EXHIBIT_ LBB-1T

BEORE THE WASHINGTON STATE
UTILTIES AND TRANSPORTATION COMMISSION

In The Matter Of **Level 3 Communications, LLC'S Petition for Arbitration Pursuant to Section 252(B) of the Communications Act of 1934, as Amended by The Telecommunications Act Of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Qwest Corporation**	**DOCKET NO. UT-063006**

DIRECT TESTIMONY

OF LARRY B. BROTHERSON

QWEST CORPORATION

(Disputed Issue Nos. 1a, 3, 4, 10, 11, 12, 14, 15, 16, 19)

MAY 30, 2006

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I. IDENTIFICATION OF WITNESS

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

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

Q. PLEASE DESCRIBE YOUR EMPLOYMENT BACKGROUND.

A. Since joining Northwestern Bell Telephone Company in 1979, I have held several positions within Northwestern Bell, U S WEST Communications, and Qwest. Most of my responsibilities and assignments have been within the Law Department. Over the past 20 years, I have been a state regulatory attorney in Iowa, a general litigation attorney, and a commercial attorney supporting several organizations within Qwest. My responsibilities have included advising the company on legal issues, drafting contracts, and addressing legal issues that arise in connection with specific products. With the passage of the Telecommunications Act of 1996 (the Telcom Act), I took on responsibility for providing legal advice and support for Qwest's Interconnection Group. In that role, I was directly involved in working with competitive local exchange carriers (CLECs). I negotiated interconnection agreements with CLECs that implemented various sections of the Act, including the Act's reciprocal compensation provisions. In 1999, I assumed my current duties as director of wholesale advocacy. My current responsibilities include coordinating the witnesses for all interconnection arbitrations and for hearings involving disputes

over interconnection issues. Additionally, I work with various groups within the Wholesale Markets organization of Qwest to develop testimony addressing issues indirectly associated with interconnection services.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I received a Bachelor of Arts degree from Creighton University in 1970 and a Juris Doctor degree from Creighton in 1973.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. This arbitration docket will address numerous disputed paragraphs to be incorporated into the interconnection agreement between Qwest and Level 3. The purpose of my testimony is to support the adoption of Qwest's proposed language relating to several of the specific issues that Qwest and Level 3 have not been able to reach agreement on. Specifically, I will explain Qwest's positions, and the policies underlying these positions.

Although there are many sub-issues, there are three major areas of dispute between Level 3 and Qwest: how VoIP traffic should be handled under the agreement; how VNXX traffic should be handled; and what the proper trunks are for different types of traffic.

1) Level 3 and Qwest disagree on a variety of issues related to VoIP (Voice over Internet Protocol) traffic. These issues include the definition of VoIP and what criteria must be met to qualify as VoIP traffic, and, (assuming traffic is properly categorized as VoIP traffic) whether interexchange calls between

local calling areas ("LCAs") are exempt from access charges if the call is received from a VoIP provider for termination; in other words, how does the ESP exemption apply and under what circumstances would access charges or reciprocal compensation apply to VoIP traffic?

2) Level 3 and Qwest disagree on the treatment of and compensation for VNXX traffic (traffic that does not originate and terminate in the same LCA, even though the telephone numbers of the called and calling parties would lead the calling party to believe the call was a local call).

3) Level 3 and Qwest disagree on the financial responsibility for the trunks carrying toll traffic and how Qwest should be compensated for the use of its network.

My testimony will address the first two issues relating to VoIP and VNXX. Mr. Easton will address the issue of financial responsibility for trunks carrying toll traffic and Level 3's reluctance to place toll traffic on Feature Group D ("FGD") trunks and pay Qwest for the use of its network. Mr. Linse will address network issues related to all three areas. Dr. Fitzsimmons will address some economics issues related to ISP traffic. In addition to my two main areas of testimony dealing with VoIP and VNXX, I also address some definitional issues where the parties were unable to reach agreement.

III. DIFFERENCES IN ISSUE STRUCTURE AND DIFFERENCES IN PROPOSED CONTRACTS

Q. HOW ARE THE ISSUES ARRANGED IN THIS CASE?

A. During the negotiation period, Qwest provided Level 3 with a matrix similar in format to others it has used in many other arbitrations with CLECs. The matrix showed Qwest's proposed language, and then incorporated Level 3's proposed additions in a **bolded and underlined** format and incorporated Level 3's proposed deletions in a ~~**bold strikethrough**~~ format. Because the Qwest proposed matrix also followed the contract numbering order, issues dealing with paragraph 5.2 would be numbered before issues dealing with paragraph 6.4 or 7.1. Level 3 objected to this format and proposed its own matrix and format. In an effort to advance the negotiations, Qwest agreed to the use of Level 3's matrix format in the negotiations. Unfortunately, the structure that Level 3 uses in its matrix format is difficult to follow.

Level 3's matrix arranges the issues in a completely different manner, grouping contract paragraphs into what it has characterized as "Tier 1" issues and "Tier 2" issues. In Level 3's words, Tier 2 issues are "derived" from Tier 1 issues. Therefore, the language sections in Level 3's matrix do not flow in the order of the numbered paragraphs in the contract; instead they follow the order in Level 3's "tier structure". Level 3 is, of course, free to use the format it prefers; however, in order for me to respond to Level 3's issues in an orderly sequence, it is necessary to address the competing language in a different order than Level 3 has presented them so that necessary pre-requisite issues are dealt with first. For example, the

Level 3 matrix shows the first issue dealing with VOIP as language in contract sections 7.1.1.1 and 7.1.1.2, which deal with operational audits and certification. Before discussing audits of VoIP traffic, it is important to first understand what VOIP is, how the FCC describes VoIP, and what disagreements exist between Qwest and Level 3 as to the requirements for a call to qualify as VOIP. Therefore, my testimony will start by addressing Issue 16: the definition of VOIP. Only after the Commission understands what each party claims are the proper elements of VoIP will other VoIP issues be meaningful, such as the issue of the necessity of audits and certification that VoIP traffic complies with the FCC definition of VoIP. My testimony will address each disputed paragraph in the agreement related to VoIP and VNXX even though I address the contract sections in a different order than they are presented in Level 3's matrix. My testimony will describe the parties' positions for each disputed paragraph and demonstrate why Qwest's language is the appropriate language and should be adopted by the Commission.

Q. ARE THERE ALSO DIFFERENCE IN THE CONTRACTS ATTACHED TO THE PETITION AND ANSWER?

A. Yes. In its petition, Level 3 attached a 2003 Qwest template agreement as the starting point for the proposed contract. Level 3 and Qwest used this template as the starting point of negotiations in the earlier (2004) rounds of negotiations. For example, that template is the correct one in Iowa, Arizona, Colorado, and Idaho. Before negotiating an interconnection agreement with Level 3 for Washington (those negotiations began in 2005), Qwest provided Level 3 with its 2005 template interconnection agreement as the starting point for negotiations. This template was

provided to Level 3 in May 2005. This template includes provisions necessary to comply with Triennial Review Order ("TRO") and Triennial Review Remand Order ("TRRO"). Because the 2005 template was the agreement proposed by Qwest as the starting point for negotiation in Washington, this is the agreement attached to Qwest's response to Level 3's Petition.

Qwest addresses all of the specific language differences raised by Level 3 in its petition. In fact, with one exception that I address in my testimony, the disputed language is the same in both templates. However, in approving a final interconnection agreement, no matter how the Commission rules on individual disputed paragraphs, the 2005 contract attached to the Qwest answer and provided to Level 3 in the Washington negotiations should be the approved version of the interconnection agreement with disputed paragraphs incorporated to reflect the arbitration decision. Although Level 3 has informed Qwest several times that it may have some additional issues related to the new template, and despite repeated assurances from Level 3 that it would identify those issues and provide alternative language, Level 3 has never provided Qwest with any proposed alternative language, which makes it impossible for Qwest to know whether there are additional issues or not. Given that Level 3 has had months to examine the new template, Qwest believes it has waived its right to contest any of the language that is unique to the 2005 template.

IV. EXECUTIVE OVERVIEW

Q. PLEASE PROVIDE A GENERAL SUMMARY OF THE ISSUES YOU ADDRESS IN YOUR TESTIMONY.

A. Although I address a variety of sub-issues, my testimony addresses two major issues that are critical to the interconnection agreement: (1) Voice over Internet Protocol ("VoIP") issues and (2) Virtual NXX ("VNXX") issues.

VoIP Issues:

- The first issue I address is the proper definition of VoIP. True VoIP calls are calls initiated through the use of IP-compatible equipment over a broadband connection. Calls initiated over traditional telephone customer premises equipment ("CPE") on the public switched telephone network ("PSTN") are not VoIP calls. Although they may eventually reach the Internet and be terminated on Internet Protocol ("IP") CPE, these traditional calls begin as traditional PSTN calls over a local loop and through the local central office. There is no more reason that such a call should be categorized as a VoIP call than to categorize a call that is initiated through the use of IP-compatible equipment over a broadband connection should be categorized as a traditional PSTN call.

- I point out that where there is a net protocol conversion, a provider that offers VOIP is treated as an enhanced service provider under FCC rules, which means that the "ESP exemption" applies to VoIP calls under certain circumstances. Under the ESP exemption, the location of the enhanced service provider ("ESP") point of presence "POP" (also referred to as the VoIP provider POP), is treated as the end user customer for purposes of determining whether a call is treated as a local or interexchange call. Contrary to Level 3's position, there is no FCC rule or policy that "exempts" information service providers or VoIP calls from honoring local exchange boundaries—the rule simply moves the customer premises for analysis purposes from the actual broadband customer's premises where the IP packets originate to the location of the enhanced service provider on the PSTN, the ESP POP.

- I comment on a variety of specific language proposals submitted by Qwest and Level 3 related to VoIP issues and demonstrates that Level 3's proposed language would erroneously and illogically treat all VoIP calls as though they were local. I demonstrate that this is merely a convenient fiction to avoid appropriate intercarrier compensation. When a Qwest end user customer originates a call destined for a remote VoIP POP (that is, a location where the VoIP provider purchased local service located outside of the LCA of the originating caller), that call must be treated as an interexchange call for all purposes. Likewise, when Qwest receives a call from a distant LCA where the VoIP POP obtains service, for termination in a different LCA, that call should

also be treated as an interexchange call for all purposes.

- Qwest's proposed language treats VoIP calls consistently with current intercarrier compensation plans. It uses the location of the ESP to classify calls. Local VoIP calls (terminating calls in the LCA where the ESP purchases local service) should be treated like other local calls, including making them subject to reciprocal compensation, while VoIP calls that are interexchange in nature (calls bound for LCAs different than the one where the ESP purchased local service) should be subject to appropriate state and federal access tariffs.

VNXX Issues

- I first define VNXX, which is the inappropriate assignment by CLECs of local telephone numbers to end user customers who are not in that local calling area, thus creating an erroneous impression that a call directed to a local number is a local call, when in fact it is delivered to an Internet Service Provider ("ISP") located in another exchange (or even in another state)—in other words, VNXX refers to disguised interexchange calls.

- I demonstrate that the proper means of determining whether a call is local or interexchange is based on the physical locations of the end users to the call and not, as Level 3 proposes, based on the telephone numbers assigned to those end users. Level 3's proposal would result in calls that are interexchange in nature being treated as though they were local calls.

- Level 3's language acknowledges that with VNXX traffic the called and calling parties are in different LCAs. It proposes: "thus the telephone numbers associated with the calling and called parties may or may not bear NPA-NXX codes associated with the physical location of either party" in its definition of VNXX. By treating such traffic as local in nature, in effect, Level 3 creates a convenient fiction that dramatically changes the long-standing distinction between local and interexchange calls.

Related Issues

- I address numerous other issues, most of them definitional in nature, that relate to the VNXX and VoIP issues. In most cases, the Level 3 definitions are designed to provide special treatment to its VoIP and VNXX traffic, while Qwest's language, which has been adopted in many other interconnection agreements and is consistent with SGAT language approved by the Commission, is designed to treat Level 3's traffic in a manner consistent with all other telecommunications traffic. Qwest's language is also consistent with

how the Commission has determined local and interexchange traffic should be handled with other carriers.

