

June 20, 2005

VIA EMAIL AND US MAIL

Filing Center
Oregon Public Utility Commission
550 Capitol Street NE #215
PO Box 2148
Salem, OR 97308-2148

Re: IC 12 - Level 3's Answer and Counterclaims

Dear Sir or Madam:

Enclosed for filing in the above-named docket are the original and five copies of Level 3 Communications, LLC's Answer and Counterclaims and Affidavit of Andrea L. Gavalas, along with a certificate of service. Please contact me with any questions.

Very truly yours,



Jessica A. Centeno

Enclosures

cc: IC 12 Service List

**CERTIFICATE OF SERVICE
IC 12**

I hereby certify that a true and correct copy of **LEVEL 3 COMMUNICATIONS, LLC'S ANSWER AND COUNTERCLAIMS** and **AFFIDAVIT OF ANDREA L. GAVALAS** was served via U.S. Mail on the following parties on June 20, 2005:

Jeffrey T. Nodland
Qwest Corporation
1801 California St.
10th Floor
Denver CO 80202

Alex M. Duarte
Qwest Corporation
Suite 810
421 SW Oak Street
Portland OR 97204

ATER WYNNE LLP



Jessica A. Centeno

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**
3 **IC 12**

4 In the Matter of

5 QWEST CORPORATION,

6 Complainant

7 v.

8 LEVEL 3 COMMUNICATIONS, LLC,

9 Defendant

10 Complaint for Enforcement of Interconnection
11 Agreement

LEVEL 3 COMMUNICATIONS, LLC
ANSWER AND COUNTERCLAIMS

12
13 **INTRODUCTION**

14 Level 3 Communications, LLC (“Level 3”), through its undersigned counsel and pursuant
15 to OAR 860-016-0050, hereby submits this Answer and Counterclaims to the Complaint filed by
16 Qwest Corporation (“Qwest”) in the above-captioned proceeding on June 6, 2005.¹ Qwest’s
17 Complaint and Level 3’s Answer and Counterclaims, taken together, set forth a dispute over the
18 intercarrier compensation regime for ISP-bound traffic and the application in Oregon of a recent
19 decision by the Federal Communications Commission (“FCC”), the *Core Forbearance Order*,²
20 which substantially modified this regime.

21 Level 3 denies the claims contained in Qwest’s complaint. Qwest’s Complaint is based
22 upon an erroneous interpretation of the Interconnection Agreement and federal and state law.
23 Level 3 therefore prays for judgment in its favor on all counts of the complaint.
24

25 ¹ Qwest and Level 3 are collectively referred to herein as the “Parties.”

26 ² *Petition of Core Communications, Inc., for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, Order, FCC 04-241, WC Docket No. 03-171 (rel. Oct. 18, 2004) (“*Core Forbearance Order*”).

1 Level 3 seeks immediate enforcement of its Interconnection Agreement with Qwest, as
2 amended (“Interconnection Agreement”), and its right to receive compensation at the rate of
3 \$0.0007 per minute of use for expenses incurred by Level 3 to handle traffic originated by
4 Qwest’s customers and terminated by Level 3 to its ISP customers. Until October 2004, the
5 FCC’s intercarrier compensation regime allowed Qwest to send ISP-bound traffic to Level 3 for
6 free. This situation arose because, under the FCC’s *ISP Remand Order*, the FCC established
7 preemptive federal rules for compensation for ISP-bound traffic, and those rules provided that
8 incumbents such as Qwest were not required to compensate competitors such as Level 3 for ISP-
9 bound traffic where the competitor had not been receiving ISP-bound traffic as of April 21,
10 2001.³ This exclusion to the intercarrier compensation requirements is commonly referred to as
11 the *ISP Remand Order* “New Market Exclusion.” In its October 2004 *Core Forbearance Order*,
12 however, the FCC eliminated the New Market Exclusion.

13 Following that express modification of governing federal law, Level 3 began to invoice
14 Qwest for intercarrier compensation for ISP-bound traffic in Oregon. Qwest, however, has taken
15 the position that it will not pay for calls originated by Qwest’s customers and terminated to
16 Level 3’s ISP customers. Moreover, on January 27, 2005, Qwest also demanded that Level 3
17 cease using the Local Interconnection Service trunk facilities that connected the Parties’ network
18 to exchange certain forms of ISP-bound traffic. Steve Hansen, Vice President of Carrier
19 Relations for Qwest, stated that if Level 3 did not capitulate to Qwest’s demands, Qwest would
20 take “any other appropriate actions that Qwest may deem necessary to cease the exchange of
21 VNXX [ISP-bound] traffic with Level 3” Even while enjoying the free use of Level 3’s
22 network, Qwest has repeatedly refused to amend the current Interconnection Agreement to
23 reflect the *Core Forbearance Order* unless Level 3 grants Qwest free use of Level 3’s network
24

25 ³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier*
26 *Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001),
remanded, *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert. den.* 538 U.S. 1012 (2003) (“*ISP Remand*
Order”).

1 for certain types of ISP-bound calls – a special benefit to which Qwest is not entitled under any
2 law – and threatens to block the exchange of traffic with Level 3 unless Level 3 concedes to
3 Qwest’s interpretation of the *Core Forbearance Order*. Specifically, Qwest will agree to a *Core*
4 *Forbearance Order* amendment only if Level 3 will waive its right to ISP-bound compensation
5 in those circumstances where Level 3’s ISP customers are not physically located within the local
6 calling area of the originating callers.

7 The Parties’ Interconnection Agreement states that their intercarrier arrangements for
8 ISP-bound traffic will be governed by the applicable federal regime. Neither the *ISP Remand*
9 *Order* nor the *Core Forbearance Order* permits Qwest to send ISP-bound traffic to Level 3 for
10 free on the basis of the location, within a LATA, of the ISP’s equipment; and neither justifies
11 Qwest’s threats to discontinue the exchange of ISP-bound traffic. As a result, Qwest has
12 breached the Parties’ Interconnection Agreement. The Interconnection Agreement requires
13 Qwest to immediately implement changes to the FCC’s compensation regimes for ISP-bound
14 traffic. Moreover, in direct violation of the Interconnection Agreement, Qwest refuses to
15 negotiation in good faith to amend the Agreement to reflect the FCC’s *Core Forbearance Order*.

16 Neither does Oregon law support Qwest’s position. Contrary to Qwest’s claims, this
17 Commission has *not* found that Level 3’s architecture or services violate the standard conditions
18 in its Certificate of Authority.⁴ Moreover, the appropriate reciprocal compensation for this
19 traffic is a question of federal law and any contrary state law is preempted.

20 As set forth in the remainder of this Answer and Counterclaim, Level 3 respectfully asks
21 the Commission to: (1) enforce the change of law provisions of the Parties’ Interconnection
22 Agreement by requiring Qwest to execute an amendment reflecting the terms of the FCC’s *Core*

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26 _____
⁴ See Docket No. UM 1058, Order No. 04-704 (December 8, 2004).

1 *Forbearance Order*;⁵ and (2) order Qwest to pay compensation for Qwest-originated ISP-bound
2 traffic, as required by the terms of that Order.

