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June 7, 2006

Frances Nichols Anglin
Oregon Public Utility Commission
550 Capitol St., NE
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Re: ARB 665

Dear Ms. Nichols Anglin:

Enclosed for filing please find an original and (5) copies of Qwest Corporation's Supplemental Testimony of William R. Easton and Larry B. Brotherson, along with a certificate of service.

If you have any question, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in blue ink that reads "Carla".

Carla M. Butler

CMB:

Enclosures

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

ARB 665

**In the Matter of the Petition of Level 3
Communications, LLC's Petition for
Arbitration Pursuant to Section 252(b) of the
Communications Act of 1934 with Qwest
Corporation**

SUPPLEMENTAL TESTIMONY OF

WILLIAM R. EASTON

FOR

QWEST CORPORATION

June 7, 2006

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1

I. IDENTIFICATION OF WITNESS

2 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS**
3 **ADDRESS.**

4 A. My name is William R. Easton. My business address is 1600 7th Avenue, Seattle
5 Washington. I am employed as Director – Wholesale Advocacy. I am testifying on
6 behalf of Qwest Corporation (“Qwest”).

7

8 **Q. ARE YOU THE SAME WILLIAM EASTON WHO FILED DIRECT AND**
9 **REBUTTAL TESTIMONY (EXHIBITS QWEST/1 AND QWEST/9) IN THIS**
10 **PROCEEDING?**

11 A. Yes.

12

II. PURPOSE OF TESTIMONY

13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A. The purpose of my testimony is to respond to the Level 3 Supplemental Technical
15 Testimony of Kenneth Wilson. Specifically I will be addressing the concept of a
16 Secondary POI that Level 3 introduces for the first time in Mr. Wilson’s testimony.
17 My testimony will discuss the lack of basis for this concept in the
18 Telecommunications Act of 1996 or the FCC’s rules and explain how this concept
19 is undermined by language in the proposed interconnection agreement and, in fact,
20 conflicts with Level 3’s previously filed testimony in this proceeding. In addition,

- 1 I will briefly address issues related to Level 3's proposal to combine all types of
- 2 traffic, including switched access, on local interconnection trunks.

1 **III. DISPUTED ISSUE NO. 1: INTERCONNECTION**

2

3 **Q. IN HIS TESTIMONY, MR. WILSON INTRODUCES THE CONCEPT OF A**
4 **SECONDARY POINT OF INTERCONNECTION (POI). IS THIS A**
5 **CONCEPT THAT HAS BEEN DISCUSSED PREVIOUSLY IN THIS**
6 **PROCEEDING?**

7 A. No. Secondary POI was not mentioned once in the nearly 200 pages of testimony
8 filed previously in this docket by Level 3 witnesses. The concept was first
9 introduced by Level 3 in a technical conference attended by Mr. Booth in response
10 to a request that Level 3 explain why Level 3's assignment of telephone numbers
11 and routing of traffic was not Virtual NXX (VNXX). Level 3 now claims that it is
12 not employing VNXX. It argues that through the purchase of Direct Trunked
13 Transport (DTT) from Qwest, it establishes a secondary POI, or presence, in each
14 local calling area, making what would ordinarily be a toll call a local call.

15

16 **Q. IS THERE ANY SUPPORT FOR THE CONCEPT OF THE SECONDARY**
17 **POI IN THE TELECOMMUNICATIONS ACT OR IN ANY FCC ORDERS?**

18 A. No. I am not aware of the FCC ever referring to the term in any of its rules or
19 orders. Indeed, the FCC's definitions conflict with Level 3's concept that paying
20 for transport somehow constitutes the establishment of a point of interconnection
21 ("POI"). FCC Rule 51.701 states that "transport is the transmission and any
22 necessary tandem switching of telecommunications traffic subject to 251(b)(5) of
23 the Act from the interconnection point between the two carriers to the terminating

1 carrier's end office switch..." Clearly the FCC makes a distinction between a POI
2 and transport such as Qwest's DTT.

3

4 **Q. IS 'SECONDARY POI' A TERM THAT IS DEFINED IN THE PROPOSED**
5 **INTERCONNECTION BETWEEN THE TWO PARTIES**

6 A. No. The term is not defined in the interconnection agreement, nor does it appear in
7 any form in the agreement or in any Level 3-proposed language.

8

9 **Q. IS THE CONCEPT OF SECONDARY POI CONSISTENT WITH OTHER**
10 **LANGUAGE IN THE INTERCONNECTION AGREEMENT?**

11 A. No. Level 3 has proposed language at Section 7.2.2.1.4 of the agreement that
12 states:

13

14 7.2.2.1.4 LIS ordered to a Tandem Switch will be provided as direct
15 trunked transport between the Serving Wire Center of CLEC's POI and the
16 Tandem Switch.

17

18 This language acknowledges that the transport connects the POI and the tandem
19 switch, not that the transport establishes a POI at the tandem switch.

20

21 Similarly, there is undisputed language at Section 7.3.2.1.1 of the agreement that
22 states:

23 7.3.2.1.1 Direct trunked transport (DTT) is available between the
24 Serving Wire Center of the POI and the terminating Party's Tandem
25 Switch or End Office Switches. The applicable rates are described in
26 Exhibit A. DTT facilities are provided as dedicated DS3, DS1 or DS0
27 facilities.

1 Again, the language acknowledges that DTT connects the POI and the Qwest
2 switches; it does not somehow establish a POI at the Qwest switches.

3
4 **Q. IS THE POSITION LEVEL 3 IS NOW TAKING REGARDING THE**
5 **SECONDARY POI CONSISTENT WITH THE PREVIOUSLY FILED**
6 **TESTIMONY?**

7 A. No. One of the ironies of the new Level 3 position is that, while Level 3's previous
8 testimony strongly asserted its right to a Single Point of Interconnection, Level 3
9 now extols the virtues on what it claims are POIs in each local calling area.

10
11 **Q. MR. WILSON STATES AT PAGE 5 OF HIS SUPPLEMENTAL**
12 **TESTIMONY THAT "SINCE LEVEL 3 IS PAYING THE ENTIRE COST**
13 **OF THE DEOT, IT MOVES THE POI TO THE POINT WHERE THE**
14 **TRUNK TERMINATES AT THE QWEST SWITCH." DO YOU AGREE?**

15 A. No. As Mr. Wilson states on page 4 of his testimony, the "POI is where two
16 carriers connect their networks..." Mr. Wilson's secondary POI is not a place
17 where the two carriers' networks connect, but is actually a part of the Qwest
18 network, a fact that Level 3 has acknowledged in previous advocacy. Issue 17 in
19 this proceeding has to do with Qwest's proposed language which establishes a
20 process for the parties to develop a forecast of LIS trunks (including DTT). Level 3
21 has stricken all of Qwest's proposed forecasting language, stating in the issue
22 matrix attached to its Petition for Arbitration:

1 Qwest is responsible for terminating all traffic to Level 3 at the POI. Level
2 3 is not required to pay any costs incurred on the Qwest side of the POI.
3 ***These provisions force Level 3 to play a role in managing trunks and***
4 ***facilities on Qwest's side of the network.*** (Emphasis added.)
5

6 Level 3 has now gone from arguing that LIS trunks are a part of the Qwest network
7 that Level 3 has no responsibility to help manage to arguing that LIS trunks are
8 somehow an extension of the Level 3 network.

