

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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In the Matter of the Petition for Arbitration of an	))	
Interconnection Agreement Between	))	
	))	
LEVEL 3 COMMUNICATIONS, LLC	))	
	)	DOCKET NO. UT-023043
and	)	
CENTURYTEL OF WASHINGTON, INC.,		
<hr/> Pursuant to 47 U.S.C. Section 252		

**DIRECT TESTIMONY OF R. CRAIG COOK**  
**(RCC-1T)**

**ON BEHALF OF**  
**CENTURYTEL OF WASHINGTON, INC.**

**OCTOBER 18, 2002**

**DOCKET NO. UT-023043**

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**I. INTRODUCTION**

**Q. Please state your name, job title, employer, and business address.**

A. My name is R. Craig Cook and I am employed by John Staurulakis, Inc. (JSI) as Staff Director of Regulatory Affairs. My office address is 9430 Research Boulevard, Echelon Building II, Suite 200, Austin, Texas, 78759.

**Q. Please describe JSI.**

A. JSI is a consulting firm specializing in regulatory and financial services to more than two hundred Incumbent Local Exchange Carriers (ILECs) throughout the United States. Additionally, JSI provides consulting services for various competitive local exchange carriers (CLECs) providing local exchange services across the nation.

**Q. What are your principal duties with JSI?**

A. As Staff Director of Regulatory Affairs, I maintain overall responsibility for regulatory matters managed by JSI's Southwest Regional Office. Such regulatory issues include state and federal compliance efforts, tariff development and interpretation, training, regulatory strategy planning, and representation of ILEC clients before state utility commissions. I also assist JSI's ILEC clients with contract management and negotiation, including negotiation of wholesale traffic exchange and interconnection agreements with Commercial Mobile Radio Service (CMRS) providers and CLECs.

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**Q. Please describe your educational background and business experience.**

A. I have worked in the telecommunications industry for over 14 years and have a BBA in Management from Southwest Texas State University and an MBA from California Coast University. I have been published in telecommunication trade periodicals, including USTA's *Teletimes*, and OPASTCO's *Roundtable* magazine and have been listed as a Member in the National Register's Who's Who in Executives and Professionals (2002-2003 Edition). Prior to joining JSI, I worked for CapRock Communications in Dallas, Texas, serving as Director of Engineering Services and Director of Regulatory Affairs. In these capacities, I directed the overall due diligence and negotiation of Interconnection Agreements, in addition to managing E911 Administration, NPA/NXX Administration, Collocation Agreements, and Regulatory Strategy and Compliance. I have also worked for GTE Communications Corp., managing vendor and contract compliance issues, as well as directing strategy and negotiations of interconnection and ancillary agreements. Additionally, I have been a consultant to a variety of telecommunications clients, consulting on regulatory and access issues including Carrier Access Billing (CABS), Access Tariff Development and Interpretation, Switched and Special Access Revenue Requirements and Rate Development, Long Distance Resell Opportunities and New Line of Business Planning.

**Q. Was this testimony prepared by you or under your direct supervision?**

A. Yes, it was.

**II. SUMMARY OF TESTIMONY**

**Q. What is the purpose of your testimony in this proceeding?**

A. The purpose of my testimony is to address the state and federal rules and policies that directly impact the issues addressed in this arbitration proceeding. My testimony will demonstrate that Level 3 is not requesting to exchange local exchange traffic that would necessitate a local interconnection agreement, but rather it is seeking to have CenturyTel originate Interexchange traffic that is not subject to the local interconnection requirements of Section 251(a) and 251(c) of the federal Telecommunications Act of 1996 (Act). Further, I will show that Level 3's traffic bound to its Internet Service Provider (ISP) customers is not subject to arbitration under Section 252, nor subject to "bill and keep" requirements established by the Federal Communications Commission (FCC) in the *ISP Remand Order*<sup>1</sup> because such traffic does not originate and terminate within the same local calling area. Such traffic is Interexchange traffic based on the physical location of the calling and called parties. Additionally, I will show that Level 3's claim that its service is "foreign exchange" (FX) type service is without merit. Level 3's so-called FX-type service does not meet the criteria for FX service as defined by the FCC and instead is an Interexchange service offering that is equivalent to interexchange carriers' (IXCs') inbound toll-free calling services and is subject to originating access charges. I will also demonstrate that Level 3 seeks to arbitrage the regulatory requirements for Interexchange traffic

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<sup>1</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, FCC 01-131, Rel. April 27, 2001 ("ISP Remand Order").

1 under the guise of “local interconnection” in violation of the requirements outlined in the FCC’s  
2 *Local Competition Order*.<sup>2</sup> I will explain how Level 3’s proposed service offering is actually a  
3 Virtual NXX (VNXX) service that violates the established industry guidelines developed by the  
4 Alliance for Telecommunications Industry Solutions at the direction of the FCC to protect the  
5 nation’s limited numbering resources. Finally, I will also provide evidence of the appropriate  
6 regulatory and compensatory treatment that applies to the specific proposition that Level 3  
7 presents in this arbitration.

8  
9 **III. DESCRIPTION OF LEVEL 3’S SERVICE**

10  
11 **Q. Please describe your understanding of Level 3’s intended service offering.**

12 A. I understand that Level 3 is seeking interconnection arrangements with CenturyTel for the  
13 primary purpose of providing originating dial-up data services to its ISP customers who are not  
14 physically located within the local calling area of CenturyTel’s customers. In presentation  
15 material entitled “*Level 3 Market Expansion Project, Key Facts and Information*,”  
16 provided by Level 3 and its consultant QSI, Level 3 defines its market expansion project as

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<sup>2</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (“*Local Competition Order*”), *aff’d in part and vacated in part sub nom. Competitive Telecommunications Ass’n v. FCC*, 117 F3d 1068 (8<sup>th</sup> Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *aff’d in part and remanded*, *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997), *further recons. pending*.

1           “expanding its network footprint by leasing facilities to increase the markets where it can offer  
2           dial-up data services to ISPs.”<sup>3</sup> In this same document, Level  
3

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<sup>3</sup> Exhibit RCC-2.

1           3 explains their market expansion project as "...NOT seeking to compete for local customers  
2           or to collect reciprocal compensation for ISP traffic." With respect to the implementation  
3           parameters of Level 3's proposed offering, Level 3 explains that "[t]raffic will be routed over  
4           common, shared trunks through the tandem switch of an interconnected third party..." and "[a]t  
5           this time, Level 3 does not intend to 'build-out' its own facilities to these geographical areas."<sup>4</sup>  
6           Additionally, Level 3's *Products and Services Overview*,<sup>5</sup> as posted on Level 3's website,  
7           does not indicate the availability of any service indicative of Telephone Exchange or Exchange  
8           Access service. In one product description, while not currently offered, Level 3 describes its  
9           “(3) Voice Origination” product by stating that “(3) Voice buyers no longer need to maintain a  
10          presence in every market, colocation costs can be significantly reduced along with any  
11          associated operating and network expenses.”<sup>6</sup> (Emphasis added.) By no longer requiring a  
12          customer to maintain a presence in every market, even Level 3's voice product, when eventually  
13          made available to the public (if ever), will be an Interexchange voice service offering, similar to  
14          IXC's 800 voice service offerings.

15  
16          From an operational standpoint, Level 3 has obtained NPA-NXX codes from the North  
17          American Numbering Plan Administrator (NANPA) and plans to establish rate center  
18          designations for those NXXs in CenturyTel rate centers or within the expanded local calling  
19          scope of CenturyTel's rate centers, thereby attempting to have the NXX(s) appear in the Local

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<sup>4</sup> Exhibit RCC-2 at pg. 1

<sup>5</sup> Exhibit RCC-4.

<sup>6</sup> Exhibit RCC-4 at pg. 11.

1 Exchange Routing Guide (LERG) as “local” within CenturyTel’s exchanges. Level 3 has  
2 assigned (or intends to assign) telephone numbers from these NPA-NXX codes to its  
3 customers who are located outside the designated rate center boundaries to which these codes  
4 are assigned and is requesting that CenturyTel route calls to these “local” numbers to Level 3’s  
5 facilities for delivery to Level 3’s customers located outside of CenturyTel’s local calling area.