3 **ANSWER**

4 Unless specifically admitted, Level 3 denies each and every allegation in Qwest
5 Complaint. Level 3 denies, admits, and alleges as follows:

6 1–9. Paragraphs 1 through 9 of Qwest’s Complaint contain arguments regarding the
7 facts and the law. Such arguments are inappropriate in a Complaint. Accordingly, Level 3
8 believes no response is necessary. However, to preserve all rights, Level 3 denies the allegations
9 in Paragraphs 1 through 9.

10 10. Level 3 admits the allegations in paragraph 10.

11 11. Level 3 admits that the Parties entered into an Interconnection Agreement and that
12 the Agreement was reviewed and approved by the Commission in the manner described in
13 paragraph 15. However, Level 3 denies that Qwest provided true and correct copies of the
14 *relevant* portions of the Agreement. Among other omissions, Qwest specifically omitted Section
15 7 of the Interconnection Agreement which provides for the Parties’ agreed-upon treatment of
16 local interconnection trunking and compensation for ISP-bound traffic—both at issue in this
17 proceeding.⁶

18 12. Level 3 admits that state commissions have the authority to interpret and enforce
19 interconnection agreements within the bounds of federal and state law and regulations. To the
20 extent paragraph 12 states an interpretation or conclusion of law, no response is required.

21 13. Level 3 admits that the Commission has jurisdiction to interpret the terms of the
22 Interconnection Agreement within the bounds of federal and state law and regulations.

23 14. Level 3 admits the allegations in paragraph 14.

24
25
26 ⁵ See *Core Forbearance Order*, supra n.2.

⁶ A true and correct copy of Section 7 of the Interconnection Agreement is attached as Exhibit A.

1 15. Level 3 admits the allegations in paragraph 15 and further states that Level 3
2 provides competitive local exchange telecommunications services in Oregon pursuant to this
3 Commission’s authorization in Docket CP 1035, Order No. 02-371. Correspondence regarding
4 the Complaint and this Answer and Counterclaim should be sent to Level 3 at the following
5 addresses:

6 Rick Thayer, Director Interconnection Law & Policy
7 Victoria Mandell, Regulatory Counsel
8 Gregg Strumberger, Regulatory Counsel
9 Level 3 Communications, LLC
10 1025 Eldorado Boulevard
11 Broomfield, CO 80021
12 Email: gregg.strumberger@Level3.com

13 and

14 Lisa Rackner
15 Sarah Wallace
16 Ater Wynne, LLP
17 222 SW Columbia
18 Suite 1800
19 Portland, OR 97201
20 E-mail: lfr@aterwynne.com
21 E-mail: sek@aterwynne.com
22 Telephone: (503) 226-1191
23 Facsimile: (503) 226-0079

24 16. Level 3 admits the allegations in paragraph 16.

25 17. Level 3 admits that Qwest sent a letter to Level 3 on January 27, 2005. Level 3
26 further admits that the Parties have held conferences, up to the Vice President level, and have
been unable to resolve this dispute. Level 3 denies the remainder of the allegations in
paragraph 17.

 18. Level 3 admits the allegations in paragraph 18.

 19. Paragraph 19 states conclusions of law to which no response is required. To the
extent that paragraph 19 contains factual allegations, Level 3 denies such allegations.

1 20. Paragraph 20 states conclusions of law to which no response is required. To the
2 extent that paragraph 20 contains factual allegations, Level 3 denies such allegations.

3 21. Paragraph 21 states conclusions of law to which no response is required. To the
4 extent that paragraph 21 contains factual allegations, Level 3 denies such allegations.

5 22. Level 3 denies the allegations in paragraph 22.

6 23. Paragraph 23 states conclusions of law to which no response is required. To the
7 extent that paragraph 23 contains factual allegations, Level 3 denies such allegations.

8 24. Paragraph 24 states conclusions of law to which no response is required.

9 25. Paragraph 25 states conclusions of law to which no response is required.

10 26. Level 3 admits that it submitted a petition for forbearance to the FCC, but denies
11 that Qwest’s description of that petition is correct. Level 3 further admits that the FCC issued its
12 Notice of Further Proposed Rulemaking in its Intercarrier Compensation docket while Level 3’s
13 petition was pending, and that Level 3 later withdrew the petition. The remaining portions of
14 paragraph 26 are conclusions of law to which no response is required.

15 27. Paragraph 27 states conclusions of law to which no response is required.

16 28. Paragraph 28 states conclusions of law to which no response is required.

17 29. Paragraph 29 states conclusions of law to which no response is required.

18 30. Paragraph 30 states conclusions of law to which no response is required.

19 31. Paragraph 31 states conclusions of law to which no response is required.

20 32. Paragraph 32 states conclusions of law to which no response is required.

21 33. Level 3 denies that paragraph 33 is an accurate statement of the Commission’s
22 decision in Docket UM 1058. Level 3 further responds that the Commission’s decision in Order
23 No. 04-504 was simply an order closing the docket, and the Commission specifically stated in a
24 subsequent order that it did not make any “findings of fact nor conclusions of law with respect to
25 the matters encompassed in the investigation” in that Order.⁷

26 _____
⁷ OPUC Docket No. UM 1058, Order No. 04-704 at 3 (December 8, 2004).

1 34. Level 3 admits that paragraph 34 accurately quotes Order No. 04-504, ORS
2 759.005(2)(c), and OAR 860-032-0001. However, Level 3 denies that paragraph 34 is an
3 accurate statement of the Commission’s decision in Docket UM 1058.

4 35. Paragraph 35 states conclusions of law to which no response is required.

5 36. Paragraph 36 states conclusions of law to which no response is required.

6 37. Paragraph 37 states conclusions of law to which no response is required.

7 38. Paragraph 38 states conclusions of law to which no response is required.

8 39. Paragraph 39 states conclusions of law to which no response is required.

9 40. Paragraph 40 states conclusions of law to which no response is required.

10 41. Level 3 admits that it has argued in other jurisdictions that the Parties have agreed
11 to exchange VNXX traffic over LIS trunks. Level 3 denies the remaining allegations in
12 paragraph 41.

13 42. Level 3 admits the allegations in Paragraph 42.

14 43. Paragraph 43 states conclusions of law to which no response is required. To the
15 extent that paragraph 43 contains factual allegations, Level 3 denies such allegations.

16 44. Paragraph 44 states conclusions of law to which no response is required.

17 45. Paragraph 45 states conclusions of law to which no response is required.

18 46. Paragraph 46 states conclusions of law to which no response is required. To the
19 extent that paragraph 46 contains factual allegations, Level 3 denies such allegations.

20 47. Paragraph 47 states conclusions of law to which no response is required.

21 48. Paragraph 48 states conclusions of law to which no response is required.

22 49. Paragraph 49 states conclusions of law to which no response is required. To the
23 extent that paragraph 49 contains factual allegations, Level 3 denies such allegations.

24 50. Level 3 denies that Qwest has accurately set forth the applicable federal law
25 regarding calls made to the Internet.

1 51. Paragraph 51 states conclusions of law to which no response is required. To the
2 extent that paragraph 51 contains factual allegations, Level 3 denies such allegations.

3 52. Level 3 denies that Qwest has accurately set forth the applicable state law
4 regarding calls made to the Internet and calls using VNXX traffic.