V. DISPUTED ISSUE 16: DEFINITION OF VOIP

Q. BEFORE ADDRESSING THE DEFINITIONAL DISPUTES RELATING TO VOIP, PLEASE PROVIDE A BRIEF GENERIC DESCRIPTION OF VOIP.

A. I will begin by describing the manner in which voice communications have taken place on the public switched telephone network (PSTN) for decades. The PSTN is a circuit based, switched network that employs a protocol called Time-Division Multiplexing ("TDM") to transmit voice messages. When one customer calls another customer under these circumstances, an actual circuit (often thought of as a pair of wires) must be established between the two callers that remains in place for the duration of the call. Thus, when such a call is made, each party's loop is used for the duration of the call as are the switches and interoffice facilities through which the call is routed. Such calls, because of the physical circuit that must be connected and utilized from end to end, are often referred to as "circuit-switched."

Both physically and conceptually, VoIP is different. VoIP is based on digital packets that are created by specialized equipment in a digital format known as Internet Protocol or "IP." Thus, a VoIP call must be initiated by an end user customer in IP protocol through the use of IP compatible equipment,[1] which

[1] The FCC, in its recent VoIP 911 order, described IP Compatible equipment:

> "The term "IP-compatible CPE" refers to end-user equipment that processes, receives, or transmits IP packets. Users may in some cases attach conventional analog telephones to certain IP-compatible CPE in order to use an interconnected VoIP service. For example, IP-compatible CPE includes, but is not limited to, (1)

converts the conversation into multiple digital IP packets of information (each of which represents a small digitized portion of the voice call between the parties). Instead of passing over a single circuit dedicated to a call, each IP packet is capable of independently traveling a different route on the Internet than other packets. Once the packets are created by the IP-compatible customer premises equipment ("CPE") such as a computer or IP phone, they are individually forwarded onto the Internet over a broadband connection. These packets do not and could not pass through a telephone company switch; PSTN switches do not recognize IP packets. As noted, because no specific circuit must be established, the individual packets do not necessarily follow the same path and each packet may wind up being forwarded along the Internet by a different router (this is one of the reasons the Internet is often depicted as a cloud rather than a line or physical connection from one point to another).

Thus, the first distinguishing characteristic of VoIP is that it must be initiated at the end user customer's premises in IP protocol using IP-compatible CPE, equipment capable of converting voice sounds into IP packets. The second characteristic is that the VoIP call must be initiated over a broadband connection such as a cable modem or DSL that connects directly to the Internet and does not pass through the

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terminal adapters, which contain an IP digital signal processing unit that performs digital-to-audio and audio-to-digital conversion and have a standard telephone jack connection for connecting to a conventional analog telephone; (2) a native IP telephone; or (3) a personal computer with a microphone and speakers, and software to perform the conversion (softphone).

First Report and Order and Notice of Proposed Rulemaking, *In the Matters of IP-Enabled Services E911 Requirements for IP-Enabled Service Providers*, FCC 05-116, ¶ 24, n. 77 (June 3, 2005) (citations omitted) ("*FCC VoIP 911 Order*").

PSTN local switch.

Q. ARE ALL CALLS THAT INVOLVE IP PROTOCOL VOIP CALLS?

A. There are two types of VoIP calls that meet these two defining characteristics of VoIP. One of the types is irrelevant to this case, while the other type of VoIP call is at the very center of the VoIP issues before the Commission in this docket.

The first type of VoIP call takes place between two VoIP customers, both served by a broadband connection. The call is, of course, initiated in IP protocol over a broadband connection. When the called party is also a VoIP customer on a broadband connection, the call is never converted into TDM (the language of the circuit-switched PSTN) or handed off to a traditional telephone company. Instead, the packets are transported over the Internet directly to the called party, delivered over broadband where the called party's IP compatible equipment reassembles the packets in the proper order so they become a voice conversation again. If, as in the foregoing example, a call goes from one IP capable piece of equipment to another IP capable piece of equipment, over broadband connections through transmission IP packets, the call is completed without ever touching the circuit switched PSTN. Thus, this type of call is a VoIP call, but it does not interconnect with the PSTN in any manner. Because such calls originate and terminate in IP format, they are often referred to as "IP-IP calls." They occur entirely over the Internet, are not exchanged between traditional telephone carriers, and therefore there are no intercarrier compensation or other interconnection issues that result from IP-IP traffic. Since no language is required in a CLEC interconnection agreement to

address these calls, they are irrelevant to the issues in this case.

The second type of VoIP is central to the VoIP issues in this docket. These calls are initiated through IP-compatible CPE over a broadband connection, but the called party is not a VoIP customer on broadband. Instead, the called party is a typical customer served by a traditional telephone company on the PSTN by a loop attached to a circuit switch and whose CPE is not IP-compatible. In this situation, the exchange of traffic is completely different than in the first type of call. In order to complete the call, the IP packets created by the equipment of the calling party must, at some point, be converted into a TDM voice format (a function of the VoIP provider's equipment), transferred to the PSTN on a connection that will route through circuit switches to the end office serving the customer, and finally sent over the loop to the customer phone. This type of call, which is often referred to as an "IP-TDM call" because it was originated in IP format and terminated to the PSTN in TDM format, is a VoIP call because it meets the criteria of originating in IP format using IP-compatible CPE over a broadband connection. It is terminated, however, using local switching and loops. This type of call requires an interconnection agreement if the VoIP provider is the customer of one company and the call is terminated to the customer of another company.

There is a third type of call that is originated in TDM format, but the carrier decides to transport the call from two points in IP before reconverting it back into TDM for delivery. Although this call was in IP format for part of the transmission, it both originates and terminates in TDM. Such calls are often referred to as "TDM-IP-TDM calls" or as "IP in the middle" calls. Because such calls both originate and

terminate on the PSTN they do not meet the criteria for VoIP traffic as described above, and therefore they are not VoIP calls. The FCC has ruled that these calls (referred to as TDM-IP-TDM or "IP in the Middle") are not VoIP calls.

Q. THE FCC HAS DISTINGUISHED VOIP TRAFFIC THAT CONNECTS TO THE PSTN FROM VOIP TRAFFIC THAT IS TRANSPORTED SOLELY OVER THE INTERNET OR A PRIVATE IP NETWORK. IS THE DISTINCTION RELEVANT TO THE DISCUSSION OF VOIP IN AN INTERCONNECTION AGREEMENT?

A. Absolutely. The FCC has been careful to distinguish VoIP traffic that connects to the PSTN from VoIP traffic that is handled entirely by the Internet, specifically using the term "interconnected VoIP services" to describe "those VoIP services that can be used to receive telephone calls that originate on the PSTN and can be used to terminate calls to the PSTN."[2] The FCC singled out Interconnected VoIP services because "consumers expect that VoIP services that are interconnected with the PSTN will function in some ways like a "regular telephone" service."[3] Interconnected VoIP service was defined "as bearing the following characteristics: (1) the service enables real-time, two-way voice communications; (2) the service requires a broadband connection *from* the end user customer's location; (3) the service requires IP-compatible CPE; and (4) the service offering permits users generally to receive calls that originate on the PSTN and to terminate calls to the

[2] FCC VoIP 911 Order ¶ 23.

[3] *Id.*

PSTN."[4] The issues between Qwest and Level 3 with regard to VoIP relate specifically to Interconnected VoIP traffic that is *terminated* or transmitted to the Qwest network (i.e., to the PSTN). Calls that originate in broadband in IP and then terminate in broadband in IP never touch the PSTN and are not a concern in this interconnection agreement.

Q. WITH THIS BACKGROUND OF THE VARIOUS TYPES OF 'VOICE OVER INTERNET PROTOCOL' CALLS, WHAT IS THE DIFFERENCE BETWEEN QWEST'S AND LEVEL 3'S PROPOSED DEFINITIONS OF VOIP?

A. It is easy to see the distinction between the two company's positions by looking at the definitional language in dispute. Qwest's proposed definition of VoIP traffic for the interconnection agreement with Level 3 is shown in the paragraph below. All of Level 3's proposed changes are in bold face type and the language Level 3 proposes to be deleted is shown as a strikethrough. Where Level 3 seeks to add additional language to the paragraph, the proposal is shown in a bold underlined format.

> "VoIP" (Voice over Internet Protocol) traffic is traffic that originates **or terminates** in Internet Protocol **~~at the premises of the party making the call~~** using IP-Telephone handsets, **~~end user premises~~** Internet Protocol (IP) adapters, CPE-based Internet Protocol Telephone (IPT) Management "plug and play" hardware, IPT application management and monitoring hardware or such similar equipment and is transmitted over a broadband connection to **or from** the VoIP provider

[4] *Id*. ¶ 24.

Qwest's definition is pictorially illustrated in Exhibit LBB-2 attached to this document.

Q. WHAT IS THE EFFECT OF LEVEL 3'S CHANGES TO THE DEFINITION DEALING WITH END USER PREMISES?

A. Level 3 attempts to remove the requirement that the call "originate at the premises of the party making the call" and to strike the words "end user premises" when referring to "end user customer's premises IP adapters." Origination *at the end user premises* in IP is a critical requirement that must remain in the agreement. The rationale for Level 3's effort to delete this requirement from the definition is far from clear (it certainly did not make it clear in its Petition), but it is an essential piece of the definition of VoIP traffic. If the call starts out as a traditional voice call, i.e. in TDM, is converted to IP later in the process, and it is delivered in TDM, there is no net protocol conversion and it is not a VoIP call. If, however, the call originates in IP (using the appropriate IP equipment at the point of origination) over a broadband connection, and is then later converted into traditional TDM protocol for termination on the PSTN to a local telephone number, the call would be a VoIP call, even though it terminated in TDM. Since the terminating end (the call being delivered to Qwest for termination) is always in TDM protocol, it *must* originate in IP at the originating end user customer premises in order to be VoIP. Originating in IP can only occur over a broadband connection. If it both originates and terminates in the PSTN protocol it is not a VoIP call. Qwest's definitional language makes it clear that VoIP:

> "originates in Internet Protocol **at the premises of the party making the call** using IP-Telephone handsets, **end user premises** Internet Protocol (IP)

adapters, CPE-based Internet Protocol Telephone (IPT) Management "plug and play" hardware, IPT application management and monitoring hardware or such similar equipment and is transmitted over a broadband connection to the VoIP provider."

Qwest's language requiring that the call originate at the end user customer's premises in broadband is also an absolute necessity if the call is to be treated as an enhanced or information service and thus entitled to the ESP exemption (an issue I will address later). Level 3's first two strikethrough proposals must be rejected. The call must originate over broadband in IP to be a VoIP call that will be exchanged under this agreement. And that requires the IP packets be created at the premises where the call originates.

Q. WHAT IS THE EFFECT OF INCLUDING CALLS THAT TERMINATE IN IP PROTOCOL OR ARE TRANSMITTED OVER BROADBAND FROM THE VOIP PROVIDER INTO THE DEFINITION OF VOIP?

A. Level 3 proposes some perplexing language to the VoIP definition regarding traffic direction, wanting it to read that VoIP may be "transmitted over a broadband connection to **or from** the VoIP provider" and stating that a call may terminate in IP and be a VoIP call under the interconnection agreement. What these additional terms mean is not clear. For example, calls delivered to Qwest from a VoIP provider for termination *under a 251 interconnection agreement* will go through a Qwest switch and over a loop connected to that switch for termination on the PSTN to a traditional telephone. A call **from** the VoIP provider that is transmitted over a broadband connection in *IP* protocol must, by definition, terminate directly to a VoIP end user customers Internet equipment and cannot go through a public

network switch. Thus, the PSTN is not used to complete the call.[5] As such, Qwest would not be involved in switching the call on the PSTN or terminating the call on its PSTN network and Level 3's proposed language is inappropriate for an interconnection agreement. I am unaware of any other situation or scenario in which a call would come *from* the VoIP provider over broadband that would involve a Qwest interconnection agreement or the PSTN. Qwest's language in the proposed modifications is critical to the definition and accurately limits the VoIP definition to only qualified situations that involve exchange of traffic under an interconnection agreement. Traffic that is in IP format and transmitted over DSL directly to computers or IP compatible phones do not involve Section 251 interconnection and are not terminations of local telephone calls. Level 3's proposed changes should be rejected and Qwest's proposed language should be adopted.

