



# Market Expansion Project

## Key Facts and Information

### Information about Level 3 and QSI:

- Level (3) Communications, LLC is a global facilities-based provider of telecommunications services with headquarters in Broomfield, Colorado.
- QSI is a consulting firm that has been retained by Level (3) to help negotiate mutual traffic exchange agreements across the nation.

### The Market Expansion Project:

- Level (3) is expanding its network footprint by leasing facilities to increase the markets where it can offer dial-up data services to ISPs.
- Pursuant to existing law Level (3) is NOT seeking to compete for local customers or to collect reciprocal compensation for ISP traffic.
- The goal of QSI and Level (3) is to develop a mutually acceptable traffic exchange agreement with each incumbent local exchange company, in a quick and efficient manner.
- Level (3) is NOT seeking to lift or modify any rural or small carrier exemptions that have been granted consistent with the Act. Level (3) is seeking Interconnection consistent with Section 251(a) and Section 201 of the Act (portions of the Act not impacted by the rural exemption).

### Implementation:

- Level (3)'s proposed agreement asks that both companies identify an "Implementation Team" consisting of representatives from Level (3) and the incumbent local exchange carrier. The team will plan the interconnection architecture and other logistics (billing, etc.).
- The companies will exchange local, EAS and Information Access traffic pursuant to the agreement. Level (3) wishes to use a strict "bill and keep" compensation structure for this traffic consistent with the FCC's guidelines.
- Traffic will be routed over common, shared transport trunks through the tandem switch of an interconnected third party, or, when/if traffic volumes warrant, over dedicated trunks leased from the ILEC. At this time, Level (3) does not intend to "build-out" its own facilities to these geographical areas.
- If and when direct connection becomes feasible, a mutually agreeable point of interconnection (POI) will be identified for the exchange of traffic at a location within the ILEC's serving territory or at the serving area boundary.



# Market Expansion

## Information on Interconnection Request

Key Facts -- The Agreement -- Implementation

## About



- A global communications company offering IP services, broadband transport, and collocation services
- Expanding service throughout the USA primarily to manage dial-up ISP traffic
- Seeking traffic exchange agreements with more than 200 incumbent LECs
- QSI Consulting is aiding Level (3) in negotiating agreements nationwide

# The Traffic Exchange Agreement

- Level (3) is NOT seeking to compete for the ILEC's existing local customer base
- Since the majority of traffic will be local data traffic, neither reciprocal compensation nor access charges are expected to apply
- Level (3) will lease facilities from the ILEC when possible— Level (3) does not intend to build
- Level (3) is NOT challenging any rural exemption or seeking to impose 251( c ) obligations from the Act

# The Traffic Exchange Agreement

- Level (3) has a proposed agreement that includes all of the principles identified above.
- The carriers are welcome to begin with the Level (3) agreement or draft/propose their own.
- Any questions, comments or discussion is best undertaken with your QSI representative.
- The next few slides walk you through the most important aspects of the Level (3) proposed agreement

# The Traffic Exchange Agreement

## MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement ("Agreement") is made effective on the date this Agreement has been executed by and between ("ILEC"), and Level 3 Communications, LLC ("Level 3"). ILEC and Level 3 may collectively be referred to as "Parties," and each individually may be referred to as a "Party."

In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

### Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customers, located within ILEC's incumbent serving area, and Level 3's customers, located both within and outside of ILEC's incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), Information Access Traffic, and mandatory Extended Area Service Traffic ("EAS") (together, "Traffic"), without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgement or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

### Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 251(a) and (b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected; or (ii) direct interconnection of the Parties' networks, subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit A to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit A at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party's NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 To the extent that both Parties are interconnected with a third party carrier, until the total amount of Traffic being exchanged between the Parties exceeds the amount of traffic for three consecutive months (the "Threshold"), the Parties may complete calls between their customers through the Tandem Switch of that other carrier (i.e., through a transit arrangement).