5 53. Paragraph 53 states conclusions of law to which no response is required. To the
6 extent that paragraph 53 contains factual allegations, Level 3 denies such allegations.

7 54. Level 3 admits that it has sent or will bill Qwest based on the FCC's *Core*
8 *Forebearance Order*. Level 3 denies the dates, amount in dispute, and all other allegations in
9 paragraph 54.

10 55. Level 3 admits that the Parties have not reached agreement on an amendment to
11 the Interconnection Agreement, but denies that Qwest has proposed an amendment that complies
12 with the *Core Forebearance Order*.

13 56. Level 3 admits that paragraph 56 accurately quotes Section 2.2 of the
14 Interconnection Agreement, but denies the remaining allegations in paragraph 56.

15 57. Paragraph 57 states conclusions of law to which no response is required.

16 58. Level 3 admits that it provides its ISP customers with telephone numbers
17 associated with the local calling areas they wish to serve. Level 3 denies the remainder of the
18 allegations in paragraph 58.

19 59. Level 3 admits that paragraph 59 accurately quotes the Interconnection
20 Agreement, but denies the remaining allegations in paragraph 59.

21 60. Level 3 admits that paragraph 60 accurately reflects Section 1.1 of Attachment 1
22 of the SPOP Amendment.⁸

23 61. Level 3 admits the allegations in paragraph 61.

24 62. Level 3 denies the allegations in paragraph 62.

25 63. Level 3 denies the allegations in paragraph 63.

26 ⁸ Qwest incorrectly refers to Attachment 1 as Attachment A. See Qwest Complaint, Exhibit D.

1 **COUNTERCLAIMS**

2 **STATEMENT OF FACTS**

3 71. On or about November 16, 2001, the Commission approved the Parties' current
4 Interconnection Agreement after arbitration in Docket No. ARB 332.

5 72. The Interconnection Agreement provides that Qwest and Level 3 shall
6 interconnect for purposes of exchanging ISP-bound traffic:

7 7.3.4.3 The Parties agree to exchange all EAS/Local (5251 (b)(5)) and
8 ISP-bound traffic (as that term is used in the FCC ISP Order) at
9 the FCC ordered rate, pursuant to the FCC ISP Order. The FCC
10 ordered rate for ISP-bound traffic will apply to EAS/Local and
11 ISP-bound traffic in lieu of End Office call termination and
12 Tandem Switched Transport. See Section 7.3.6 of this
13 Agreement for FCC-ordered rates.⁹

12 7.3.6.1 The parties shall exchange ISP-bound traffic pursuant to the
13 compensation mechanism set forth in the FCC ISP Order.¹⁰

13 73. The Interconnection Agreement provides the below rate schedule that is reflected
14 in the *ISP Remand Order*:

15 7.3.6.2.3. Rate Caps - Intercarrier compensation for ISP-bound traffic exchanged
16 between Qwest and Level 3 will be billed as follows:

17 7.3.6.2.3.1 \$0.0015 per MOU for six (6) months from June 14, 2001
18 through December 13, 2001.

19 7.3.6.2.3.2 \$0.001 per MOU for eighteen (18) months from December
20 14, 2001 through June 13, 2003.

21 7.3.6.2.3.3 \$0.0007 per MOU from June 14, 2003 until thirty six (36)
22 months after the effective date of the FCC ISP Order or
23 until further FCC action on intercarrier compensation,
24 whichever is later.¹¹

25 ⁹ Exhibit A at 15.

26 ¹⁰ *Id.*

¹¹ *Id.* at 16.

1 The Interconnection Agreement specifically provides that the rate of \$0.0007 per minute of use
2 shall apply for the period from “June 14, 2003 until thirty six (36) months after the effective date
3 of the FCC ISP Order or until further FCC action on intercarrier compensation, whichever is
4 later.”¹²

5 74. The Interconnection Agreement also includes a provision that it will be modified
6 to reflect changes in law, including any change in law relating to the *ISP Remand Order*.
7 Section 2.2 of the Interconnection Agreement provides:

8 The provisions in this Agreement and this Amendment are based,
9 in large part, on the existing state of the law, rules, regulations and
10 interpretations thereof, as of the date hereof (the Existing Rules).
11 To the extent that the Existing Rules are changed, vacated,
12 dismissed, stayed or modified, then the Agreement and all
13 Amendments and all contracts adopting all or part of the
14 Agreement shall be amended to reflect such modification or
15 change of the Existing Rules. Where the Parties fail to agree upon
16 such an amendment within sixty (60) days from the effective date
17 of the modification or change of the Existing Rules, it shall be
18 resolved in accordance with the Dispute Resolution provision of
19 the Agreement.¹³

20 75. The FCC in the *ISP Remand Order* established a compensation mechanism for the
21 transport and termination of ISP-bound traffic. Based upon ILEC representations prior to 2001
22 that growth in dial-up ISP traffic was expected to be enormous, however, the FCC limited
23 carriers from receiving compensation for terminating calls to ISPs.
24

25 76. Three key elements of the FCC’s compensation mechanism are applicable to the
26 present dispute:

(a) Rate – The terminating compensation rate began at \$0.0015
per minute, and declined over time to \$0.001 per minute, and then
declined to its current level of \$0.0007 per minute. Note, however,
that what is in dispute between Level 3 and Qwest in this docket is
not the per-minute *rate* to apply to ISP-bound traffic; it is the issue
of whether Qwest may properly exclude some or all ISP-bound

¹² Interconnection Agreement at § 7.3.6.2.3.3 (Exhibit A at 16).

¹³ Qwest Complaint, Exhibit A at 6.

1 *minutes* from compensation at all.

2 (b) “Growth Caps” – Prior to the *Core Forbearance Order*, the
3 amount of ISP-bound traffic that was compensable under the
4 interim regime was subject to limits on growth. For the year 2001,
5 a LEC originating ISP-bound traffic owed the LEC terminating
6 that traffic intercarrier compensation for a maximum of four times
7 the number of minutes terminated by that LEC in the first quarter
8 of 2001, plus a ten percent growth factor. For the year 2002, a
9 LEC was entitled to compensation on the number of minutes
10 permitted for 2001, plus a ten percent growth factor. For the year
11 2003, a LEC was entitled to compensation on the number of
12 minutes permitted for 2002. Traffic that exceeded the growth caps
13 was not eligible for intercarrier compensation. Therefore, traffic in
14 excess of the calculated limits was subject to a terminating
15 compensation rate of zero. The growth caps were eliminated by
16 the *Core Forbearance Order*.

17 (c) “New Markets Rule” – Prior to the *Core Forbearance*
18 *Order*, to be eligible for compensation for the termination of ISP-
19 bound traffic, the LEC seeking compensation had to have
20 exchanged ISP-bound traffic under an interconnection agreement
21 with the LEC from whom it was seeking compensation prior to the
22 adoption of the *ISP Remand Order* on April 18, 2001. This
23 restriction was considered a “new market rule” because it
24 effectively established an intercarrier compensation rate of zero in
25 markets where the LEC began service after April 18, 2001.¹⁴ The
26 new markets rule was eliminated by the *Core Forbearance Order*.