9 In addition to ignoring the fact that the LIS trunks are a part of the Qwest network,
10 Mr. Wilson also ignores the fact that Level 3 is, at least in its proposed language
11 (which it has not amended) affirmatively proposing that Qwest bear the full
12 financial responsibility for all LIS services like DTT. Level 3's proposed language,
13 testimony, and briefs in other states (at least up to this point) make the claim that
14 Level 3 has no obligation to pay for any facilities on the Qwest side of the POI. In
15 issue 1H, for example, Level 3 has stricken Qwest's proposed language that would
16 have the parties share the cost of DTT based on a relative usage calculation. Level
17 3's proposed language reads as follows:

18 7.3.2.2 Each party is solely responsible for any and all costs arising from
19 or related to establishing and maintaining the interconnection trunks and
20 facilities it uses to connect to the POI. Thus, neither party shall require the
21 other to bear any additional costs for the establishment and operation of
22 interconnection facilities that connect its network to its side of the POI.

23 Yet, as Mr. Brotherson points out in his testimony, Level 3 has now answered some
24 recent data requests with answers that indicates that it accepts financial
25 responsibility for all LIS services in Oregon. Although Level 3 may be paying for
26 the costs of DTT today under the existing interconnection agreement and although

1 Level 3 now appears to accept responsibility for DTT, that is not what it is
2 proposing in the interconnection agreement being arbitrated in this proceeding. Its
3 language continues to impose the financial responsibility for DTT on Qwest.

4

5 **Q. ON PAGE 7 OF HIS TESTIMONY MR. WILSON ARGUES THAT THERE**
6 **IS NO REAL DIFFERENCE BETWEEN THE PRI TRUNKS THAT QWEST**
7 **AND QCC USE AND THE DTT THAT LEVEL 3 AND ITS CUTOMERS**
8 **USE. PLEASE COMMENT.**

9 A. Mr. Wilson overlooks one very key difference: price. Even setting aside Level 3's
10 advocacy that it should not have to pay for trunking on the Qwest side of the POI,
11 there are significant price differences between the two services. While PRI is
12 purchased out of Qwest tariffs at tariffed prices, DTT is priced based on the
13 TELRIC pricing methodology.

14

15 **Q. CAN YOU PROVIDE AN EXAMPLE TO ILLUSTRATE THE**
16 **DIFFERENCE IN PRICES FOR THE TWO SERVICES?**

17 A. Certainly. Assuming 50 miles of DS1 DTT and applying the Oregon SGAT rates of
18 \$37.94 fixed and \$1.16 per mile results in a DTT price of \$95.94 per month. Even
19 before considering transport prices, the prices QCC must pay for PRI, the local
20 exchange offering that gives QCC access to a specific LCA, are in the range of
21 \$700-975 per month depending on the length of the contract and the specifics of the
22 service being purchased. In addition to the PRI, retail private line would need to be
23 purchased from the tariff to transport the call out of the local calling area to the

1 location where QCC maintains the modems it uses to provide its service to ISPs
2 (there is one such location in each of Oregon's two LATAs). Again using the
3 assumption of 50 miles of DS1 transport and applying the Oregon tariff rates of
4 \$75.00 fixed and \$7.25 per mile results in a monthly private line price of \$437.50.
5 Combined with the PRI price, the monthly price for the tariffed services would be
6 somewhere between \$1,137.50 and \$1,412.50, approximately 13 times greater than
7 the corresponding monthly DTT price of 95.94. Clearly, from a price perspective,
8 there is no comparison between PRIs that Qwest and QCC use and the DTT that
9 Level 3 is proposing to use. Mr. Wilson's statement that "PRI trunks are retail
10 service that is *slightly more expensive* retail than DEOT.DTT trunks" (Wilson Supp.
11 Test. at 9; emphasis added) misses the mark by a huge margin.

12
13 **Q. ARE THERE OTHER PROBLEMS RELATED TO THE LEVEL 3**
14 **CONCEPT OF A SECONDARY POI?**

15 A. Yes. In addition to the inconsistencies I have previously described, the fundamental
16 flaw with the Level 3 argument is that it assumes that a call is rated as local or toll
17 depending on where the carriers are interconnected. But, as Mr. Brotherson
18 describes in his testimony, the location of the carriers has never been used as a basis
19 for determining whether a call is local or toll. The key determinant is the location
20 of the calling and called parties, not where the carriers' networks are connected.
21 Even if one were to ignore all of the inconsistencies and accept Level 3's concept of
22 a secondary POI, it does not logically follow that the existence of a secondary POI
23 in a local calling area makes all calls local. A POI is simply a point at which two

1 carriers exchange traffic. To the best of my knowledge a POI has never been
2 considered to be a customer location, and if it were in this case, then there would be
3 no basis for a claim by Level 3 for terminating compensation: after all, if Qwest
4 hands off traffic directly to a customer of a CLEC at a POI, the CLEC's claim that
5 it is terminating the traffic would be without substance.

1 **IV. DISPUTED ISSUE NO. 2: ALL TRAFFIC ON**
2 **INTERCONNECTION TRUNKS**

3
4 **Q. AT THE RECENT TECHNICAL CONFERENCE, LEVEL 3 PROPOSED**
5 **TO AVOID THE PROBLEM OF PRODUCING ACCESS BILLING**
6 **RECORDS TO THE INDEPENDENT COMPANIES BY NOT SENDING**
7 **TOLL TRAFFIC TO QWEST THAT DOES NOT TERMINATE TO QWEST**
8 **END USERS, OR UNE/RESALE CUSTOMERS. DOES THIS ALLEVIATE**
9 **QWEST’S CONCERNS ABOUT ALLOWING SWITCHED ACCESS**
10 **TRAFFIC ON LIS TRUNKS?**

11 A. No. Level 3’s offer does not reduce the systems changes required of Qwest to
12 apply the proposed factors, and the appropriate tariffed rates, to traffic on LIS
13 trunks. Nor does it eliminate the issue of third parties’ needs for access billing
14 records.

15
16 Qwest offers services called Qwest Platform Plus (QPP) which are the replacements
17 for certain Unbundled Network Elements-Platform (UNE-P) products that Qwest is
18 no longer required to offer under the interconnection agreement. As a part of the
19 QPP product offering, Qwest provides switched access billing records to allow
20 CLECs to bill for switched access related to their QPP lines. Under the Level 3
21 proposal to route switched access over LIS trunks, Qwest would be unable to
22 provide these records and CLECs, using the QPP services, would be unable to bill
23 for switched access.

1 **Q. AT PAGE 18 OF HIS TESTIMONY, MR. WILSON ARGUES THAT THE**
2 **USE OF BILLING FACTORS, RATHER THAN ACTUAL CALL**
3 **RECORDINGS, TENDS TO REDUCE COSTS. DO YOU AGREE?**

4 A. No. I cannot speak to what other companies do, but, as I noted in both my Direct
5 and Rebuttal testimony in this proceeding, adopting Level 3's proposal to put all
6 traffic over local interconnection trunks and bill using billing factors would force
7 Qwest to expend significant resources to implement the proposals. Qwest already
8 has a system in place to bill for all types of traffic carried on FGD trunks based on
9 actual call recording. However, Qwest lacks this capability if all types of traffic,
10 including switched access, are allowed to be carried over local interconnection
11 trunks as Level 3 is proposing. Building this capability into the local
12 interconnection trunk billing process or building in the billing factor functionality
13 proposed by Level 3 would require a significant reworking of Qwest systems and
14 processes.

15
16 Finally, I would point out that using actual traffic recordings as a basis for billing,
17 as Qwest is proposing to do over FGD, is inherently more accurate than basing the
18 billing on the estimates involved in Level 3's factor approach. Mr. Greene's
19 Supplemental Technical Testimony includes a copy of an amendment between
20 Verizon and Level 3. It is interesting to note that Section 6.1 of the amendment
21 calls for billing between the parties to be based on individual call records, which is
22 completely consistent with Qwest's position in this case.