## Section 1. Scope of the Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customers, located within ILEC's incumbent serving area, and Level 3's customers, located both within and outside of ILEC's incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), Information Access Traffic, and mandatory Extended Area Service Traffic ("EAS") (together, "Traffic"), without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgement or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

- Defines scope of the agreement as traffic exchange
- Identifies "Information Access Traffic" and "Local Traffic"
- Highlights the fact that this Agreement is NOT meant to impact a rural carrier's "exemption" from portions of Section 251 of the TA96

# The Traffic Exchange Agreement

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In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

### Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customers, located within ILEC's incumbent serving area, and Level 3's customers, located both within and outside of ILEC's incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), Information Access Traffic, and mandatory Extended Area Service Traffic ("EAS") (together, "Traffic"), without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgment or admission, by either Party with respect to any claim that it may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

### Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 251(a) and (b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected; or (ii) direct interconnection of the Parties' networks, subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit A to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit A at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party's NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 To the extent that both Parties are interconnected with a third party carrier, until the total amount of Traffic being exchanged between the Parties exceeds the amount of traffic for three consecutive months (the "Threshold"), the Parties may complete calls between their customers through the Tandem Switch of that other carrier (i.e., through a transit arrangement).

## Section 2. Routing, Exchange, and Completion of Traffic

2.1 ...Parties shall negotiate in good faith ... to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize ... the Tandem Switch ... or direct interconnection of the Parties' networks if justified by traffic.

2.2 ...calls to the other Party's NXX codes ... are rated based upon the rate center to which each NXX code has been assigned

2.3 ... Parties may complete calls between their customers through the Tandem Switch of that other carrier (i.e., through a transit arrangement), unless and until traffic warrants direct interconnection.

2.4 ... When traffic warrants, parties will establish a mutually agreeable POI where their owned or leased facilities will be interconnected for the routing of all Traffic between them; provided, however, that this POI shall be located within ILEC's incumbent serving area or at ILEC's incumbent serving area boundary.

- Identifies requirement to negotiate in good faith and implement effective interconnection using either tandem routed or direct, dedicated connections.
- When traffic warrants, parties agree to negotiate a POI within the ILEC's serving area for interconnection and routing of traffic.



# The Traffic Exchange Agreement

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In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

### Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customers, located within ILEC's incumbent serving area, and Level 3's customers, located both within and outside of ILEC's incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), Information Access Traffic, and mandatory Extended Area Service Traffic ("EAS") (together, "Traffic"), without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgment or admission, by either Party with respect to any claim that it may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

### Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 251(a) and (b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected; or (ii) direct interconnection of the Parties' networks, subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit A to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit A at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party's NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 To the extent that both Parties are interconnected with a third party carrier, until the total amount of Traffic being exchanged between the Parties exceeds \_\_\_\_\_ of traffic for three consecutive months (the "Threshold"), the Parties may complete calls between their customers through the Tandem Switch of that other carrier (i.e., through a transit arrangement).

### Section 3. Compensation for Local Traffic and Information Access Traffic

Because of anticipated *de minimis* nature of the Local Traffic to be exchanged between the Parties, Level 3 and ILEC agree to exchange Local Traffic on a bill-and-keep basis, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Local Traffic. Level 3 and ILEC further agree to compensate one another on a bill-and-keep basis for the exchange of Information Access Traffic in accordance with the Order on Remand released by the Federal Communications Commission ("FCC") in CC Docket No. 96-98 on April 27, 2001, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Information Access Traffic.

● Carriers agree to compensate one another using “Bill and Keep” for all local and information access traffic.



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### Section 1. Scope of Agreement

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### Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 251(a) and (b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected; or (ii) direct interconnection of the Parties' networks, subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit A to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit A at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party's NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 To the extent that both Parties are interconnected with a third party carrier, until the total amount of Traffic being exchanged between the Parties exceeds the amount of traffic for three consecutive months (the "Threshold"), the Parties may complete calls between their customers through the Tandem Switch of that other carrier (i.e., through a transit arrangement).