6  
7 In accordance with the Central Office (“CO”) Code Assignment Guidelines, NANPA assumes  
8 “from a wireline perspective that CO Codes/blocks allocated to wireline Service Providers are  
9 to be utilized to provide service to a customer’s premises physically located in the same rate  
10 center that the CO Codes/blocks are assigned”.<sup>7</sup> NANPA recognizes that certain exceptions  
11 may exist, such as in the case of foreign exchange service. However, it is important to  
12 remember that Level 3’s proposed service offering is not a foreign exchange service and as  
13 such, this exception does not apply to Level 3 in this instance. Therefore, the assignment of  
14 telephone numbers to customers not physically located within the rate center boundaries violates  
15 such established guidelines. As discussed later in my testimony, this practice contradicts industry  
16 established rating practices, threatens the nation’s limited numbering resources and may  
17 accelerate future area code splits and overlays within Washington. Level 3 claims that calls to  
18 its ISP customers outside of CenturyTel’s local calling area through these NPA-NXXs should  
19 be treated as local calls for CenturyTel’s retail rating purposes. As discussed in Exhibit RCC-2,  
20 Level 3 does not seek to establish any physical presence or interoffice trunking in the

1 geographic areas where these NPA-NXXs are “designated,” nor does Level 3 seek to  
2 establish a POI in CenturyTel territory. Instead, Level 3 seeks to require CenturyTel to deliver  
3 such Interexchange traffic to Level 3 at no charge to Level 3. Level 3 does not seek to  
4 “exchange” local traffic with CenturyTel, as encompassed by local interconnection under the  
5 FCC’s rules and Section 251, since traffic to Level 3’s customers does not originate and  
6 terminate in the same local calling area; rather, it seeks to originate Interexchange traffic.

7  
8 **Q. Is Level 3’s service FX Service?**

9 **A.** Level 3 claims that its service “should be considered a functional equivalent to Foreign  
10 Exchange Traffic.”<sup>8</sup> However, there are a number of distinctions between the service that Level  
11 3 proposes and true FX service. First, FX is a retail service offering which provides a direct  
12 connection to the called party, not a wholesale service which provides a connection to an  
13 intermediate carrier. Second, FX is capable of providing a two-way communications service,  
14 where Level 3’s Direct Inward Dialing (DID) service is one-way inward only, which is  
15 characteristic of 800 service and not FX service.

16  
17 Level 3’s so-called FX service is characteristic of the service offering established by many  
18 CLECs prior to the FCC’s *ISP Remand Order*<sup>9</sup> to reap reciprocal compensation windfalls for

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<sup>7</sup> Exhibit RCC-3 at Section 2.13.

<sup>8</sup> *Level 3 Petition for Arbitration*, at 12.

<sup>9</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, FCC 01-131, rel. April 27, 2001, (“*ISP Remand Order*”).

1 terminating ISP bound traffic that originated and terminated within the local calling area. Prior to  
2 the FCC's *ISP Remand Order*, many CLECs established one-way (inbound only) Integrated  
3 Services Digital Network Primary Rate Interface lines for ISP customers. Level 3 is now  
4 attempting to market a similar service offering (albeit no longer local traffic) whereby toll-free  
5 incoming Interexchange service is offered to ISPs. For other telecommunications providers  
6 who follow the established Central Office Code Assignment Guidelines, such an interexchange  
7 service could not be offered in this manner. If the Washington Utilities and Transportation  
8 Commission (Commission) endorses such a service offering, Washington could face significant  
9 routing and number exhaust issues, as other service providers establish numerous new NPA-  
10 NXX codes and assign them to their customers physically located outside of the established rate  
11 center in order to compete with Level 3's so-called FX service offering.

12  
13 **Q. Level 3 argues that its service is FX. How has the FCC defined FX service?**

14 A: The FCC has specifically defined "foreign exchange service": "Foreign Exchange (FX) service  
15 connects a subscriber ordinarily served by a local (or "home") end office to a distant (or  
16 "foreign") end office *through a dedicated line from the subscriber's premises to the home*  
17 *end office, and then to the distant end office.* The "home" end is known as the closed end,  
18 while the "foreign" end is known as the open end. In effect, this gives the subscriber a dial tone  
19 presence in the distant exchange without incurring additional toll charges."<sup>10</sup> In the typical FX  
20 service offering, the subscriber purchases local exchange service from the "foreign" or distant

1 end office and purchases dedicated interoffice transport between the subscriber's location and  
2 the "foreign" or distant end office. In an FX service arrangement, all providers whose facilities  
3 are used to provide the FX service receive compensation from the end user. Additionally, the  
4 subscriber is provided a telephone number from the existing central office codes assigned to the  
5 distant end office.

6  
7 Level 3's proposed service is vastly different than the FX service described by the FCC.  
8 According to the FCC's definition, an FX customer purchases a dedicated line "from the  
9 subscriber's premises to the home end office, and then to the distant end office." Level 3 is not  
10 requesting a dedicated line between their customer and the foreign end office. Likewise, Level  
11 3 believes that no compensation is due to CenturyTel for providing the "foreign" or open end of  
12 the circuit, as Level 3 does not intend to jointly provide an FX service with CenturyTel.  
13 However, as CenturyTel would be providing the foreign or "open-end" of the FX service, and  
14 at least a portion of dedicated transport, it is unclear how Level 3 intends to provide its service  
15 without a joint provisioning of such service with CenturyTel. It is clear that Level 3 is proposing  
16 an Interexchange service arrangement that on its surface appears to be an FX service in an  
17 effort to avoid customary charges such as transport, switching, and other access charges, that  
18 are inherent to properly classified Interexchange 800-type service.

19  

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<sup>10</sup> *AT&T Corporation, MCI Corporation v. Bell Atlantic*, 14 FCC Rcd 556, at ¶ 71 (1998).

1       Also, with FX service, the end-user pays all the cost of receiving a different local calling area to  
2       both the foreign and home providers (and compensates any third-party providers where their  
3       facilities may be used to transport traffic between the home and foreign central offices).  
4       Because FX customers compensate each affected carrier whose network is used to provide the  
5       FX service through local exchange and dedicated transport rates, there is no shifting of costs to  
6       customers in the distant exchange. However, with Level 3's proposed service, the ISP end-  
7       user and Level 3, as the carrier, do not pay for the local exchange rates of the foreign central  
8       office. Additionally, because the FX service customer receives a telephone number from an  
9       existing NPA-NXX code, there are no implications with regard to telephone number exhaust.  
10      With Level 3's service, there must be a block of numbers, often a 10,000 telephone number  
11      block, assigned to each rate center, regardless of the number of NXXs needed to serve Level  
12      3's customers. In Washington, Level 3 has already opened 21 NXXs,<sup>11</sup> resulting in the captive  
13      reserve of 210,000 numbers for likely only a handful of customers.

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<sup>11</sup> As shown on Exhibit RCC-5, Level 3 has obtained 21 NPA-NXX codes in Washington.

1   **Q.     Is Level 3’s service a “Virtual NXX” service arrangement?**

2   A.     Yes. In evaluating the context of Level 3’s requested provision of service, it is clear that Level  
3         3’s traffic falls within the scope of a “Virtual NXX” or VNXX arrangement. To clarify this  
4         point, it is necessary to consider the definition of a VNXX arrangement. Generally, the practice  
5         of a carrier assigning an NXX to its customers, who are not physically located in the exchange  
6         to which the NXX is rate centered is a VNXX arrangement. As defined in the FCC’s *Unified*  
7         *Intercarrier Compensation NPRM*, a VNXX code is a central office code that corresponds  
8         with one geographic area but is assigned to a customer located in a different geographic area.<sup>12</sup>  
9         In simple terms, a VNXX is a 10,000 block of telephone numbers reserved by a carrier and  
10        associated in the LERG with a particular rate center, yet calls to the NXX are terminated to  
11        customers located in a different (non-local) rate center. The purpose of the VNXX  
12        arrangement is to provide the customers of the VNXX code-holding carrier, who are physically  
13        located in the terminating, non-local rate center, the ability to receive toll-free calls from the rate  
14        center with which the NXX is associated. As I will discuss later in my testimony, the use of  
15        NPA-NXX codes to provide VNXX services is not consistent with the existing Central Office  
16        Code Assignment Guidelines (Section 2.13 of Exhibit RCC-3) and is not an efficient use of the  
17        nation’s numbering resources. In fact, the Maine Public Utilities Commission has already  
18        prohibited a CLEC from providing a VNXX service and ordered NANPA to reclaim such

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<sup>12</sup>     *Notice of Proposed Rulemaking In the Matter of Developing a Unified Intercarrier Compensation Regime*,  
FCC 01-132, CC Docket No. 01-92, at fn 188, rel. April 27, 2001 (“*Unified Intercarrier Compensation*  
*NPRM*”).

