

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

In the Matter of the Joint Application of

QWEST COMMUNICATIONS  
INTERNATIONAL INC. AND CENTURYTEL,  
INC.

For Approval of Indirect Transfer of Control of  
Qwest Corporation, Qwest Communications  
Company LLC, and Qwest LD Corp.

UT-100820

**RESPONSIVE TESTIMONY AND EXHIBITS**

**OF**

**RICHARD E. THAYER**

**ON BEHALF OF**

**LEVEL 3 COMMUNICATIONS, LLC**

**September 27, 2010**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** My name is Richard E. Thayer. I am employed by Level 3 Communications, LLC  
3 (“Level 3”). My business address is 1025 Eldorado Boulevard, Broomfield, CO  
4 80021.

5 **Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AT LEVEL 3.**

6 **A.** I am Senior Corporate Counsel at Level 3. In that role I am primarily responsible  
7 for negotiating and finalizing interconnection agreements between Level 3 and  
8 other carriers in the U.S. Additionally, I am responsible for dispute resolution  
9 between Level 3 and other carriers when the subject matter of those disputes lies  
10 within the areas of interconnection agreements or the regulations regarding the  
11 exchange of traffic.

12 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND.**

13 **A.** From 1989 until 2002, I worked as an attorney for AT&T. My responsibilities  
14 included acting as: managing counsel for an AT&T subsidiary company,  
15 American Transtech; General Attorney responsible for all commercial affairs for  
16 AT&T in the Pacific Northwest (including interconnection agreements); and Vice  
17 President responsible for AT&T’s wireless regulatory activities in the Pacific  
18 Northwest and AT&T Broadband, formerly TCI. I joined Level 3 in 2003 in my  
19 present position. A more comprehensive CV describing my qualifications is  
20 attached hereto as Exhibit RET-2T.

21 **Q. PLEASE PROVIDE LEVEL 3’s POSITION ON THE PROPOSED**  
22 **MERGER OF QWEST WITH CENTURYLINK.**

23 **A.** Level 3 believes that with the adoption of targeted, common sense conditions, the  
24 Commission can approve the proposed transaction between “Qwest,” “Qwest  
25 Operating Companies,” “CenturyLink,” and the “CenturyLink Operating  
26 Companies,” as those terms are defined in the joint applicants’ application for

1 approval.<sup>1</sup> For ease of reference, when speaking about the transaction, I will refer  
2 to it as the “Proposed Transaction,” to the involved companies as the  
3 “Applicants,” and to the post transaction company as the “Combined Entity.”

4 **Q. WHY DOES THIS TRANSACTION RAISE CONCERNS FOR LEVEL 3?**

5 A. This merger is one of first impression because the entire operation of a Regional  
6 Bell Operating Company (“RBOC”) will be taken over by an Independent  
7 Incumbent Local Exchange Carrier (“ILEC”) that serves predominately rural  
8 territories. If the Proposed Transaction is completed, the resulting entity will  
9 combine businesses and management that have been forced to open their markets  
10 to local competition with those that, for the most part, have not. For the Combined  
11 Entity’s management, primarily from CenturyLink, its introduction to the ways of  
12 competition may run counter to past obligations or experiences of managing a  
13 rural ILEC. To ensure that the Combined Entity understands and meets its  
14 obligations, the Commission will need to adopt common sense conditions before  
15 it approves the transaction. Level 3 also believes that the Commission must be  
16 vigilant to ensure that the Combined Entity does not meet the same fate as Hawaii  
17 Telephone or Fairpoint.

18 **Q. WHAT CONDITIONS DOES LEVEL 3 BELIEVE ARE NECESSARY**  
19 **BEFORE THE COMMISSION CAN APPROVE THE PROPOSED**  
20 **TRANSACTION?**

21 A. Level 3 believes the Commission should:  
22 1. Promote stable and predictable interconnection rights by:  
23 a. Extending the term of existing interconnection agreements as set  
24 forth in the Joint CLEC testimony;

---

<sup>1</sup> *In the Matter of the Joint Application of Qwest Communications International Inc. And Centurytel, Inc. For Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp* Docket UT-100820 (May 13, 2010) (“Application”).

- 1           b.     Requiring the Combined Entity to allow the portability from one  
2           state to another of the existing interconnection agreements between the  
3           Applicants and that CLEC; and
- 4           c.     Requiring Qwest to extend its existing Statements of Generally  
5           Available Terms (“SGAT”) for a period of five years.
- 6           2.     Provide explicit guidance that, in light of the decision by the United States  
7           Court of Appeals for the District of Columbia upholding the order of the  
8           Federal Communications Commission (“FCC”) in the Core  
9           Communications Mandamus case,<sup>2</sup> all ISP-bound traffic is now subject to  
10          the rate set by the FCC, including what has been labeled in the past as  
11          “virtual NXX” traffic. Specifically, the Commission should impose the  
12          following conditions:
- 13          a.     The Combined Entity shall compensate terminating carriers at the  
14          appropriate rate for ISP-bound traffic and that ISP-bound traffic shall  
15          include traffic provisioned using virtual NXX codes; and
- 16          b.     The Combined Entity shall treat all locally-dialed ISP-bound  
17          traffic including virtual NXX traffic, as telecommunications traffic in the  
18          calculation of relative use factors for purposes of 51 C.F.R. § 703(b).
- 19          3.     Take steps to prevent the Combined Entity from arbitraging the Rural  
20          CLEC exemption to circumvent the CLEC access rate cap;
- 21          4.     Ensure that the Combined Entity passes through to competitors the  
22          synergies captured through network integration and the establishment of  
23          new routes or capacity;

---

<sup>2</sup> *Core Communications, Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010) (“*D.C. Circuit Decision*”).