### Section 4. Implementation of Interconnection Arrangements

4.1 Level 3 and ILEC shall work cooperatively to install and maintain a reliable interconnection architecture .... the Parties agree to ensure the deployment of sufficient trunking capacity at all times at the POI to accommodate the exchange of Traffic and to minimize the likelihood of call blocking.

4.2 ...the Parties agree to meet and to form a team (the "Implementation Team") within ten (10) business days of execution that shall develop and identify the standards and specifications for implementation of this Agreement.

- The parties agree to work cooperatively to install and maintain a reliable interconnection architecture.
- The goal will be to minimize blocking and other network disruptions.
- Carriers agree to use an "implementation team" made up of representatives from Level (3) and the ILEC to plan the interconnection and business processes.

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### Section 1. Scope of Agreement

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### Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 251(a) and (b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected; or (ii) direct interconnection of the Parties' networks, subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit A to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit A at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party's NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 To the extent that both Parties are interconnected with a third party carrier, until the total amount of Traffic being exchanged between the Parties exceeds \_\_\_\_\_ of traffic for three consecutive months (the "Threshold"), the Parties may complete calls between their customers through the Tandem Switch of that other carrier (i.e., through a transit arrangement).

### Section 5. Billing

5.1 Each Party shall keep adequate records relating to Traffic usage and all other facilities or services provided to the other Party for twelve (12) months. Either Party may request an audit of usage data on no less than thirty (30) days written notice....

5.2 The Parties shall be governed by applicable state and federal rules, practices, and procedures regarding the provision and recording of billing records. Neither Party shall bill the other Party relating to any usage, services, or facilities more than ninety (90) days from the end of the billing quarter in which the relevant usage, services, or facilities were rendered.

- Agree to keep records for 12 months. Audits are allowed.
- Normal rules and regulations apply to the provisioning and recording of billing records.
- Back-billing is limited to 90 days.

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### Section 1. Scope of Agreement

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### Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 251(a) and (b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected; or (ii) direct interconnection of the Parties' networks, subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit A to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit A at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party's NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.


2.3 To the extent that both Parties are interconnected with a third party carrier, until the total amount of Traffic being exchanged between the Parties exceeds the amount of traffic for three consecutive months (the "Threshold"), the Parties may complete calls between their customers through the Tandem Switch of that other carrier (i.e., through a transit arrangement).

## Section 6. Term of Agreement

This Agreement shall commence when executed by both Parties and have an initial term of two (2) years from the date of full execution. If neither Party provides written notice to the other Party at least one-hundred thirty-five (135) days prior to expiration, this Agreement shall automatically renew for successive one (1) year periods. If a Party provides written notice to the other Party of its intent to negotiate a new agreement at least one-hundred thirty-five (135) days prior to expiration, and the Parties have not reached a new agreement by the date of expiration, this Agreement shall continue in effect until the Parties are able to reach a new agreement through good faith negotiation or other means.

- The agreement will have an agreed upon initial term of two years.
- The agreement will automatically renew for successive one year periods absent a written notice 135 days prior to expiration.
- The agreement remains in effect while negotiations proceed.

# Summary

-  seeks the following:
  - Expand into new markets quickly and efficiently with minimal impact on interconnected carriers
  - Execute a simple traffic exchange agreement
  - No attempt to collect reciprocal compensation or to impact rural exemptions
  - Lease facilities required for interconnection
  - Develop a good working relationship that results in a win-win situation for carriers and customers

## **MUTUAL TRAFFIC EXCHANGE AGREEMENT**

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In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

### **Section 1. Scope of Agreement**

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC’s customers, located within ILEC’s incumbent serving area, and Level 3’s customers, located both within and outside of ILEC’s incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic (“Local Traffic”), Information Access Traffic, and mandatory Extended Area Service Traffic (“EAS”) (together, “Traffic”), without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgement or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”).

### **Section 2. Routing, Exchange, and Completion of Traffic**

2.1 Pursuant to Sections 251(a) and (b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected; or (ii) direct interconnection of the Parties’ networks, subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party’s NXX codes as listed in Exhibit A to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide (“LERG”). Either Party may update Exhibit A at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party’s NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party’s right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 To the extent that both Parties are interconnected with a third party carrier, until the total amount of Traffic being exchanged between the Parties exceeds \_\_\_\_\_ of traffic for three consecutive months (the “Threshold”), the Parties may complete calls between their customers through the Tandem Switch of that other carrier (*i.e.*, through a transit arrangement).