1 NPA-NXX codes in an effort to prevent future number exhaust in Maine.<sup>13</sup> While state  
2 commissions do not assign NPA-NXX codes, they have authority to reclaim these codes and  
3 supervise their use. As noted by the FCC in the *Unified Intercarrier Compensation NPRM*,  
4 the FCC “has delegated some of its authority to the state public utility commissions in order that  
5 they may order the North American Numbering Plan Administrator to reclaim NXX codes that  
6 are not used in accordance with the Central Office Code Assignment Guidelines.”<sup>14</sup>

7  
8 **Q. Why is Level 3 attempting to utilize VNXX codes?**

9 A. Level 3 is seeking to establish VNXX codes in order to provide a means of receiving toll-free  
10 Interexchange calls from a wide geographic area by compelling originating carriers such as  
11 CenturyTel to enter into local retail calling arrangements with Level 3’s end users. Such calling  
12 arrangements are void of compensation provisions to CenturyTel that are standard in other  
13 Interexchange service provider arrangements. The primary purpose of assigning a “local”  
14 telephone number to a retail customer located outside of the NPA-NXX’s designated rate  
15 center is to prevent the presubscribed toll carrier (IXC) from assessing standard “toll” charges  
16 for calls to the number and to prevent the ILEC from assessing Exchange Access charges to its  
17 IXC customers. By assigning multiple NPA-NXX codes, each from a different rate center, to  
18 an individual customer in a distant location, a telecommunications provider can offer a customer

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<sup>13</sup> *Maine Public Utilities Commission Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber*, Docket No. 98-758 and *New England Fiber Communications D/B/A Brooks Fiber Proposed Tariff Revisions to Introduce Regional Exchange (RX) Service*, Docket No. 99-593; (June 30, 2000) (“*Maine VNXX Decision*”).

<sup>14</sup> *Unified Intercarrier Compensation NPRM* at ¶ 115.

1 the ability to receive incoming toll-free Interexchange calls from the entire geographic area of  
2 each NPA-NXX rate center, thereby effecting an 800-type service without incurring the  
3 customary Exchange Access charges. If the VNXX provider obtains enough NXX codes, it  
4 could essentially offer LATA-wide or state-wide (and potentially nation-wide) inbound toll-free  
5 Interexchange calling to its customers. Not only does this use of VNXXs tie up hundreds of  
6 thousands or even millions of telephone numbers for a handful of customers, it also creates  
7 regulatory arbitrage by avoiding the otherwise applicable Exchange Access charges associated  
8 with Interexchange traffic. Through the use of VNXXs, Level 3 seeks to avoid intercarrier  
9 compensation mechanisms that were implemented by the FCC when it adopted the Exchange  
10 Access charge mechanisms for such Interexchange traffic, and exacerbates number exhaust.

11  
12 **IV. LEVEL 3'S PROPOSED SERVICE IS INTEREXCHANGE SERVICE**

13  
14 **Q. From a regulatory perspective, how should Level 3's VNXX service be classified?**

15 A. The service that Level 3 is attempting to provide, through the use of VNXX codes, is  
16 indistinguishable at a carrier level from existing inbound toll-free Interexchange service offerings  
17 currently provided by interexchange carriers (IXCs). The Code of Federal Regulations (CFR)  
18 Title 47, Part 51, Section 5 (47 CFR 51.5) defines "telephone toll service" as "telephone  
19 service between stations in different exchange areas for which there is made a separate charge  
20 not included in contracts with subscribers for exchange service." Level 3's service arrangement  
21 is an Interexchange service and is identical to the toll-free 800 Interexchange service

1 traditionally offered by IXC's, with the significant exception that it seeks to avoid the intercarrier  
2 compensation mechanisms for 800 service paid by IXC's and dialing sequences. Because Level  
3 3's proposed VNXX service is an Interexchange service offering, the service Level 3 obtains  
4 from CenturyTel is Exchange Access service.

5  
6 As with "800" service, Level 3's proposed service would enable CenturyTel end user  
7 customers to place toll-free Interexchange calls to Level 3's customers who are not located  
8 within the CenturyTel customer's local calling area. Thus, Level 3's customers (ISPs) in distant  
9 exchanges would be able to receive calls that are ordinarily considered "Interexchange" service  
10 calls with no liability for compensating CenturyTel for the use of its network as normally  
11 associated with 800 service. Although CenturyTel end users will be dialing a local seven digit  
12 number, through Level 3's use of VNXXs in lieu of a traditional 800 number and, as discussed  
13 in the Direct Testimony of Mr. Weinman, the call would be routed by CenturyTel in the same  
14 manner, utilizing the same facilities and switching functions as required for interexchange calls.  
15 The fact that the end user dials seven digits instead of a ten digit 800 number does not change  
16 the fact that the call itself is not "local" because it does not originate and terminate to customers  
17 physically located within the same local calling area.

18  
19 One of the most important aspects of the question regarding the type of traffic that Level 3 is  
20 providing is the fact that, regardless of whether Level 3 chooses to acknowledge that its service  
21 is an Interexchange service, the service that Level 3 is intending to provide is not "local"

1 because it does not originate and terminate within the same local calling area. For CenturyTel to  
2 treat Level 3 any differently than it treats other telecommunications providers who provide the  
3 identical inbound Interexchange service, and who are assessed the appropriate tariffed charges  
4 for access service, would clearly be discriminatory on the part of CenturyTel. To avoid  
5 regulatory arbitrage, Level 3's non-local Interexchange service should be subject to usage-  
6 based originating access charges. Again, the only significant difference between 800 service  
7 and Level 3's service is the attempt to use VNXXs to avoid compensating CenturyTel for the  
8 Interexchange service.

9  
10 **Q. Should Level 3's service be considered "ISP-bound traffic" for purposes of**  
11 **determining interconnection or compensatory duties?**

12 A. No. It is critical to recognize that the term "ISP-bound traffic" as used by the FCC in the *ISP*  
13 *Remand Order*, continues to refer to traffic in which the end-user customer obtains modem  
14 access to its ISP within the end-user customer's "local calling area."<sup>15</sup> The issue of  
15 Interexchange ISP-bound traffic was not before the FCC, and its order only considered  
16 whether "local traffic" reciprocal compensation arrangements included "local" ISP-bound  
17 traffic. In addressing this question in the *ISP Remand Order*, the FCC reaffirmed its prior  
18 conclusion that ISP-bound traffic that originates and terminates within a local calling area is not  
19 subject to Section 251(b)(5) obligations because it is interstate in nature, and therefore subject  
20 to the FCC's jurisdiction over interstate traffic under Section 201 of the Act. With regard to

1 Interexchange telecommunications traffic (whether terminating to an ISP or not) between two  
2 local calling areas, such traffic continues to fall within the access charge regime. When  
3 Congress passed revisions to the Act, under Section 251(g), it carved out Interexchange traffic  
4 from the then new Section 251(b)(5) obligations and explicitly preserved the pre-1996  
5 intercarrier compensation mechanisms associated with such traffic. Telecommunications traffic  
6 that originates and terminates outside of a single local calling area fell under the regulatory  
7 authority of FCC and Commission approved access tariffs before the Act and such traffic  
8 continues to fall under these access tariffs today. Therefore, the FCC's pronouncements  
9 regarding ISP-bound traffic in the *ISP Remand Order* must be viewed in the context of  
10 satisfying the FCC's fundamental issue in that proceeding (i.e., telecommunications traffic  
11 exchanged between two parties within the same "local calling area.") The FCC's decision that  
12 ISP-bound traffic originating and terminating between end-user and ISP modems within a single  
13 local calling area was largely interstate in nature, merely added "local" ISP-bound traffic to the  
14 FCC's existing authority under Section 201 over interstate Interexchange ISP-bound traffic.  
15 The only distinction between the two was that the FCC pronounced that when ISP-bound  
16 traffic originated and terminated *within a single local calling area*, the proper intercarrier  
17 compensation mechanism was "bill and keep." The FCC has not modified the access charge  
18 regime for ISP-bound traffic *that originates and terminates outside of a single local calling*  
19 *area* and such traffic continues to fall within the intercarrier access charge regime for  
20 Interexchange traffic.