1

V. CONCLUSION

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

3 A. Yes.

4

5

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

ARB 665

**In the Matter of the Petition of Level 3
Communications, LLC's Petition for
Arbitration Pursuant to Section 252 (b) of
the Communications Act of 1934 with Qwest
Corporation**

**LEVEL 3 COMMUNICATIONS, LLC'S
PETITION FOR ARBITRATION**

SUPPLEMENTAL TESTIMONY OF

LARRY B. BROTHERSON

FOR

QWEST CORPORATION

JUNE 7, 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. ARE YOU THE SAME LARRY BROTHERSON WHO FILED DIRECT AND REBUTTAL TESTIMONY IN THIS PROCEEDING?

A. Yes.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the supplemental testimony filed by Level 3 witnesses Mack Greene and Ken Wilson on May 10, 2006. Their testimony was filed following a technical conference held in Portland between Qwest and Level 3, and attended by Mr. Booth of the Commission staff. The purpose of the conference was to review how both Qwest and Level 3 provision service to end users and how the two telephone companies interconnect their networks in Oregon. Because the Level 3 testimony to which I am responding was very general in nature and was not tied to specific issue numbers, I have made an attempt to identify the issues to which each section of my response to Level 3’s testimony relates.

1 **III. TECHNICAL DIFFERENCES – REGULATORY DIFFERENCES.**

2
3 **(ISSUES 3A (COMPENSATION FOR VNXX TRAFFIC), 3B (DEFINITION**
4 **OF VNXX), 3C (ISP-BOUND TRAFFIC), AND 4 (COMPENSATION FOR**
5 **EXCHANGE OF TRAFFIC).**

6
7 **Q. MR. GREENE LABELS HIS TESTIMONY SUPPLEMENTAL**
8 **TECHNICAL TESTIMONY. IS THE DISPUTE BETWEEN LEVEL 3 AND**
9 **QWEST TECHNICAL?**

10 A. Not really. One of Level 3's primary arguments in the testimony of both witnesses
11 is that what Level 3 does to serve ISPs is technically the same as what QCC does to
12 serve ISP customers. While aspects of that conclusion could certainly be
13 challenged even from a technical perspective, Level 3's basic argument misses the
14 point.

15
16 At a high level, a telecommunications network consists of switches, trunks, and
17 loops, and that is where the Level 3 witnesses erroneously concentrate their
18 discussion. Level 3 focuses on technical similarities, but completely ignores the
19 very dramatic regulatory treatment and compensation mechanisms of the different
20 types of calls that go over the network. Just because certain calls may be similar
21 from a technical perspective does not mean they are treated the same under the
22 compensation regimes established by the FCC and state commissions over the
23 course of the past few decades.

24
25 For example, an IXC Feature Group D trunk has many of the same technical
26 characteristics as a PBX trunk. Mr. Wilson is correct when he states that both are

1 “trunks” and are in many respects similar. But to suggest that IXCs are exempt
2 from access charges because their trunks are similar to an end user PBX trunk (to
3 which access charges are not applied) completely ignores the regulatory
4 foundations of current pricing mechanisms. Likewise, two end offices in the
5 Portland LCA may be 20 miles apart and calls between end users served out of
6 those offices are deemed “local calls” by the Commission. Yet in another part of the
7 state, calls between two end offices 20 miles apart may be treated as long distance
8 because they are in different local calling areas (“LCAs”). To argue, for example,
9 that toll charges should not apply because the interoffice trunks are technically
10 similar in both cases requires one to ignore the very real and necessary regulatory
11 distinctions between the two situations. Level 3’s attempt to focus on technical
12 similarities in order to avoid proper regulatory treatment of different categories of
13 calls ignores both federal and Oregon law.

14
15 **Q. WHAT IS THE FOCUS OF MR. GREENE’S TESTIMONY?**

16 A. Mr. Greene’s repeated theme throughout most of his supplemental testimony is that
17 Level 3 competes with QCC (the section 272 entity in the Qwest family of
18 companies) to provide service for ISP customers, and Level 3 is merely “doing the
19 same thing that QCC is doing.” The first part is true. Level 3 and QCC both serve
20 ISP customers. But the latter part of his theme is simply not true. From a legal and
21 regulatory perspective, he has glossed over the real distinctions between what Level
22 3 and QCC are doing, and has thus ignored completely the regulatory consequences
23 of those fundamental differences. It is those distinctions that are the basis for the
24 fundamental dispute in this arbitration.

1

2 **Q. PLEASE DESCRIBE THE DIFFERENCES BETWEEN LEVEL 3 AND QCC**
3 **AND HOW THEY SERVE ISP CUSTOMERS.**

4 A. The differences between Level 3 and QCC are fundamental. First, when QCC
5 provides its service to ISPs it does not purport to be doing so as a competitive local
6 exchange carrier (“CLEC”) and does not interconnect with Qwest as a CLEC under
7 the Act in order to provides its Wholesale Dial service. Because it is not a
8 operating as a CLEC in order to provide services to ISPs, QCC must connect to the
9 network as an end user in order to offer its dial-up services to ISPs. In fact, ISPs
10 like AOL or Earthlink do not need to use the services of an Enhanced Service
11 Provider (“ESP”) like QCC or the services of a CLEC like Level 3 at all. ISPs can
12 purchase end user services directly from Qwest or any other local telephone
13 company. But some ISPs choose to use the service of QCC, and in each instance
14 where that occurs, Qwest (the ILEC) complies with the regulatory rules and
15 requires that an ESP like QCC be treated as an end user, and not as a telephone
16 company entitled to interconnection under section 251 of the Act. When an ISP
17 buys services directly from Qwest, it too is treated as an end user, and not as a
18 CLEC. Because neither the ISP nor QCC interconnects with Qwest under section
19 251 in order to provide ISP services, they are not entitled to any of the rights that
20 come along with interconnection, such as the right to reciprocal compensation, the
21 right to require an ILEC to transport local traffic to a single point of interconnection
22 in each LATA, or the right to purchase services at TELRIC rates.

23

24 In contrast, Level 3 (the CLEC) is the provider of Level 3’s Managed Modem

1 Service. In providing that service, Level 3 makes no claim that it is an ISP or that it
2 is an ESP like QCC. Instead, Level 3 interconnects as a CLEC, and is thus entitled
3 to demand that Qwest deliver “local” calls to a single point of interconnection in
4 each LATA over TELRIC-priced LIS trunks, and is entitled to terminating
5 compensation at \$.0007 per MOU for *local* ISP traffic. Neither ISPs nor ESPs like
6 QCC are entitled to interconnect at a SPOI nor receive terminating compensation
7 from Qwest, and they do not claim such a right.

8
9 **Q. IS WHAT LEVEL 3 IS DOING AS A CLEC IN OREGON REALLY THE**
10 **SAME AS WHAT QCC DOES AS AN ISP CUSTOMER IN OREGON?**

11 A. No. If Level 3 wishes to act as either an ISP or operate more generally as an ESP,
12 it too would be required to buy local service such as PRI (which compensates the
13 LEC for use of the local exchange and switching facilities) and buy transport at
14 retail end user private line rates. In other words, if Level 3 wishes to actually make
15 a connection in each LCA then it too must pay for the local connection like QCC
16 and other ISPs. But if the traffic is delivered to an ISP end user in the LCA in
17 which traffic is originated, then no reciprocal compensation would be due because
18 the call is delivered to an end user and end users are not entitled to charge
19 reciprocal compensation. If, however, the calls are delivered to Level 3 acting as
20 an ISP then it would not be entitled to purchase LIS trunks at TELRIC pricing and
21 the traffic should be placed on private lines either provided by Level 3 or leased
22 from third parties.

23
24 The truth of the matter is that, while Level 3 claims that it and QCC are doing the

1 same thing, Level 3 does not want to be treated as an end user like QCC. Instead,
2 Level 3 seeks all the advantages of being a CLEC. But to obtain those rights, Level
3 3 must be a CLEC, and the CLEC is not the end user whose physical location must
4 be in the same LCA as the calling party in order to qualify for terminating
5 compensation.