- 1           5.     Require all contracts between the affiliates of the Combined Entity for
- 2                 telecommunications services and network interconnection to be made
- 3                 publicly available;
- 4           6.     Prohibit the Combined Entity from using billing disputes with one entity
- 5                 to threaten disconnection of services or refuse to provision new orders
- 6                 across the Combined Entity;
- 7           7.     Prohibit the Combined Entity from continuing or expanding improper
- 8                 8YY homing switched access arbitrage practices. All telecommunications
- 9                 carrier entities of the Combined Entity will assess tandem transport
- 10                switched access charges based on call routing to the nearest tandem
- 11                according to the currently published LERG, even when such a tandem is a
- 12                non-Embarq tandem;
- 13           8.     Require Qwest to cease its practice of denying dispute claims purely on
- 14                 the basis that they are older than 90 days from the date originally billed;
- 15                 and
- 16           9.     Require Qwest to cease its practice of using its interstate tariffs as a
- 17                 claimed basis for establishing billing analogs for intrastate charges that are
- 18                 not tariffed in its intrastate tariffs.

19   **Q.     ARE THESE THE ONLY CONDITIONS THAT LEVEL 3 BELIEVES THE**  
20   **COMMISSION SHOULD CONSIDER?**

21   **A.**    No. Level 3 supports the conditions proposed by the Joint CLECs, and is one of  
22           the sponsors of the testimony offered by Messrs. Gates and Ankum in support of  
23           those conditions. My testimony is intended as a complement to testimony offered  
24           by the Joint CLECs, but with a particular focus on problems Level 3 has  
25           experienced first hand or is particularly concerned could result from this  
26           transaction if left unaddressed.

1 **Q. PLEASE EXPLAIN LEVEL 3's POSITION ON INTERCONNECTION**  
2 **AGREEMENTS.**

3 **A.** Interconnection agreements are the lifeblood of a competitive telecommunications  
4 infrastructure. Without them, a carrier cannot exchange traffic or provide services  
5 within a specific area. Because of their importance, companies invest substantial  
6 time and effort in those agreements before they invest funds in their networks. It  
7 is crucial that the Commission ensure that the interconnection process continues  
8 as smoothly as possible while the Combined Entity goes about integrating its  
9 systems and streamlining its operations. It can do so by adopting three common  
10 sense conditions related to interconnection. They are:

11 1. The Combined Entity shall allow competitive providers to extend existing  
12 interconnection agreements as described in the testimony of Mr. Gates and  
13 as stated in the Joint CLEC combined Conditions List.

14 2. The Combined Entity shall allow competitive providers to import any  
15 interconnection agreement between the CLEC and the Applicants,  
16 including all of their ILEC affiliates, into the operating territory of another  
17 affiliate. For example, Level 3 should be able to import the Embarq-Level  
18 3 interconnection agreement into the Qwest region.

19 3. Qwest shall agree to keep its existing SGAT available, without changes,  
20 for five years.

21 **Q. WHY SHOULD THE COMMISSION REQUIRE AN EXTENSION OF**  
22 **THE INTERCONNECTION AGREEMENTS?**

23 **A.** To ensure that the Combined Entity can focus on integrating its operations and  
24 meeting its wholesale commitments, the Commission should require the  
25 Combined Entity to allow competitive providers to elect to extend the existing  
26 interconnection agreement between the parties for a period of three years from the

1 closing date of the transaction. This requirement must expressly include all  
2 agreements in “evergreen” status.

3 The competitive industry is concerned that the Combined Entity will  
4 decide to terminate those agreements and force carriers into renegotiations that  
5 will eventually result in the CLECs filing for arbitration. The CLECs and the  
6 Combined Entity have limited resources to devote to any project. Level 3 would  
7 prefer that the parties devote those resources, personnel and financial, toward  
8 ensuring the wholesale commitments are met.

9 **Q. WOULD A CONDITION EXTENDING THE INTERCONNECTION**  
10 **AGREEMENTS BE UNIQUE TO THIS TRANSACTION?**

11 **A.** No, it would not. Similar conditions have been adopted in orders approving the  
12 mergers of AT&T and Bell South; SBC and Ameritech; Fairpoint and its purchase  
13 of the Verizon territories in New Hampshire, Vermont and Maine; and the  
14 Frontier acquisition of certain Verizon territories.

15 **Q. PLEASE DISCUSS LEVEL 3’s PROPOSAL TO REQUIRE**  
16 **PORTABILITY OF INTERCONNECTION AGREEMENTS.**

17 **A.** Level 3 believes that the Commission should require the Combined Entity to  
18 allow a competitive carrier to import into Washington any interconnection  
19 agreement that it maintains in another state. So, for example, Level 3 would have  
20 the option of extending an interconnection agreement it already has in  
21 Washington or it could notify the Combined Entity that it wants to use the Nevada  
22 interconnection agreement between Level 3 and Embarq in Washington. Only  
23 mandatory state-specific pricing changes would be required and those changes  
24 should be automatic. The Combined Entity should not be allowed to delay  
25 implementation of an imported agreement by claiming that negotiations are  
26 required to make the agreement state specific.

1 **Q. WOULD A PORTABILITY REQUIREMENT FOR INTERCONNECTION**  
2 **AGREEMENTS BE UNIQUE TO THIS TRANSACTION?**

3 **A.** No, it would not. A similar condition was imposed by the FCC in the  
4 *AT&T/BellSouth Order*. In doing so, the FCC found that such conditions “should  
5 reduce any incremental effect on the pending merger on the incentive to  
6 discriminate.”<sup>3</sup>

7 **Q. PLEASE EXPLAIN LEVEL 3’s CONCERNS REGARDING THE QWEST**  
8 **SGAT.**

9 **A.** Since the Combined Entity will be focused on integrating its operations and  
10 meeting its wholesale commitments, it is important that competitors limit friction  
11 caused by expiring interconnection agreements. That’s why Level 3 believes it is  
12 important to extend the existing agreements and allow for the importation of other  
13 interconnection agreements the Combined Entity maintains. There is a third step,  
14 however, that Level 3 believes the Commission should take to allow competitors  
15 flexibility, and that is, requiring Qwest to agree to keep its SGAT available for  
16 five years. By doing so, the Commission will ensure that competitive providers  
17 have sufficient options to establish interconnection arrangements with the  
18 Combined Entity. Everyone will then be focused on integration, implementation  
19 and exchanging traffic instead of arbitrating new interconnection agreements.  
20 Five years is the appropriate time period for offering the SGAT because it  
21 provides a consistent approach to interconnection for competitors to rely upon.  
22 When it comes to interconnection, the public interest requires certainty so that  
23 appropriate investments can be made in the respective networks. With the  
24 adoption of this simple, common sense solution, Level 3 believes the Commission  
25 can promote a competitive playing field in the marketplace.