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<sup>15</sup> *ISP Remand Order* at ¶¶ 13, 24, and 63.

1  
2 The rules established for local interconnection, including transport and termination, apply only to  
3 calls originating and terminating in the same local calling area. As the FCC recognized in its  
4 *Unified Intercarrier Compensation NPRM*, “access charge rules ... govern the payments that  
5 interexchange carriers (“IXCs”) ... make to LECs to originate and terminate long-distance  
6 calls; and reciprocal compensation rules ... govern the compensation between  
7 telecommunications carriers for the transport and termination of local traffic.”<sup>16</sup> Allowing Level  
8 3 to treat its service as “local” would, in effect, grant it a waiver of access charges for traffic that  
9 is not between two end-users in the same local calling area. Such an allowance would disrupt  
10 the intrastate and interstate intercarrier access charge compensation mechanisms the  
11 Commission and the FCC have established.<sup>17</sup> The Commission should not allow VNXX  
12 service arrangements to circumvent and create uncertainty in the access charge structure, and  
13 therefore should not consider Level 3’s Interexchange traffic as “ISP-Bound” traffic under the  
14 context of the *ISP Remand Order*.

15  
16 **Q. Level 3 asserts that its ISP-bound traffic is subject to local interconnection under**  
17 **Sections 251(a) and 251(c) of the Federal Telecommunications Act. Do you agree with**  
18 **this assertion?**

19 **A.** No. As discussed above, the VNXX service Level 3 seeks to provide to its ISP customers

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<sup>16</sup> *Unified Intercarrier Compensation NPRM* at ¶ 6.

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<sup>17</sup> If Level 3 were allowed to assign multiple NPA-NXX codes to a single customer, it is likely that this practice will be instigated by other providers, creating an erosion of intrastate and interstate switched access revenues, thereby creating upward pressure on local rates.

1 does not originate from CenturyTel end users and terminate to Level 3's customer located  
2 within the same local calling area and therefore is Interexchange traffic subject to the FCC's  
3 authority under the Act Section 201 as established in paragraphs 190 and 191 of the *Local*  
4 *Competition Order*.

5  
6 **Q. Level 3 asserts that when a CenturyTel customer originates a call to Level 3's**  
7 **customers located outside of CenturyTel's local calling area, functionally, CenturyTel**  
8 **performs the same services regardless of the location of Level 3's customer. Do you**  
9 **agree?**

10 A. Depending on Level 3's interconnection architecture, yes. However, the jurisdiction of a call is  
11 not defined by functionality of the telecommunications network, it is determined by the location  
12 of the calling and called parties. An example of this scenario is when a CenturyTel end user  
13 places a long distance call that terminates within Washington versus when a CenturyTel end user  
14 places a long distance call that terminates outside of Washington, but within the United States.  
15 Functionally, there is no difference in the service that CenturyTel's telecommunications network  
16 performs nor the physical facilities used, however, the customer's IXC pays either originating  
17 intrastate switched access rates for access service, as approved by this Commission, or  
18 interstate switched access rates, as approved by the FCC. The originating and terminating  
19 location of the two end users has always defined the jurisdiction of the call and when the two  
20 end users are located outside of a single local calling area, the applicable intercarrier  
21 compensation arrangement is originating access charges.

1  
2 **Q. Level 3 asserts that Section 251 and 252 govern interconnection, without limitation,**  
3 **between *all* telecommunications carriers. Do you agree with this assertion?**

4 A. No. The FCC has clearly determined that a telecommunications provider “may obtain  
5 interconnection pursuant to section 251(c)(2) for the purpose of terminating calls originating  
6 from *their customers residing in the same telephone exchange (i.e., non-interexchange*  
7 *calls).*”<sup>18</sup> The FCC maintained that a telecommunications provider “may not obtain  
8 interconnection pursuant to section 251(c)(2) for the purpose of terminating interexchange  
9 traffic...”<sup>19</sup> In other words, when Level 3 offers an Interexchange service to its customers  
10 physically located outside of CenturyTel’s local calling area, such services are, and have been,  
11 subject to the federally or state approved access services tariffs of CenturyTel for Exchange  
12 Access services, not Section 251.

13  
14 As will be discussed in CenturyTel’s legal briefs in this matter, there is an additional basis for  
15 determining that Level 3’s service is not subject to Section 251(b) and (c) local interconnection  
16 requirements. Under the *ISP Remand Order* all ISP-bound traffic is removed from Section  
17 251(c)(2) and placed under the FCC’s Section 201 authority. As a result of this decision, ISP-  
18 bound traffic is not subject to local interconnection under Section 252(c)(2).

19  

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<sup>18</sup> *Local Competition Order* at 190.

<sup>19</sup> *Id.* at 191.

1   **Q.     Level 3 asserts that because it requested interconnection with CenturyTel under**  
2       **Section 251, it is automatically entitled to interconnection under Section 251. Do you**  
3       **agree with that assertion?**

4   A.   No. As shown on Exhibit RCC-2, Level 3 has already stated that it “is NOT seeking to  
5       compete for local customers” in CenturyTel’s service area and therefore does not intend to  
6       provide Telephone Exchange or Exchange Access to customers within CenturyTel’s service  
7       area. Accordingly, under the FCC’s *Local Competition Order*, Level 3 is not eligible to  
8       obtain local interconnection under Section 251(c)(2) for the purpose of its VNXX service  
9       offering.

10  
11   **Q.     Is CenturyTel obligated to provide local interconnection under the provisions of**  
12       **Section 251(c)(2) for Level 3’s Interexchange service?**

13   A.   No. The FCC clearly stated in the *Local Competition Order* that a telecommunications carrier  
14       is not entitled to interconnection under Section 251(c)(2), when it “requests interconnection  
15       solely for purpose of originating or terminating its *interexchange* traffic.”<sup>20</sup> (Emphasis in  
16       original.) Similar language is used in the FCC’s rules, which state that “[a] carrier that requests  
17       interconnection solely for the purpose of originating or terminating its interexchange traffic on an  
18       incumbent LEC’s network and not for the purpose of providing to others telephone exchange or  
19       exchange access, or both, *is not entitled to receive interconnection pursuant to Section*

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<sup>20</sup> *Id.* at ¶ 191.

1       251(c)(2) of the Act.”<sup>21</sup> (Emphasis added.) In the *Local Competition Order*, the FCC  
2       envisioned that Section 251(c)(2) interconnection obligations would be used to obtain  
3       interconnection “for the purpose of terminating calls originating from *their customers residing*  
4       *in the same telephone exchange (i.e., non-interexchange calls).*”<sup>22</sup> (Emphasis added.)

5  
6       The FCC further stated that under Section 251, “incumbent LECs have a duty to interconnect  
7       with telecommunications providers ‘for the transmission and routing of telephone exchange and  
8       exchange access.’ A telecommunications carrier seeking interconnection only for interexchange  
9       services is not within the scope of this statutory language because it is not seeking  
10      interconnection for the purpose of providing telephone exchange service.”<sup>23</sup> When the FCC  
11      discussed all traffic under 251 obligations, the scope is limited to traffic related to Telephone  
12      Exchange and Exchange Access.