6

7 **Q. LEVEL 3 CLAIMS THAT COMPLYING WITH THE RULES THAT APPLY**
8 **TO OTHER CARRIERS WOULD HARM ITS BUSINESS. DO YOU**
9 **AGREE?**

10 A. If Level 3 is compelled to comply with the rules that other carriers must meet, it
11 could certainly increase Level 3's costs, but, as I discuss later, Level 3 chose to
12 configure its network as it did with full knowledge of existing intercarrier
13 compensations rules. The fact that compliance with those rules may not fit Level
14 3's desired business plan does not mean that Qwest should bear costs that rightfully
15 should be borne by Level 3 nor does it mean that Level 3 should be given an
16 exemption from the rules that the rest of the industry must meet. The fact is that
17 what Level 3 offers to its ISP customers today is simply the equivalent of an
18 inbound 800 service, a service for which access charges are appropriately charged
19 to IXCs. Level 3 accomplishes this through the improper assignment of VNXX
20 numbers, rather than paying for 800 service and assigning 800 numbers to their ISP
21 customers. If it chose to, Level 3, as a local telephone company, could design a
22 network that could offer service to its ISP customers the same as Qwest as a local
23 telephone company offers local service to ISPs and ESPs like QCC. It could also
24 deploy modems in more LCAs. But Level 3 elected to design its network using a

1 Washington-based Softswitch and Media Gateway in order to serve ISP customers
2 in other states. However, unlike Level 3, Level 3's competitors (whether Qwest,
3 other CLECs, or independent LECs) continue to recognize Commission-established
4 LCA boundaries and hand off interexchange calls to IXCs.

5

6 **Q. HOW DO YOU RESPOND TO LEVEL 3'S STATEMENT THAT IT IS**
7 **INEFFICIENT TO ASK ITS CUSTOMER TO PURCHASE A FACILITY TO**
8 **EACH LCA?**

9 A. When Qwest proposes that Level 3 must actually transfer traffic to a customer in
10 the LCA in order for the call to be considered a local call, Level 3 expresses
11 incredulity that such a requirement would be imposed upon it. Level 3 asserts that
12 it is much more efficient to serve Oregon using a Softswitch and Media Gateway
13 located in Washington and assigning ISP customers in places like Virginia local
14 Oregon telephone VNXX numbers (see network diagram). It is not Qwest's
15 intention to debate whether Level 3's means of serving customers is more efficient.
16 But, whether efficient or not, such calls are not local calls in Oregon and cannot be
17 treated as such. In fact, Qwest is justifiably incredulous that a company would
18 assert that such calls are local calls. The rules for classifying local, intrastate toll,
19 and interstate toll calls existed long before Level 3 chose to construct its network.
20 Level 3 was well aware of the regulatory structure of the telecommunications
21 industry when it petitioned to become an Oregon local telephone company (as
22 opposed to an IXC, for example). Having designed a network that completely
23 ignores state and local boundaries and Oregon law relating to the various
24 classifications of calls, it is totally disingenuous for Level 3 to now assert that it

1 would be inefficient to determine whether calls are local by their origination and
2 termination points.

3
4 **Q. IS IT TRUE THAT WHAT LEVEL 3 DOES AS A CLEC IS THE SAME AS**
5 **WHAT QWEST OFFERS TO QCC AS AN END USER?**

6 A. Absolutely not. Perhaps a simple way of summarizing the regulatory and legal
7 differences between Level 3's approach to providing service to ISPs would be to
8 compare the approaches of QCC and Level 3 in three separate areas: (1)
9 origination of calls; (2) transport of calls; and (3) termination of calls. Viewing the
10 differences from these perspectives, it is obvious that they are not the same and,
11 indeed, are fundamentally different.

12
13 **Call Origination:** QCC buys a local exchange service (PRI) as an end user out of
14 the local exchange tariff of Qwest. QCC thus compensates Qwest for the use of the
15 local exchange facilities and switching that are necessary to originate ISP calls.
16 Level 3 opposes paying originating access charges to Qwest for the use of those
17 same facilities used for calls originated in the LCA but delivered to ISPs not located
18 in the same LCA (*i.e.*, VNXX ISP calls). Nothing in Level 3's language would
19 require it to compensate Qwest in any manner for the use of Qwest's local facilities
20 and switching that is necessary to originate the VNXX ISP calls delivered to Level
21 3's ISP customers. Thus, QCC compensates Qwest for call origination, while Level
22 3 denies any obligation to do so for the origination of VNXX traffic.¹

¹ Level 3 claims that it provides a local exchange service, a service that consists solely of DID. Payment by Level 3's ISP customers to Level 3 for that service does nothing to compensate Qwest for Qwest's local network (the local network, after all, that the ISPs must have access to, since Level 3 has no local network facilities in the vast majority of the LCAs in

1

2 **Transport:** In addition to paying retail rates for local exchange service, QCC pays
3 Qwest for transport from each LCA to the location of the modems that QCC
4 provides as part of its service to ISPs (there is one location in each of Oregon’s two
5 LATAs). QCC pays for such transport at *retail private line rates*. Level 3’s
6 position on its financial responsibility for transport has been difficult to ferret out.
7 Its proposed contract language would require Qwest to bear the financial
8 responsibility for all LIS services ordered by Level 3; for example, it proposes
9 language in several provisions that each party would be financially responsible for
10 all costs on their side of the POI.² Level has done nothing to amend that language.
11 Yet in its supplemental testimony, Level 3 claims that, because it currently pays for
12 these LIS services, it has extended its network and has established “secondary
13 POIs.” Now in recent data responses, Level 3 appears to agree that *Level 3 is*
14 *financially responsible* for the LIS services at issue. (See Level 3’s responses to
15 Data Request Nos. 1 and 3.b, Qwest’s Fourth Set of Data Requests.)³ So, if one

Oregon). Furthermore, as Mr. Greene acknowledged in the recent technical conference, Level 3’s functionality for providing this DID service is not located in each LCA, but is actually located in Level 3’s Media Gateway and Softswitch, both of which are located in Seattle. Thus, while Level 3 claims it provides local service, it does not represent any equipment or functionalities owned or leased by Level 3 in the actual LCAs from which ISP traffic is originated.

² See, e.g., Level 3’s language in sections 7.2.2.1.1, 7.2.2.9.3.1, 7.3.1.1.3, 7.3.2.2, 7.3.3.1, and 7.3.3.2.

³ Level 3’s response to request no. 1 states: “Level 3 [is] responsible for paying for transport from all local calling areas.” Qwest’s request no. 3.b asked: “Is transport from each local calling area (“LCA”) to a Level 3/Qwest POI part of Level 3 Manage Modem Service.” Level 3’s response stated: “Yes. Under Oregon law Level 3 bears the cost of carrying Qwest originated traffic to and from Qwest’s local calling areas.”

1 bases Level 3's position on its proposed language and its direct and rebuttal
2 testimony, Level 3 would not be responsible for LIS services. However, if the
3 recent data responses represent Level 3's position, Level 3 acknowledges its
4 responsibility for LIS services used to carry ISP traffic (which, by the way, is a
5 position also at odds with Level 3's advocacy in every other state in which it has
6 filed a Petition for Arbitration). In either case, however, Level 3 and QCC are
7 fundamentally different with regard to its financial responsibility for transport.
8 QCC pays retail private lines rates. Depending on which Level 3 position one is
9 examining, Level 3 would either (1) pay nothing for transport or (2) pay TELRIC
10 rates as a telephone company rather than as an end user. As Mr. Easton's testimony
11 points out, in either case the financial difference is dramatic.