2.4 At such time as the total amount of Traffic between the Parties exceeds the Threshold, or as may otherwise be mutually agreed to by the Parties, the Parties will begin to implement arrangements for direct interconnection of their respective networks. Such interconnection may be achieved by any technically feasible means, including but not limited to the use of either Party's own facilities or the leasing of facilities from a third party carrier. The Parties shall negotiate in good faith and in a prompt manner to establish a mutually agreeable Point of Interconnection ("POI") where their owned or leased facilities will be interconnected for the routing of all Traffic between them; provided, however, that this POI shall be located within ILEC's incumbent serving area or at ILEC's incumbent serving area boundary.

2.5 Should any dispute arise with respect to the establishment of the POI under Subsection 2.4, the Parties desire to avoid any interruption in the completion of calls, will pursue dispute resolution as set forth in Section 12 of this Agreement, and will continue to exchange Traffic without disruption pursuant to the existing means of traffic exchange pending resolution of the dispute.

2.6 Nothing in this Section 2 nor in this Agreement as a whole shall be interpreted or construed to require that Level 3 deploy switching functionality or a physical point of presence other than a POI within the ILEC's incumbent serving area.

### **Section 3. Compensation for Local Traffic and Information Access Traffic**

Because of anticipated *de minimis* nature of the Local Traffic to be exchanged between the Parties, Level 3 and ILEC agree to exchange Local Traffic on a bill-and-keep basis, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Local Traffic. Level 3 and ILEC further agree to compensate one another on a bill-and-keep basis for the exchange of Information Access Traffic in accordance with the Order on Remand released by the Federal Communications Commission ("FCC") in CC Docket No. 96-98 on April 27, 2001, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Information Access Traffic.

### **Section 4. Implementation of Interconnection Arrangements**

4.1 Level 3 and ILEC shall work cooperatively to install and maintain a reliable interconnection architecture. Level 3 and ILEC shall exchange appropriate information (*e.g.*, maintenance contact numbers, escalation contact information) to achieve reliability. Should direct interconnection be employed pursuant to Section 2, the Parties agree to ensure the deployment of sufficient trunking capacity at all times at the POI to accommodate the exchange of Traffic and to minimize the likelihood of call blocking.

4.2 To optimize the exchange of traffic under this Agreement, the Parties agree to meet and to form a team (the "Implementation Team") within ten (10) business days of execution that shall develop and identify the standards and specifications for implementation of this Agreement. Among other things, the Implementation Team shall address the following matters as promptly as possible:

- a. planning of the interconnection architecture, including trunk management and overflow contingencies;
- b. the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the interconnections (including signaling);

- c. disaster recovery and escalation provisions;
- d. points of contact and escalation procedures for ordering, provisioning, billing, and maintenance;
- e. service ordering and provisioning procedures, including provision of the trunks and facilities; and
- f. other network planning components including testing and provisioning intervals.

## **Section 5. Billing**

5.1 Each Party shall keep adequate records relating to Traffic usage and all other facilities or services provided to the other Party for twelve (12) months. Either Party may request an audit of usage data on no less than thirty (30) days written notice. Any such audit shall be accomplished during normal business hours. All information gathered in an audit shall be subject to the Proprietary Information provisions of this Agreement.

5.2 The Parties shall be governed by applicable state and federal rules, practices, and procedures regarding the provision and recording of billing records. Neither Party shall bill the other Party relating to any usage, services, or facilities more than ninety (90) days from the end of the billing quarter in which the relevant usage, services, or facilities were rendered.