---

<sup>3</sup> *Memorandum Opinion and Order*, In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, released March 26, 2007.

1 **Q. IF THE COMMISSION PROVIDES AN OPTION TO EXTEND THE**  
2 **INTERCONNECTION AGREEMENTS OR TO IMPORT AN**  
3 **AGREEMENT FROM ANOTHER STATE, DOES THAT RESOLVE ANY**  
4 **DISPUTES OR ISSUES SURROUNDING THE COMBINED ENTITY'S**  
5 **WHOLESALE OBLIGATIONS?**

6 **A.** While those two steps would go a long way in ensuring that the parties focus on  
7 operating their businesses and providing services to end-users, the Commission  
8 must resolve the outstanding issues with respect to contract interpretation. It  
9 won't do much good to extend an agreement when the parties have serious policy  
10 disagreements over the interpretation for implementation of the agreements. It's  
11 in everyone's best interests to resolve interconnection issues.

12 **Q. WHAT ISSUES SHOULD THE COMMISSION RESOLVE?**

13 **A.** One important issue the Commission should resolve involves intercarrier  
14 compensation for ISP-bound traffic. Any condition regarding agreements will be  
15 hollow unless this question is explicitly addressed. Without clear guidance,  
16 regulatory and judicial litigation involving the interpretation of interconnection  
17 agreements will drag on and agreements ported into a state will spur new  
18 conflicts.

19 The most litigated issue that Level 3 has experienced in the Qwest service  
20 territory for the past 10 years has been the treatment of locally dialed ISP-bound  
21 traffic. Qwest has taken every opportunity to oppose its obligation to pay  
22 terminating compensation for that traffic, arguing that the ISP must be physically  
23 located in the same local calling area as the Qwest end user making the call. The  
24 dockets of the state commissions as well as state and federal courts are full of  
25 proceedings interpreting and reinterpreting the *ISP Remand Order*. With each

1 conflicting interpretation, the unsuccessful party pushes the matter further up the  
2 appellate ladder.

3 **Q. WHY SHOULD THE COMMISSION RESOLVE THE TREATMENT OF**  
4 **ISP-BOUND TRAFFIC HERE?**

5 **A.** Resolution of the applicable interconnection obligation concerning ISP-bound  
6 traffic is necessary to ensure that the Combined Entity does not force its  
7 competitors to litigate issues that have been finally resolved by the United States  
8 Court of Appeals for the District of Columbia Circuit in its review of the *Core*  
9 *ISP Order*.<sup>4</sup> As incumbents, CenturyLink, Qwest and Embarq have every  
10 incentive to dispute the application of the intercarrier compensation regime for  
11 ISP-bound traffic by pressing invalidated arguments to avoid paying their  
12 competitors for traffic that their end users originate. In the context of this merger,  
13 however, the question isn't just whether the Combined Entity will thwart  
14 competition, but it also goes to the basic economic assumptions the Applicants  
15 have made when examining this transaction and whether the Applicants will force  
16 competitors to subsidize the operations of the Combined Entity.

17 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY THE BASIC ECONOMIC**  
18 **ASSUMPTIONS MADE BY THE APPLICANTS.**

19 **A.** In preparing for this transaction, CenturyLink has made some basic assumptions  
20 about the expenses that Qwest incurs, such as reciprocal compensation, and the  
21 revenue it receives, such as inter- and intrastate access charges. In the case of  
22 ISP-bound traffic, Qwest and CenturyLink have taken the position that unless the  
23 ISP's modem is in the same local calling area as their customer, then the call is a

---

<sup>4</sup>*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-bound traffic*, CC Docket Nos. 96-98, 99-68, 01-92, et al., Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, 24 FCC Rcd. 6475, 2008 WL 4821547 (rel. Nov. 5, 2008) ("Core ISP Order"); *D.C. Circuit Decision*.

1 toll call and access charges apply. While the *Core ISP Order* and the D.C. Circuit  
2 Court's affirmation reject this interpretation, Level 3 expects Qwest to continue  
3 to argue—wherever and whenever it can—that “VNXX” traffic is not covered by  
4 the FCC's established regime for ISP-bound traffic. One question for the  
5 Commission is whether the Combined Entity is assuming it will receive access  
6 charges for ISP-bound traffic, thus inflating its revenue, or whether it will pay the  
7 reciprocal compensation rate, thus reducing some revenue. The second question is  
8 how either outcome impacts the ability of the Combined Entity to meet its  
9 commitments based on its financial projections.

10 **Q. IS THE ONLY QUESTION SURROUNDING ISP-BOUND TRAFFIC THE**  
11 **TERMINATION RATE FOR THE TRAFFIC?**

12 **A.** No. The classification of ISP-bound traffic impacts more than compensation. It  
13 goes to whether the Combined Entity can shift the cost of interconnection for  
14 facilities on its side of the network to its competitors.

15 **Q. PLEASE EXPLAIN.**

16 **A.** In the past, Qwest has used the now discredited legal theory that ISP-bound traffic  
17 falls under Section 251(g) to argue that such traffic cannot be counted as local  
18 traffic when calculating the relative use factor (“RUF”) charges that apply to local  
19 interconnection facilities. RUF charges apportion the cost of an interconnection  
20 facility based on the flow of the traffic. So, if all the traffic on a facility was local  
21 and Qwest delivered 80 percent, Qwest credits the terminating carrier for that  
22 percentage of the usage. However, Qwest has argued that ISP-bound traffic must  
23 be excluded from the calculation of RUF charges because Qwest claims it does  
24 not fall within the scope of Section 251(b)(5). That argument was cut out from  
25 under Qwest and CenturyLink by the *D.C. Circuit Decision*. It's unfortunate, but  
26 the acceptance of Qwest's flawed position by a number of states has resulted in

1 millions of dollars in subsidies by competitive carriers for the network operations  
2 of Qwest.