Q. WERE THERE OTHER DISPUTES REGARDING THE DEFINITION OF VOIP TRAFFIC?

A. Yes. And this is the one place where the two contracts differ in the depiction of disputed language. In the earlier rounds of negotiations (which took place in 2004) Qwest included additional language in the definition of VoIP about how the VoIP traffic would be treated under the interconnection agreement. In the early arbitrations Level 3 proposed deleting that additional language. Because Qwest felt that this language was more of a contractual requirement than a definition, in the 2005 Washington contract that was provided to Level 3, those two additional

[5] The call may use Qwest facilities, but not for Section 251 termination; for example, if the end user leases a DSL connection to his home.

sentences were moved from the VoIP definitions section of the agreement and inserted into the body of the contract. They are as follows:

> 7.2.2.12 VoIP Traffic. VoIP traffic as defined in this agreement shall be treated as an Information Service, and is subject to interconnection and compensation rules and treatment accordingly under this Agreement based on treating the VoIP Provider Point of Presence ("POP") is an end user premise for purposes of determining the end points for a specific call.
>
> > 7.2.2.12.1 CLEC is permitted to utilize LIS trunks to terminate VoIP traffic under this Agreement only pursuant to the same rules that apply to traffic from all other end users, including the requirement that the VoIP Provider POP must be in the same Local Calling Area as the called party.

Because Level 3 proposed striking this language when it was part of the definition of VoIP, Qwest assumes Level 3 also proposes striking the language in the 2005 agreement at its new location at 7.2.2.12. I will address why this section should not be stricken and why the Commission should approve this language contained in 7.2.2.12. I will address this subject as part of Issue 16, Definition of VoIP, rather that address it elsewhere.

Q. LEVEL 3 OBJECTS TO THE REQUIREMENT THAT THE LANGUAGE IN 7.2.2.12 THAT STATES THE VOIP PROVIDER POINT OF PRESENCE (POP) BE CONSIDERED AN END USER CUSTOMER FOR PURPOSES OF DETERMINING THE END POINTS OF A CALL. CAN YOU COMMENT?

A. Yes. These two paragraphs are at the heart of the VoIP debate in this arbitration. And the resolution by the Washington Commission of this one issue, whether to include these two paragraphs, will determine how VoIP calls will be terminated in

this state. Qwest's language requiring that the VoIP POP be considered an end user customer for determining where a call begins and ends is at 7.2.2.12. Level 3's position on this paragraph in both the 2003 contract language and the current 2005 template has always been to delete this language.

Q. WHAT MAKES THESE PARAGRAPHS CRITICAL TO THE TREATMENT OF VOIP CALLS?

A. The language is important because it clearly spells out how Qwest will apply the ESP Exemption. In order to terminate VoIP calls, the VoIP provider (which includes companies such as Vonage, Skype, or even QCC's' VoIP business) must buy a "connection" to the local network. The VoIP provider can purchase that connection from Qwest, an independent telephone company, Level 3, or some other CLEC. Since both Level 3 and Qwest agree that the traffic that is handed off to the public network from the VoIP POP arrived over the Internet and is an alternative to traditional interexchange carrier ("IXC") long distance traffic, the only real question is whether or not the VoIP provider must purchase a FGD connection to terminate its calls. In answer to that question, the FCC has said no. *If* the VoIP provider is acting as an enhanced service provider or ESP, it is entitled to purchase its connection out of the local exchange tariffs and obtain local service. In this respect, the ESP is treated as any other end user customer.

Q. PLEASE DESCRIBE THE ISSUES THAT ARE RAISED BY THE QWEST LANGUAGE IN 7.2.2.12 THAT LEVEL 3 SEEKS TO STRIKE.

A. The ultimate issues relate to intercarrier compensation, and how you measure where

a VoIP call originates and terminates. Qwest's contractual conditions in 7.2.2.12 center on two basic issues related to VoIP providers:

1) What requirements must be met to permit a VoIP provider to terminate calls using a local exchange product for its connection to the PSTN rather than a Switched Access (Feature Group D) connection?

2) Assuming a VoIP provider is qualified to purchase a connection out of the local exchange tariffs, how are calls that terminate within and also outside the LCA in which the VoIP provider is physically located handled?

Q. DOES THE QWEST LANGUAGE PROPERLY REFLECT THE ESP EXEMPTION AND DESCRIBE HOW VOIP CALLS WILL BE TERMINATED UNDER THIS INTERCONNECTION AGREEMENT?

A. Yes. VoIP service that has a net protocol conversion (*i.e.,* originates in broadband and terminates in TDM) qualifies as an "information service" and is entitled to the ESP exemption. Thus, VoIP providers that meet the definition Qwest proposes, whether they buy their connections from Qwest or Level 3, are entitled to receive service pursuant to the ESP exemption, but only in very specific circumstances. Thus, it is important for the Commission to apply the fundamentals of the ESP exemption, and use those concepts in approving definition language that spells out what VoIP traffic is. The language in 7.2.2.12 defines how VoIP traffic is treated in terms of what is a locally terminated VoIP call and what is an inter-exchange VoIP call.

The ESP exemption has a long history with the FCC. It was originally established

at the time access charges were established following the Modified Final Judgment (MFJ) that governed the divestiture of the old Bell System. While establishing the access charge regime in use today for all IXCs, the FCC permitted ESPs to connect its point of presence or "POP" to the local network by purchasing local exchange service products as opposed to tariffed feature group services like FGD that IXCs were (and still are) required to purchase, even though the ESPs used the local exchange facilities for interstate access. Thus, under the exemption, the ESP can order a local service connection to its POP in the same manner as the service can be ordered by other end user customers located within a particular LCA.[6] In other words, under the ESP exemption, the ESP is treated like an end user customer as opposed to an IXC for purposes of obtaining access to a LCA. Within that LCA, the ESP can obtain the same business services that any other end user business can obtain on a retail basis. The effect of the exemption, then, is that unlimited calls may be terminated by the ESP within such LCAs just like a business customer and it will be charged typical retail business rates instead of access charges to do so. But that is the extent of the exemption. For example, to the extent the ESP seeks to terminate calls to customers within the LATA but outside that LCA, the exemption does not apply and the calls will be handed off to the end user customer's (ESP's) Primary Interexchange Carrier ("PIC") choice for delivery to the other LCA. Exhibit LBB-3 depicts the two examples. In LBB-3, I depict the termination of VoIP calls from the Internet through valid routing. When the VoIP provider and

[6] "The [FCC's] primary justification for the intrastate classification [of ISP traffic for separations purposes] matches the language it has used for the ESP exemption. Rather than directly exempting ESP's from interstate access charges, *the Commission defined them as "end users"--no different from a local pizzeria or barber shop*." ACS of Anchorage v. FCC, 290 F.3d 403, 409 (DC Cir. 2002) (Emphasis added).

the end user customer are in the same LCA, the ESP obtains a local connection to the network by purchasing local service from a CLEC in Seattle. In this example, the call is handed off by the ESP within the Seattle LCA for termination to a Qwest end user customer also in the Seattle LCA via the CLECs LIS trunk. The exhibit further shows a call where the ESP is within the Seattle LCA and the Qwest end user customer is located in the Olympia LCA. The call is routed through use of an IXC using FGD trunks for termination to the distant end user customer. This is explained in more detail in the following section.

Q. HOW DOES QWEST'S DEFINITION OF VOIP RELATE TO THE ESP EXEMPTION?

A. If a call originates as a TDM voice call on the PSTN and is then terminated as a voice call on the PSTN, even if handed off for termination from a VoIP provider, this is a TDM-IP-TDM or "IP in the middle" call, which is subject to access charges such as Feature Group D call. The FCC ruled in the *AT&T Declaratory Ruling* that this type of call is not a VoIP call even if at some point during the call it was converted to IP because, before delivery, it was *reconverted* to TDM and delivered over the PSTN.[7] Since, in this proceeding, we are only addressing the calls that Qwest is being asked to terminate on the PSTN under its interconnection agreement, the termination of every call is in TDM over the PSTN. Thus, if the call is *not* originated in IP over a broadband facility, it will be both originating and

[7] Order, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, 19 FCC Rcd 7457, ¶¶ 12-13 (April 14, 2004) (ruling that AT&T's service was a telecommunications service and is subject to access charges) ("*AT&T Declaratory Ruling*").

terminating in traditional PSTN format, thus losing its current status as an enhanced service call, and access charges will apply. The VoIP provider cannot terminate such calls under the ESP exemption.

Q. ASSUMING A CALL PROPERLY ORIGINATES IN BROADBAND AND IS TERMINATED BY A VOIP PROVIDER UNDER THE ESP EXEMPTION, WHAT IS THE EFFECT OF LEVEL 3'S DELETIONS OF QWEST'S PROPOSED LANGUAGE IN 7.2.2.12?

A. By making these deletions, Level 3 is asking the Washington Commission to dramatically modify the FCC prescribed method of treating ESPs. The FCC made its position very clear in the ESP Exemption order:

> "Under our present rules, enhanced service providers are treated as end users for purposes of applying access charges. See 47 C.F.R. § 69.2(m); *Northwestern Bell Telephone Company Petition for a Declaratory Ruling, Memorandum Opinion and Order, 2 FCC Rcd 5986, 5988 at para. 20 (1987),* appeal docketed, No. 87-1745 (D.C.Cir. Dec. 4, 1987). Therefore, enhanced service providers generally pay local business rates and interstate subscriber line charges for their switched access connections to local exchange company central offices."[8]

The FCC was clear on how an ESP would be treated. Level 3's language is a direct attempt to avoid the FCC's ruling. Level 3 seeks to delete Qwest's language in an explicit attempt to avoid access charges when a VoIP terminated call is between

[8] Order, *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, ¶ 2, n.8 (1988) ("*ESP Exemption Order*"). *See also id.* ¶ 20, n. 53 ("Thus, the current treatment of enhanced service providers for access charge purposes will continue. At present, enhanced service providers are treated as end users and thus may use local business lines for access for which they pay local business rates and subscriber lines charges. To the extent that they purchase special access lines, they also pay the special access surcharge under the same conditions as those applicable to end users.").

two LCAs (*i.e.*, avoid access charges on calls that are clearly interexchange in nature). The Qwest language that states that the VoIP Provider's POP will be treated as an end user customer must be incorporated into the agreement because that is precisely the manner in which the ESP exemption operates (under the exemption, the ESP is treated as an end user customer). Thus, Qwest's language that the VoIP Provider's POP will be considered as an end user customer for purposes of determining the end points of the call is essential in order to resolve any doubt that if the call is handed off from an end user in one LCA in the LATA, to be transported and terminated in another LCA, another LATA, to another state, or to another country, the call must be delivered to an IXC and the IXC that transports the call will be responsible for access charges. Otherwise, the interconnection agreement will enable Level 3 to provide a service to ESPs (or to itself, acting as an ESP) that gives it the ability to use Qwest's entire Washington network essentially free of charge to terminate IXC traffic.

Q. CAN YOU SUMMARIZE HOW THE ESP EXEMPTION IS APPLIED IN QWEST PROPOSED LANGUAGE IN 7.2.2.12 AND IN THE QWEST PROPOSED DEFINITION OF VOIP?

A. Yes. For traffic to meet Qwest's VoIP definition it must originate in IP, otherwise it is simply another call originated in TDM that terminates in TDM. Qwest's definition requires that the call originate in IP using IP CPE and be transmitted over a broadband connection to the VoIP Provider. Qwest's definition also limits VoIP as used in the interconnection agreement to an enhanced service. Designating VoIP

as an enhanced service in Qwest's definition makes the PSTN portion of the service subject to interconnection and compensation based on the ESP exemption. This results in treating the VoIP Provider's POP as an end user customer's premises. Therefore, Level 3 may terminate VoIP traffic based on rules that apply to other end user customers, including the requirement that the VoIP Provider's purchase of local service be physically located in the same LCA as the called party. Other types of VoIP calls can also be delivered to Qwest for termination, of course, but since they do not qualify for the ESP exemption, such traffic should be classified as toll traffic and all existing access rules are applicable to it.

Q. WHY DOES QWEST OBJECT TO LEVEL 3'S ATTEMPT TO DELETION OF 7.2.2.12?

A. As Qwest understands Level 3's proposal (which essentially treats *all* VoIP traffic as though it were local traffic) Qwest would receive reciprocal compensation for terminating traffic between two local calling areas if it were received by Level 3 from a VoIP provider. The reciprocal compensation rate, of course, is dramatically less than FGD rates and was never designed for the termination of inter-exchange traffic (reciprocal compensation traditionally applies to the termination of local traffic only). Thus, Level 3's proposal would result in a fundamental restructure of inter-carrier compensation on traffic that, other than the manner in which it was connected to the PSTN through the ESP exemption, looks precisely the same to the PSTN as any other inter-exchange traffic. Level 3 appears to propose that these

traditional means of inter-carrier compensation be completely scrapped in favor of treating all VoIP as though it were local traffic no matter where in the LATA the call is bound. Thus far, Level 3 has not offered any compelling legal reason why VoIP should be given special treatment. There is certainly no good policy reason. It is easy to see why Level 3 wants to change the compensation scheme in such a radical manner; it would allow Level 3 or its VoIP provider customers to avoid charges that other identically-situated IXC carriers must pay. Qwest strongly opposes such an approach.