## **Section 6. Term of Agreement**

This Agreement shall commence when executed by both Parties and have an initial term of two (2) years from the date of full execution. If neither Party provides written notice to the other Party at least one-hundred thirty-five (135) days prior to expiration, this Agreement shall automatically renew for successive one (1) year periods. If a Party provides written notice to the other Party of its intent to negotiate a new agreement at least one-hundred thirty-five (135) days prior to expiration, and the Parties have not reached a new agreement by the date of expiration, this Agreement shall continue in effect until the Parties are able to reach a new agreement through good faith negotiation or other means.

## **Section 7. Limitation of Liability and Indemnification**

7.1 Neither Party shall be liable to the other for any lost profits or revenues or for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing, a Party's liability shall not be limited with respect to its indemnification obligations under this Agreement.

7.2 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage expense (including reasonable attorney's fees) to third parties, relating to or arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness, negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement. In the event said loss, cost, claim, liability, damage or expense to third parties is the result of the fault, in whole or in part, of both Parties, the Parties shall be entitled to indemnification or contribution to the extent permitted by applicable state law governing the apportionment, if any, of said loss, cost, claim, liability, damage or expense. In addition, the Indemnifying Party shall, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a Third Party against the Indemnified Party.



7.3 The Indemnified Party shall (i) notify the Indemnifying Party promptly in writing of any written claims, lawsuits, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section and (ii) tender the defense of such claim, lawsuit or demand to the Indemnifying Party. The Indemnified Party also shall cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand or lawsuit. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense.

7.4 The Indemnifying Party shall not be liable under this Section for settlements or compromises by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the defense of the claim, demand, or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense.

## **Section 8. Force Majeure**

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay; provided, however, that the affected Party shall make commercially reasonable efforts to restore service as soon as practicable. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations during the delay.

## **Section 9. Agency**

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

## **Section 10. Nondisclosure of Proprietary Information**

10.1 The Parties desire to protect certain Proprietary Information, as defined herein, should it become necessary to exchange Proprietary Information during the term of this Agreement. Proprietary Information shall include, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data and Customer Proprietary Network Information ("CPNI") as that term is defined by the Act, and similar information. Furthermore, Proprietary Information shall include (i) all information delivered in written form and marked "confidential" or "proprietary" or bearing mark of similar import; and (ii) information derived by the receiving Party from a disclosing Party's usage of the receiving Party's network. Proprietary Information is deemed proprietary to the disclosing Party and it shall be protected by the receiving Party in the same manner as the receiving Party would protect its own proprietary information. Proprietary Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement.

10.2 The receiving Party shall have no obligation to safeguard Proprietary Information (i) which was in the receiving Party's possession free of restriction prior to its receipt from disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by receiving Party,

or (iii) after it is independently developed by personnel of receiving Party to whom the disclosing Party's Proprietary Information had not been previously disclosed. The receiving Party may disclose Proprietary Information if required by law, a court, or governmental agency; provided, however, that the receiving Party shall provide as much written and other notice as possible (as considered in the context of time frames identified in the legal requirement) to the disclosing Party prior to disclosing any information to the governmental entity so that the disclosing Party an opportunity to consider the legal requirement.

## **Section 11. Notices**

Bills shall be effective when received or five (5) business days after being sent via first class mail, whichever is sooner, to:

FOR LEVEL 3:  
Business Name: Level 3 Communications, LLC  
Mailing Address: 1025 Eldorado Boulevard  
City/State/Zip Code: Broomfield, CO 80021  
Attention: Manager – Finance/Network Cost  
Contact Phone Number: (720) 888-2876

FOR ILEC:  
Business Name:  
Mailing Address:  
City/State/Zip Code:  
Attention:  
Contact Phone Number:

Notices shall be effective five (5) business days after being sent via registered mail with return receipt requested, to:

FOR LEVEL 3:  
Business Name: Level 3 Communications, LLC  
Mailing Address: 1025 Eldorado Boulevard  
City/State/Zip Code: Broomfield, CO 80021  
Attention: Michelle Krezek, Director-Interconnection Services  
Contact Phone Number: (720) 888-6330  
Facsimile: (720) 888-5271

FOR ILEC:  
Business Name:  
Mailing Address:  
City/State/Zip Code:  
Attention:  
Contact Phone Number:  
Facsimile:

or to such other location as the receiving party may direct in writing.