77. The FCC’s *Core Forbearance Order* lifted the “Growth Caps” and “New Markets Rule” as of October 8, 2004.¹⁵

78. With regard to both restrictions, the FCC determined that the public interest was no longer served by limiting compensation paid for terminating such traffic.¹⁶ For example, the FCC determined that the new market restrictions created different rates for similar or identical functions. This is because two carriers serving ISPs in the same market would be subject to

¹⁴ See *ISP Remand Order* at ¶ 81 (new market restrictions apply as of the adoption date of the order, *i.e.*, after the date of public within the Federal Register.)

¹⁵ See *Core Forbearance Order* at ¶¶ 21-22.

¹⁶ See *id.* at ¶ 21

1 different compensation rates based solely upon when they entered the market. The FCC further
2 determined that public policy favoring a unified intercarrier compensation regime applicable to
3 all traffic outweighed concerns about compensation paid to carriers serving ISPs.¹⁷ Finally,
4 because the FCC's rationale for forbearing from enforcement of the growth caps and new market
5 restrictions applied with equal force to other telecommunications carriers, the FCC specifically
6 extended the grant of forbearance of the *ISP Remand Order's* new markets and growth cap
7 restrictions beyond the petitioner in that case to all telecommunications carriers.¹⁸

8 79. Accordingly, as of the October 8, 2004 effective date of the *Core Forbearance*
9 *Order*, Level 3 is entitled to receive compensation for terminating all Qwest-originated ISP-
10 bound traffic in Oregon at the current FCC mandated rate of \$0.0007 per minute of use.

11 80. Following that express modification of governing federal law, Level 3 began to
12 invoice Qwest for intercarrier compensation for all ISP-bound traffic allowed under the *Core*
13 *Forbearance Order* in Oregon. Qwest, however, has taken the position that it will only pay for a
14 portion of the calls originated by Qwest's customers and terminated to Level 3's ISP
15 customers—in effect refusing to comply with the *Core Forbearance Order*.

16 81. As set forth in paragraphs 66 through 70 above, Level 3 has attempted to resolve
17 this dispute and negotiate an amendment to the Interconnection Agreement to reflect the FCC's
18 *Core Forebearance Order*.

19 82. Qwest has refused to amend the current Interconnection Agreement to reflect the
20 *Core Forbearance Order* unless Level 3 concedes to Qwest's interpretation of that order.
21 Specifically, Qwest will agree to a *Core Forbearance* Amendment only if Level 3 will waive its
22 right to ISP-bound compensation in those circumstances where Level 3's ISP customers are not
23 physically located within the local calling area of the originating callers.

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¹⁷ See *id.* at ¶ 24.

¹⁸ See *id.* at ¶ 27.

1 83. Neither the FCC’s *ISP Remand Order* nor the *Core Forbearance Order*
2 distinguish “local” ISP-bound traffic from “non-local” ISP-bound traffic for purposes of
3 determining the appropriate rate of compensation to be paid by Qwest to Level 3. The *ISP*
4 *Remand Order* makes clear that the federal compensation regime of \$0.0007 applies to *all* ISP-
5 bound traffic: “We conclude that this definition of ‘information access’ – the statutory category
6 into which the FCC placed ISP-bound calling – “was meant to include *all access traffic* that was
7 routed by a LEC ‘to or from’ providers of information services, of which ISPs are a subset.”¹⁹

8 84. Qwest seeks to impose a geographic limitation on the scope of ISP-bound calls
9 covered by the FCC’s special regime for this type of traffic. Nothing in the FCC’s compensation
10 regime for ISP-bound traffic provides for such a limitation.

11 85. Qwest’s limitation results in disparate treatment in violation of the *ISP Remand*
12 *Order’s* mirroring rule which requires carriers to exchange all Section 251(b)(5) traffic at the
13 same rate.²⁰

14 86. Level 3 has received insufficient payment from Qwest for Level 3’s transport and
15 termination of Qwest-originated ISP-bound traffic from October 8, 2004 (the effective date of
16 the FCC’s *Core Forbearance Order*) to the present (the “Disputed Period”).²¹

17 87. The unpaid charges for Level 3’s transport and termination of Qwest-originated
18 ISP-bound traffic during the Disputed Period exceeds \$616,202.10, as of April 30 2005,
19 exclusive of applicable late payment charges. A spreadsheet with invoice numbers and amounts
20 submitted by Level 3 to Qwest are attached hereto as Exhibit E.

21 88. To date, more than six months after Level 3 served notice upon Qwest to
22 implement the terms of the *Core Forbearance Order*, Level 3 has been unable to reach an

23 ¹⁹ *ISP Remand Order* at ¶ 44 (emphasis added).

24 ²⁰ See *AT&T Communications v. Illinois Bell Telephone Company d/b/a SBC*, 2005 WL 820412 (N.C. Ill. March 25,
25 2005).

26 ²¹ Given the ongoing nature of this dispute, Level 3 continues to invoice Qwest for Level 3’s transport and
termination of Qwest-originated ISP-bound traffic, and therefore the “Disputed Period” is continuing.

1 amendment with Qwest reflecting the *Core Forbearance Order*, despite Level 3's numerous
2 attempts at good faith negotiations.

3 COUNTERCLAIM I

4 **QWEST BREACHED ITS OBLIGATION TO COMPENSATE LEVEL 3 FOR LEVEL 3'S TRANSPORT AND** 5 **TERMINATION OF QWEST-ORIGINATED ISP-BOUND TRAFFIC**

6 89. Level 3 incorporates into this Counterclaim, by reference thereto, paragraphs 1
7 through 88 of this Answer and Counterclaim.

8 90. During the Disputed Period, Level 3 terminated millions of minutes of Qwest-
9 originated ISP-bound Traffic, for which Level 3 received no payment from Qwest. As reflected
10 in Exhibit E, the unpaid charges for transport and termination of Qwest-originated ISP-bound
11 traffic during the Disputed Period exceeds \$\$616,202.10 as of April 30 2005, exclusive of
12 applicable late payment charges.

13 91. Qwest's failure to pay Level 3 for all Level 3's transport and termination of
14 Qwest-originated ISP-bound traffic as required by the *Core Forbearance Order* is a material
15 breach of the Interconnection Agreement.

16 92. Qwest's failure to pay Level 3 for Level 3's transport and termination of Qwest
17 originated ISP-bound traffic is a violation of FCC rules and federal law.

18 93. The Parties' Interconnection Agreement states, *without qualification*, that "[t]he
19 Parties agree to exchange ISP-bound traffic pursuant to the compensation mechanism set forth in
20 the FCC ISP Order."²²

21 94. Based on the foregoing terms of the Interconnection Agreement, Qwest had a
22 duty to pay Level 3 for transporting and terminating Qwest-originated ISP-bound traffic
23 allowable under the *Core Forbearance Order*. Qwest's conduct is clearly in breach of the
24 Interconnection Agreement and has harmed Level 3. Level 3 is entitled to damages equal to the
25 past due amounts for reciprocal compensation, plus late payment charges.

26 ²² Interconnection Agreement at § 7.3.6.1 (Exhibit A at 15).