13  
14      As shown on Exhibit RCC-2, Level 3 has already admitted that it “is NOT seeking to compete  
15      for local customers” in CenturyTel’s service area and therefore does not intend to provide  
16      Telephone Exchange or Exchange Access to end users within CenturyTel’s service area. Level  
17      3’s proposed VNXX service merely seeks to arbitrage the existing intercarrier compensation  
18      mechanisms for Interexchange traffic by attempting to obtain interconnection from CenturyTel  
19      under Section 251 rather than Section 201. This is in

20  

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<sup>21</sup> 47 C.F.R. § 51.305(b).

<sup>22</sup> *Id.* at ¶ 190.

<sup>23</sup> *Id.* at ¶ 191.

1 violation of the FCC's *Local Competition Order*.

2  
3 Although Level 3 believes it is entitled to a single interconnection agreement instead of two  
4 separate agreements,<sup>24</sup> the requirements for the provision of local interconnection, and the  
5 related responsibilities of Section 251 of the Act remain clear with respect to the carriers'  
6 obligations and are limited to situations in which a telecommunications carrier provides  
7 Telephone Exchange or Exchange Access to customers within the incumbent LEC's service  
8 territory. CenturyTel currently has no obligation to provide interconnection under Section  
9 251(c)(2) to Level 3 because Level 3's stated service offering is Interexchange service. Level  
10 3's request for interconnection is not for the exchange of local traffic, but rather, for the  
11 origination of Interexchange traffic, since Level 3's traffic does not originate and terminate in the  
12 same local calling area. As disclosed by Level 3 in Exhibit RCC-2, Level 3 does not intend to  
13 provide local service to customers physically located within CenturyTel's service area.  
14 Additionally, it is my understanding that Level 3's ISP customers are located at Level 3's soft  
15 switches, which are not physically located within CenturyTel's expanded local calling service  
16 area. In fact, it is uncertain that Level 3's customers are even located in the State of  
17 Washington. Because Level 3's proposed VNXX service does not originate and terminate  
18 within the same local calling area, it is subject to the interconnection obligations established  
19 under the FCC's authority under Section 201 applicable to interstate Interexchange traffic,  
20 rather than Telephone Exchange or Exchange Access traffic subject to Section 251 local

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<sup>24</sup> *Level 3 Communications Petition for Arbitration*, at ¶ 14.

1 interconnection obligations.

2  
3 Neither the Act nor the FCC's rules allow a requesting carrier to obtain interconnection  
4 pursuant to Section 251(c)(2), solely for originating or terminating its interexchange traffic on the  
5 incumbent LEC's network. Level 3 may argue that its proposed VNXX traffic is "Internet-  
6 Bound Traffic" and therefore subject to the "bill and keep" intercarrier compensation  
7 mechanism established by the FCC in the *ISP Remand Order*. Nonetheless, because such  
8 traffic does not originate and terminate to customers located within a single local calling area, it  
9 was never included in Section 251(b)(5) traffic at issue in the *ISP Remand Order*. As found by  
10 the FCC and reiterated by the D.C. Circuit in its review of the *ISP Remand Order*, the *ISP*  
11 *Remand Order* applied only to "251(b)(5) calls made to internet service providers ("ISPs")  
12 *located within the local calling area.*"<sup>25</sup> (Emphasis added.) See also ¶ 57 of the *ISP*  
13 *Remand Order* that outlines the application of interstate access charges to ISP communications  
14 that cross state boundaries.

15  
16 **V. FEDERAL AND STATE INTERCONNECTION OBLIGATIONS**

17  
18 **Q. What are the federal requirements for interconnection under Section 251(a)?**

19 **A.** Section 251(a) requires a telecommunications carrier (as defined by the Act) to "interconnect"  
20 with all other telecommunications carriers, to the extent any such carrier is engaged in providing

1 telecommunications services to the public.<sup>26</sup> The *Local Competition Order* also distinguishes  
2 the “duty to interconnect” under Section 251(a) from the obligations imposed under Section  
3 251(c)(2), “Interconnection.”<sup>27</sup> The duty to interconnect under Section 251(a) is a duty only to  
4 connect, directly or indirectly. The duties imposed under Section 251(a) do not include the  
5 obligation of reciprocal compensation. Section 251(a)(1) of the Act states “[e]ach  
6 telecommunications carrier has the duty to interconnect directly or indirectly with the facilities  
7 and equipment of other telecommunications carriers.” It should be noted that CenturyTel is  
8 currently interconnected with Level 3 through the Public Switched Telephone Network (PSTN)  
9 and therefore CenturyTel has met its obligations under Section 251(a), under the FCC’s *Local*  
10 *Competition Order*.<sup>28</sup>

11  
12 Likewise, 47 C.F.R. 51.5 defines “interconnection” as “...the linking of networks for the  
13 mutual exchange of traffic. This term does not include the transport and termination of traffic.”  
14 (Emphasis added.) The FCC, in its *Local Competition Order*, stated that an indirect  
15 connection satisfies a telecommunications carrier’s duty to interconnect pursuant to Section  
16 251(a).<sup>29</sup> This statutory design is consistent with Congress’ explicit goal of ensuring  
17 interconnected networks.

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<sup>25</sup> *Worldcom, Inc v. FCC*, 288 F.3d 429 at 430 (D.C. Cir. May 3, 2002).

<sup>26</sup> *Local Competition Order* at ¶ 992.

<sup>27</sup> *Id.* at ¶ 997.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at ¶ 997.

1   **Q.     How does the duty under Section 251(a) compare to the duties under Section**  
2       **251(c)(2)?**

3   A.     Section 251(c)(2) requires an incumbent LEC “to provide, for the facilities and equipment of  
4       any requesting telecommunications carrier, interconnection with the local exchange carrier’s  
5       network . . . for the transmission and routing of telephone exchange service and exchange  
6       access . . . .” (Emphasis added.) The FCC commented on these terms in the *Local*  
7       *Competition Order* and stated that “[a]ll carriers (including those traditionally classified as  
8       IXCs) may obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating  
9       calls originating from their customers residing in the same telephone exchange (i.e., non-  
10      interexchange calls).”<sup>30</sup> (Emphasis added.) In those cases in which CenturyTel is considered a  
11      non-rural ILEC, CenturyTel accepts its responsibility to comply with Section 251(c)(2), with  
12      regard to non-interexchange calls. However, in the present case, Level 3 is not attempting to  
13      interconnect with CenturyTel for “transmission or routing of telephone exchange service and  
14      exchange access”, and therefore does not maintain a legitimate request for such interconnection  
15      under Section 251(c)(2).

16  
17   **Q.     Are there federal and state definitions of local traffic?**

18   A.     Yes. As previously addressed in the review of Section 251 requirements, the FCC specifies that  
19      local interconnection is limited to the provision of Telephone Exchange

20  

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<sup>30</sup>       *Local Competition Order* at ¶ 190.

1 service and Exchange Access. In consideration of what is considered “local” traffic, the  
2 industry generally accepts that the term “telephone exchange service” is synonymous with “local  
3 traffic.” Furthermore, the Act defines “telephone exchange service” as “...service within a  
4 telephone exchange, or within a connected system of telephone exchanges within the same  
5 exchange area...”<sup>31</sup>

6  
7 Additionally, CenturyTel has provided specific definitions of local traffic through its Washington  
8 local tariffs that have been reviewed and approved by this Commission. Specifically,  
9 CenturyTel’s local tariff defines local service as “Telephone service furnished between  
10 customer’s stations within the same local service area.”<sup>32</sup> (Emphasis added.) Additionally,  
11 CenturyTel defines a local service area as “The area within which telephone service is furnished  
12 under a specific schedule of rates. This area may include one or more exchanges without the  
13 application of toll charges.”<sup>33</sup>

14  
15 As confirmed by the FCC in the *Local Competition Order*, state commissions have the  
16 authority to determine what geographic areas should be considered “local areas” for the  
17 purpose of applying reciprocal compensation obligations under Section 251(b)(5), consistent  
18 with the state commissions’ historical practice of defining local service areas for wireline

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<sup>31</sup> 47 U.S.C 153 (47).

<sup>32</sup> See Telephone Utilities of Washington, Inc., WN-U1, Third Revised Definition Sheet No.8, Cancelling WN U-1 Second Revised Definition Sheet No. 8, Advice No. 94-21, effective March 1, 1995.