3 **Q. CAN YOU PLEASE BRIEFLY SUMMARIZE THE LEGAL TREATMENT**  
4 **OF ISP-BOUND TRAFFIC?**

5 **A.** Yes, based on the *D.C. Circuit Decision* upholding the FCC's *Core-ISP*  
6 *Order*, all ISP-bound traffic falls under the scope of Section 251(b)(5). The Court  
7 also upheld the FCC's ability to set the rate for ISP-bound traffic under its Section  
8 201 authority because ISP-bound traffic is interstate in nature. Since the traffic  
9 falls under 251(b)(5), it is subject to the Part 51 Rules. The application of those  
10 rules to ISP-bound traffic is not new, because even when the FCC tried to regulate  
11 ISP-bound traffic under 251(g), it was *explicit* that the finding did not "alter  
12 carriers' other obligations under our Part 51 rules, 47 C.F.R...."<sup>5</sup> Under those  
13 rules: "A LEC may not assess charges on any other telecommunications carrier  
14 for telecommunications traffic that originates on the LEC network."<sup>6</sup> Now that the  
15 FCC's legal basis for treating such traffic as covered by Section 251(b)(5) in the  
16 Core ISP Order has been affirmed by the D.C. Circuit Court, the application of  
17 the Part 51 rules to ISP-bound traffic is settled and the Combined Entity may not  
18 assess RUF charges on ISP-bound traffic.

19 Despite the clarity of the *D.C. Circuit Decision* and the *Core ISP Order*,  
20 Level 3 expects the Combined Entity to continue to argue the opposite. Such a  
21 refusal in the face of this clear ruling will result in unnecessarily adding more  
22 complaints to the Commission's docket. It is in everyone's best interests to avoid  
23 any additional litigation on these issues.

---

<sup>5</sup> *ISP Remand* at Footnote 149

<sup>6</sup> As part of the *ISP Remand Order*, the Commission deleted the word "local" from its original rule.

1 **Q. HAS CENTURYLINK AGREED TO PAY RECIPROCAL**  
2 **COMPENSATION ON ALL ISP-BOUND TRAFFIC?**

3 **A.** Yes. Embarq, which is now a subsidiary of CenturyLink, pays \$.0004 per  
4 minute of use for ISP-bound traffic exchanged with Level 3.<sup>7</sup> In that agreement,  
5 ISP-bound traffic “includes ... traffic provisioned using virtual NXXs.”<sup>8</sup>

6 **Q. PLEASE SUMMARIZE LEVEL 3’s POSITION ON RECIPROCAL**  
7 **COMPENSATION FOR ISP-BOUND TRAFFIC AND RUF CHARGES IN**  
8 **THIS PROCEEDING.**

9 **A.** The Commission needs to resolve the treatment of ISP-bound traffic for two  
10 reasons. The first is so that it can better understand the basic economic  
11 assumptions made by Qwest and CenturyLink that underlie this transaction. If the  
12 business model for the Combined Entity is based in part on continuing to try to  
13 charge access fees on ISP-bound traffic and shifting network expenses to  
14 competitive providers, the Commission needs to understand this because the law  
15 no longer supports that assumption. Then, the Commission needs to determine  
16 whether a transaction based on such an illegal assumption is in the public interest.

17 The second reason is to bring the Combined Entity in line with the law and  
18 to make sure that companies can focus on building their networks and dealing  
19 with integration issues rather than fighting old battles that have been settled by  
20 federal law.

21 **Q. ARE THERE OTHER POLICY ISSUES THE COMMISSION SHOULD**  
22 **CONSIDER IN RESOLVING INTERCARRIER COMPENSATION FOR**  
23 **ISP-BOUND TRAFFIC?**

---

<sup>7</sup> It’s worth noting that the rate is lower than the \$.0007 set by the *ISP Remand Order*.

<sup>8</sup> See Section 55.1, Part F, Master Interconnection, Collocation & Resale Agreement for the State of Nevada, August, 2005.

1 A. Yes. While the country, and especially regulators, are focused on ensuring  
2 ubiquitous deployment of broadband facilities, the simple truth is that for the  
3 foreseeable future, dial-up internet access will remain a primary vehicle for  
4 internet access for many residents in Washington and across the country. Whether  
5 it is because of price or lack of access to a broadband provider, dial-up access will  
6 remain a necessity for many Americans for years to come. The Commission must  
7 consider the future of dial-up services as part of any state plans to roll out  
8 broadband access. Any money spent by either the Combined Entity or the  
9 competitive industry fighting over the compensation regime for dial-up services is  
10 money that could have been spent on broadband deployment.

11 When the FCC adopted the *ISP Remand Order* in 2001, it did so with the  
12 goal of stopping what it saw as an arbitrage opportunity. The FCC did that by  
13 reducing the compensation rate, capping the amount of compensable traffic and  
14 excluding new markets from any compensation regime. However, a few years  
15 later, the FCC found that the arbitrage threat was gone and lifted the cap on  
16 compensable traffic and the new market exclusion. In supporting its decision, the  
17 FCC cited the decrease in dial-up traffic and the increasing migration of  
18 Americans to broadband internet access services.

19 One of the “compelling” events that Qwest and CenturyLink have touted  
20 to shareholders is that the Combined Entity will be a stronger company with an  
21 “extensive 173,000 mile fiber network” and the “enhanced ability to  
22 competitively rollout strategic products such as IPTV and other high-bandwidth  
23 services”<sup>9</sup> that will be able to continue its broadband deployment. Meeting the  
24 Company’s economic assumptions will be crucial to that expanded deployment of  
25 broadband services. And while that transition occurs, it is important to ensure that

---

<sup>9</sup> See: <http://www.centurylinkqwestmerger.com/downloads/presentations/Investor%20Presentation-4-22-10.pdf>, Slide 8

1 all end users can access the internet, not just those who purchase broadband  
2 services from the Combined Entity. Resolving these settled issues of  
3 compensation for ISP-bound traffic and the treatment for RUF charges will ensure  
4 that companies devote their resources to broadband deployment while at the same  
5 time ensuring that a competitive market exists for dial-up services for those  
6 consumers who choose not to or are not afforded the opportunity to purchase  
7 broadband access.