1 **COUNTERCLAIM II**

2 **QWEST HAS FAILED TO NEGOTIATE AN AMENDMENT REFLECTING THE FCC'S CORE**
3 **FORBEARANCE ORDER**

4 95. Level 3 incorporates into this Counterclaim, by reference thereto, paragraphs 1
5 through 94 of this Answer and Counterclaim.

6 96. Pursuant to the Parties' Interconnection Agreement, Qwest is obligated to
7 negotiate an amendment in good faith upon a change of law.²³

8 97. To date, Qwest has refused to enter into an amendment that reflects only the terms
9 of the FCC's *Core Forbearance Order*, in which the FCC eliminated growth caps and new
10 market restrictions from its unified national compensation framework for ISP-bound traffic.

11 98. Qwest has not negotiated an amendment to the Interconnection Agreement in
12 good faith.

13 99. As a result of Qwest's refusal to implement the FCC's *Core Forbearance Order*,
14 Level 3 has not been compensated by Qwest for intercarrier compensation relating to ISP-bound
15 traffic minutes of use above the growth cap.

16 100. Level 3's proposed contract terms are consistent with the FCC's *Core*
17 *Forbearance Order*, which addressed Core's petition requesting the FCC refrain from enforcing
18 the provisions of the *ISP Remand Order*.

19 101. Accordingly, Level 3 asks that the Commission approve Level 3's proposed
20 amendment and order that it be incorporated into the Parties' Interconnection Agreement. A true
21 and correct copy of the proposed amendment is attached as Exhibit F. Additionally, Level 3
22 requests that the Commission order the Parties to true-up all billing for ISP-bound traffic back to
23 October 8, 2004, the effective date of the *Core Forbearance Order*.

24
25
26 _____
²³ Interconnection Agreement at § 2.2 (Qwest Complaint, Exhibit A at 6).

RELIEF REQUESTED

WHEREFORE, Level 3 respectfully requests that the Commission issue an Order:

- (1) Dismissing all claims asserted against Level 3 by Qwest in Qwest Corporation’s Complaint for Enforcement of Interconnection Agreement, filed June 6, 2005;
 - (2) Declaring that Qwest must continue exchanging traffic with Level 3 over the Parties’ current LIS trunk architecture;
 - (3) Declaring that the Interconnection Agreement, as interpreted by applicable law, requires Qwest to compensate Level 3 for all of Level 3’s transport of Qwest-originated ISP-bound traffic to Level 3’s network for termination;
 - (4) Compelling Qwest to pay all past due reciprocal compensation charges for Level 3’s transport and termination of Qwest-originated ISP-bound traffic;
 - (5) Requiring Qwest to pay late payment charges on all past due amounts, in accordance with the Parties’ Interconnection Agreement, related to Level 3’s transport and termination of Qwest-originated ISP-bound traffic;
 - (6) Approving the language in Level 3’s proposed *Core Forbearance Order* Amendment and compelling Qwest to execute the same;
 - (7) Requiring the Parties to true-up all billing related to their exchange of ISP-bound traffic back to October 8, 2004, the effective date of the *Core Forbearance Order*;
- and

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1 (8) Awarding such other relief, including, but not limited to, any appropriate fines or
2 penalties, as the Commission deems just and reasonable.

3 Respectfully submitted this 20th day of June, 2005.

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5
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Section 7.0 – LOCAL INTERCONNECTION SERVICE (LIS)

7.1 LIS Options

7.1.1 This Section describes the Interconnection of Qwest's network and Level 3's own network for the purpose of exchanging Exchange Service (EAS/Local traffic), Exchange Access (IntraLATA Toll) and Jointly Provided Switched Access (InterLATA and IntraLATA) traffic. Qwest will provide interconnection at any technically feasible point within its network, including but not limited to, (i) the line-side of a local switch (*i.e.*, local switching); (ii) the trunk side of a local switch, (iii) the trunk connection points for a tandem switch, (iv) central office cross-connection points, (v) out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases, and (vi) points of access to unbundled network elements. Section 9 of this Agreement describes interconnection at points (i), (iv), (v), and (vi). "Interconnection" in this section of the Agreement is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone exchange service traffic and exchange access traffic at points (ii) and (iii) described above. Qwest's Local Interconnection Service is provided for the purpose of connecting end office switches to end office switches or end office switches to local or access tandem switches for the exchange of Exchange Service (EAS/Local traffic); or end office switches to access tandem switches for the exchange of Exchange Access (IntraLATA Toll) or Jointly Provided Switched Access traffic. Qwest tandem to Level 3 tandem switch connections will be provided where technically feasible. Qwest local tandem to Qwest access tandem and Qwest access tandem to Qwest access tandem switch connections are not provided.

7.1.1.1 Qwest will provide to Level 3 interconnection at least equal in quality to that provided to itself, to any subsidiary, affiliate, or any other party to which it provides interconnection. Qwest will provide interconnection under rates, terms and conditions that are just, reasonable and non-discriminatory.

7.1.2 LIS Methods of Interconnection

The Parties will negotiate the facilities arrangement used to interconnect their respective networks. Level 3 shall establish at least one Physical Point of Interconnection ("POI") in Qwest territory in each LATA where it does business. The Parties shall establish, through negotiations, one of the following interconnection agreements: (1) a DS1, DS3 or OCn entrance facility; (2) Collocation; (3) negotiated Mid-Span Meet POI facilities; (4) other methods of Interconnection mutually agreeable to the Parties.

7.1.2.1 Entrance Facility. Interconnection may be established through the provision of a OC12, OC3, DS3, or DS1 entrance facility where facilities exist. An entrance facility extends from the Qwest Serving Wire Center to Level 3's switch location or POI. Entrance facilities may not extend beyond the area served by the Qwest Serving Wire Center. The rates for entrance facilities are provided in Exhibit A. Qwest's Private Line Transport Service is available, at Level 3's option, as an alternative to entrance facilities when Level 3 uses such Private Line Transport service for multiple services. Until such time as ordering and provisioning processes may be established, Qwest will accept and process orders for OC level entrance facilities on an individual case basis. Until such time that rates are developed and approved for OC level entrance facilities, the rates for EUDIT found in Exhibit A will apply for OC level entrance facility requests. The Parties agree that the rates for OC level entrance facilities will be temporary until the

appropriate interconnection rates are approved in a cost docket. Once the appropriate rates are approved, these rates will be applied upon the effective date of the cost docket. If Level 3 chooses to order OCn level entrance facilities, these facilities will only be used to support LIS Trunk groups, including EAS/Local Trunk groups and intraLATA toll Trunk groups. Qwest reserves the right to audit the use of these facilities pursuant to Section 18 of this Agreement.

7.1.2.2 Collocation. Interconnection may be accomplished through the Collocation arrangements offered by Qwest. The terms and conditions under which Collocation will be available are described in Section 8 of this Agreement. When interconnection is provided through the Collocation provisions of Section 8 of this Agreement, the Expanded Interconnection Channel Termination rate elements, as described in Exhibit A will apply.

7.1.2.3 Mid-Span Meet POI. A Mid-Span Meet POI is a negotiated Point of Interface, limited to the Interconnection of facilities between one Party's switch and the other Party's switch. The actual physical Point of Interface and facilities used will be subject to negotiations between the Parties. Each Party will be responsible for its portion of the build to the Mid-Span Meet POI. A Mid-Span Meet POI shall not be used by Level 3 to access unbundled network elements.