<sup>33</sup> See Telephone Utilities of Washington, Inc., WN-U1, Third Revised Definition Sheet No.8, Cancelling WN U-1 Second Revised Definition Sheet No. 8, Advice No. 94-21, effective March 1, 1995.

1       LECs.<sup>34</sup> It is clear that this Commission has exercised its authority in part, by its review and  
2       approval of not only the definitions of local service offered by CenturyTel in its local tariff, but  
3       also by its purview over the local calling areas of CenturyTel in Washington.<sup>35</sup>

4  
5       Level 3 is not intending to provide any type of local service within a CenturyTel service  
6       territory.<sup>36</sup> Nor do Level 3's proposed services intend to furnish telephone service "between  
7       customer's stations within the same local service area." Based on both federal and state  
8       definitions of "telephone exchange service" and "local service" as well as Level 3's own  
9       Market Expansion material,<sup>37</sup> it is clear that Level 3 will not be providing any such service to  
10      customers within CenturyTel's service area.

11  
12   **Q.    Are there industry standard definitions of what constitutes interexchange traffic?**

13   A.    The Code of Federal Regulations (CFR) Title 47, Part 51, Section 5 (47 CFR 51.5) defines  
14       "telephone toll service" as "telephone service between stations in different exchange areas for  
15       which there is made a separate charge not included in contracts with subscribers for exchange  
16       service." Likewise, the Act defines "exchange access" as meaning "the offering of access to  
17       telephone exchange services or facilities for the purpose of the origination and termination of

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<sup>34</sup>       *Local Competition Order* at ¶ 1035.

<sup>35</sup>       Title 480 WAC, Chapter 480-120-045 re: Local Calling Areas.

<sup>36</sup>       Exhibit RCC-2 at pg.1.

<sup>37</sup>       Exhibit RCC-2.

1 telephone toll services.”<sup>38</sup> Each of these definitions addresses what is commonly referred to in  
2 the industry as “interexchange traffic”.  
3

4 **Q. Do reciprocal compensation obligations apply to Interexchange traffic?**

5 A. No. Interexchange traffic is exchanged between carriers pursuant to the FCC’s authority  
6 established by Sections 251(a) and 201, under which the FCC has established its access charge  
7 regime, or if intrastate in nature, is subject to the Commission’s jurisdiction over intrastate  
8 access services.  
9

10 **Q. As Level 3’s traffic is Interexchange in nature, is Level 3 entitled to the local**  
11 **interconnection provisions allowed for under Section 251(c)(2)?**

12 A. No. Given the clear direction of the FCC in this respect, CenturyTel has met its obligations  
13 under section 251(a)(1) of the Act by offering to interconnect with Level 3 under the existing  
14 access charge regime. Level 3 can not legitimately claim or unilaterally impose additional  
15 obligations on CenturyTel.  
16

17 Moreover, Level 3’s request for interconnection, for the purpose of providing an Interexchange  
18 Service disguised as a local dial-up service to its ISP customers physically located in another  
19 local calling area is not allowed by the Act or the FCC rules. The goals of local competition are  
20 not advanced by a service which attempts to expand another carrier’s (CenturyTel’s) local

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<sup>38</sup> 47 U.S.C. 153 (16).

1 calling scope by misassigning telephone numbers from one rate center to its customer located  
2 outside of the rate center boundaries in violation of the Central Office Code Assignment  
3 Guidelines. Under Section 251(c)(2), a requesting telecommunications carrier is not entitled to  
4 receive interconnection solely for purpose of originating its Interexchange traffic.

5  
6 It is clear that Level 3 will not be providing Telephone Exchange service or Exchange Access  
7 service to end users within CenturyTel's service territory. As such, Level 3 is not entitled to  
8 local interconnection with CenturyTel under Section 251(c)(2) of the Federal Act. CenturyTel  
9 has met any obligation it may have to interconnect with Level 3 under Section 251(a)(1) by  
10 offering to do so pursuant to Exchange Access tariffs or under its proposed Agreement for  
11 Information Access.

12  
13 **VI. SERVICE OPTIONS AVAILABLE TO LEVEL 3**

14 **Q. Are existing options available to Level 3 to facilitate the provisioning of Level 3's**  
15 **proposed service?**

16 **A.** Yes. As identified below, CenturyTel is aware of at least three available options that would  
17 allow Level 3 to implement its proposed service in an efficient and timely manner.

18  
19 *800Type Service*

1 The service that most closely mirrors the service that Level 3 is attempting to provide is 800  
2 service. 800 service allows a customer to receive calls from any customer-designated  
3 geographic area without the originating caller incurring toll charges to place the call. In fact, as  
4 identified in Exhibit RCC-6 regarding Level 3's Nationwide Access Service with Level 3's  
5 (3)Connect Modem product, Level 3 is already capable of providing toll-free 800 service to its  
6 customers. In exchange for the ability to be reached without cost to the originating caller, the  
7 customer subscribing to the 800 service pays a usage fee to the 800 service provider, who in  
8 turn pays compensation to the local exchange carrier for Exchange Access service. As  
9 previously discussed, there exists a strong similarity between the VNXX service that Level 3 is  
10 proposing and 800 service. In fact, state commissions have observed and commented on this  
11 similarity. The South Carolina Public Utility Commission stated that "Virtual NXX" also closely  
12 parallels 800 service."<sup>39</sup> Another Commission noted that virtual NXX service "is a variant of  
13 '800' service, which is a recognized interexchange service."<sup>40</sup> Instead of seeking "local"  
14 interconnection, Level 3 would order the appropriate Exchange Access service and obtain 800  
15 NPA-NXXs to assign to its ISP customers. This approach provides the appropriate  
16 compensation to the local exchange carrier, avoids regulatory arbitrage between local  
17 interconnection and access rates, and also avoids the numbering resource drain that is imposed  
18 by Level 3's VNXX service.

<sup>39</sup> *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration*, (S.C. P.U.C., Jan. 16, 2001) at 5.

<sup>40</sup> *Maine VNXX Decision* at 12.

1           *Foreign Exchange (FX) Service*

2           To the extent that Level 3 chooses not to execute an agreement or order Exchange Access

3

1 service for the provision of 800 service, Level 3 can provide its customers an FX service  
2 through the use of existing CenturyTel NPA-NXX codes.<sup>41</sup> The customer would be required to  
3 pay CenturyTel the cost of CenturyTel's Telephone Exchange service at the "open end"  
4 exchange, as well as whatever Level 3 would charge for the private line service for the  
5 dedicated transport from the CenturyTel exchange to the ISP customer's location. Although  
6 Level 3 claims that its service is similar to FX service, from a regulatory standpoint, the service  
7 is either FX service or not. Should Level 3's customer need to establish calling with  
8 CenturyTel's local calling area, Level 3 and CenturyTel could jointly provide FX service.

9  
10 *Information Access Traffic Exchange Agreement*

11 As discussed in the Direct Testimony of Mr. Weinman, CenturyTel has offered an Information  
12 Access Traffic Exchange Agreement to Level 3. CenturyTel recently developed this agreement  
13 to support a nearly identical service arrangement proposed by another carrier wishing to  
14 originate Interexchange ISP-bound traffic that would terminate to ISPs located outside of  
15 CenturyTel's exchanges.<sup>42</sup> This agreement was offered to Level 3 in an attempt to  
16 accommodate Level 3's request to originate Interexchange ISP-bound, information access  
17 traffic. The Information Access Traffic Exchange Agreement proposed by CenturyTel will  
18 allow Level 3 to originate its ISP-bound traffic from a CenturyTel local calling area and

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<sup>41</sup> As discussed in Mr. Weinman's testimony, FX service may not be available in some CenturyTel exchanges. In these cases, FGA service may be utilized.

<sup>42</sup> CenturyTel and ICG Communications recently negotiated a stand-alone Information Access Traffic Exchange Agreement for the transport and termination of ISP-bound traffic in the states of Washington, Colorado, and Wisconsin.

