 characterizes the *TSR Order* as a dispute “arising from the ILECs' attempt to
12 recover the costs of the trunks used to deliver one-way paging traffic from the
13 ILECs' networks to the paging carrier's networks.” Response at ¶23. Substitute
14 “paging” with “ISP” and the sentence summarizes Level 3's dispute with Qwest.²²
15

16
17 Qwest asserts that because the FCC interpreted FCC Rule 51.703(b) rather
18 than Rule 51.709(b), the *TSR Order* has no relevance to this proceeding.
19 Response at ¶¶23-24. What Qwest ignores is that the FCC based its decision in
20 the *TSR Order* on the fact that *no* reciprocal compensation provisions applied to
21 facilities on the originating carrier's side of the POI.²³ The originating carrier is
22 obligated to deliver traffic to the terminating carrier, and also to pay reciprocal
23

24
25 ²¹ *Id.* at ¶34 (emphasis added) (footnotes omitted).

²² The fact that Level 3 is not a paging carrier makes no difference. The *TSR Order* explains the
interconnection obligations between carriers generally.

26 ²³ The FCC regulation that was being interpreted—Section 51.703—explains that reciprocal compensation
provisions do not apply to facilities used to originate traffic.

1 compensation to the *terminating* carrier to complete a call originated by one of its
2 customers. The paging carriers won in the *TSR Order* because reciprocal
3 compensation requirements are not applicable to originating traffic.

4 Qwest also argues that the *TSR Order* is irrelevant because it pre-dates the
5 *ISP Order on Remand*. Response at ¶24. This argument is without any merit
6 whatsoever, and ignores critical provisions in the *ISP Order on Remand* and
7 subsequent FCC decisions. First, the very requirement at issue in the *TSR Order*
8 – the question of what an originating carrier’s obligations are – is *precisely* what
9 the FCC pointed to in stating that the subsequent *ISP Order on Remand* should
10 not be read to invalidate all of the interconnection rules. In footnote 149 of the
11 *ISP Order on Remand*, the FCC expressly reiterated the crux of its holding in the
12 *TSR Order* – that carriers still bear the obligation of taking their own traffic to a
13 point of interconnection.
14
15

16 Second, the principles stated in the *TSR Order* were repeated yet again,
17 following the *ISP Order on Remand*, in the context of a recent FCC arbitration of
18 disputes between an ILEC and facilities-based CLECs. In the *Federal Arbitration*
19 *Order*, the Wireline Competition Bureau was asked to consider a proposal by
20 Verizon that CLECs should be required to compensate Verizon for transport from
21 numerous end offices on Verizon’s side of the POI. The Bureau rejected the
22 Verizon proposal because it was not consistent with the FCC’s interconnection
23 rules. The Bureau stated, in pertinent part, as follows:

24
25 Specifically these rules establish that: (1) competitive
26 LECs have the right, subject to questions of technical
feasibility, to determine where they will interconnect with,

1 and deliver their traffic to, the incumbent LEC's network;
2 (2) competitive LECs may, at their option, interconnect
3 with the incumbent's network at only one place in a LATA;
4 [and] (3) all LECs are obligated to bear the cost of
5 delivering traffic originating on their networks to
6 interconnecting LECs' networks for termination.²⁴

7 These are the rules applicable to this dispute, and Qwest is obligated to bear the
8 cost of delivering traffic its customers originate – including ISP-bound traffic – to
9 the POI with Level 3.

10 **Q: YOU'VE MENTIONED THAT THE PARTIES HAVE AGREED UPON A
11 SINGLE POI PER LATA AND THAT THE POI SHOULD BE THE
12 PHYSICAL AND FINANCIAL DEMARCATION POINT. IS LEVEL 3
13 ATTEMPTING TO STRICTLY APPLY THIS PRINCIPLE TO QWEST IN
14 THIS CASE?**

15 **A:** No. While the FCC's rules and orders establish generally that each party should
16 bear financial responsibility for its facilities on its side of the POI alone, Level 3
17 has compromised on this point consistent with federal law by stating that the
18 parties' financial responsibilities in the specific case of two-way direct trunk
19 transport and entrance facilities will be determined by the "relative use" of
20 interconnection trunks and transport for originating traffic. This "relative use"
21 factor is intended to account for the fact that the same facility may be used to
22 carry both (1) a carrier's end-users' originating traffic from the end office to the
23 POI and (2) the interconnecting carrier's terminating traffic from the POI to the
24 end office serving the called party. So while the negotiated solution is not a strict
25 application of the rule that says the POI establishes both the physical and financial
26 demarcation point between carriers, it does still allow for a single POI per LATA
and is consistent with FCC Rules and the *TSR Order*, in that it is agreed that the

²⁴ Federal Arbitration Order at ¶67.