As the Commission reviews this matter, Qwest suggests that it refuse to consider such an elemental change in inter-carrier compensation. To the PSTN, there is no difference between a typical IXC interexchange call that terminates on the PSTN (and is therefore subject to appropriate access charges) and a VoIP originated call that, once it is converted into TDM, is placed on the PSTN for termination by the VoIP end user between two exchanges. Qwest is unaware of any good reason, let alone a compelling reason, to treat these calls in a completely different manner for inter-carrier compensation purposes. Level 3's proposal to strike the language in 7.2.2.12 should, therefore, be rejected.

Q. CAN YOU DESCRIBE HOW CALLS WITHIN THE LCA WHERE THE VOIP PROVIDER PURCHASES A LOCAL CONNECTION AND CALLS BOUND FOR LOCATIONS OUTSIDE THAT LCA ARE TREATED?

A. Yes. Under current Washington rules, a call by a local subscriber between two

different Washington LCAs is a toll call and must be treated as such.[9] If the ESP wishes to purchase local service under the ESP exemption then this rule applies equally to VoIP traffic delivered to the Qwest switch by the ESP "end user" as well. When a call is originated in IP format on IP-compatible equipment it may traverse the internet over great distances but once it is converted to TDM and is handed off to Qwest within a LCA where the ESP purchased local service, it is treated as any other end user call. And if the call is being sent for termination over the PSTN to another LCA, the ESP is not entitled to free transport to the distant terminating LCA under the ESP exemption or on any other basis. Calls of this sort (calls between two Washington LCAs) are properly classified as interexchange traffic and must be handed off to an IXC, which must connect to Qwest typically via a Feature Group connection. Level 3 can deliver calls from its local customer to Qwest's local customer under the interconnection agreement, but the same local calling area boundaries and access rules apply to Level 3s local customers as well. Assuming a call is a VoIP call, and has been converted from IP protocol to TDM, the call can be delivered to Qwest over Local Interconnection Service (LIS) trunks if, and only if, the hand off to Qwest is for termination of the call within the same LCA as the VoIP provider's POP. Because the VoIP provider (as an ESP) purchases its connection to the local network as an end user customer, the call will be treated as a local call and no access charges would apply if the call is sent to a Qwest end user located in the same LCA as the local calling area where the VoIP provider has purchased local service. Which local telephone company provides the local service is not critical; where the local service is provided is. This call would also be treated

[9] *See, e.g.*, definitions of "Exchange" "Local calling area" "Interexchange" in WAC 480-120-021.

as a local call for 251(b)(5) reciprocal compensation purposes. If Level 3 delivers a call to Qwest for termination at a distant local exchange outside of the LCA where the VoIP provider purchased local service, the call must be delivered to Qwest on FGD by the 'end user' VoIP providers chosen IXC for termination to that other LCA, just like any other end user. The second call example on Exhibit LBB-3 shows a call from a VoIP provider's POP (end user customer) in Seattle who seeks to complete a call to Olympia. In that example the call is handed off to the IXC PICed by the end user customer (or VoIP Provider), and the IXC delivers the call to Olympia over Feature Group D. If the VoIP Provider purchases local service from Qwest in Seattle, then Qwest's switch will recognize the call to Olympia as a toll call and route the call to the appropriate IXC. If the VoIP Provider purchases local service from the Level 3 switch in Seattle then as a local service company, just like Qwest, Level 3 must honor the Commission established local boundaries and Level 3's switch is required to route the call to an IXC.

Q. PLEASE SUMMARIZE QWEST'S BASIC POSITIONS ON VOIP.

A. The first issue is the proper definition of VoIP. Consistent with FCC decisions, there are two key essential features that must be present for a VoIP call: (1) the call must originate on IP-compatible CPE) and (2) it must also originate on a broadband connection, such as DSL, cable modem, or other equivalent high-speed connection to the Internet. If these two criteria are *not* met, then the call cannot be deemed to have a net protocol conversion and cannot be a VoIP call under this interconnection agreement. If the definition is met and a net protocol conversion occurs the VoIP

provider is entitled to a connection to the PSTN by buying local service from either Qwest or Level 3. But the language in 7.2.2.12 must remain to make clear that calls outside that local calling area are treated like the calls of other end users. Both Qwest definition and the provisions in 7.2.2.12 and 7.2.2.12.1 must be retained in the interconnection agreement.

VI. DISPUTED ISSUE 1A: SECTION 7.1.1.1 OPERATION AUDITS

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 1A ?

A. This dispute first highlights the reason that I am addressing the issues in a different order than that presented by Level 3. In its petition and matrix, Level 3 lists Issue 1A as the first of its Tier 1 issues. This single issue number, 1A, has three Qwest proposed paragraphs, and six Level 3 proposed paragraphs dealing with totally unrelated and totally different issues. My testimony in this section will deal with two of the 1A issues, Qwest proposed paragraphs, 7.1.1.1 Verification audits, and 7.1.1.2 VoIP certification. The third Qwest proposed paragraph in Issue 1A is 7.1.1, which deals with points of interconnection. Mr. Easton and Mr. Linse will address that in their testimony along with the six Level 3 proposed paragraphs in Issue 1A.

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR 7.1.1.1?

A. Qwest's proposal for section 7.1.1.1 of the interconnection agreement states:

> 7.1.1.1. CLEC agrees to allow Qwest to conduct operational verification audits of those network elements controlled by CLEC and to work cooperatively with Qwest to conduct an operational verification audit of any other provider that CLEC used to originate, route and transport VoIP traffic

that is delivered to Qwest, as well as to make available any supporting documentation and records in order to ensure CLEC's compliance with the obligations set forth in the VoIP definition and elsewhere in this Agreement. Qwest shall have the right to redefine this traffic as Switched Access in the event of an "operational verification audit failure". An "operational verification audit failure" is defined as: (a) Qwest's inability to conduct a post-provisioning operational verification audit due to insufficient cooperation by CLEC or CLEC's other providers, or (b) a determination by Qwest in a post-provisioning operational verification audit that the CLEC or CLEC's end users are not originating in a manner consistent with the obligations set forth in the VoIP definition and elsewhere in this Agreement.

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.1.1.1?

A. This is somewhat confusing. Apparently because Level 3 does not believe there should be any provision in the contract for audits to assure the traffic is VoIP, Level 3 offers no changes to Qwest's proposed language and simply wants it stricken. Since Level 3 presumably believes the Qwest language will be stricken, Level 3 went ahead and used the same paragraph number, 7.1.1.1, to introduce an unrelated issue dealing with single point of interconnection (SPOI). My testimony will address the *Qwest* proposed 7.1.1.1 dealing with verification audits of VoIP traffic and which will require Commission resolution and a decision on the situations in which Qwest's proposed language in 7.1.1.1 is acceptable. Mr. Easton's testimony will address the SPOI issue. In addressing the dispute with Level 3 over the SPOI, he will address the second proposed paragraph numbered 7.1.1.1 (Level 3's SPOI language).

Q. WHAT IS THE DISPUTE WITH REGARD TO QWEST'S PROPOSED PARAGRAPH 7.1.1.1?

A. Level 3 seeks to strike Qwest language that is necessary so that Qwest can verify

that the traffic that Level 3 identifies as VoIP traffic is valid VoIP traffic entitled to the ESP exemption. Determining whether the traffic is proper VoIP traffic has implications for a determination of whether it qualifies as an information service and whether it is local or interexchange for the application of the appropriate intercarrier compensation regime. Thus, the proper classification of traffic impacts the compensation obligations of both Qwest and Level 3. Only traffic that qualifies as an Enhanced or Information Service is entitled to the FCC's ESP exemption. Only VoIP traffic that originates on broadband in IP can be terminated on the PSTN in TDM protocol under the ESP Exemption. Thus, verification is critical.

First, the Qwest proposed language gives Qwest the right to do a verification audit to assure that the VoIP traffic being delivered to Qwest for termination complies with the definition and obligations of VoIP in this agreement. As discussed above, the definition of VoIP is strongly disputed. Second, the contract makes clear that when traffic does not qualify for the ESP exemption, an exemption that alleviates the requirement to purchase switched access connections to the local network, that Qwest has the right to redefine the non-qualifying traffic as Switched Access. If the traffic does not qualify for the ESP exemption, then the only other connection to the PSTN available is a Feature Group connection such as FGD.

Q. WHAT IS THE FUNDAMENTAL DISPUTE RELATED TO THIS LANGUAGE?

A. Qwest and Level 3 are not in agreement regarding intercarrier compensation for VoIP traffic that does not originate and terminate at physical locations within the

same LCAs. The VoIP compensation issue will be discussed in more detail in Issue 3B of my testimony regarding compensation for ISP Traffic. Level 3 apparently does not agree that Qwest has the right to recognize VoIP traffic as Switched Access in the event of an "operational verification audit failure," because Level 3 takes the position that Switched Access rates should never apply to VoIP traffic, no matter where it originates or terminates.

Q. DOES QWEST BELIEVE THAT OPERATIONAL AUDITS ARE NECESSARY?

A. Absolutely. Qwest believes that audits are necessary to verify the jurisdiction of a call by ensuring that a VoIP call is properly classified for billing purposes according to the location of the originating and terminating points of the PSTN portions of the call. Qwest also believes that audits are necessary to ensure that calls that are classified as VoIP are properly identified as VoIP calls in compliance with the FCC's definition of VoIP, which is the basis of Qwest's proposed definition of VoIP. Again, as discussed above, Level 3's definition of VoIP does not conform to the definition provided by the FCC.

Q. DOES LEVEL 3 OFFER ANY OTHER SOLUTION THAT WOULD ENABLE QWEST TO IDENTIFY VOIP TRAFFIC?

A. No. While Level 3 does not address audits for VoIP traffic, it does state in its Petition that approval of Level 3's proposed definition of "call record" would allow the Parties to identify and account for the exchange of such traffic in a relatively easy process. I can only assume that Level 3 believes such call records are

sufficient verification. As Mr. Linse addresses in his testimony, there is no technical way today to distinguish VoIP traffic from other traffic, and reliance on an optional parameter input by Level 3 is not a solution. Qwest has also found with CLECs in the past, through sampling, that even though some call records indicate a local call, the call in fact has been a toll call, and the records did not indicate that access charges were applicable.

Q. HAVE THE PARTIES AGREED TO AUDIT PROVISIONS ELSEWHERE IN THIS CONTRACT?

A. Yes. As a matter of fact, an entire section, Section 18, of the agreement is devoted to the procedures for auditing "books, records, and other documents used in providing services under this Agreement."[10] In addition to the provisions of Section 18, the parties have agreed to audit provisions for safety audits,[11] service eligibility audits for high capacity combination or commingled facilities,[12] Qwest's loop information,[13] and a comprehensive audit of Qwest's use of CLEC's Directory Assistance Listings.[14]

Q. HAS LEVEL 3 PROPOSED OTHER AUDIT PROVISIONS?

A. Yes. In Level 3's proposed Section 7.3.9, which is covered under Disputed Issue 18, Level 3 includes proposed section 7.3.9.5.1 for auditing of company factors. As

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[10] See Section 18.1.1 of the agreed to language in the proposed contract.

[11] See Section 8.2.3.10 of the agreed to language in the proposed contract.

[12] See Section 9.1.1.10.5 et seq. of the agreed to language in the proposed contract.

[13] see Section 9.2.2.8 of the agreed to language in the proposed contract.

[14] See Section 10.5.2.10.1 of the agreed to language in the proposed contract.

a matter of principle, and as evidenced by the provisions the parties have agreed to, Qwest does not oppose the inclusion of audit provisions, and the audit provision included in disputed Issue 18 is not the reason that Qwest opposes Level 3's proposed language, as Mr. Easton will explain. It is apparent from Level 3's proposal and from the agreed upon language elsewhere in this contract Level 3 does not oppose audits in general. But for reasons yet to be explained, Level 3 opposes the audit provision proposed by Qwest in section 7.1.1.1 dealing with the origination and routing of VoIP calls.