1 terminate this traffic to Level 3's customer in a "foreign" or non-local calling area. CenturyTel  
2 will assess per-minute of use charges for Level 3's originating Interexchange traffic that  
3 terminates outside the local calling area of CenturyTel.  
4

5 **VII. REGULATORY AND FINANCIAL IMPLICATIONS OF LEVEL 3'S REQUEST**  
6

7 **Q. What are the regulatory and financial implications of Level 3's request?**

8 A. The implications of accommodating a request such as Level 3's are multifaceted. As will be  
9 discussed below, Level 3's request to accommodate a VNXX arrangement and treat the traffic  
10 as local will impact CenturyTel's ability to define its own calling scope, while promoting  
11 discriminatory treatment against other carriers. In addition, such a request will have a negative  
12 impact on numbering resources, while subjecting CenturyTel to certain negative revenue  
13 impacts.  
14

15 **Q. Would CenturyTel's implementation of Level 3's request entail a redefinition of**  
16 **CenturyTel's local calling scope?**

17 A. Yes. For wireline traffic, the state Commissions define the local calling areas. The FCC  
18 provides the following guidance to state commissions: "With the exception of traffic to or from  
19 a CMRS network, state commissions have the authority to determine what geographic areas  
20 should be considered "local areas" for the purpose of applying reciprocal compensation  
21 obligations under Section 251(b)(5), consistent with the state commissions' historical practice of

1 defining local service areas for wireline LECs. Traffic originating or terminating outside of the  
2 applicable local area would be subject to interstate and intrastate access charges.”<sup>43</sup>

3  
4 In the CMRS area, where the FCC has established clear jurisdiction, the geographic locations  
5 of the calling and called parties at the beginning of a call are of paramount importance. The  
6 FCC determines the jurisdictional classification of a CMRS call to be “defined based on the  
7 parties’ locations at the beginning of the call.”<sup>44</sup> The FCC further states that where a cellular  
8 company is offering interstate, interexchange CMRS service, the local telephone company  
9 providing interconnection is deemed to be providing exchange access to an interexchange  
10 carrier and may expect to be paid the appropriate access charge.<sup>45</sup>

11  
12 The Commission has exercised its authority in this area by establishing the boundaries of the  
13 exchanges in which local service is offered, and by its rules which determine if and when those  
14 boundaries will be changed. State law defines the procedures for and compensation associated  
15 with extended area service, the result of which is “local” calling boundaries are expanded.  
16 Within the established local calling areas, calls between two customers are included in the rate  
17 for local exchange service.

43 *Local Competition Order* at ¶ 1035.

44 *Local Competition Order* at ¶ 1043.

45 *Id.* at footnote 2485.

1 Level 3's attempted use of a VNXX calling arrangement attempts to change the local calling  
2 area of CenturyTel by assigning to its customers in a distant exchange a VNXX that appears as  
3 a "local" service number within the CenturyTel local calling area. When an ILEC is deceived  
4 into rating a call to a VNXX as if it were a local call, even though the called party is outside the  
5 local calling area, the ILEC local calling area has been involuntarily expanded. If allowed to  
6 assign an NXX to a customer located outside the rate center assigned to the NXX, there is no  
7 limit to the geographic area or the number of customers to which this practice could be  
8 expanded.

9 Level 3 attempts to accomplish this expansion without following the state of Washington's  
10 established procedures for expanding the local calling scope. It has not complied with the  
11 petition or notification requirements; there is no demonstration of community of interest; the  
12 impact on competition has not been considered; the effect on local rates is left open; and,  
13 customers have not been surveyed for their reaction.<sup>46</sup>

14  
15 This is not to imply that a CLEC cannot establish its own local calling scope for its own  
16 customers – it can. However, in lieu of creating its own local calling scopes, Level 3 is  
17 attempting to expand CenturyTel's local calling scope, which it is not permitted to do.

18  

---

<sup>46</sup> Revised Code of Washington (RCW), Title 80 RCW – Public Utilities, RCW 80.36.855, Extended area service program.

1   **Q.     Would CenturyTel’s implementation of Level 3’s request be discriminatory or anti-**  
2       **competitive to other carriers?**

3   A:    Yes. As discussed above, for Interexchange services, the carrier orders and CenturyTel  
4       charges the carrier for access services. By rating calls to Level 3’s Interexchange services as  
5       free or at “bill and keep” compensation, CenturyTel is forced to discriminate against other  
6       Interexchange services.

7  
8   **Q.     Does the use of VNXXs impact other carriers in other ways?**

9   A.    Yes. By inappropriately assigning telephone numbers to customers who are not physically  
10       located within the telephone number’s rate center designation, VNXX calling reduces the  
11       number of Interexchange calls carried by IXC’s by making calls to locations outside local calling  
12       areas appear to be local. IXC’s will have to attempt to offer a similar service to their ISP  
13       customers to remain competitive. This leads one to question if VNXX services are permitted  
14       for the carriage of Interexchange ISP-bound traffic, why not for all Interexchange traffic?

15  
16       VNXX calling is also anti-competitive in the local service market. Under Level 3’s proposal as  
17       outlined in Exhibit RCC-2, VNXX calling offloads inter-carrier costs and creates intercarrier  
18       compensation disputes with all carriers who are within or may have extended local calling  
19       service to the rate center to which Level 3 has designated its VNXXs. If permitted, Level 3  
20       would be able to use its VNXXs to provide 800-type or FX-like services for their end-users

1 without bearing the relevant costs. Additionally, any Telephone Exchange provider who  
2 complies with the established Central Office Code Assignment Guidelines by appropriately  
3 assigning telephone numbers only to customers who are physically located within the designated  
4 rate center is placed at a competitive disadvantage for following the established guidelines.

5  
6 In the present case, Level 3 is not acting as a CLEC because it does not intend to provide  
7 Telephone Exchange or Exchange Access service to customers located within CenturyTel's  
8 serving area.<sup>47</sup> Indeed, Level 3's proposed service is simply an Interexchange service.  
9 Allowing Level 3 to provide an Interexchange service as if it were a local service would be  
10 discriminatory to CenturyTel's existing IXC customers who remit payment to CenturyTel for the  
11 Commission-approved tariffed rates for such Exchange Access service. As previously  
12 addressed, to permit Level 3 to employ VNXXs could expand CenturyTel's local calling area  
13 to include the entire state of Washington, or quite possible the entire nation, considering the  
14 location of Level 3's customers. This type of discriminatory treatment will send the  
15 inappropriate signals to both end users and carriers alike, and would not be in the public  
16 interest.

17  
18 The Washington Legislature has addressed the issue of discriminatory treatment. Section  
19 80.36.180 of the Revised Code of Washington (RCW) states:

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<sup>47</sup> Exhibit RCC-2 at pg. 1.

1 “No telecommunications company shall, directly or indirectly, or by any special  
2 rate, rebate, drawback or other device or method, unduly or unreasonably  
3 charge, demand, collect or receive from any person or corporation a greater or  
4 less compensation for any service rendered or to be rendered with respect to  
5 communication by telecommunications or in connection therewith, except as  
6 authorized in this title or Title 81 RCW than it charges, demands, collects or  
7 receives from any other person or corporation for doing a like and  
8 contemporaneous service with respect to communication by telecommunications  
9 under the same or substantially the same circumstances and conditions.”  
10

11 The purpose of this law is to ensure that public utilities, such as CenturyTel, do not charge more  
12 or less or provide services that vary from those services that have received the Commission’s  
13 approval. If CenturyTel were to provide to Level 3 its proposed service, CenturyTel would in  
14 fact be providing Level 3 Exchange Access service for free. Current IXC customers of  
15 CenturyTel must pay for such Exchange Access service and clearly to provide the same service  
16 to Level 3 without compensation could be discriminatory.  
17

18 **Q. What effect does the use of VNXX codes have on numbering resources?**

19 A. Although Level 3 is attempting to categorize their service as “local” by use of VNXXs, the  
20 classification of the calls, based on the originating and terminating point of the call, remains  
21 Interexchange. In order to receive Interexchange traffic from a large geographic area on a  
22 local-dialed basis, Level 3 must have an NPA-NXX for each different rate center designations  
23 throughout the geographic area<sup>48</sup>. In fact, if the Commission permits telecommunications  
24 providers to utilize VNXXs, every provider would want to obtain NPA-NXX codes for each

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<sup>48</sup> As shown on Exhibit RCC-5, Level 3 has already obtained 21 NPA-NXX codes in Washington.