12
13 **Termination of VNXX ISP Traffic:** QCC buys its PRI and private line services
14 as an end user. An end user has no right to reciprocal or other terminating
15 compensation, and QCC makes no such claim. On the other hand, Level 3 asserts
16 that it is entitled to receive compensation at \$.0007 on all ISP traffic, including
17 VNXX ISP traffic.

18
19 Level 3's claim that it and QCC are doing the same thing is simply false when
20 viewed with a wide lens. Yes, both companies provide services to ISPs that allow
21 those ISPs access to end user customers. But that is where the similarity ends.
22 QCC pays for origination and transport, while claiming no right to terminating
23 compensation. Level 3 claims no obligation to pay for call origination. Level 3
24 apparently now acknowledges a legal obligation to pay for LIS transport in Oregon,

1 but only at TELRIC rates (although in its proposed contract language continues to
2 deny any financial responsibility for LIS transport). And, to ice the cake, it claims
3 a right to receive terminating compensation on all ISP minutes. It would be
4 difficult to design two approaches to serving ISPs that are more different than those
5 taken by QCC and Level 3. To suggest that they are identical because of technical
6 similarities in the transport facilities used to provide both services is absurd.
7

8 **Q. LEVEL 3 FOCUSES ON THE TECHNICAL SIMILARITIES OF**
9 **NETWORKS AND NOT THE REGULATORY CLASSIFICATION OF**
10 **CALLS. HAS QWEST ADDRESSED THIS ISSUE IN ITS TESTIMONY?**

11 A. Yes. I addressed the issue in some depth in my Rebuttal Testimony (Qwest/10, at
12 39-51). That testimony was filed last September and there are several Commission
13 decisions that were issued after my rebuttal testimony was filed that further address
14 this issue.
15

16 **Q. WHY ARE THE REGULATORY DISTINCTIONS RELEVANT TO LEVEL**
17 **3'S TECHNICAL DISCUSSIONS?**

18 A. Because the technical similarities of facilities alone are not determinate of how a
19 call is treated. Oregon law (as reflected in statutes and rules, Oregon Commission
20 decisions, and an Oregon federal court decision), like most states, makes a clear
21 distinction between local and long distance (interexchange) calls, subjecting them
22 to different pricing regimes. Because LCAs in Oregon are geographically-based,
23 the distinction between local and long distance calling has been determined by
24 whether the call is between *end users* physically located in the same LCA, while
25 interexchange calls are calls that originate from a customer physically located in

1 one exchange and terminate to a customer physically located in another distant
2 exchange. Local exchange service calls within a LCA are traditionally flat-rated;
3 interexchange calls have traditionally been priced on a per-minute basis.

4

5 **Q. LEVEL 3 PROPOSES TO DEFINE LOCAL AND TOLL BASED ON**
6 **TELEPHONE NUMBERS INSTEAD OF PHYSICAL LOCATIONS OF THE**
7 **PARTIES TO THE CALL. BASED ON YOUR REVIEW OF LEVEL 3'S**
8 **SUPPLEMENTAL TESTIMONY, IS THAT STILL LEVEL 3'S CLAIM?**

9 A. Level 3's proposed language⁴ continues to base call classification on telephone
10 numbers, not LCAs. Its proposed contract language continues to make VNXX
11 permissible.

12

13 However, Level 3, in its supplemental testimony, now advocates a completely new
14 theory. The essence of Level 3's claim is that if it has a POI (including its entirely
15 fictional "secondary POI") in a LCA, that fact alone eliminates VNXX. For a
16 variety of legal, practical, and policy reasons, this theory is flawed and must be
17 rejected by the Commission. For ease of reference, I will refer to Level 3's new
18 position in the technical testimony as the "POI theory."

⁴ See for example the Level 3 definition for ISP VNXX where Level 3 language stated: "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."

1 **IV. RESPONSE TO LEVEL 3'S NEW "POI THEORY"**

2
3 **(ISSUES 3A (COMPENSATION FOR VNXX TRAFFIC), 3B (DEFINITION**
4 **OF VNXX), 3C (ISP-BOUND TRAFFIC), 4 (COMPENSATION FOR**
5 **EXCHANGE OF TRAFFIC), 10 (DEFINITION OF**
6 **"INTERCONNECTION").**

7
8 **Q. YOU MENTIONED THAT LEVEL 3'S POI THEORY IS FLAWED.**
9 **PLEASE ELABORATE.**

10 A. The fundamental issue is actually quite straightforward. The proper means test for
11 rating or classifying calls in Oregon (which, in turn, helps define what calls are
12 VNXX) is determined by *where the called and calling parties are physically*
13 *located*. It is clear that the location of a POI is not (and never has been) a relevant
14 location for determining the proper classification of a calls in Oregon. For
15 example, ORS 759.005(2)(c) defines "Local exchange telecommunications
16 service" as "telecommunications service provided *within the boundaries of*
17 *exchange maps filed with and approved by the commission.*" (Emphasis added).
18 The Commission's rule on this point makes specific reference to the Oregon statute
19 quoted above. OAR 860-032-0001(5) defines "local exchange service" as local
20 exchange telecommunications service is defined in ORS § 759.005(2)(c). Inherent
21 in this definition is the concept that the location of the called and calling party are
22 the determining factors. Consistent with Oregon statutes and rules, Qwest's
23 proposed language treats traffic as local traffic only if it originates and terminates
24 within the same LCA.⁵ Nothing in the statute or rule purports to categorize calls
25 based on the NPA/NXX assigned to a particular call, nor is there anything to

⁵ Qwest's tariffs likewise make the physical location of the parties to a call the relevant locations. See *Qwest Corp. v. Universal Telecom*, 2004 WL 2958421, at *10 (D. Ore. 2004).

1 suggest that the location of a POI, a point where two telephone companies
2 interconnect their networks has any relevance either.

3
4 **Q. HAVE RECENT COMMISSION DECISIONS AND THE DECISIONS OF**
5 **AN OREGON FEDERAL COURT ADDRESSED THIS ISSUE?**

6 A. Yes, VNXX has been the subject of several recent Commission decisions⁶ as well
7 as the subject of recent Oregon federal court decisions in *Qwest v. Universal*.⁷ I
8 will not engage in a detailed analysis of those decisions because the parties will
9 have an opportunity to do so in their briefs. These decisions make clear that VNXX
10 is identified by the physical location of the calling and called parties and not by the
11 point at which traffic is exchanged between the two telephone companies that serve
12 those customers. In other words, Level 3's POI theory is not supported by anything
13 in Commission decisions in Oregon or in the *Qwest v. Universal* decisions. Quite
14 the contrary, those rulings are clear that Level 3's theory is completely inconsistent
15 with Oregon and federal law.

16
17 The Commission's definition of VNXX is stated in Order No. 04-504, Docket UM
18 1058 (September 7, 2004), where the Commission stated that "[a] 'Virtual NXX'
19 (VNXX) occurs when a CLEC assigns a 'local' rate center code to a *customer*

⁶ Order No. 04-504, Docket UM 1058 (September 7, 2004) (generic VNXX docket); Order No. 06-037, Docket No. IC 12 (January 30, 2006) (Level 3 Complaint case); Order No. 06-190, Docket ARB 671 (April 19, 2006) (Universal/Qwest arbitration); Order No. 05-1219, Docket No. IC 9 (November 18, 2005) (Pac-West Complaint case).

⁷ 2004 WL 2958421 (D. Ore. 2004). After a dispute arose over the meaning of the term "termination" in the original decision, the Court issued a short supplemental decision in *Qwest Corp. v. Universal Telecom*, Civil No. 04-6047-AA (D. Or. September 22, 2005) (slip opinion).