7.1.2.4 Qwest agrees to arrange local interconnection trunk diversity to the same extent it does so in the traditional local network.

7.2 Exchange of Traffic

7.2.1 Description

7.2.1.1 This Section 7.2 addresses the exchange of traffic between Level 3's network and Qwest's network. Where either Party acts as an IntraLATA Toll provider, each Party shall bill the other the appropriate Switched Access charges pursuant to its respective Tariff. Each Party will provide the other notice of tariff filings made with the Commission that will affect switched access rates charged to the other Party. In cases where a Party makes such a tariff filing, the Commission's tariff protest rules will govern disputes concerning those rates. However, where a Party does not maintain access tariffs, that Party must still provide notice of a change in switched access rates to the other Party and, if such change is disputed, it will be resolved under the dispute resolution clause of the Agreement. Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective Tariffs or contractual offerings for such third party terminations. Unless otherwise agreed to by the Parties, via an amendment to this Agreement, the Parties will directly exchange traffic between their respective networks without the use of third party transit providers.

7.2.1.2 The traffic types to be exchanged under this Agreement include:

7.2.1.2.1 EAS/Local Exchange Service (EAS/Local) traffic as defined in this Agreement.

7.2.1.2.2 IntraLATA Toll Exchange Access (IntraLATA Toll) traffic as defined in this Agreement.

7.2.1.2.3 Jointly Provided Switched Access traffic is defined in Section 7.5.1.

7.2.1.2.4 Transit traffic is any traffic that originates from one Telecommunications Carrier's network, transits another Telecommunications Carrier's network, and terminates to yet another Telecommunications Carrier's network. For purposes of the Agreement, transit traffic does not include traffic carried by interexchange carriers. That traffic is defined as Jointly Provided Switched Access. Transit service is provided by Qwest, as a local and access tandem provider, to Level 3 to enable the completion of calls originated by or terminated to another Telecommunications Carrier (such as another CLEC, an ILEC, or a wireless carrier), which is connected to Qwest's local or access tandems. To the extent that Level 3's switch functions as a local or access tandem switch, as defined in this Agreement, Level 3 may also provide transit service to Qwest.

7.2.1.2.5 Traffic having special billing or trunking requirements includes, but is not limited to, the following:

- a) Directory Assistance;
- b) 911/E911;
- c) Operator busy line interrupt and verify; and
- d) Toll free services.

7.2.2 Terms and Conditions

7.2.2.1 Transport and Termination of Exchange Service (EAS/Local) Traffic

7.2.2.1.1 Exchange Service (EAS/Local) traffic will be terminated as Local Interconnection Service (LIS).

7.2.2.1.2 As negotiated between the Parties, the transport of Exchange Service (EAS/Local) traffic may occur in several ways:

7.2.2.1.2.1 Two-way trunk groups may be established. However, if either Party elects to provision its own one-way trunks for delivery of Exchange Service (EAS/Local) traffic to be terminated on the other Party's network, the other Party must also provision its own one-way trunks.

7.2.2.1.2.2 The Parties may purchase transport services from each other or from a third party. Such transport provides a transmission path for the LIS trunk to deliver the originating Party's Exchange Service EAS/Local Traffic to the terminating Party's end office or tandem for call termination. Transport may be purchased from Qwest or CLEC as tandem routed (i.e., tandem switching, tandem transmission and direct trunked transport) or direct routed (i.e., direct trunked transport). This Section is not intended to expand either Party's obligation under Section 251(a) of the Act.

7.2.2.1.3 When either Party utilizes the other Party's tandem switch for the exchange of local traffic, where there is a DS1's worth of traffic (512 CCS) for three (3) consecutive months between the originating Party's end office switch delivered to the other Party's tandem switch for delivery to one of the other Party's end office switches, the originating Party will order a dedicated (*i.e.*, direct) trunk group to the other Party's end office. To the extent that Level 3 has established a Collocation arrangement at a Qwest end office location, and has available capacity, Level 3 may provide two-way direct trunk facilities, when required, from that end office to Level 3's switch. If both Level 3 and Qwest desire to provision the facility and cannot otherwise agree, the Parties may agree to resolve the dispute through the submission of competitive bids.

7.2.2.1.4 LIS ordered to a tandem will be provided as Direct Trunked Transport between the Serving Wire Center of CLEC's POI and the tandem. Tandem transmission rates, as specified in Exhibit A of this Agreement, will apply to the transport provided from the tandem to Qwest's end office.

7.2.2.1.5 If Direct Trunked Transport is greater than fifty (50) miles in length, and neither Party has facilities or capacity in place, and the Parties cannot agree as to which Party will provide the facility, the Parties will lease or construct facilities to a mid-point of the span.

7.2.2.2 Exchange Access (IntraLATA Toll) Traffic

7.2.2.2.1 Exchange Access (IntraLATA Toll) traffic shall be delivered to Qwest at the access tandem or via separate trunks to Qwest's end office(s), as designated by Level 3.

7.2.2.3 Transit Traffic

7.2.2.3.1 Qwest will accept traffic originated by Level 3 for termination to another LEC, ILEC, IXC, or wireless carrier that is connected to Qwest's local and/or access tandems. Qwest will also terminate traffic from these other Telecommunications Carriers to Level 3.

7.2.2.3.2 To the extent technically feasible, the Parties involved in transporting transit traffic will deliver calls to each involved network with CCS/SS7 Protocol and the appropriate ISUP/TCAP messages to facilitate full interoperability and billing functions.

7.2.2.3.3 The originating company is responsible for payment of appropriate rates to the transit company and to the terminating company. In the case of Exchange Access (IntraLATA Toll) traffic where Qwest is the designated IntraLATA Toll provider for existing LECs, Qwest will be responsible for payment of appropriate usage rates.

7.2.2.3.4 When Qwest receives an unqueried call from Level 3 to a number that has been ported to another local services provider, the transit rate will apply.

7.2.2.4 Jointly Provided Switched Access. The Parties will use industry standards developed to handle the provisioning and billing of jointly provided switched

access (MECAB, MECOD, and the Parties' FCC and state access Tariffs). Each Party will bill the IXC the appropriate portion of its Switched Access rates. Qwest will also provide notification to Level 3 of the billing name, billing address and carrier identification codes of the IXCs subtending any access tandems to which Level 3 directly connects. This type of traffic is discussed separately in this Section.

7.2.2.5 Interface Code Availability. Supervisory signaling specifications, and the applicable network channel interface codes for LIS trunks can be found in the U S WEST Technical Publication for Local Interconnection Service 77398.

7.2.2.6 Switching Options.

7.2.2.6.1 SS7 Out of Band Signaling. SS7 Out of Band Signaling is available for LIS trunks. SS7 Out-of-Band Signaling must be requested on the order for the new LIS trunks. Common Channel Signaling Access Capability Service may be obtained through the following options: (a) as set forth in this Agreement at Section 9.6 or 9.13; (b) as defined in the Qwest FCC Tariff #5 (Section 20); or (c) from a third party signaling provider. Each of the Parties, Qwest and Level 3, will provide for interconnection of their signaling network for the mutual exchange of signaling information in accordance with the industry standards as described in Telcordia documents, including but not limited to GR-905 CORE, GR-954 CORE, GR-394 CORE and U S WEST Technical Publication 77342.