8 **Q. DOES LEVEL 3 HAVE ANY SPECIFIC RECOMMENDATIONS FOR**  
9 **THE COMMISSION?**

10 **A.** Yes, Level 3 recommends that any order granting approval for the transaction  
11 include the following language:

- 12 1. The Combined Entity shall compensate terminating carriers at the  
13 appropriate rate for all locally dialed ISP-bound traffic, and all locally  
14 dialed ISP-bound traffic shall include traffic provisioned using “virtual  
15 NXX codes.”
- 16 2. The Combined Entity shall treat all locally dialed ISP-bound traffic,  
17 including any “virtual NXX traffic,” as telecommunications traffic in the  
18 calculation of relative use facilities for the purposes of 51 C.F.R. § 703(b).

19 By adopting these conditions, the Commission will provide the  
20 explicit guidance that the industry, regulators and courts have sought since  
21 the release of the *ISP Remand Order*. With that issue resolved, the  
22 industry can turn its attention to deploying capital in a manner that will  
23 grow networks and help expand broadband networks across the country  
24 instead of funding litigation. It’s time that the telecommunications  
25 industry stop paying by the hour to determine what it can charge by the  
26 minute.

1 **Q. PLEASE EXPLAIN LEVEL 3's CONCERN WITH RESPECT TO THE**  
2 **COMBINED ENTITY ESTABLISHING A RURAL CLEC.**

3 **A.** Traffic pumping is a growing problem in the telecommunications industry. It is  
4 one that Qwest has been aggressive in pursuing at the FCC and before state  
5 commissions.

6 **Q. PLEASE DESCRIBE TRAFFIC PUMPING.**

7 **A.** There are many descriptions or variations around the concept of “traffic  
8 pumping.” For purposes of my testimony, I will focus on a specific type—that’s  
9 where a Rural CLEC that is affiliated with an ILEC sets up operations in the  
10 territory of a RBOC adjoining its incumbent parent. Under FCC rules, a rural  
11 carrier can create a competitive local exchange carrier and can compete in the  
12 rural areas of an adjoining incumbent local exchange carrier. While that is not  
13 unique, the twist arises when the Rural CLEC takes advantage of an exemption  
14 from the FCC’s requirement that CLECs cap their interstate access charges at the  
15 rate of the incumbent local exchange carrier. While the Applicants have not  
16 indicated that they will act in such a manner, that exception would allow  
17 CenturyLink to set up a Rural CLEC in qualified Qwest exchanges. This would  
18 create an incentive for the Combined Entity to move conference call, chat line,  
19 adult entertainment, or other high volume customers to the Rural CLEC. The  
20 incentive may be so great that Qwest stops marketing such services in its territory  
21 and cedes them to the Rural CLEC of its parent. In either case, the Rural CLEC  
22 would be able to charge higher access rates than Qwest or its competitors.

1 **Q. IF THE COMBINED ENTITY HAS NOT INDICATED ITS INTENTION**  
2 **TO USE RURAL CLECS IN THIS MANNER, WHY SHOULD THE**  
3 **COMMISSION ACT NOW?**

4 **A.** The Commission can avoid future disputes over the payment of access charges for  
5 this type of traffic. As Qwest appreciates from its experiences with traffic  
6 pumping in Iowa and elsewhere, this type of traffic ramps up quickly, which  
7 means the amounts in dispute can reach into the millions within a short period of  
8 time. Under these circumstances, carriers will resort to self-help, which in turn  
9 will lead to litigation.

10 **Q. WOULDN'T QWEST HAVE TO PAY THE HIGHER RATES FOR CALLS**  
11 **TERMINATED TO THE RURAL CLEC?**

12 **A.** Yes, presuming that there was no contract between Qwest and the rural CLEC.  
13 One issue is that Qwest and CenturyLink could reach a volume and term  
14 agreement that reduces the switched access rates. Since Qwest is the dominant  
15 provider in the state, chances are it will deliver most of the intrastate traffic to the  
16 rural CLEC. It is unlikely that another carrier would be able to get the same rates  
17 based on the volume of traffic that Qwest handles. From Level 3's perspective,  
18 the bottom line is that Qwest and CenturyLink can shift higher access charges on  
19 competitors while keeping their costs down.

20 **Q. WHY SHOULD THE COMMISSION CONSIDER THE FINANCIAL**  
21 **IMPLICATIONS OF SUCH AN ARBITRAGE SCHEME?**

22 **A.** The Commission is charged with reviewing this transaction and ensuring that it is  
23 in the public interest. Part of the public interest analysis must be an understanding  
24 of the long-term financial health of the Combined Entity and its impact on  
25 competition.

1 **Q. PLEASE SUMMARIZE LEVEL 3's POSITION ON THIS ISSUE.**

2 **A.** To ensure that the Applicants are not tempted to arbitrage the rural CLEC  
3 exemption, the Commission should condition approval with a requirement that  
4 CenturyLink mirror the rates charged by Qwest if it operates as a Rural CLEC in  
5 the Qwest RBOC territory. In the event that CenturyLink is operating as a Rural  
6 CLEC in the Qwest territory at the time of the closing of this transaction, it should  
7 reduce its access rates to mirror Qwest. In addition, to the extent that Qwest  
8 negotiates an off-tariff agreement with a CenturyLink Rural CLEC for the  
9 termination of intrastate or interstate traffic, the Combined Entity must make the  
10 same rate available to other interexchange carriers without requiring volume or  
11 term commitments. These simple conditions will prevent arbitrage, prevent  
12 expansion of the traffic pumping issues that plague the industry, make it easier for  
13 the FCC to unify compensation rates by eliminating rate variations within an  
14 incumbent's operating territory, and will send appropriate pricing signals to the  
15 market

16 **Q. DOES LEVEL 3 HAVE ANY OTHER RECOMMENDATIONS FOR THIS**  
17 **COMMISSION RELATING TO THE PROVISION OF SERVICES BY**  
18 **QWEST AND CENTURYLINK IN ADJOINING TERRITORIES?**

19 **A.** Yes.

20 **Q. WHAT ELSE WOULD LEVEL 3 RECOMMEND?**

21 **A.** One of the potential benefits of this transaction could result from increased  
22 network synergies as Qwest and CenturyLink either establish new routes or  
23 upgrade existing interconnection facilities. This would allow them to reduce  
24 network expenses as they exchange traffic between their adjoining territories.  
25 Level 3 believes that it would certainly be in the public interest if the Combined  
26 Entity can reduce the costs of moving traffic across its footprint. In that case,

1        though, the Combined Entity should not be the only company that benefits from  
2        network and operations synergies. Level 3 recommends that the Commission  
3        require the Combined Entity to make those benefits available to  
4        telecommunications carriers or CLECs by allowing them access to new routes or  
5        upgraded interconnection facilities to interconnect for the purposes of exchanging  
6        traffic in that adjoining territory.