Q. SHOULD THE COMMISSION ADOPT QWEST'S LANGUAGE FOR SECTION 7.1.1.1?

A. Yes. A sound business approach is to trust but include verification provisions within the agreement. Level 3 offers no real arguments against such a proposal. To ensure fair and accurate billing for VoIP traffic, the commission should approve Qwest's proposed language for Section 7.1.1.1.

VII. DISPUTED ISSUE 1A: SECTION 7.1.1.2 CERTIFICATION

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO 7.1.1.2 VOIP CERTIFICATION.

A. The disagreement identified in section 7.1.1.2 is similar to 7.1.1.1. Level 3's Petition is silent on Level 3's opposition to proposed section 7.1.1.2. Qwest's proposed 7.1.1.2 addresses VoIP certification consistent with the VoIP configurations as defined in the agreement. Instead of addressing Qwest's proposed language, Level 3 remains silent on the VoIP certification process and proposes an

entirely new section 7.1.1.2 relating to SPOI.

Q. WHAT IS QWEST'S LANGUAGE PROPOSAL THAT RELATES TO THIS ISSUE?

A. Qwest's proposal for section 7.1.1.2 of the interconnection agreement states:

> 7.1.1.2 Prior to using Local Interconnection Service trunks to terminate VoIP traffic, CLEC certifies that the (a) types of equipment VoIP end users will use are consistent with the origination of VoIP as defined in this Agreement; and (b) types of configurations that VoIP end users will use to originate calls using IP technology are consistent with the VoIP configuration as defined in this Agreement

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.1.1.2?

A. As was the case with section 7.1.1.1, this gets a bit confusing. Apparently Level 3 opposes any provision in the contract for certification of VoIP traffic. Therefore, Level 3 offers no changes to Qwest's proposed language and instead seeks to eliminate it completely. Since again Level 3 presumably assumes the Qwest language will be stricken, Level 3 has used the 'available' number 7.1.1.2 to introduce additional language dealing with single point of interconnection (SPOI). My testimony will address the Qwest proposed 7.1.1.2 dealing with certification of VoIP traffic and which will require Commission resolution one way or the other. Mr. Easton will address the SPOI issue in his testimony.

Q. DOES QWEST BELIEVE THAT CERTIFICATION IS NECESSARY?

A. Yes. As discussed above, Qwest and Level 3 have a fundamental disagreement regarding what qualifies as a VoIP call. Level 3 should be willing (and the

Commission should require Level 3) to certify that VoIP traffic that it sends to Qwest meets the definition established by the FCC.

Q. HAVE THE PARTIES AGREED TO CERTIFICATION LANGUAGE ELSEWHERE IN THIS CONTRACT?

A. Yes. There are many certification provisions included in the agreed upon language in this contract. For example, numerous provisions are included in Section 12 requiring Level 3 to certify that its OSS can properly communicate with and submit orders to Qwest's OSS. In addition, Level 3 must certify that it is entitled to certain high capacity loops or transport UNEs per the Triennial Review Remand Order;[15] Level 3 must certify that it meets service eligibility criteria for high capacity EELs;[16] both parties must certify their service management systems;[17] and Qwest must certify Right of Way ("ROW") agreements to Level 3.[18] Clearly, both parties have agreed to certification obligations elsewhere in this agreement.

Q. SHOULD THE COMMISSION ADOPT QWEST'S PROPOSED LANGUAGE FOR SECTION 7.1.1.2?

A. Yes. The Commission should adopt Qwest's proposed language for section 7.1.1.2.

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15 See Section 9.1.1.4 of the agreed to language in the proposed contract.

16 See Section 9.1.1.10 et. seq. of the agreed to language in the proposed contract.

17 See Section 10.2.3 et. seq. of the agreed to language in the proposed contract.

18 See Section 10.8.2.26 et. seq. of the agreed to language in the proposed contract.

VIII. DISPUTED ISSUE 3 VNXX TRAFFIC

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 3.

A. Level 3 listed three separate issues under Issue 3 denominated as Issues 3a, 3b, and 3c. Issue 3a concerns section 7.3.6.2 of the agreement and involves intercarrier compensation for calls not physically originating and terminating within the same LCA. Issue 3b relates to section IV of the agreement's definition of Virtual NXX or "VNXX traffic." Finally, Issue 3c addresses whether intercarrier compensation is required on VNXX traffic in section 7.3.6.1.

Q. WHAT IS THE DISPUTE REGARDING ISSUE 3B AND THE DEFINITION OF VNXX?

A. Issue 3b involves the definition of VNXX traffic. Although not in the order presented in the Level 3 Petition and matrix, a discussion of the definition of VNXX traffic is necessary in order to understand the core principles of the disputed issues. Understanding the VNXX concept and the types of traffic that should be classified as VNXX is crucial to an understanding of the parties' differences over VNXX issues. An understanding of the definitional differences between the parties is a necessary prerequisite to the later discussion of compensation for local traffic.

Q. WHAT IS VNXX TRAFFIC?

A. In short, VNXX is an arrangement that provides the functionality of toll or 8XX service, but at no extra charge. An NXX code, commonly referred to as a prefix, is the second set of three digits of a ten-digit telephone number (NPA-**NXX**-XXXX).

These three digits (NXX) are assigned to and indicate a specific central office from which a particular customer is physically served. In other words, in the number (206) 345-XXXX, the “345” prefix is assigned to a specific central office in the (206) area code and thus identifies the general geographic area in which the customer is located. A “virtual” NXX, or VNXX undercuts that concept because it results in a carrier-assigned NXX associated with a particular central office, even though the carrier has no customers physically located in the geographical area of that central office or exchange. Instead, these telephone numbers are assigned to a customer physically located outside the LCA of the central office associated with the particular NXX. With VNXX, the physical location of the CLEC customer is in most cases in a LCA that would require a toll call from the LCA with which the telephone number is associated. This scheme requires the assignment of a "virtual" NXX. The NXX is labeled "virtual" because it is an assigned number that tells callers that it is in the *calling party's* LCA, rather than the *called* party's LCA. In other words, a call to the ""virtual" NXX looks like a local call within the LCA to which the VNXX number appears to be assigned; but in reality the call is not a local call. Instead, the call is terminated in a different LCA, and perhaps even in a different state. Exhibit LBB-4 attached hereto demonstrates visually how VNXX circumvents the proper numbering plan.

VNXX has become an issue because CLECs, like Level 3 in Washington, obtain local numbers from the North American Numbering Plan Administrator (“NANPA”) in various parts of a state that are actually assigned to its customers (*i.e.*, ISPs) with no physical presence whatsoever in the LCA with which the local

numbers are associated; thus, the traffic directed to those numbers is, instead of being routed to customer in the same LCA as the calling party, routed to one of the points of interconnection ("POIs") of the CLEC and is then terminated with the CLEC's ISP customer at a physical location in another LCA or even in another state.

Q. IS THE VNXX ISSUE CONNECTED TO THE SINGLE POINT OF INTERCONNECTION (SPOI) ISSUE?

A. Yes. In the early 2000s CLECs argued that they should be entitled to serve a LATA from a single switch rather than placing switches in numerous LCAs in order to offer local service. Qwest agreed and has offered such a form of interconnection (SPOI) for several years. If a CLEC provides local service from a single switch within a LATA, it is entitled (because it is a CLEC) to be assigned NXXs for LCAs both near and far from the switch. The manner in which those NXXs are used is a critical matter. If a CLEC is assigned an NXX and it has constructed or leases loops to retail subscribers located within the LCA of the NXX, that is consistent with the intended use of the assigned NXX (i.e., to allow the CLEC to provide local exchange service to customers located within that LCA). But if a CLEC is assigned an NXX from a distant LCA and it creates a primary line of business that creates a deliberate misimpression that, from a carrier-to-carrier perspective, toll free calling is really conventional local calling, then that is an unintended and inappropriate use of the assigned NXX.

Q. WHAT IS QWEST'S PROPOSAL FOR ISSUE 3B, DEFINITION FOR

VNXX TRAFFIC?

A. Qwest proposes the following definition of VNXX Traffic:

> "VNXX Traffic" is all traffic originated by the Qwest End User Customer that is not terminated to CLEC's End User Customer physically located within the same Qwest Local Calling Area (as approved by the state Commission) as the originating caller, regardless of the NPA-NXX dialed and, specifically, regardless of whether CLEC's End User Customer is assigned an NPA-NXX associated with a rate center in which the Qwest End User Customer is physically located.

Q. WHAT IS LEVEL 3'S PROPOSAL FOR ISSUE 3B, DEFINITION FOR VNXX TRAFFIC?

A. Level 3's proposes 3 paragraphs for the definition of VNXX traffic:

> VNXX Traffic shall include the following:
>
> **ISP-bound VNXX traffic** is telecommunications over which the FCC has exercised exclusive jurisdiction under Section 201 of the Act and to which traffic a compensation rate of $0.0007 / MOU applies. ISP-bound VNXX traffic uses geographically independent telephone numbers ("GITN"), and thus the telephone numbers associated with the calling and called parties may or may not bear NPA-NXX codes associated with the physical location of either party. This traffic typically originates on the PSTN and terminates to the Internet via an Internet Service Provider ("ISP").
>
> **VoIP VNXX** traffic is telecommunications over which the FCC has exercised exclusive jurisdiction under Section 201 of the Act and to which traffic a compensation rate of $0.0007 / MOU applies. VoIP VNXX traffic uses geographically independent telephone numbers ("GITN"), and thus the telephone numbers associated with the calling and called parties may or may not bear NPA-NXX codes associated with the physical location of either party. Because VoIP VNXX traffic originates on the Internet, the physical location of the calling and called parties can change at any time. For example, VoIP VNXX traffic presents billing situations where the (i) caller and called parties are physically located in the same ILEC retail (for purposes of offering circuit switched "local telephone service") local calling area and the NPA-NXX codes associated with each party are associated with different ILEC

LCAs; (ii) caller and called parties are physically located in the same ILEC retail (for purposes of offering circuit switched "local telephone service") local calling area and the NPA-NXX codes associated with each party are associated with the same ILEC LCAs; (iii) caller and called parties are physically located in the different ILEC retail (for purposes of offering circuit switched "local telephone service") local calling area and the NPA-NXX codes associated with each party are associated with same LEC LCAs; and (iv) caller and called parties are physically located in the different ILEC retail (for purposes of offering circuit switched "local telephone service") local calling area and the NPA-NXX codes associated with each party are associated with different ILEC LCAs. Examples of VoIP VNXX traffic include the Qwest "One Flex" service and Level 3's (3)VoIP Enhanced Local service.

Circuit Switched VNXX traffic is traditional "telecommunications services" associated with legacy circuit switched telecommunications providers, most of which built their networks under monopoly regulatory structures that evolved around the turn of the last century. Under this scenario, costs are apportioned according to the belief that bandwidth is scarce and transport expensive. The ILEC offers to a customer the ability to obtain a "local" service (as defined in the ILEC's retail tariff) by paying for dedicated transport between the physical location of the customer and the physical location of the NPA-NXX. Thus, this term entirely describes a service offered by ILECs, but which cannot be offered by IP-based competitors as such networks do not dedicate facilities on an end-to-end basis.

Q. WHAT IS THE BASIC DIFFERENCE BETWEEN THE TWO COMPANIES' DEFINITIONS OF VNXX?

A. Both sides agree that a VNXX call originates in one LCA and terminates in another. In addition, both Level 3 and Qwest agree that, with VNXX, the physical location of the end user customer who is being called bears no relationship to the local number that is assigned to the call. For example, Qwest's definition defines VNXX traffic as "traffic…that is not terminated to CLEC's End User Customer physically located within the same Qwest LCA …. as the originating caller, regardless of the NPA-NXX dialed." Level 3's definition states that "VNXX traffic uses

geographically independent telephone numbers ("GITN"), and thus the telephone numbers associated with the calling and called parties may or may not bear NPA-NXX codes associated with the physical location of either party."

What the parties do not agree on is the means of compensation or appropriate trunking for VNXX traffic. For instance, Level 3 adds "compensation" language into the definition on the assumption that reciprocal compensation applies to VNXX traffic, attempting to set the compensation rate[19] for a call originating in one LCA and terminating in a different one. Thus, as noted above, under Level 3's proposal, instead of Qwest recovering the cost of delivering the traffic, Qwest would deliver the traffic for free and then pay Level 3 to terminate the traffic. In other words, Level 3 proposes a fundamental change in intercarrier compensation for VNXX traffic.