## **Section 12. Dispute Resolution**

Should a dispute arise between the Parties with respect to implementation or enforcement of this Agreement, or with respect to the billing of and payment for services or facilities under this Agreement,

either Party may give written notice of its intent to seek dispute resolution pursuant to this Section 12. Upon receipt of this notice, representatives of the Parties with primary responsibility for the area(s) of dispute shall first meet and confer as often as they deem reasonably necessary to resolve the dispute. If these initial negotiations should fail to resolve the dispute within thirty (30) calendar days from receipt of the notice, either Party may request in writing that the dispute be escalated to the Vice President level (or other position with authority to negotiate and settle on behalf of each Party). If these second-tier negotiations should fail to resolve the dispute within sixty (60) calendar days after the matter has been escalated, either Party may seek relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Notwithstanding the foregoing, in the event that a dispute impairs the service a Party provides to its customers, the affected Party may seek immediate relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Pending resolution of the dispute, each Party shall continue to perform its obligations under this Agreement and shall not take any other action with respect to the disputed issue except as set forth in this Section 12. Furthermore, in the case of billing disputes, the Parties agree that all amounts that are undisputed shall be paid in a timely manner, and will not be withheld pending resolution of the disputed portion of any bill.

### **Section 13. Severability**

If any part of this Agreement is held to be invalid for any reason, such invalidity shall affect only the portion of the Agreement which is invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.

### **Section 14. Assignment**

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that upon written notice either Party may assign this Agreement or any rights and obligations hereunder without the other Party's consent to any entity that the assigning Party controls, is controlled by, or is under common control with, or to any entity which acquires or succeeds to all or substantially all of the business or assets of the assigning Party whether by consolidation, merger, sale or otherwise, or in connection with a financing transaction.

### **Section 15. Entire Agreement**

This Agreement, including all Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof. No modification or waiver of any provisions of this Agreement shall be effective unless in writing and signed by both parties.

### **Section 16. Multiple Counterparts**

This Agreement may be executed in counterparts and such counterparts shall together constitute one and the same instrument.

### **Section 17. Default**

If either Party defaults in the payment of any undisputed amount, or if either Party materially breaches any other material provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may move to terminate this Agreement or suspend the provision of any or all services hereunder by providing a second written notice to the defaulting Party and to the State Commission thirty (30) days prior to the intended date of suspension or termination. Notice shall be posted by overnight mail, return receipt requested. If the defaulting Party cures the default or violation within the sixty (60) day period noted above, or the alleged default or violation is the subject of a good faith dispute, the other Party shall not terminate the Agreement or suspend service provided hereunder.

#### **Section 18. Representations and Warranties**

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, **NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FACILITIES OR ARRANGEMENTS PROVIDED HEREUNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.**

#### **Section 19. No Third Party Beneficiaries**

This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder.

#### **Section 20. Joint Work Product**

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

#### **Section 21. Headings**

The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement.

#### **Section 22. Change of Law**

In the event of a change in applicable law (including, but not limited to, rulings by the FCC or the State Commission) that materially affects any material term of this Agreement or the rights or obligations of either Party hereunder, the Parties shall promptly renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required as a result of such legislative, regulatory, judicial or other legal action.

#### **Section 23. Governing Law**

To the extent not governed by, and construed in accordance with, the laws and regulations of the United States, this Agreement shall be governed by, and construed in accordance with, the laws and regulations of the state of \_\_\_\_\_, without regard to its conflicts of laws principles.

IN WITNESS WHEREOF, each Party having been advised by counsel, the Parties hereto have caused this Agreement to be executed as of the date(s) set forth below.

LEVEL 3 COMMUNICATIONS, LLC

[ILEC]

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**NXX CODES TO BE RECOGNIZED BY EACH PARTY  
AS LOCAL OR EAS FOR CALLING PURPOSES BASED UPON  
ORIGINATING AND TERMINATING RATE CENTER**