7.2.2.6.2 Clear Channel Capability. Clear Channel Capability (64CCC) permits 24 DS0-64 Kbps services or 1.536 Mbps of information on the 1.544 Mbps/s line rate. 64CCC is available for LIS trunks equipped with SS7 Out-of-Band Signaling. 64CCC must be requested on the order for the new LIS trunks. Qwest will provide Level 3 with a listing of Qwest tandems fully capable of routing 64CCC traffic through the Qwest website: <http://www.uswest.com/disclosures>. Where available to Qwest, Qwest will provide Level 3 with the same 64CCC on an alternate route or if necessary via an overlay network.

7.2.2.7 Measurement of terminating Local Interconnection Service (LIS) minutes begins when the terminating LIS entry switch receives answer supervision from the called end user's end office indicating the called end user has answered. The measurement of terminating call usage over LIS trunks ends when the terminating LIS entry switch receives disconnect supervision from either the called end user's end office, indicating the called end user has disconnected, or Level 3's Point of Interconnection, whichever is recognized first by the entry switch. This is commonly referred to as "conversation time." The Parties will only charge for actual minutes of use and/or fractions thereof of completed calls. Minutes of use are aggregated at the end of the billing cycle by end office and rounded to the nearest whole minute.

7.2.2.8 LIS Forecasting

7.2.2.8.1 Both Level 3 and Qwest shall work in good faith to define a mutually agreed upon forecast of LIS trunking.

7.2.2.8.2 Both Parties shall have the obligation to participate in joint planning meetings at quarterly intervals to establish trunk design and

provisioning requirements. The Parties agree to provide mutual trunk forecast information to ensure end user call completion between the Parties' networks. Such forecasts shall be for LIS trunking which impacts the switch capacity and facilities of each Party.

7.2.2.8.3 Switch capacity growth requiring the addition of new switching modules may require six months to order and install. To align with the timeframe needed to provide for the requested facilities, including engineering, ordering, installation and make ready activities, the Parties will utilize Qwest standard forecast timelines, as defined in the standard Qwest LIS Trunk Forecast Forms for growth planning. For capacity growth, Qwest will utilize Level 3 forecasts to ensure availability of switch capacity.

7.2.2.8.4 Each Party will utilize the Forecast cycle outlined on the Qwest LIS Trunk Forecast Forms, which stipulates that forecasts be submitted on a quarterly basis. The forecast will identify trunking requirements for a two year period. From the quarterly close date as outlined in the forecast cycle, the receiving Party will have one month to determine network needs and place vendor orders which require a six month minimum to complete the network build. Each Party may place trunk orders with respect to a forecast any time after submission of the forecast, and the other Party will provide capacity in response to such orders where spare capacity exists in its network at the time of that order. In any event, within seven months after submission of the forecast, each Party will have capacity in place to meet the other Party's orders against the forecast, given no vendor or other unavoidable delays as identified in the Force Majeure clause of this Agreement. For ordering information see the Interconnection – Ordering Section. The Parties agree that each forecast provided under this Section shall be deemed "Proprietary Information."

7.2.2.8.5 Both Parties will follow the forecasting and provisioning requirements of this Agreement for the appropriate sizing of trunks, and use of direct end office vs. tandem routing. See Section 7.2.2.1.3.

7.2.2.8.6 In the event of a dispute regarding forecast quantities, the Parties shall meet to resolve the dispute as soon as possible. Pending resolution of the dispute, the Parties shall make capacity available in accordance with the higher of: (i) the lower forecast; or (ii) twenty-five percent (25%) of the trunk capacity installed during the prior quarter.

7.2.2.8.7 Joint planning meetings will be used to bring clarity to the process. Each Party will provide adequate information associated with the Qwest LIS Trunk Forecast Forms in addition to its forecasts. During the joint planning meetings, both Parties shall provide information on major network projects anticipated for the following year that may impact the other Party's forecast or Interconnection requirements. No later than two weeks prior to the joint planning meetings, the Parties shall exchange information to facilitate the planning process. Qwest shall provide Level 3 a report reflecting then current spare capacity at each Qwest switch that may impact the interconnection traffic. Qwest shall also provide a report reflecting then current blocking of local direct and alternate final trunk groups, interconnection and non-interconnection alike. Level 3 will be provided interconnection trunk group data on its own trunks. The

information is Qwest-proprietary, provided under non-disclosure and is to be used solely for interconnection network planning.

7.2.2.8.8 In addition to the above information, Level 3 shall provide:

- a) Completed Qwest LIS Trunk Forecast Forms; and
- b) Any planned use of an alternate tandem provider.

7.2.2.8.9 In addition to the above information, the following information will be available through the Local Exchange Routing Guide or the Interconnections (ICONN) Database. The LERG is available through Telcordia. ICONN is available through the Qwest Web site located at <http://www.uswest.com/cgi-bin/iconn/iconn.pl>.

- a) Qwest Tandems and Qwest end offices (LERG);
- b) CLLI codes (LERG);
- c) Business/Residence line counts (ICONN);
- d) Switch type (LERG or ICONN); and
- e) Current and planned switch generics (ICONN).

7.2.2.8.10 Qwest Network Disclosure of deployment information for specific technical capabilities (e.g., ISDN deployment, 64 CCC, etc.) shall be provided on Qwest's web site, <http://www.uswest.com/disclosures>.

7.2.2.8.11 When appropriate, Qwest will notify Level 3 through the Qwest Trunk Group Servicing Request (TGSR) process of the need to take action and place orders in accordance with the forecasted trunk requirements. Level 3 shall respond to the TGSR within ten (10) business days of receipt.

7.2.2.8.12 The following terms shall apply to the forecasting process:

- a) Level 3 forecasts shall be provided as detailed in the standard LIS Trunk Forecast Form.
- b) Level 3 forecasts shall be deemed Confidential Information and Qwest may not distribute or reveal, in any form, Level 3 forecasts to its retail marketing, sales, or strategic planning personnel.
- c) QWEST may reveal Level 3 forecast to its network planning and growth personnel on a need to know basis only. These personnel shall be informed of the confidentiality of Level 3 forecasts and further informed that they, upon threat of termination, may not reveal or use such information beyond that necessary to plan network growth.

7.2.2.8.13 If a trunk group is consistently utilized at less than sixty percent (60%) during the time consistent busy hour measured during the twenty (20) business days each month of any consecutive three (3) month period, Qwest will notify Level 3 of Qwest's desire to resize the trunk group. Such notification shall include Qwest's information on current utilization levels. If Level 3 does not submit an ASR to resize the trunk group or provide Qwest with its reasons for maintaining excess capacity within thirty (30) calendar days of the written

notification, Qwest may reclaim the unused facilities and rearrange the trunk group. When reclamation does occur, Qwest shall not leave the Level 3-assigned trunk group with less than twenty five percent (25%) excess capacity, during the time consistent busy hour measured during the twenty (20) business days.