Level 3's language is improper for several reasons. First, because the purpose of this section is to define VNXX traffic is; its purpose is not to set rates, and second, and of critical importance, Level 3's proposed definition of VNXX would convert toll calls to local calls, and change the Commission's defined LCAs. For example, Level 3's language would enable a customer physically located in the Seattle LCA to have a Olympia telephone number, so that calls to and from that person by local subscribers in Olympia would be treated as local calls even though they are routed over the PSTN to Seattle just like other toll calls. This is improper because, among other reasons, Level 3 wants to shift all of the costs of this arrangement to Qwest.

[19] If the Commission were to adopt Level 3's proposed definition, it would then mandate reciprocal compensation payments at the local ISP rate of $.0007 and would completely eliminate the concept of a toll call with regard to this traffic.

Q. LEVEL 3'S DEFINITION CONTAINS THREE CATEGORIES OF VNXX TRAFFIC. DO YOU AGREE WITH "CATEGORIES" IN REGARD TO VNXX CALLS?

A. No. The ISP and VoIP paragraphs of Level 3's definition are essentially the same for both categories. For example, both sections state that "VNXX traffic uses geographically independent telephone numbers…not associated with the physical location of either party…" In the VoIP section above, I stated that it appears that Level 3 wants to treat all VoIP traffic as if it were local and it is through this definition that it attempts to do so. Both the ISP and VoIP sections attempt to impose "the compensation rate of $0.0007/MOU" on this interexchange traffic. The only actual difference between the paragraphs is the claim that an ISP VNXX call originates on the PSTN and terminates to an ISP while VoIP VNXX calls originate on the Internet and terminate to an end customer on the PSTN. These comments, however, do not change the actual definition of what constitutes VNXX traffic. The categories (ISP or VoIP) are irrelevant to establishing the VNXX definition which deals with the geographic location of customers and NXX numbers.

Level 3's third category is both unnecessary and out of place in this section. Labeled "Circuit Switched VNXX traffic," the alleged definition contains only Level 3's biased legal opinion regarding "traditional 'telecommunications services.'" This language looks far more like a section from a legal brief than a contract provision. The language does not add any substance to the definition of

VNXX traffic and is obviously extraneous to the subject matter of this section of the contract.

On the whole, Level 3 is attempting to create distinctions where none exist in order to avoid the existing intercarrier compensation mechanisms—in effect to avoid costs that other carriers pay and replace them with revenues. All three proposed categories of VNXX are based on the termination of a call being physically located in a different LCA. The labeled distinctions are irrelevant to the definition of VNXX and only confuse the language and the underlying issues.

Q. IF A VNXX CALL IS PLACED TO AN ISP OR TO A PSTN END USER CUSTOMER AS A VOIP TERMINATION, DOES THE CALL CLASSIFICATION CHANGE TO A LOCAL CALL?

A. The type of business of an end user customer does not affect whether a call is local or not. If an end user customer is located in Olympia (and the ISP's modems and routers are physically located in Seattle, and the ESP has not purchased local service in Olympia, but whose number is an Olympia NPA NXX) logs onto the Internet, the call to the ISP telephone number is not a local call because it originates in Olympia and terminates in Seattle.[20] It makes no difference if the call is to an ISP, a hardware store, or a restaurant in Seattle, because it is a call that originates in Olympia and terminates in Seattle. The location of the calling and called parties determines the nature of the call, not the business type. Despite Level 3's effort to, in effect, say that black is white, a toll call is a toll call. Level 3's avoidance of that

[20] Olympia is in a different LCA than Seattle.

fact is demonstrated by its creation of VNXX categories. ISP, VoIP or circuit based VNXX calls do not change a toll call into a local call. This language does not belong in the contract anywhere, including in the definition of VNXX.

Q. IF ISP TRAFFIC AND VOICE TRAFFIC ARE TREATED THE SAME FOR THE VNXX DEFINITION, HOW IS A CALL DETERMINED TO BE LOCAL OR TOLL?

A. In regard to defining VNXX traffic, ISP traffic should be treated no differently than voice traffic. In determining if a call is local or toll, the location of the origination and termination is the decisive factor: calls that physically originate and terminate within the same LCA are rated as local calls. The ESP POP is the point of termination (for an ISP) and origination (for terminating VoIP). Calls routed through a point of interface, which are delivered to an end user (such as an ISP) **outside** of the originating LCA, are interexchange calls. VNXX services that deliver traffic to an ISP whose Internet equipment that controls the ISP call for its duration (e.g., modems, servers, and routers) is not located within the same LCA as the originating LCA are simply interexchange toll calls and must remain subject to the access charge provisions that govern interexchange toll traffic. In the case of VoIP calls, where a VoIP Provider's POP is in one LCA, say Seattle, and the VoIP Provider's CLEC, for example Level 3, wants to deliver a call on behalf of its end user customer (the VoIP Provider) to an end user customer in Olympia, Level 3 should hand that call to an "intraLATA" toll provider for termination. Level 3's definitional language attempts to say this is a toll call or not depending on to whom the call is placed. Again, a toll call is a toll call. Qwest's definition of VNXX

traffic is clear, concise, and accurate, while Level 3's definition unnecessarily complicates the issue. Qwest's language should be adopted.

Q. IN ITS PETITION LEVEL 3 REFERS TO ITS VNXX PRODUCT AS AN "FX LIKE" PRODUCT. IS VNXX LIKE FOREIGN EXCHANGE (FX) SERVICE?

A. No. Level 3's VNXX product uses the PSTN to route and terminate calls to end user customers connected to the PSTN in another LCA. In all respects, except the number assignment, the call is routed and terminated as any other toll call. Qwest's FX product, on the other hand, delivers the FX calls within the LCA where the number is actually associated. In other words, a Qwest FX customer actually purchases a local exchange service connection in the LCA associated with the telephone number. That local service connection is purchased by the FX customer out of the local exchange tariffs that apply to that LCA. The calls are then transported on what is, in effect, the end user customer's private network (a private line service provided at retail/tariffed rates) to another location. In other words, after purchasing the local connection in the LCA, the FX customer bears full financial responsibility to transport it to the location where the call is actually answered. It does this at tariffed rates. Qwest, and other telephone companies, have been selling such private line services to PBX owners and other customers for decades. Calls are delivered to the customer's PBX and any call delivery behind the PBX is, for purposes of transport to the customer's actual location, carried on the owner's private network. Qwest and other telephone companies delivered the call to the PBX location. Private transport beyond that is the business of and

financial responsibility of the PBX owner.

Level 3's approach is fundamentally distinct from FX service. Under FX, the customer who desires a presence in another LCA purchases local service in that LCA and is fully responsible to transport the traffic to the location where it wants the call answered. Under Level 3's proposal, Level 3 wants the call routed over the PSTN, but feels no responsibility to provide actual local exchange service to its customer in that LCA or for providing the transport to the distant location. In calling its product an FX-like product, Level 3 attempts to confuse this critical distinction. Calls over the PSTN between communities that use the toll network are toll calls no matter how the numbers are assigned. Calls delivered to end user customers within a LCA and transported over private networks are more than a mere technical distinction. It is consistent with the way commissions have been distinguishing between toll and local calls for decades.

ISSUE 3A RECIPROCAL COMPENSATION FOR VNXX

Q. PLEASE DESCRIBE ISSUE 3A AND WHAT THE PARTIES DISPUTE IN THIS ISSUE.

A. Now that the distinction between a local call and VNXX has been established, Issue 3a can be addressed. Qwest's position is clear. VNXX calls are not local calls subject to reciprocal compensation payments under 251(b)(5). Qwest's proposed language makes clear that Qwest will not treat VNXX calls as local and will not pay local reciprocal compensation on such VNXX traffic. Level 3 attempts to cast this issue as to whether Qwest may exclude ISP traffic from compensation due

under the FCC's *ISP Remand Order* through contract terms that identify geographic designations based on LCAs. A call from a customer in Seattle to a customer located in Miami, Florida is a toll call, regardless of the telephone number dialed. The fact that the customer at the other end of that toll call is an ISP does not magically change the call into a local call. And a VNXX call to an ISP physically located in Seattle, but with an Olympia NPA NXX, placed by an end user customer in Olympia is not a local call either. However, Qwest also makes clear that Qwest *will* pay reciprocal compensation, a charge for terminating local traffic, on traffic that actually originates and terminates at physical locations within the same LCA, as established by the Commission. Qwest also makes clear that calls that originate and terminate at locations in different LCAs are not local calls and not entitled to reciprocal compensation. The "VNXX" number is not and should not be determinative. And, of course, as stated earlier, if the VNXX call is an ISP call, no reciprocal compensation is due, just as it would not be due on a typical voice call. The fact that the call is ISP grants it no special status, legal or otherwise.

Qwest's language in consistent with the ruling of the First Circuit Court of Appeals in its recent decision, *Global NAPs v. Verizon New England Inc.,* 444 F.3d 59, 2006 WL 924035 (1st Cir. April 11, 2006), where the court ruled conclusively that the compensation regime of the *ISP Remand Order* applies only to local ISP traffic. VNXX ISP traffic continues to fall under state and federal access charge regimes. Level 3's language is based on a fundamental misinterpretation of the *ISP Remand Order*, a misunderstanding that was dispelled by the *Global NAPs* decision.

Q. WHAT IS QWEST'S LANGUAGE PROPOSAL FOR ISSUE 3A, SECTION 7.3.6.3?

A. Qwest's proposal for Section 7.3.6.3 of the interconnection agreement states:

> 7.3.6.3 Qwest will not pay reciprocal compensation on VNXX traffic.

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.3.6.3?

A. Level 3's counter-proposal for Section 7.3.6.3 is set forth:

> 7.3.6.3 If CLEC designates different rating and routing points such that traffic that originates in one rate center terminates to a routing point designated by CLEC in a rate center that is not local to the calling party even though the called NXX is local to the calling party, such traffic ("Virtual Foreign Exchange" traffic) shall be rated in reference to the rate centers associated with the NXX prefixes of the calling and called parties' numbers, and treated as 251(b)(5) traffic for purposes of compensation.

Q. LEVEL 3 STATES THAT QWEST IS PROPOSING TO EXCLUDE ISP TRAFFIC FROM COMPENSATION DUE IT UNDER THE FCC'S ISP REMAND ORDER. DO YOU AGREE?

A. No. First, Qwest agrees that, under the *ISP Remand Order* and consistent with *Global NAPs* (and until addressed more definitively by the FCC), terminating compensation under the *ISP Remand Order's* compensation regime is due only on calls placed to an ISP in the same LCA as the calling party. In the Amicus Curiae brief filed by the FCC in the *Global NAPs* case, the FCC was clear that it has not ruled that all ISP traffic is subject to intercarrier compensation. Indeed, quite the opposite. After the *Global NAPs* case was fully briefed and argued by the parties, the First Circuit panel took the unusual step of seeking input from the FCC on

several questions related to VNXX traffic, including whether the FCC has made a final decision on how VNXX should be handled. On that issue, the FCC stated: "The Commission itself has not addressed application of the *ISP Remand Order* to ISP-bound calls outside a local calling area. Nor has the Commission decided the implications of using VNXX numbers for intercarrier compensation more generally." (*Amicus Brief,* at pp. 10-11). Thus, the FCC has not made a determination on how it will deal with VNXX traffic.

Level 3's fundamental argument is that the *ISP Remand Order*, read in combination with the *Core Forbearance Order,*[21] requires that intercarrier compensation must be paid on *all* ISP traffic, including VNXX ISP traffic.[22] *Global NAPs* conclusively demonstrates that Level 3's position is wrong.

Q. DOES LEVEL 3 ALSO CONFUSE THE ISSUE OF ISP TRAFFIC WITH VNXX ISSUES?

A. Yes. VNXX is not just a phenomenon associated with ISP calls, although it is in that context that VNXX issues usually arise. A VNXX call can be to an ISP such as AOL located in another town or to a voice customer such as the local hardware store in that other town. VNXX arrangements can exist for both ISP and voice traffic. The issue of VNXX traffic (whether ISP or other types of traffic) has not been substantively addressed by the FCC, but it has been extensively litigated

[21] Order, *Petition of Core Communications for Forbearance Under 47 USC § 160(c) from the Application of the ISP Remand Order*, Order FCC 04-241 WC Docket No. 03-171 (rel. October 18, 2004) ("*Core Forbearance Order*").