7        **Q. PLEASE EXPLAIN.**

8        **A.** According to the Application filed by Qwest and CenturyLink at the FCC, Qwest  
9        states that it is adjacent to 41 CenturyLink exchanges in Washington. I have  
10       attached to my testimony the appropriate pages from Exhibit 5 (RET-3T) of that  
11       application Qwest and CenturyLink filed with the FCC.<sup>10</sup> It details where the  
12       exchanges adjoin. For purposes of this discussion, I'd like to use an example.  
13       You'll notice on the bottom of the last page of Exhibit 5 that the CenturyLink  
14       exchange McCleary is adjacent to the Olympia exchange of Qwest. Level 3  
15       expects that the Combined Entity will look to capture network synergies by  
16       increasing capacity and improving facilities. This could include eliminating  
17       tandems or rerouting their intra-entity traffic to avoid them. Level 3 urges the  
18       Commission to require the Combined Entity to make those new traffic routing  
19       arrangements available to all carriers. So for example, the Combined Entity  
20       should accept traffic bound for CenturyLink's McCleary exchange in the Olympia  
21       exchange. By the same token, Level 3 would be willing to accept traffic from  
22       McCleary in the Olympia exchange. It wouldn't make sense from an engineering  
23       and technological basis to require the continued use of separate network  
24       architectures if a shorter, more efficient route is available. In fact, Level 3  
25       believes that the Commission should condition its approval of this merger on the

---

<sup>10</sup> See Exhibit 5, attached.

1 parties implementing such network synergies. By imposing such a condition, the  
2 Commission can create the appropriate incentives for the Combined Entity to  
3 capture the promised synergies.

4 **Q. WHY IS IT IMPORTANT FOR THE COMMISSION TO ENSURE THAT**  
5 **THE COMBINED ENTITY CAPTURES NETWORK SYNERGIES?**

6 **A.** As discussed earlier, the Commission is charged with ensuring that the Proposed  
7 Transaction is in the public interest. CenturyLink and Qwest have stated publicly  
8 that the transaction will generate annual synergies of \$575 million.<sup>11</sup> It is  
9 imperative for the Commission to understand the scope of those synergies and  
10 where appropriate ensure that they are passed through to end users and customers,  
11 including interconnecting carrier customers. Level 3 believes that given the  
12 market share held by the Combined Entity, it could leverage synergies against its  
13 competitors by forcing a carrier to keep redundant facilities to reach adjacent  
14 exchanges while the Combined Entity reduces them. That result would not be in  
15 the public interest.

16 **Q. DOES LEVEL 3's RECOMMENDATION REQUIRE A CHANGE TO THE**  
17 **STATUS OF CARRIER SUCH AS ITS RURAL PROTECTIONS UNDER**  
18 **THE FEDERAL ACT?**

19 **A.** No it would not. This recommendation is designed to provide incentives for the  
20 Combined Entity to capture network synergies by reducing infrastructure costs.  
21 There would be no extension of Qwest's obligations under Section 251(c) or 252  
22 to any CenturyLink exchange that has an exemption under Section 251(f). The  
23 only change would be that if the Combined Entity provided a preferential rate to  
24 its affiliate, that rate would have to be made available to other carriers.

---

<sup>11</sup> See: <http://www.centurylinkqwestmerger.com/downloads/presentations/Investor%20Presentation-4-22-10.pdf>, Slide 13

1 **Q. WHAT IS LEVEL 3's RECOMMENDATION WITH RESPECT TO**  
2 **NETWORK SYNERGIES?**

3 **A.** In order to ensure that synergies are made available across the board and that the  
4 Combined Entity does not gain an unfair or anticompetitive advantage over its  
5 competitors, Level 3 urges the Commission to adopt the following condition on  
6 the proposed transaction:

7 1. Where Qwest operates in a territory or exchange that is adjacent to one of  
8 the CenturyLink exchanges identified by Qwest and CenturyLink in  
9 Exhibit 5 of its application with the FCC, it agrees to:

10 a. allow a CLEC to deliver traffic bound to or originating from the  
11 adjoining CenturyLink exchange in the Qwest exchange; and

12 b. allow an intrastate intraexchange carrier to deliver traffic bound to  
13 or originating from the adjoining CenturyLink exchange in the Qwest  
14 exchange.

15 2. Where CenturyLink operates in a territory or exchange that is adjacent to  
16 one of the Qwest exchanges identified by Qwest and CenturyLink in  
17 Exhibit 5 of its application with the FCC it agrees to:

18 a. allow a CLEC to deliver traffic bound to or originating from the  
19 adjoining Qwest exchange in the CenturyLink exchange; and

20 b. allow an intrastate intraexchange carrier to deliver traffic bound to  
21 or originating from the adjoining Qwest exchange in the CenturyLink  
22 exchange.

23 **Q. PLEASE EXPLAIN WHY LEVEL 3 WANTS ALL CONTRACTS FOR**  
24 **TELECOMMUNICATIONS SERVICES OR NETWORK**  
25 **INTERCONNECTION BETWEEN QWEST AND CENTURYLINK MADE**  
26 **AVAILABLE TO THE PUBLIC.**

1 A. A major theme for all parties filing testimony in this proceeding is the concern  
2 that the Combined Entity will be able to use its unique regulatory status as part  
3 RBOC, part protected rural carrier to establish preferential deals between the  
4 carriers for interconnection, access to each other's poles, ducts and conduits, the  
5 exchange of traffic, special access or other switched access services. Under these  
6 circumstances, the Combined Entity could also impose additional costs on its  
7 competitors. Level 3 believes that by making all agreements between the carriers  
8 public and available for public inspection, the public interest will be furthered.