1 *physically located in a 'foreign' rate center.*" (*Id.* at 2; emphasis added.). The
2 federal court in *Qwest v. Universal* defined local service as service "furnished
3 *between customer's premises* located within the same local calling area."⁸

4
5 In Order No. 06-037 (in the Level 3 complaint case), the Commission noted that the
6 *ISP Remand Order* "does not contemplate that ISP-bound traffic will be provisioned
7 through VNXX arrangements, but rather requires the *ISP's modems must be located*
8 *in the same local calling area as customers originating the Internet-bound call* in
9 order for the traffic to be compensable." (Order No. 06-037, at 4; emphasis added).
10 Level 3 did not seek rehearing of that order. The decision in the Universal/Qwest
11 arbitration (Order No. 06-190) followed the same principles, but went one more step
12 and required language in the ICA that bans the exchange of VNXX traffic. (Order
13 No. 06-190, at 10). Thus, in Oregon, VNXX occurs when a local number is assigned
14 to an ISP whose modems are not in the same LCA as the calling party. A POI,
15 which Mr. Wilson defines as "the location where two carriers connect their
16 networks for the purpose of exchanging traffic,"⁹ is neither of those locations.

17
18 **Q. ASIDE FROM LEGAL AND POLICY ISSUES, ARE THERE COST**
19 **CAUSATION ISSUES THAT THE COMMISSION SHOULD CONSIDER IN**
20 **WEIGHING THIS NEW POI THEORY?**

21 A. Yes. I am not an economist, and cannot comment in depth on issues such as
22 economic efficiency. From my perspective, the cost causation issue is simply a

⁸ 2004 WL 2958421, at *9-*11.

⁹ Wilson Supplemental Testimony at 4.

1 question of fairness. It is fair that those who cause costs to be incurred also bear the
2 financial responsibility for those costs in the prices they pay; likewise, it is unfair to
3 impose those costs on a company that is not the cost causer.

4
5 Level 3's provides services to ISPs, which result each month in millions of minutes
6 of one-way traffic destined for Level 3's ISP customers and then on to the Internet.
7 VNXX makes this situation even worse. Through the use of VNXX, the end
8 users who originate ISP traffic are not in the same LCAs as the ISPs that provide
9 them with Internet access. In this situation, the ISP traffic travels from the ISP end
10 user (who is also a Qwest customer) on Qwest's facilities to Level 3 POIs and the
11 traffic is delivered to an ISP in a LCA that is different than the LCA of the calling
12 party. While Level 3 makes numerous arguments, it cannot deny that the result is
13 an interexchange call. As I discussed above, there are well-defined rules in Oregon
14 for classifying local and interexchange calls. Originating access charges
15 compensate the originating LEC for the local network and switching used to collect
16 the traffic. Other access charges (transport) also apply when the LEC transports the
17 call between LCAs. But by using VNXX numbering rather than requiring the ISP
18 to purchase 800 numbers or delivering the traffic to the ISP in the same LCA as the
19 caller, Level 3 requires Qwest to perform services without compensation.

20
21 **Q. LEVEL 3 JUSTIFIES VNXX WITH THE CLAIM THAT VNXX CALLS**
22 **ARE MADE BY QWEST CUSTOMERS. PLEASE COMMENT ON THAT**
23 **ISSUE.**

24 A. First, it is true that the calls in question come from customers who buy local

1 exchange service from Qwest, but that does not mean they are acting in that role
2 when they make a call to their ISP. To the contrary, the end users who purchase
3 Internet access service from ISPs are customers of the ISPs when they make an ISP
4 call. The primary purpose of an ISP is to sell its services (*i.e.*, access to the
5 Internet) to end users in order to make a profit. Thus, an ISP encourages end users
6 to establish a business relationship with it whereby the end user obtains access to
7 the Internet and pays a monthly fee to the ISP for the services the ISP provides.
8 The purpose an end user establishes an Internet connection is, among other things,
9 to access information and web sites on the Internet. Thus, when an end user
10 establishes the connection with its ISP, the end user is acting as a customer of the
11 services offered by the ISP.

12
13 **Q. HOW HAS THIS ISSUE BEEN ADDRESSED BY OTHER STATE**
14 **COMMISSIONS?**

15 A. In an arbitration between Qwest and Level 3, the Colorado Commission hit this
16 issue head on:

17
18 “We find Qwest’s ILEC/IXC analogy for the transport of
19 ISP-bound calls more persuasive than the ILEC/CLEC analogy
20 advanced by Level 3. We continue to believe that in transporting
21 an ISP-bound call, the ISP plays a role similar to that of an IXC in
22 the transmission of an interstate long distance call. *We believe that*
23 *the originator of either call, the ILEC end-user, acts primarily as*
24 *the customer of the ISP or IXC, not as the customer of the ILEC.”¹⁰*

¹⁰ Commission Decision, *In the Matter of Petition of Level 3 Communications LLC, for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Qwest Corporation*, Decision No. C01-312, Docket No. 00B-601T, at 18 (Colo. PUC 2001) (emphasis added).

1

2 Similarly, the Vermont Board reached a similar conclusion:

3

4

5

6

7

8

9

“In effect, a CLEC using VNXX offers the equivalent of incoming 1-800 service, without having to pay any of the costs associated with deploying that service and instead relying upon [the ILEC] to transport the traffic without charge simply because the VNXX says the call is ‘local.’”¹¹

10

11

12

13

14

The Vermont Board also noted that the CLEC’s use of VNXX to avoid paying for the cost of transporting traffic on the incumbent’s network “sends inappropriate signals to competitors and discourages the deployment or purchase of facilities that may provide more efficient service to customers.”¹²

15

16

An arbitrator in Massachusetts also concluded that the use of VNXX to avoid compensating the incumbent for costs it incurs:

17

18

19

20

21

22

23

24

“[W]ould artificially shield [the CLEC] from the true cost of offering the service and will give [the CLEC] an economic incentive to deploy as few facilities as possible. *By artificially reducing the cost of offering the service, [the CLEC] will be able to offer an artificially low price to ISPs and other customers who experience heavy inbound calling...* The result would be a considerable market distortion...”¹³

¹¹ *Petition of Global NAPs, Inc. for Arbitration Pursuant to §252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England*, Docket No. 6742, 2002 Vt. PUC LEXIS 272, at *41-*42 (Vt. PSB 2002).

¹² *Id.* at *45.

¹³ *Petition of Global NAPs, Inc., Pursuant to Section to §252(b) of the Telecommunications Act of 1996, for arbitration to Establish an Interconnection Agreement with Verizon New England*, D.T.E. 02-45, 2002 Mass. PUC LEXIS 56, at *56 (Mass. Dep’t of Tel. and Energy 2002) (emphasis added).

1

2 In these cases, the state commissions concluded that, as between the ILEC and a
3 CLEC that serves ISPs, financial responsibility should be borne by the one most
4 responsible for the costs to be incurred: the CLEC.

5

6 **Q. DO YOU SEE A SIMILARITY BETWEEN TRAFFIC SENT TO ISPS AND**
7 **LONG DISTANCE TRAFFIC SENT TO IXCS?**

8 A. Yes. So have other state commissions. Earlier this year, the South Carolina
9 Commission articulated a similar conclusion:

10

11 “The Commission’s and the FCC’s current intercarrier
12 compensation rules for wireline calls clearly exclude
13 interexchange calls from both reciprocal compensation and ISP
14 intercarrier compensation. These calls are subject to access
15 charges. *This is also the case for Virtual NXX calls, which are no*
16 *different from standard dialed long distance toll or 1-800 calls.*”¹⁴

17

18 The Colorado Commission also addressed this issue. In that case, Level 3 sought to
19 interconnect with Centurytel (a rural independent carrier) for the purpose of serving
20 ISP customers located in Centurytel territory. However, the Colorado Commission
21 concluded that Level 3 had no right to interconnect with Centurytel:

22

23 “Centurytel notes that the ISP customers that Level 3 seeks to
24 serve are not located in Centurytel’s local calling area. *As such,*
25 *calls by Centurytel’s end-users to Level 3’s ISP customers would*
26 *originate and terminate in different calling areas, and, therefore,*
27 *would be interexchange calls.* Section 252(c)(2) is clear that the

¹⁴Order Ruling on Arbitration, *In re Petition of MCI Metro Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative*, 2006 S.C. PUC LEXIS 2, at *35 (S.C. PUC, January 11, 2006) (emphasis added).