1 party responsible for carrying the originating traffic will bear the financial burden
2 of delivering that traffic on its own network to the other carrier for termination.

3 **Q: ARE YOU AWARE OF OTHER STATE COMMISSIONS THAT HAVE**
4 **ADOPTED LEVEL 3'S POSITION ON THIS ISSUE?**

5 A: Yes. While Qwest refers to decisions from the Colorado and Oregon commissions
6 in an attempt to support its argument, Qwest ignores the decision of the Arizona
7 Corporation Commission that ruled in favor of Level 3 on this issue. The
8 Arizona Commission resolved this arbitrated issue as follows:

9
10 We concur with Level 3 that Qwest's arguments ignore the
11 fact that the facilities Qwest installs on its side of the POI
12 serve Qwest's own customers. Qwest does not provide
13 these facilities to Level 3 without compensation, but rather
14 receives compensation for these facilities from its own
15 customers. The issue of relative use of facilities on
16 Qwest's side of the POI is distinct from the issue of
17 whether Internet traffic is local and subject to reciprocal
18 compensation. Qwest's reliance on FCC rules and orders
19 concerning reciprocal compensation for local traffic is
20 misplaced. Because this is a distinct issue from reciprocal
21 compensation, we do not believe that employing the same
22 compromise for switching costs and reciprocal
23 compensation is appropriate. We, therefore, find that ISP
24 traffic should be included in the calculation of relative use
25 of interconnection facilities on Qwest's side of the POI.²⁵

18 The Arizona Commission recognized that all traffic carried over the
19 interconnection facilities on the Qwest side of the POI must be considered to
20 calculate each carrier's relative use of the facility. This decision is attached as
21 WPH-3.
22
23
24

25
26 ²⁵ *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, with Qwest Corporation Regarding Rates, Terms and Conditions for Interconnection*, Opinion and Order, Decision No. 63550, 10 (Ariz. C.C. Apr. 10, 2001).

1 **Q: WHY SHOULDN'T THIS COMMISSION FOLLOW THE DECISIONS OF**
2 **THE OREGON AND COLORADO PUCS CITED BY QWEST?**

3 A: Following Qwest's lead, the Oregon Commission failed to differentiate between
4 the basic concepts of interconnection and of intercarrier compensation for
5 transport and termination. The Oregon Commission did not discuss or explain the
6 FCC's express decision to limit the *ISP Order on Remand* to reciprocal
7 compensation matters and the FCC's express refusal to extend the scope of its
8 order to interconnection responsibilities such as origination of traffic. By these
9 failures, the Oregon Commission erroneously applied the *ISP Order on Remand*
10 to interconnection obligations as well as reciprocal compensation. Furthermore,
11 the Oregon and Colorado Commissions both erred when they considered the
12 revenue from the interconnection facility to be volume-sensitive, when it clearly
13 is not. Finally, the Colorado Commission's assertion that Level 3 is the "cost-
14 causer" rather than the user placing the call to the ISP is circular. In fact, it is the
15 caller (a Qwest customer) who causes the call to be placed in the first instance and
16 both the caller and the ISP (who is a Level 3 customer) benefit from the call.
17 Accordingly, it makes the most sense to have Qwest bear the costs of delivering
18 the call to the POI, and for Level 3 to bear the costs of taking the call from the
19 POI to Level 3's customer.
20
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1 **Q: DO YOU KNOW IF QWEST HAS TAKEN A POSITION DIFFERENT**
2 **FROM THE ONE IT IS ADVOCATING HERE IN ANY OTHER**
3 **PROCEEDING BEFORE THE FCC?**

4 A: Yes. I understand that Qwest is advocating a different position before the FCC.

5 **Q: CAN YOU PLEASE EXPLAIN WHAT QWEST IS ADVOCATING AT**
6 **THE FCC?**

7 A: Yes. At the same time that the FCC issued its *ISP Order on Remand*, it also
8 opened a proceeding to examine the development of a unified intercarrier
9 compensation regime.²⁶ In that proceeding, the FCC expressed its preference to
10 move toward “bill and keep” for all traffic exchanged by telecommunications
11 carriers.