9 **Q. WILL MAKING THE DEALS PUBLICLY AVAILABLE RESOLVE**  
10 **LEVEL 3's CONCERN?**

11 A. No, not by itself. In addition to making the contracts available, the Combined  
12 Entity should allow any party to avail itself of any specific term or rate without  
13 regard for any volume or term commitment. As discussed, the Combined Entity  
14 will be in a unique position to identify opportunities where it can leverage the  
15 network of its affiliates to its advantage and perhaps to the disadvantage of its  
16 competitors. Volume and term commitments in this context are inappropriate  
17 since the CenturyLink territories are generally free from landline competition. In  
18 the past, Qwest and CenturyLink have dealt with each other in arms-length  
19 transactions. This merger changes that negotiating dynamic. The Commission can  
20 ensure that competition is not harmed, and the public interest met, by ensuring  
21 that transactions between the Applicants are open for public review and that the  
22 appropriate rates can be selected by other carriers.

23 **Q. PLEASE DESCRIBE LEVEL 3's CONCERNS REGARDING HOW THE**  
24 **COMBINED ENTITY WILL TREAT 8YY TRAFFIC.**

25 A. This issue involves problems that Level 3 has experienced with the routing of  
26 wireless originated 8YY traffic primarily but is something that could happen with

1 any kind of 8YY traffic. As is relevant to this proceeding, Embarq is the ILEC  
2 entity that is engaged in an access charge arbitrage scheme Level 3 seeks to  
3 address.

4 An example of the scheme is described in the following scenario: a  
5 wireless 8YY call is originated in Boise and the call is routed to Embarq, which  
6 provides transport services to the wireless carrier. In this call flow, Level 3 is the  
7 IXC providing the 8YY service. When the call hits the Embarq network, Embarq  
8 must route the call to Level 3. However, instead of handing the traffic off at the  
9 Qwest tandem in Boise or through some other interconnection point in Idaho,  
10 Embarq backhauls the traffic to its switch in or near Spokane and then sends it  
11 back to the Qwest tandem in Boise. What is troublesome about this scenario is  
12 that Embarq then bills Level 3 for all the transport from the point of picking up  
13 the call in Boise to Spokane and back to Boise. Level 3 has been disputing these  
14 transport charges and believes that Embarq should be limiting its tandem transport  
15 charges to the amount of transport that represents the distance between the Level  
16 3 POI and the nearest tandem. Level 3's recommendation in this example also  
17 reflects the industry practice.

18 **Q. WHY IS THIS ISSUE IMPORTANT IN THIS PROCEEDING?**

19 **A.** This issue is important for a number of reasons. First, it represents the type of  
20 inefficient network routing that the Combined Entity is engaging in and could  
21 continue to engage in for the purposes of increasing the costs it imposes on  
22 competitors. With Embarq, CenturyLink and Qwest all operating as incumbents in  
23 the West region, the Combined Entity will have an incentive to home traffic  
24 across its affiliates to maximize transport costs. That would not be in the public  
25 interest.

1           Second, because routing can be altered relatively easily, the Combined  
2 Entity can implement this type of routing change with no or little notice to the  
3 industry. Then like traffic pumping, the impacted carrier will not know about the  
4 excessive charges until it is too late. At that point, carriers will open disputes and  
5 some party will seek self-help, with the resulting disputes landing in either courts  
6 or before the Commission.

7           The third and final reason for why it is an important issue is that the  
8 Commission needs to understand if the Combined Entity has included in its  
9 financial projections revenues from excessive transport charges for 8YY traffic.  
10 The Commission will need to have a complete understanding of those  
11 assumptions before it can determine if this transaction is in the public interest.

12 **Q. WHAT IS LEVEL 3'S RECOMMENDATION ON THIS ISSUE?**

13 **A.** With a few common sense conditions, the Commission can resolve this issue and  
14 allow the transaction to move ahead. To do that, Level 3 proposes the following  
15 language: "The Combined Entity agrees that it will limit any tandem transport  
16 charges for 8YY traffic to charges based upon the nearest tandem identified in the  
17 LERG to the originating point of each call." This simple requirement will  
18 eliminate any incentive for the Combined Entity to re-home 8YY traffic through  
19 inefficient routes and creates the incentive for bringing traffic to the nearest, most  
20 efficient tandem.

21 **Q. PLEASE EXPLAIN LEVEL 3's CONCERNS REGARDING EXISTING**  
22 **BILLING DISPUTES BEING LEVERAGED AGAINST A COMPETITOR.**

23 **A.** This issue focuses on the ability of the Combined Entity to leverage existing  
24 billing disputes with one ILEC affiliate to slow or refuse to provision new  
25 services by another ILEC affiliate. For example, assume that Level 3's billing  
26 dispute with Embarq for improper homing of 8YY traffic continues after the

1 transaction closes. The concern is that one of the other entities, CenturyLink or  
2 Qwest, would refuse to provision or process a request for interconnection or some  
3 other service order based on the outstanding dispute with Embarq. Level 3 does  
4 not believe that the transaction should allow the Combined Entity to refuse to  
5 provision services because of billing disputes that existed prior to the transaction  
6 or for unique billing disputes that arise afterwards. Absent the proper conditions,  
7 the Combined Entity will be able to impair competition by throwing up new  
8 roadblocks to the provision of services. But for the completion of the transaction,  
9 the existing disputes would not allow Qwest to refuse to provision services by  
10 citing a billing dispute between Level 3 and Embarq. This transaction should not  
11 create that incentive.

12 **Q. WHAT IS LEVEL 3's RECOMMENDATION ON THIS ISSUE?**

13 **A.** Level 3 believes that with a simple, common sense condition, the Commission  
14 can resolve this issue and allow the transaction to proceed. Level 3 proposes the  
15 following language be added to any order:

16 "The Combined Entity shall not refuse to provision services, process  
17 orders or threaten disconnection across the entire footprint of the  
18 Combined Entity based on a billing or other commercial dispute between  
19 any telecommunications provider and any one affiliate of the Combined  
20 Entity."

21 This condition will keep the playing field level between the Combined Entity and  
22 its competitors. Because a dispute between Level 3 and Embarq could not be  
23 legally used to threaten disconnection in the Qwest territory today, this condition  
24 preserves the status quo and eliminates any incentive for the Combined Entity to  
25 use its size to force parties into unreasonable settlements.