1 duty to interconnect under its provisions does not apply to
2 interexchange calling.”¹⁵
3

4 When customers use their phone lines to make long distance calls, they have been
5 treated as customers of the long distance companies. When a customer made a call
6 to another person in another LCA, he or she is acting as a customer of an IXC, and
7 the costs associated with the call have been attributed to the IXC under the existing
8 access charge compensation mechanism. To compensate the local companies for
9 the use of their facilities when users acted as long distance customers, the long
10 distance companies (such as AT&T, MCI, and Sprint) pay the local companies for
11 those costs through access charges.
12

13 **Q. WHEN LEVEL 3 ENTERS AN AGREEMENT WITH AN ISP TO DELIVER**
14 **DIAL-UP INTERNET CALLS TO THE ISP THAT CROSS LCA**
15 **BOUNDARIES, IS LEVEL 3 ACTING AS A PROVIDER OF**
16 **INTEREXCHANGE SERVICES**

17 A. Yes. When the end user in one LCA calls a number that is delivered to modems (or
18 functionally equivalent equipment that “answers” the call and provides the TDM-IP
19 conversion during the course of the ISP call) in another LCA, the call is an
20 interexchange call. The originating caller’s goal is not to reach the POI between
21 Qwest and Level 3. The caller wants to reach the ISP, wherever the ISP is
22 physically located. As discussed above, under Oregon law, these are the end points

¹⁵Decision Denying Exceptions, *In the Matter of the Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 with Centurytel of Eagle, Inc.*, Decision No. C03-0117, Docket No. 02B-408T ¶ 36 (Colo. PUC, January 30, 2003) (emphasis added).

1 of the call for intercarrier compensation purposes.

2
3 **Q. PLEASE DISCUSS THESE FACTS IN THE CONTEXT OF COST**
4 **CAUSATION.**

5 A. The ISP end users cause costs when they call to connect to their ISP. Through the
6 ISP's relationships with these with end users, the ISP causes the costs associated
7 with collecting Internet traffic from their customers throughout Oregon. However,
8 because ISPs are not CLECs, they cannot collect this traffic without obtaining
9 service from a local exchange carrier. For example, an ISP cannot obtain local
10 telephone numbers from NANPA. Only a few types of entities have that legal right
11 (*e.g.*, ILECs, CLECs, wireless providers). ISPs are also unable to obtain
12 interconnection under the Act. Thus, the ISPs contract with a CLEC like Level 3,
13 which assumes the responsibility for obtaining local telephone numbers, for
14 collecting traffic from multiple LCAs, and for delivering traffic to the ISP's
15 location. Thus, Level 3, through its interconnection agreement with Qwest, causes
16 Qwest to incur costs for the benefit of Level 3's ISP customers. Level 3 and its ISP
17 customers cause the costs, and they should compensate Qwest for the costs that
18 Qwest incurs on their behalf. That, of course, is the nub of the issue in this case.
19 Level 3 does not want to compensate Qwest for any of the local network costs,
20 switching costs, or transport costs that Qwest incurs on Level 3's behalf. Instead, it
21 is asking the Commission to require Qwest to provide its statewide network free of
22 charge for the benefit of Level 3 and its ISP customers.

23
24 **Q. MR. GREENE SUGGESTS THAT LEVEL 3'S PROPOSALS ARE**

1 **APPROPRIATE BECAUSE “LEVEL 3 HAS DEPLOYED THIS PRECISE**
2 **TYPE OF INTERCONNECTION ARCHITECTURE WITH QWEST FOR**
3 **AT LEAST THE PAST FOUR YEARS.” (GREENE SUPP. TEST. AT 4).**
4 **PLEASE COMMENT ON HIS STATEMENT.**

5 A. Mr. Greene seems to be suggesting that the existence of its current network
6 architecture should exempt it from the rules that apply to all other carriers. Level 3
7 cannot legitimately claim it is surprised by the existence of long-standing existing
8 compensation regimes like inter- and intra-LATA access charges or that Qwest
9 would oppose Level 3’s effort to be treated better than other carriers.

10
11 Level 3 is well aware of the access charge regime and is also well aware that the
12 FCC has done nothing as yet to change the current rules. Level 3 has been an
13 active participant in the FCC’s intercarrier compensation docket since its inception.
14 In August 2001, Level 3 filed comments in that docket, and Level 3 remains an
15 active participant in the FCC’s intercarrier compensation docket.¹⁶ Through its
16 comments, Level 3 has demonstrated that it is well aware of the intercarrier
17 compensation rules and other issues that the industry is grappling with, including
18 access charges. In its comments in the FCC proceeding, Level 3 recapped the
19 derivation of access charges as follows:

20
21 “In 1983, following the break-up of AT&T, the Commission
22 adopted uniform access charge rules that governed the fees
23 charged by the local exchange carriers for the costs associated with

¹⁶ Comments of Level 3 Communications, LLC, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, (FCC August 21, 2001).

1 using the local network for the provision of interstate access
2 services.”¹⁷

3
4 “Although the Commission has revised the interstate access charge
5 regime, *the essential characteristics of intrastate and interstate*
6 *access charge systems remain.*”¹⁸

7
8 “In any event, the interexchange carrier is left to recover its costs
9 for originating and terminating the call from its customers.”¹⁹

10 In 2001, Level 3 acknowledged ongoing revisions to access charge systems and that
11 interexchange carriers are responsible for recovering the costs that they cause on
12 behalf of their customers. Level 3 continues as an active participant in the debate at
13 the FCC regarding intercarrier compensation issues, as demonstrated by its ex parte
14 meeting with the FCC just last month.²⁰

15
16 In light of this history, it is disingenuous for Level 3 to suggest that it placed its
17 facilities and designed its network without full knowledge of current access charge
18 rules or the ongoing efforts at the FCC to resolve difficult intercarrier compensation
19 issues. Yet, Level 3 has embarked upon a business plan that seeks to be treated in
20 a fundamentally different way than other carriers by shifting costs that it causes
21 onto Qwest.

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 9 (emphasis added).

¹⁹ *Id.* at 10.

²⁰ Notice of Ex Parte Presentation by Level 3 Communications, LLC, *In the matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, (FCC May 1, 2006).

1 **V. USE OF LIS FOR TERMINATION OF LONG DISTANCE TRAFFIC**

2
3 **ISSUES 1C (TERMINATION OF LOCAL TRAFFIC ON LIS), 3 AND 4**
4 **(DEFINITION AND COMPENSATION FOR COMPENSABLE TRAFFIC)**
5

6 **Q. MR. GREENE STATES, “POIS COULD EASILY SUPPORT OUR ABILITY**
7 **TO COMPETE IN NATIONAL MARKETS FOR *LOW COST***
8 ***TERMINATION OF LONG DISTANCE TRAFFIC.*” (GREENE SUPP. TEST.**
9 **AT 12; EMPHASIS ADDED). HOW CAN SECONDARY POIS PROVIDE**
10 **LOW COST TERMINATION FOR LONG DISTANCE TRAFFIC?**

11 A. These so-called secondary POIs are simply TELRIC-priced two-way LIS trunks
12 that were intended to be used to exchange local service traffic. They were never
13 designed nor intended for interexchange calls, as demonstrated by the fact that
14 when IXCs buy transport services, they pay access transport rates, and are not
15 entitled to TELRIC-priced LIS transport. Mr. Greene goes on to say that Level 3
16 is “competing with major IXCs now backed by ILECs” and suggests that “AT&T
17 can terminate free in SBC territory,” that MCI can do the same in Verizon territory,
18 and “Qwest can use its own subsidiary—QCC—to do the same in Qwest territory.”
19 (Greene Supp. Test. at 12-13). I have three points that I would like to make in
20 response.