1           “virtually” located rate center, thereby enabling it to offer its chosen customers the ability to  
2           receive toll-free calls from all end users within each such

3

1 rate center at no additional originating Exchange Access or transport expense to the VNXX  
2 service provider. Conceivably, while a provider would tie up 10,000 telephone numbers with  
3 each new NPA-NXX, the provider may only be using one telephone number in each block of  
4 10,000 for its one customer.

5  
6 If the Commission sanctions this sort of service arrangement, it will further strain the existing  
7 numbering resources in Washington. Over the past few years, many state Commissions have  
8 been forced to implement area code splits and overlays, which have either forced a significant  
9 portion of the population to change their telephone number (NPA assignment) or dial ten digits  
10 to place local calls.

11  
12 **Q. Do accepted industry guidelines permit Level 3 to assign a telephone number to an end**  
13 **user without regard to the customer's location and without regard to established POIs?**

14 A. No. The Central Office Code Assignment Guidelines were developed by the North American  
15 Numbering Plan Administrator (NANPA) at the direction of the FCC in an attempt to establish  
16 uniform, industry-wide procedures for the assignment of codes to all qualifying carriers in  
17 competitive markets and to protect the nation's limited numbering resources. These guidelines  
18 apply to all providers of telecommunications services using NPA-NXX codes. In order to  
19 receive NPA-NXX codes, when Level 3 applies for NPA-NXX codes rate centered in  
20 CenturyTel exchanges, it represents to NANPA that when it assigns numbers from these codes  
21 to its customers, it would do so for customers physically located in the designated rate center

1 boundary. In the case of the services Level 3 is providing to its customers, we know that this  
2 representation is incorrect. Consequently, Level 3's proposed service will violate the established  
3 industry guidelines governing the assignment of NPA-NXX codes.

4  
5 **Q. If Level 3 is allowed to deploy its VNXX service as described in Exhibit RCC-2, what**  
6 **impact will Level 3's proposed service have on regulated revenues?**

7 A: As with other expansions of local calling areas, there is an impact on the price of basic local  
8 service resulting if VNXX calls are allowed. Allowing VNXX calls without proper  
9 compensation will encourage intrastate Interexchange toll service to migrate to VNXX numbers.

10  
11 If allowed, VNXX service will also undermine the Exchange Access charges CenturyTel  
12 currently receives for Interexchange Exchange Access services. Loss of these revenues will  
13 likely impact local rates (or impact universal service), as these revenues include compensation  
14 for CenturyTel's current plant investment.

15  
16 In addition to the loss of Exchange Access revenues for current interexchange traffic, a policy  
17 that rates VNXX traffic as local would impose additional costs on CenturyTel; namely, the  
18 costs of transport, either directly to the distant exchange or indirectly through a third party; and  
19 switching costs otherwise recovered through Exchange Access, together with the costs of the  
20 network necessary to support the stimulation that will occur if what is a toll call can be dialed for  
21 free, or at a substantially reduced rate.

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**Q. Are there any other revenue impacts for CenturyTel under a scenario whereby interexchange traffic is designated as local traffic using VNXXs?**

A: Yes. If the Commission endorses the use of VNXX codes and exempts such Interexchange traffic from the standard Exchange Access charges, Exchange Access revenues would decline as more telecommunications providers deploy VNXXs to arbitrage the regulatory discrepancy afforded such service offerings. As Exchange Access revenues decline, the costs for local loops, switching, transport, routing, billing, measurement, and administrative costs would have to be shifted to the local ratepayer.

Level 3's use of VNXXs will allow Level 3 to avoid paying Exchange Access charges that are typically associated toll-free Interexchange traffic. As with the provision of 800 service, CenturyTel is entitled to transport, switching and other access charges associated with the provision of Level 3's proposed service. In the present case, Level 3's proposed service will utilize CenturyTel's loop and switch in the same manner as an interexchange carrier when it receives Exchange Access from CenturyTel. As such, Level 3 should be assessed the same charges as IXC's.

## **VIII. CONCLUSION**

**Q. How do you believe the Commission should resolve this proceeding?**

1     A.     As I have demonstrated, Level 3 is not requesting to provide Telephone Exchange or Exchange  
2           Access to customers within CenturyTel's local service area that would necessitate a local  
3           interconnection agreement, but rather to originate Interexchange traffic that is not subject to the  
4           local interconnection requirements of Section 251(a) and 251(c) of the Act. Level 3 is  
5           attempting to provide an Interexchange service under the guise of local service in order to  
6           arbitrage the Exchange Access system developed by the Commission and the FCC. It is clear,  
7           not only through Level 3's description of their own service, but through an understanding of who  
8           Level 3's customers are, that Level 3 is in the business of providing dial-up Interexchange data  
9           services to an ISP customer base. The service that Level 3 intends to deploy, however, is what  
10          determines how to treat Level 3's traffic from both a regulatory and compensatory standpoint.  
11          Because Level 3 intends to originate traffic from CenturyTel exchanges and terminate this traffic  
12          to its ISP customer located outside of CenturyTel's local calling area, it is clear that Level 3's  
13          proposed service utilizes CenturyTel's Exchange Access service. It is critical to remember that  
14          while Level 3's traffic is bound for ISPs, this traffic is Interexchange in nature, not subject to  
15          Section 251(b)(5) or 251(c)(2), and therefore outside the "bill and keep" requirements  
16          established by the FCC in the *ISP Remand Order*. Such traffic has been, and remains to be,  
17          Interexchange traffic because of the physical location of the calling and called parties.

18  
19          The primary distinction in the present case is that Level 3 is attempting to obtain a free service  
20          by use of a VNXX service arrangement and should be assessed the appropriate access charges

1 for the use of CenturyTel's network, just as other carriers are liable for their origination of  
2 Interexchange traffic today. As discussed, Level 3's proposed VNXX service arrangement  
3 violates established industry guidelines developed by the North American Numbering Plan  
4 Administrator's (NANPA), which are designed to provide the rules by which all carriers use the  
5 nation's limited numbering resources.

6  
7 Further, I have shown that Level 3's proposed "foreign exchange" (FX) service is not FX  
8 service as defined by the FCC and instead is an Interexchange service offering that competes  
9 with interexchange carriers' inbound toll-free calling services, which are subject to originating  
10 Exchange Access charges. Treatment of this service any differently would be discriminatory.

11  
12 Clearly, Level 3 seeks to arbitrage the regulatory requirements for interexchange traffic under  
13 the guise of "local interconnection" in violation of the requirements outlined in the FCC's *Local*  
14 *Competition Order*. As such, the Commission should acknowledge Level 3's proposed  
15 service arrangement and traffic as Interexchange traffic and therefore not subject to local  
16 interconnection requirements of Section 251(b)(2) and 251(c) of the Act. Likewise, the  
17 Commission should allow the existing Exchange Access charge regime to apply in this case, as  
18 Level 3's proposed service arrangement is Interexchange in nature.

1    **Q.     Does this conclude your testimony?**

2    A.     Yes, it does.  However, I would like to reserve the right to submit rebuttal testimony as this case  
3           proceeds and would like to request the opportunity to revise or modify this pre-filed Direct  
4           Testimony at or before the hearing if I receive additional information pertaining to the issues I  
5           have presented herein.

**DOCKET NO. UT-023043**

**EXHIBIT RCC-2**

**LEVEL 3 MARKET EXPANSION PROJECT  
KEY FACTS AND INFORMATION**

**DOCKET NO. UT-023043**

**EXHIBIT RCC-3**

**CENTRAL OFFICE CODE ASSIGNMENT GUIDELINES**

**DOCKET NO. UT-023043**

**EXHIBIT RCC-4**

**LEVEL 3 PRODUCTS AND SERVICES OVERVIEW**

**DOCKET NO. UT-023043**

**EXHIBIT RCC-5**

**LEVEL 3 NPA-NXXs IN WASHINGTON**

**DOCKET NO. UT-023043**

**EXHIBIT RCC-6**

**LEVEL 3'S (3)CONNECT MODEM PRODUCT BROCHURE**