[22] Level 3 Petition pages 26-27.

before many state commissions. The majority of state commissions have ruled that traffic, whether voice or ISP traffic, which does not physically originate and terminate in the same LCA is not subject to reciprocal compensation under existing interconnection agreements. Here, however, the issue is not the interpretation of an existing interconnection agreement, but what the language of a new agreement should provide. In this case, Level 3 is asking the Commission to require local reciprocal compensation for non-local calls, deviating from the policy that reciprocal compensation is recoverable only for the termination of "local" traffic (as defined by state commission tariffs). In that regard, language from the *ISP Remand Order* that the court in *Global NAPs* relied upon is instructive:

> Congress preserved the pre-Act regulatory treatment of all the access services enumerated under Section 251(g). These services thus remain subject to Commission jurisdiction under Section 201 (or, to the extent they are *intra*state services, they remain subject to the jurisdiction of state commissions), whether those obligations implicate pricing policies as in *Comptel* or reciprocal compensation. *This analysis properly applies to the access services that incumbent LECs provide (either individually or jointly with other local carriers) to connect subscribers with ISPs for Internet-bound traffic.*[23]

The FCC was focused upon problems unique to the compensation mechanism that applied to traffic where the ISP was located in the same LCA. Level 3 attempts to inject language that "ISP-bound" VNXX traffic is subject to ISP compensation, and argues that the FCC changed the access charge structure and issued an exemption for "all" calls sent to the Internet, regardless of where the call originates and terminates. While the FCC has opened a docket to scrutinize these issues as a part

[23] *ISP Remand Order* ¶ 39 (emphasis added, footnote omitted).

of an overall examination of intercarrier compensation,[24] the applicable law has not changed. Until the FCC takes further action in its intercarrier compensation docket, and particularly in light of *Global NAPs*, expanding reciprocal compensation to include calls from across the state or country would be unlawful.

Q. LEVEL 3 ARGUES THAT THERE IS NO COST DIFFERENCE IN TERMINATING ISP AND NON ISP CALLS. PLEASE RESPOND.

A. Level 3 argues that its cost to terminate an ISP call is not different than the cost to terminate a non ISP call. Qwest has never suggested that there is a cost difference to Level 3 and, whether there is or is not a difference, the question is completely irrelevant. The question before the Commission is not the cost of termination, but whether a CLEC, by serving ISPs, may gather traffic from multiple LCAs at no cost to itself (remember that Level 3 also claims it should pay no costs on Qwest's side of the POI) and then be able to charge Qwest for terminating *all* of that traffic, whether it is local or not. As many other state commissions that have addressed the issue have concluded and as the FCC clearly concluded in the *ISP Remand Order*, requiring reciprocal compensation on ISP traffic leads to uneconomic arbitrage and windfall revenues.

Q. WHY SHOULD QWEST'S LANGUAGE BE ADOPTED?

A. Reciprocal compensation as used in the Act is the charge to terminate "local" traffic. Under Qwest's definition, VNXX traffic (the issue discussed in 3b above) is traffic that originates and terminates at physical locations that *are not* within the

[24] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610 (2001) ("*Intercarrier Compensation NPRM*").

same LCA. Even Level 3's definition of VNXX recognized that the call would originate in one LCA and terminate in another LCA. While acknowledging the true nature of VNXX calls, Level 3's proposal attempts to produce a major change in compensation policy by requesting that the Commission nevertheless eliminate access charges on such traffic and require the payment of compensation for terminating the traffic. Such a dramatic change in policy should not be approved by the Commission. Indeed, it should not even been considered without full input by all interested parties, including Staff, independent LECs, CLECs, and IXCs. It certainly should not be ordered in a two-party arbitration proceeding.

Q. WHY DOES QWEST BELIEVE ITS LANGUAGE SHOULD BE ADOPTED?

A. Carriers seeking to receive reciprocal compensation on VNXX services are attempting to redefine existing tariffed services and Commission-established local boundaries and categorize them in a unique way in an attempt to collect reciprocal compensation and avoid access charges. These VNXX numbers, and the facilities that would be used to connect to locations where such calls would be terminated, are interexchange in nature and are therefore not subject to reciprocal compensation. By attempting to fool the systems with a local number, the call detail itself would not indicate that any compensation associated with this interexchange or toll call should be made. The assignment of telephone numbers in the VNXX manner should not result in inter-exchange calls between two communities not in the same LCA to masquerade as local calls.

ISSUE 3C: RECIPROCAL COMPENSATION FOR ISP TRAFFIC

Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES IN ISSUE 3C?

A. In Issue 3b the definition of VNXX traffic was discussed. Issue 3a dealt with Level 3's claim that VNXX traffic should be subject to reciprocal compensation. There was no distinction made by Level 3 between a voice call and an ISP call; Level 3's language unlawfully tries to include VNXX in the category of calls entitled to reciprocal compensation. Qwest's proposed language made clear that VNXX traffic was not local traffic subject to reciprocal compensation. Now in Issue 3c the language addresses the payment of reciprocal compensation for ISP traffic generally.

Q. WHAT IS QWEST'S LANGUAGE PROPOSAL FOR ISSUE 3C, SECTION 7.3.6.1, INTERCARRIER COMPENSATION FOR ISP BOUND TRAFFIC?

A. Qwest proposal for the definition of Section 7.3.6.1 is as follows:

> 7.3.6.1 Subject to the terms of this Section, intercarrier compensation for ISP-bound traffic exchanged between Qwest and CLEC (where the end users are physically located within the same Local Calling Area) will be billed as follows, without limitation as to the number of MOU ("minutes of use") or whether the MOU are generated in "new markets" as that term has been defined by the FCC:
>
> $.0007 per MOU or the state ordered rate, whichever is lower.

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR ISSUE 3C, SECTION 7.3.6.1, INTERCARRIER COMPENSATION FOR VNXX TRAFFIC?

A. Level 3's counter-proposal for the definition of Section 7.3.6.1 is as follows:[25]

[25] The language for Section 7.3.6.1 filed with Qwest's Response to the Petition inadvertently excluded the particular phrase "(where the end users are physically located within the same Local Calling Area)". The language in my testimony is the correct language.

7.3.6.1 Intercarrier compensation for ISP-bound traffic Section 251(b)(5) traffic, and VoIP traffic exchanged between Qwest and CLEC will be billed and paid without limitation as to the number of MOU ("minutes of use") or whether the MOU are generated in "new markets" as that term has been defined by the FCC in the ISP Remand Order at a rate of $.0007 per MOU.

Q WHY DOES QUEST OBJECT TO LEVEL 3'S PROPOSED LANGUAGE IN 7.3.6.1?

A. Qwest's major objection is that Level 3's language violates existing law. Level 3's language includes the insertion of additional types of traffic into the paragraph for which it wants to receive reciprocal compensation at the rate of $.0007. The two additional types of traffic are the imprecise reference to "section 251(b)(5) traffic" as well as "VoIP traffic." As I explain below, by proposing this definition, Level 3 is attempting, in effect, to obtain a decision from the Washington Commission that access rates do not apply to any Level 3 traffic in Washington.

Q. HOW IS LEVEL 3 ATTEMPTING TO ELIMINATE ACCESS CHARGES IN WASHINGTON?

A. In Section 7.3.6.1, Level 3 proposes language saying the rate of $.0007 shall apply to "251(b)(5) traffic." But it is impossible to find out from Level 3's contract language what this means because it never defines the term, except to say in its definition of "interconnection" that the exchange of "Jointly Provided Switched Access (InterLATA and IntraLATA) traffic" is not section 251(b)(5) traffic. On the other hand, in Level 3's proposed section 7.3.6.3, VNXX traffic is explicitly included in the definition of section 251(b)(5) traffic. Thus, by including all VNXX traffic in the definition, Level 3 attempts to avoid access charges for VNXX traffic.

Likewise, by including all VoIP traffic in the definition of section 251(b)(5) traffic, Level 3 asserts that VoIP traffic should never, under any circumstance, be subject to access charges. Level 3 thus believes that access charges should not apply to originating VNXX and terminating VoIP traffic, even for calls outside the LCA. Thus it has attempted in several places to insert language into the agreement that would completely exempt Level 3 from those charges. These are not just minor tweaks to contract language that are of little consequence; rather, it represents a dramatic change in intercarrier compensation from the mechanisms that govern the relationships between carriers.

IX. DISPUTED ISSUE 4: COMPENSATION FOR VOICE AND VoIP TRAFFIC

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 4.

A. At its core, this is also a dispute over VNXX calls. Qwest agrees to pay reciprocal compensation on local VoIP calls where the end user customers are physically located in the same LCA, but not if they are located in different LCAs. While the disputed language in section 7.3.6 dealt with ISP traffic, the language in dispute in this issue, section 7.3.4, deals with the exchange of local voice and VoIP traffic. In this issue, section 7.3.4 deals with the exchange of local voice and VoIP traffic. Again, VNXX is the central issue because Level 3 proposes in its language that the compensation for local voice and VoIP calls also apply as long as the NXX codes are associated with the same LCA, with no requirement that the end user customers actually be physically located within the same LCA. The Level 3 language simply attempts to have the Commission amend its access rules and impose reciprocal compensation for VNXX calls that are from outside the LCA.

Q. WHAT IS QWEST'S LANGUAGE PROPOSAL FOR SECTION 7.3.4.1?

A. Qwest's proposal for Section 7.3.4.1 is set forth below:

> 7.3.4.1 Intercarrier compensation for Exchange Service (EAS/Local) and VoIP traffic exchanged between CLEC and Qwest (where the end users are physically located within the same Local Calling Area) will be billed at $.001178.
>
> 7.3.4.2 The Parties will not pay reciprocal compensation on traffic, including traffic that a Party may claim is ISP-Bound Traffic**,** when the traffic does not originate and terminate within the same Qwest local calling area (as approved by the state Commission), regardless of the calling and called NPA-NXXs and, specifically regardless of whether an End User Customer is assigned an NPA-NXX associated with a rate center different from the rate center where the customer is physically located (a/k/a "VNXX Traffic"). Qwest's agreement to the terms in this paragraph is without waiver or prejudice to Qwest's position that it has never agreed to exchange VNXX Traffic with CLEC.

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.3.4.1?

A. Level 3's proposal for Section 7.3.4.1 is set forth:

> 7.3.4.1 Subject to the terms of this Section, intercarrier compensation for Section 251(b)(5) Traffic where originating and terminating NPA-NXX codes correspond to rate centers located within Qwest defined local calling areas (including ISP-bound and VoIP Traffic) exchanged between Qwest and CLEC will be billed as follows, without limitation as to the number of MOU ("minutes of use") or whether the MOU are generated in "new markets" as that term has been defined by the FCC: $.0007 per MOU.

Q. IS THERE ALSO A DISPUTE ABOUT THE RATE THAT IS PAID?

A. Yes. The Qwest proposed rate in my testimony reflects the rate of $.001178 established by the Commission for voice traffic. The FCC did nothing to take away the state commissions' right to set the voice rate for reciprocal compensation.

Level 3 thinks a different rate, $.0007, should apply and not the rate established by the Washington Commission. In addition, Level 3 again tries to insert 251(b)(5) language, which, based on the discussion above, includes toll. Level 3 also attempts to include any VNXX calls by tying the traffic to the NPA-NXX, and not to the towns where the customers reside.

Nonetheless, under the mirroring rule of the *ISP Remand Order*, Level 3 may choose to exchange all traffic properly subject to reciprocal compensation at the lower $.0007 rate that applies to local ISP traffic. However, it is Level 3 that must make this election. If it does make that election, then Qwest agrees that the $.001178 rates in Qwest's proposed section 7.3.4.1 should be changed to $.0007.

Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE OVER THE LEVEL 3 LANGUAGE?

A. I will not repeat the arguments on this issue. I addressed them in the VNXX definition section, as well as the compensation for ISP issue. In both instances, Level 3 sought to expand the definition of 251(b)(5) traffic to include calls from outside the LCA if the terminating party had an assigned NXX associated with the local exchange of the calling party. Level 3 is attempting through its language in 7.3.4.1 to do the same thing for voice and VoIP calls. Qwest's language makes clear that VNXX traffic, including voice and VoIP VNXX traffic, is not local and is not subject to reciprocal compensation rules for local traffic. Level 3's attempt to change the FCC's orders and redefine 251(b)(5) to include toll is also addressed in Issues 10 and 19.