1 **Q. DOES LEVEL 3 HAVE A POSITION ON THE ISSUES REGARDING**  
2 **OPERATIONAL SUPPORT SYSTEMS (“OSS”) RAISED BY THE JOINT**  
3 **CLECS?**

4 **A.** Yes. Like many parties, Level 3 is concerned about the ability of the Combined  
5 Entity to meet its obligations regarding OSS. Level 3’s experiences in Maine,  
6 Vermont and New Hampshire following the Verizon and Fairpoint transaction are  
7 a clarion’s call for vigilant oversight when a relatively untested independent ILEC  
8 takes over the significantly greater operations of a RBOC. The ink has not dried  
9 on the recent transfer of the West Virginia operation of Verizon to Frontier  
10 Communications and a complaint has been filed alleging Frontier has not met its  
11 OSS commitments.<sup>12</sup>

12 Level 3 does not rely heavily upon unbundled network elements to  
13 provide services like other competitive providers, however, Level 3’s experience  
14 with obtaining wholesale services from Qwest and CenturyLink is anecdotally  
15 similar to the competitive comments. Ensuring an even playing field in the  
16 wholesale market is a crucial litmus test for whether the transaction is in the  
17 public interest. Level 3 agrees that conditions are required to ensure wholesale  
18 transactions are completed in a timely, fair and efficient manner.

19 **Q. WHY ARE QWEST’S CARRIER BILLING PRACTICES IMPORTANT**  
20 **FOR THE COMMISSION TO UNDERSTAND AND CHANGE AS A**  
21 **CONDITION OF APPROVAL?**

---

<sup>12</sup> *Commission Order*, Petition to Reopen by FiberNet LLC, Case No. 09-871-T-PC, Frontier Communications Corporation (full cite omitted), Public Service Commission of West Virginia, August 16, 2010. The Commission denied FiberNet’s petition to reopen because most of the issues happened after the sale from Verizon to Frontier. The Commission also noted that the issues raised could be best handled in a complaint proceeding; the Commission ruled that the issues would be transferred to a complaint proceeding and also determined that the parties would be given time to mediate the disputes. If mediation does not resolve the issues, the parties are to notify the Commission and the matter will be handled in the complaint case. *Commission Order*, pp. 2-3; *see also* FiberNet, LLC v. Frontier West Virginia, Inc., Case No. 10-1289-T-C.

1 A. At a high level, Qwest's existing carrier billing practices must be modified as a  
2 condition of approval for two reasons. First, any improper or inappropriate billing  
3 practice can have a significant detrimental effect on competitors. Any delays in  
4 payment or underpayment to a competitor harms its financial situation and can  
5 even jeopardize a carrier's survival. Second, if CenturyLink is basing any of its  
6 financial projections on a continuation of some of the aggressive billing practices  
7 of Qwest, it is important for the Commission to understand this and assess the  
8 degree to which such practices not only threaten the competitive industry and  
9 other carriers such as rural carriers, but also the degree to which such practices  
10 reflect some underlying financial weakness that could jeopardize CenturyLink's  
11 commitments to the Commission and its customers.

12 **Q. CAN YOU CITE TO ANY EXAMPLES OF BILLING PRACTICES THAT**  
13 **WARRANT THE COMMISSION MAKING A CHANGE AS A**  
14 **CONDITION OF APPROVAL?**

15 A. Yes. A little over a year ago, Qwest informed Level 3 that it would no longer  
16 accept any billing disputes that were lodged with Qwest 90 days after the date of  
17 the invoice. When challenged on the lawfulness of establishing this apparent  
18 arbitrary barrier to lodging good faith billing disputes and asked to point to any  
19 legal authority that allows Qwest to implement this practice, Qwest failed to  
20 provide any satisfactory legal explanation.

21 **Q. WHY IS THIS IMPORTANT?**

22 A. The arbitrary cut-off date imposed by Qwest curtails a CLEC's ability to lodge  
23 and collect on a legitimate billing dispute and rewards Qwest by allowing it to  
24 keep monies it is otherwise not entitled to. Given the complexity of intercarrier  
25 billing, it is not uncommon for billing errors to be discovered months—or even  
26 years—after the bills have been received. Qwest's practice in this regard is an

1           assertion of its far greater financial and regulatory litigation resources to the effect  
2           that carriers are faced with the choice of either expending scarce resources to  
3           litigate with Qwest or just accept its unlawful practice. Qwest should not be  
4           allowed to arbitrarily “deem” a 90-day cut-off period to be in effect to the harm of  
5           CLECs that rely upon them as an RBOC. A continuation of this practice by the  
6           Combined Entity is improper and should not be countenanced by approval of the  
7           transaction without this practice being ceased.

8   **Q.   IS THERE ANOTHER BILLING PRACTICE THAT YOU CAN CITE TO**  
9   **THAT THE COMMISSION SHOULD INVESTIGATE?**

10  **A.**   Yes. Level 3 is aware of another example in which Qwest has refused to follow  
11       the terms of its own tariffs and has billed Level 3 for charges that are not included  
12       within the applicable intrastate tariff. In this case, in the absence of a specific  
13       provision in Qwest’s intrastate tariff addressing expanded interconnection, Qwest  
14       nonetheless billed, and continues to bill, Level 3 a rate that is contained in its  
15       interstate tariff (rather than its intrastate tariff), which does have the specific  
16       provision in question. In this context, it is critical that the Commission affirm the  
17       Combined Entity’s obligation to strictly abide by the terms of its tariffs, amending  
18       them as necessary to allow for the requisite Commission scrutiny and industry  
19       input before Qwest bills and attempts to collect intercarrier charges.

20  **Q.   PLEASE SUMMARIZE YOUR TESTIMONY.**

21  **A.**   In my testimony, Level 3 has highlighted a number of areas where conduct by the  
22       Combined Entity could threaten to impair competition in general and especially in  
23       the Qwest operating territory. That conduct ranges from forcing competitors to  
24       subsidize the network operations of the Combined Entity through RUF or  
25       excessive tandem transport charges for 8YY traffic to threatening nationwide  
26       disconnection over unrelated billing disputes. It is imperative the Commission

1 understand and address these concerns now to ensure that the public interest is  
2 met by this transaction. Level 3 has proposed simple, common sense solutions to  
3 the issues it has raised. Level 3 urges the Commission to protect competition and  
4 adopt these conditions.

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

6 **A.** Yes it does. Thank you.