21
22 First, in the several arbitration dockets in which testimony has been filed by Qwest
23 and Level 3, this is the first time that Level 3 has suggested that it competes with

1 IXC. In fact, Level 3 claims not to be an IXC.²¹ Further, it has steadfastly denied
2 that there is any need under any circumstance for it to hand off a VoIP or VNXX
3 call to an IXC.²² In light of that, it is surprising for Level 3 to now suggest that the
4 “secondary POIs” would allow it compete with major IXCs.

5
6 Second, Mr. Greene’s subtle, and completely unsupported, allegation that Qwest
7 would allow QCC to terminate IXC traffic on Qwest’s network for free is blatantly
8 untrue. QCC is a section 272 subsidiary. As such, QCC is subject to the structural
9 and transactional requirements of section 272(b), and to “conduct all transactions
10 with [its ILEC affiliate] on an arm’s length basis” with agreements reduced to
11 writing [section 272(b)(5)]. In addition, the relationship between Qwest and QCC
12 is subject to section 272(c)(1), which makes it unlawful for the ILEC to

²¹ In Arizona, Level 3 witness Ducloo (the witness whose testimony Mr. Greene adopted in Oregon) engaged in the following question and answer with Qwest counsel:

Q. (BY MR. DETHLEFS) Let's reverse the call flow in this example. Let's assume the traffic is coming from the IXC, and in this situation the IXC function is Level 3 and it's gone to the Qwest access tandem.

A. Well, we're not an IXC.

Transcript, Level 3/Qwest Arizona Arbitration, September 8, 2005 (Docket Nos T-03654A-05-0350 and T-01051B-05-0350) at 86.

²² Level 3 witness Ducloo testified that when it offers VoIP, there is no such thing as an associated IXC that it hands interexchange traffic to and that Level 3’s position is that terminating access charges never should apply to VoIP traffic. Transcript, Level 3/Qwest Arizona Arbitration, September 8, 2005 (Docket Nos T-03654A-05-0350 and T-01051B-05-0350) at 184-85, 187. Given that VNXX does not result in a 1 plus dialing pattern, Level 3 argues that such calls need not be handed off to an IXC.

1 “discriminate between [QCC] and any other entity in the provision or procurement
2 of good, services, [and] facilities” The relationship between Qwest and QCC
3 is subject to a biennial audit to assure compliance [section 272(d)(1)]; the results of
4 those audits are made available to state commissions [section 272(d)(2)].

5
6 The suggestion that Qwest is now or would in the future blatantly violate those
7 provisions by providing free termination of traffic to QCC is nothing but a wild,
8 unsupported allegation. I can state categorically that when QCC provides
9 interexchange services, QCC is subject to exactly the same access charges as any
10 other IXC providing the same service. Although I obviously cannot speak for
11 other ILECs like SBC and Verizon, I cannot imagine that either of them would
12 provide their affiliate IXC with free termination of traffic, while charging other
13 IXCs for the same service. Other than his bare allegation, Mr. Greene provides no
14 evidence of any such wrongdoing by Qwest or any other ILECs.

15
16 Finally, the real irony of Mr. Greene’s statement is that what Level 3 really seeks
17 is a set of terms in its interconnection agreement that would allow it to operate
18 completely free of the rules to which the IXCs are subject. As Mr. Easton notes, an
19 IXC may buy transport into a LCA, but it does so at rates from the relevant access
20 tariffs, which are priced well above TELRIC-rated services. Furthermore, IXCs

1 pay ILECs for access to their local network through originating and terminating
2 access charges. Level 3, in contrast, claims (1) that it has no obligation to pay for
3 transport at all (but if it does, it has the right to receive it at TELRIC rates), and (2)
4 that it has no obligation to pay either originating or terminating access charges
5 under any circumstances, thus requiring Qwest to bear all costs of its local
6 network. In other words, while saying that IXCs are its competitors, Level 3 seeks
7 discriminatorily advantageous terms and conditions to those that apply to IXCs.

1

2 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

3 A. The parties met at the technical conference and submitted network diagrams that
4 graphically clarify the methods by which they interconnect with each other. The
5 parties agreed in principle to the depictions, but disagreed on labeling and whether
6 certain connections and functions were being performed by Level 3 the CLEC or
7 Level 3 the ESP. Level 3's supplemental testimony focuses on technical
8 similarities between CLEC trunks and QCC's end user trunks that are purchased
9 from local exchange tariffs. Although omitted from Level 3's testimony, IXC
10 trunks also have technical similarities to Level 3's CLEC trunks.

11

12 But it is not the technical similarities and differences that determine the proper
13 classification of a call and the compensation regime that applies to it. It is the
14 regulatory rules and regulations of the use of those trunks that are at issue. FGD
15 trunks purchased by IXCs fall under access tariffs, end user trunks under retail
16 tariffs, and CLEC trunks are TELRIC-priced interconnection services purchased
17 pursuant to an interconnection agreement.

18

19 It is the proper application of Oregon and federal law to the traffic that is
20 controlling in this docket. In several states, Level 3 has simply argued VNXX is
21 permissible based solely on the theory that if the numbers are associated with the
22 same LCA, the call must be treated as a local call, no matter where the parties of the
23 call are actually located. Following recent decisions by the Oregon Commission
24 and by an Oregon federal court, Level 3 has taken a new approach. At least in

1 Oregon, Level 3 now argues that virtually none of the ISP traffic directed to Level
2 3's ISP customers is VNXX (though its proposed definitions continue to claim that
3 VNXX is appropriate in Oregon). This new argument is based on a POI theory.
4 But a POI is simply the point at which the trunks that connect the switches and
5 other equipment of two telephone companies are joined together to facilitate the
6 exchange of traffic. If Level 3 claims that these trunk connections are being made
7 directly the Level 3's ISP customers (a theory at odds with the facts) then Qwest's
8 trunks should not be TELRIC priced, nor would reciprocal compensation apply
9 because the ISPs to whom the traffic is being delivered are end users. If, on the
10 other hand, Level 3 claims these POIs are CLEC/ILEC connections (a theory that
11 does fit with the facts), then Level 3 loses any credible argument that the customer
12 presence is at the POI; thus, under that circumstance, the calls are not local calls
13 and must be treated as interexchange calls. The POI theory is simply a red herring
14 to avoid the fact that Level 3 is serving ISP customers located in other states,
15 through a switch and media gateway located in Seattle, using VNXX numbers.
16 And while this may be efficient for Level 3, it does not turn interexchange calls into
17 local calls under existing Oregon law. In the end, it is Level 3's fallacious claim
18 that VNXX calls are local calls that is in dispute. Regardless of the technical
19 issues, VNXX calls are not local calls and neither of Level 3's fictional theories can
20 make them so.

21
22 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?**

23 A. Yes, it does.

CERTIFICATE OF SERVICE VIA E-MAIL

I do hereby certify that a true and correct copy of the foregoing QWEST CORPORATION'S SUPPLEMENTAL TESTIMONY OF WILLIAM R. EASTON and LARRY B. BROTHERSON was served on the 7th day of June, 2006 via e-mail electronic transmission upon the following individuals:

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