X. DISPUTED ISSUE 19: ISP BOUND 3:1 RATIO, Section 7.3.6.2

Q. WHAT IS THE DISPUTED LANGUAGE FOR SECTION 7.3.6.2?

A. The disputed language for Section 7.3.6.2 is as follows:

> 7.3.6.2 Identification of ISP-Bound Traffic – ~~**unless the Commission has previously ruled that Qwest's method for tracking ISP-Bound Traffic is sufficient,**~~ Qwest will presume traffic delivered to CLEC that exceeds a 3:1 ratio of terminating (Qwest to CLEC) to originating (CLEC to Qwest) traffic is ISP- Bound traffic. Either party may rebut this presumption by demonstrating the factual ratio to the state Commission. **Traffic exchanged that is not ISP-Bound Traffic will be considered to be Section 251(b) (5) traffic.**

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO THE LANGUAGE IN SECTION 7.3.6.2.

A. There are two issues in regard to Section 7.3.6.2. In the first instance Level 3 seeks to strike language dealing with the situation where a State Commission has previously ruled on what is an appropriate method of tracking ISP-bound Traffic. I show this disputed language above in ~~**strike through text**~~. The second issue deals with Level 3's attempt to insert additional language in the section dealing with 3:1 ratio such that there would be a presumption that all traffic exchanged between Qwest and Level 3 that is not ISP-bound traffic is 251(b)(5) traffic. I show this proposed Level 3 change in **underlined text**. I will address each of these issues separately.

Q. WHY DID QWEST INCLUDE THE LANGUAGE IN THE FIRST PART OF SECTION 7.3.6.2 THAT LEVEL 3 WANTS STRIKEN?

A. The language at issue, "*unless the Commission has previously ruled that Qwest's method for tracking ISP-Bound Traffic is sufficient"* is language proposed by Qwest for all states. Qwest's proposed language simply provides that *if* a Commission has previously ruled that Qwest's method of identifying actual ISP-bound traffic is sufficient, then that method of identifying actual local and ISP minutes should be employed instead of the presumption formula. The FCC gave this right to both parties as part of the decision in the ISP Remand Order establishing the 3:1 ratio.

> "A carrier may rebut the presumption, for example, by demonstrating to the appropriate state commission that traffic above the 3:1 ratio is in fact local traffic delivered to non-ISP customers. In that case, the state commission will order payment of the state-approved or state-arbitrated reciprocal compensation rates for that traffic. Conversely, if a carrier can demonstrate to the state commission that traffic it delivers to another carrier is ISP-bound traffic, even though it does not exceed the 3:1 ratio, the state commission will relieve the originating carrier of reciprocal compensation payments for that traffic, which is subject instead to the compensation regime set forth in this Order".[26]

Qwest has brought this issue up elsewhere and has successfully rebutted the 3:1 presumption. In Washington, because Qwest has not yet brought this matter before the Commission, the Commission has not yet ruled on Qwest's method of identifying ISP traffic. Because Level 3 does not object to the language "Either party may rebut this presumption by demonstrating the factual ratio to the state Commission", Qwest has no objection to the language '**~~unless the Commission has previously ruled that Qwest's method for tracking ISP-Bound Traffic is~~**

[26] *ISP Remand Order*, ¶ 79.

~~**sufficient,'**~~ being struck.

Q. WHY DOES QWEST OBJECT TO LEVEL 3'S INSERTION OF LANGUAGE AT THE END OF SECTION 7.3.6.2?

A. This is simply another manifestation of Level 3's roundabout effort to reclassify all of its traffic and eliminate access charges. By making what at first blush is a seemingly harmless insertion ("**Traffic exchanged that is not ISP-Bound Traffic will be considered to be Section 251(b) (5) traffic,"),** Level 3 is in fact attempting to classify *all* traffic exchanged between the two companies as local traffic subject to reciprocal compensation. As I discussed previously, this sentence must be read side by side with Level 3's definition of 251(b)(5) traffic, in which Level 3 attempts to even include toll traffic. Level 3's language would have the effect of eliminating the interstate and intrastate access structures established by the FCC and Washington Commission and should be rejected as inconsistent with both the law and good policy. The FCC made clear that all traffic is not subject to 251(b)(5):

> "We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (g) from the reciprocal compensation requirements of subsection (b)(5). Thus, the statute does not mandate reciprocal compensation for "exchange access, information access, and exchange services for such access" provided to IXCs and information service providers."[27]

Q. HOW SHOULD THE COMMISION RULE ON ISSUE 19?

A. The Commission should rule that Level 3's attempt to change existing law on what

[27] *ISP Remand Order* ¶ 34.

is included in section 251(b)(5) traffic should be denied. Thus, the Level 3 proposed language at the end of Section 7.3.6.2 should be rejected.

XI. DISPUTED ISSUE 10: DEFINITION OF INTERCONNECTION

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 10.

A. It is unclear why Level 3 does not accept Qwest's language, which is used in interconnection agreements throughout Qwest's regions. Qwest's definition ties the definition to clear concepts used in the Act and is consistent with the manner in which the term is used in the industry. On the other hand, Level 3's definition is complicated, relies on definitions that are unclear (e.g., "section 251(b)(5) traffic") and raises far more questions than it answers.

XII. DISPUTED ISSUE 11: DEFINITION OF INTEREXCHANGE CARRIER

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 11.

A. This issue relates to whether the Interconnection Agreement should contain the definition of "Interexchange Carrier" as proposed by Qwest or use Level 3's definition.

Q. WHAT IS QWEST'S LANGUAGE PROPOSAL FOR THIS DEFINITION?

A. Qwest's definition for "Interexchange Carrier" is as follows:

> "Interexchange Carrier" or "IXC" means a Carrier that provides ***InterLATA or IntraLATA Toll services.***

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR THE DEFINITION OF AN INTEREXCHANGE CARRIER?

A. Level 3's proposal for the definition of "Interexchange Carrier" is set forth:

> "Interexchange Carrier" or "IXC" means a Carrier that provides ***Telephone Toll Service.***

Q. WHY DOES QWEST BELIEVE THAT ITS DEFINITION IS ACCURATE?

A. I will state first that this is not an area of disagreement that is significant or will have a profound effect on the implementation of the interconnection agreement, except as discussed below. Qwest's proposed definition of "Interexchange Carrier" is the current, standard language included in interconnection agreements with CLECs and has been approved by every Commission in Qwest's region. An interexchange carrier is an access customer that typically purchases Feature Group D access trunks from Qwest to originate and terminate "interLATA and intraLATA" toll calls. The terms "InterLATA and IntraLATA" have been widely used and understood within the telecommunications industry. The Communications Act of 1934 (as amended) contains a definition for "'interLATA service"[28] and references the term "interLATA" throughout the Act. State commissions also reference intraLATA and interLATA services and refer to "toll" services ordered by an IXC.

Q. WHY WOULD LEVEL 3 OBJECT TO THE USE OF "INTERLATA" AND

[28] 47 U.S.C. § 153(21). (InterLATA service "means telecommunications between a point located in a local access and transport area and a point located outside such area").

"INTRALATA" IN RELATIONSHIP TO AN IXC?

A. During negotiations, Level 3 implied that in order for a toll call to be a toll call, a discrete charge must be imposed. Thus, under this logic, if Level 3 did not charge its customers for VNXX calls, the VNXX calls could not be categorized as toll calls, could not be subject to access charges, and should be subject to reciprocal compensation. Level 3's effort to inject the "Telephone Toll Service" definition appears to be a back door attempt to inject this issue into the agreement. Although Qwest has little dispute between the two definitions, Qwest takes strong issue with a Level 3 assertion that the "telephone toll service" definition means that VNXX is not toll and has been validated by the agreement, with all of its attendant implication for access charges and reciprocal compensation. Under what appears to be Level 3's theory, a carrier that offers toll but does not charge its customers for any reason would thereby exempt itself from FCC or state prescribed access charges. Furthermore, Level 3's ability as a CLEC to obtain local numbers carries with it the assumption (apparently false in Level 3's case) that these numbers will be used to originate and/or terminate local calls. Thus, Qwest has no way to determine in advance whether any particular call is really a toll call that it should be billing as such. Thus, a CLEC like Level 3 that wants to rely on a definition that a toll call can only be a toll call if there is a charge, is enabled to create its own self-fulfilling prophecy. The reference to charges is addressed to the end user customers. Toll is a retail product sold to end user customers. The term toll does not address the charges between carriers. Whether or not there is a charge to a retail end user customer for the toll call will not impact the tariffed obligation to pay access charges.

XIII. DISPUTED ISSUE 12: DEFINITION OF "INTRALATA TOLL TRAFFIC"

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 12.

A. This issue relates to whether the Interconnection Agreement should contain the definition of "IntraLATA Toll" as proposed by Qwest or use Level 3's definition.

Q. WHAT IS QWEST'S PROPOSAL FOR "INTRALATA TOLL"?

A. Qwest's proposal for "IntraLATA toll" is as follows:

> IntraLATA Toll Traffic" describes IntraLATA Traffic outside the Local Calling Area.

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL?

A. Level 3's proposal for "IntraLATA toll" is as follows:

> IntraLATA Toll Traffic" describes IntraLATA Traffic that constitutes Telephone Toll Service.

Again, the Commission will note that there is little in the way of a substantive difference here. Both definitions accurately describe a type of IntraLATA toll call in different ways. Neither definition will change the impact of the Agreement. However, Level 3's injection of the "Telephone Toll Service" definition again raises the issue of whether Level 3 believes that the inclusion of that definition means that traffic between two exchanges (i.e., interexchange traffic) is exempt from access charges. If so, the companies have a major dispute. The dispute can be avoided by simply adopting Qwest's language, which is clear and has been widely accepted in SGATs and interconnection agreements.

XIV. DISPUTED ISSUE 9: DEFINITION OF EXCHANGE ACCESS

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 9.

A. This dispute related to Qwest's proposed definition for "Exchange Access". Qwest agrees with Level 3's proposed definition that "Exchange Access" will have the meaning as set forth in the Act. Where Qwest used the word "Exchange Access" uniquely in Section 7 of the agreement, Qwest simply deleted the words "Exchange Access" and left the remainder of the language "Intralata toll carried solely by Local Exchange Carriers, (LEC IntraLATA toll)". The description of LEC IntraLATA toll was not disputed by Level 3 in Section 7, thus we believe this issue is closed.

XV. DISPUTED ISSUE 14: DEFINITION OF EXCHANGE SERVICE

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 14.

A. This dispute relates to Level 3's deletion of the term "Exchange Service" as part of its request to include "Telephone Exchange Service" in the agreement. Qwest's definition for "Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within a LCA as determined by the Commission. Qwest cannot nor should the Commission agree to strike "Exchange Service" from the definitions. Exchange Service is used in paragraphs throughout the agreement (most of which Level 3 has not disputed). Qwest objects to the removal of Qwest's definition for "Exchange Service" as it is used repeatedly throughout the agreement and is therefore necessary.

XVI. DISPUTED ISSUE 15: DEFINITION OF 'TELEPHONE TOLL SERVICE'

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 15.

A. This issue relates to Level 3's inclusion of a definition for "telephone toll service" and Qwest's position that it is not necessary to include a separate definition for "telephone toll service."

Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR THE DEFINITION OF TELEPHONE TOLL SERVICE?

A. Level 3's proposal is as follows:

> Telephone toll service - the term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

Q. WHAT IS THE EXISTING DEFINITION FOR SWITCHED ACCESS SERVICE THAT INCLUDES TELEPHONE TOLL SERVICE?

A. The definition that has been agreed upon by both parties for "Switched Access Service" states that Switched Access is the service that an IXC orders for originating and terminating 'telephone toll service.' Switched Access enables access customers (IXCs) to complete end user customer requests for intrastate or interstate long-distance calls. The terms and conditions for access services are in compliance with the rules and regulations for telephone toll service. The definition reads as follows:

"Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of ***telephone toll service***. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, 8XX access, and 900 access and their successors or similar Switched Access Services.

Q. DOES QWEST HAVE A PROBLEM WITH THE DEFINITION OF TOLL SERVICE ITSELF?

A. No. The definition is from the FCC and is not controversial. What is controversial is Level 3's attempt to avoid access charges on telephone toll elsewhere in the agreement. The real issue regarding this definition is Level 3's attempt to exempt "telephone toll service" from access charges and instead treat this traffic as local, and therefore subject to reciprocal compensation.

Q. DOES QWEST HAVE A PROBLEM WITH THE DEFINITION ITSELF?

A. No. As long as the Commission remains mindful of Level 3's improper use of the term in other paragraphs involved in this arbitration.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

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