12 **Q: HAS QWEST TAKEN A POSITION ON WHETHER THE FCC SHOULD**
13 **ADOPT BILL AND KEEP FOR ALL TRAFFIC?**

14 A: Yes. Qwest has been a strong proponent of bill and keep in its comments. In an ex
15 parte filing made with the Commission on Aug. 2, 2002, Qwest stated that it
16 “believes the Commission, carriers and end users are better served by moving to
17 bill and keep sooner than later.” A copy of the ex parte and the default
18 interconnection rules is attached as WPH-4.

19 **Q: IN ADDITION TO INTERCARRIER COMPENSATION, DOES QWEST**
20 **TAKE A POSITION WITH RESPECT TO WHO PAYS FOR**
21 **INTERCONNECTION FACILITIES?**

22 A: Yes. In the ex parte, Qwest outlines a series of default interconnection rules that
23 would apply absent an agreement between interconnecting parties. The first rule
24 on page 2 states that “(e)ach carrier is responsible for recovering the costs of its
25

26 ²⁶ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. April 27, 2001) (“*Intercarrier Compensation NPRM*”).

1 own network from its own subscribers with the exception of costs associated with
2 transiting traffic.” (Citations to Qwest comments omitted.) That position is
3 consistent with current FCC rules and Level 3’s position in this case. I do not
4 understand why Qwest seeks a different result here other than as a way to impose
5 additional financial burdens on its competitors and to establish an unjustified
6 revenue source.
7

8 **Q: IN THE EX PARTE, QWEST REFERS TO “THE EDGE.” WHAT DO**
9 **YOU UNDERSTAND THE “EDGE” TO BE?**

10 A: Rule number 2 on Page 2 designates the “edge” of each carrier’s network. In
11 Qwest’s case, it appears that where they deploy a hierarchical network, the “edge”
12 would be the access tandem. In the case of Level 3’s packet-switched network,
13 our “edge” is designated as any technically feasible point on our network. These
14 rules basically reflect the interconnection arrangement reached between Level 3
15 and Qwest since the POI will be at Qwest’s access tandem.
16

17 **Q: DO YOU HAVE ANY OTHER COMMENTS ON QWEST’S “EDGE”**
18 **PROPOSAL?**

19 A: Yes. On page 4 of the ex parte, Qwest offers additional support for its proposal
20 that I believe undermines the position it is taking in this proceeding. First, Qwest
21 points out that by forcing each carrier to bear its own costs of the traffic it
22 originates, no carrier will subsidize the inefficient network of another provider. I
23 believe that under Qwest’s proposal in this arbitration, they are trying to force
24 Level 3 to do exactly that by shifting their financial responsibility to Level 3.
25
26

1 **Q: DO YOU HAVE ANY OTHER COMMENTS ON THE QWEST**
2 **PROPOSALS IN THIS ARBITRATION?**

3 A: Yes, I have one final comment. Regardless of whether the Commission approves
4 a regime under which each carrier need only pay for trunks and facilities on the
5 other carrier's network to the extent those facilities are being used to terminate the
6 paying carrier's originating traffic, there is an administrative issue that must also
7 be addressed. Qwest proposed that once a relative use factor is established, the
8 Parties will retroactively true up the first quarter charges which are agreed to be
9 set at 50%. This pay-and-credit-back structure should be rejected. It creates an
10 unnecessary and confusing payment structure. The likelihood of having disputes
11 with respect to relative use is enhanced by the fact that no carrier has successfully
12 implemented a process to accurately parse "Internet Related" traffic from other
13 types of local traffic (as would be required by Qwest's proposed contract
14 language). Rather than allowing Qwest to create another likely billing dispute by
15 trying to apply its interpretation of relative use retroactively, Level 3 urges the
16 Commission to adopt its more straightforward and efficient proposal of applying
17 the relative use factor prospectively only.
18
19

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

21 A. Yes, it does.
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