7.2.2.8.14 Each Party shall provide a specified point of contact for planning, forecasting and trunk servicing purposes.

7.2.2.8.15 Interconnection facilities provided on a route which involves extraordinary circumstances shall be subject to the Construction Charges, as detailed in the Construction Charges Section of this Agreement. Qwest and Level 3 may also choose to work in good faith to identify and locate alternative routes which can be used to accommodate Level 3 forecasted build. Extraordinary circumstances include, but are not limited to, natural obstructions such as lakes, rivers, or steep terrain, and legal obstructions such as governmental, federal, Native American or private rights of way. Standard Qwest forecast timeframes will not apply under extraordinary circumstances.

7.2.2.8.16 Interconnection facilities provided on a route which involves extraordinary circumstances shall be subject to the Construction Charges, as detailed in the Construction Charges Section of this Agreement. Qwest and Level 3 may also choose to work in good faith to identify and locate alternative routes which can be used to accommodate Level 3 forecasted build. Extraordinary circumstances include, but are not limited to, natural obstructions such as lakes, rivers, or steep terrain, and legal obstructions such as governmental, federal, Native American or private rights of way. Standard Qwest forecast timeframes will not apply under extraordinary circumstances.

7.2.2.9 Trunking Requirements

7.2.2.9.1 The Parties will provide designed Interconnection facilities that meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, in accordance with current industry standards.

7.2.2.9.2 Separate trunk groups may be established based on billing, signaling, and network requirements. The Parties agree to route Enhanced Service Provider traffic over the Exchange Service EAS/Local Trunk group. However, if the FCC determines that access charges shall apply to this traffic, the Parties will re-evaluate this provision. The following is the current list of traffic types that require separate trunk groups, unless specifically otherwise stated in this Agreement.

- a) Directory Assistance trunks (where the switch type requires separation from Operator Services trunks);
- b) 911/E911 trunks;
- c) Operator Services trunks (where the switch type requires separation from Directory Assistance trunks)

d) Mass calling trunks, if applicable.

7.2.2.9.2.1 Exchange Service (EAS/local), Exchange Access (IntraLATA toll carried solely by Local Exchange Carriers) Jointly Provided Switched Access (InterLATA and Inter LATA toll involving a third-party IXC) and may be combined in a single LIS trunk group or transmitted on separate LIS trunk groups. If combined, the originating carrier shall provide to the terminating carrier, each month, Percent Local Use (PLU) factors(s) that can be verified with individual call record detail.

7.2.2.9.2.2 Exchange Service (EAS/Local) traffic shall not be combined with Switched Access on the same trunk group, i.e. EAS/Local may not be combined with FGD to a Qwest Access Tandem Switch and/or End Office Switch.

7.2.2.9.3 Trunk group connections will be made at a DS1 or multiple DS1 level for exchange of EAS/Local, and IntraLATA Toll/Jointly Provided Switched Access traffic. Directory Assistance, 911/E911, Operator busy line interrupt and verify; and toll free service trunk groups may be made below a DS1 level, as negotiated.

7.2.2.9.4 The Parties will provide Common Channel Signaling (CCS) to one another in conjunction with all trunk circuits, except as provided below.

a) The Parties will provision all trunking using SS7/CCS capabilities. Redundant MF signaling networks will not be provided unless specifically called for in this Agreement. Exceptions to this arrangement would be limited to operator services trunking, directory assistance trunking, 911 trunking and any others currently available in the Qwest network only on MF signaling. When the SS7/CCS option becomes available in the Qwest network for said trunking, the Parties will provision new trunks using SS7. In addition, the Parties will jointly work to convert existing trunking to SS7, as appropriate.

b) When the Parties interconnect via CCS for Jointly Provided Switched Access Service, the tandem provider will provide MF/CCS interworking as required for Interconnection with Interexchange Carriers who use MF signaling.

7.2.2.9.5 With the exception described in paragraph 7.2.2.9.5.1 below, the Parties shall terminate Exchange Service (EAS/Local) traffic on Local Tandems or End Office Switches.

7.2.2.9.5.1 In the complete absence of a Local Tandem serving a particular end office, EAS/Local, Exchange Access (intraLATA Toll) and Jointly Provided Switched Access traffic between the Qwest end office switch and Level 3 switch may be exchanged by the Parties through LIS trunk groups established directly between (1) Level 3 switch and Qwest end office switch or (2) Level 3 switch and Qwest access tandem. Use of a Qwest Access Tandem for the exchange of EAS/Local, Exchange Access (intraLATA Toll) and Jointly Provided Switched Access traffic shall

be subject to the following conditions:

- a) Where there is a DS1 of traffic (512 BHCCS) between Level 3's switch and a Qwest End Office Switch for three (3) consecutive months, Level 3 will order a dedicated (i.e., direct) trunk group to the Qwest End Office Switch. To the extent Level 3 has established a Collocation arrangement at the Qwest end office location, and has available capacity, Level 3 may provide two-way direct trunk facilities from that end office to Level 3's switch.
- b) Level 3 shall deliver its EAS/Local, Exchange Access (intraLATA Toll) and Jointly Provided Switched Access traffic to the Qwest access tandem over a LIS two-way trunk group. Other traffic types shall be placed on separate trunk groups in accordance with Section 7.2.2.9.2 above.
- c) The Parties shall utilize SS7 signaling on the Level 3 switch to Qwest access tandem trunk group.
- d) If the Qwest Access Tandem is at, or forecasted to be at exhaust, the Parties with unforecasted demand will direct trunk to the appropriate end offices for the exchange of traffic. When the tandem has new capacity, the Parties may rehome traffic to the tandem.

7.2.2.9.6 Alternate Traffic Routing. If Level 3 has a LIS arrangement which provides two paths to a Qwest end office (one route via a tandem and one direct route), Level 3 may elect to utilize alternate traffic routing. Level 3 traffic will be offered first to the direct trunk group (also referred to as the "primary high" route) and then overflow to the tandem group (also referred to as the "alternate final" route) for completion to Qwest end offices.

7.2.2.9.7 Host-Remote. When a Qwest Wire Center is served by a remote end office switch, Level 3 may deliver traffic to the host central office or to the tandem. Level 3 may not deliver traffic directly to the remote end office switch.

7.2.2.10 Testing

7.2.2.10.1 Acceptance Testing. At the time of installation of a LIS trunk group, and at no additional charge, acceptance tests will be performed to ensure that the service is operational and meets the applicable technical parameters.

7.2.2.10.2 Testing Capabilities

7.2.2.10.2.1 LIS acceptance testing is provided where equipment is available, with the following test lines: seven-digit access to balance (100 type), milliwatt (102 type), nonsynchronous or synchronous, automatic transmission measuring (105 type), data transmission (107 type), loop-around, short circuit, open circuit, and non-inverting digital loopback (108 type), and such other acceptance testing that may be needed to ensure

that the service is operational and meets the applicable technical parameters.

7.2.2.10.2.2 In addition to LIS acceptance testing, other tests are available (e.g., additional cooperative acceptance testing, automatic scheduled testing, cooperative scheduled testing, manual scheduled testing, and non-scheduled testing) at the applicable Qwest Tariff rates. Testing fees will be paid by Level 3 when requesting the testing.

7.2.2.10.3 Repair Testing. At the time of repair of a LIS trunk group, at no additional charge, tests will be performed to ensure that the service is operational and meets the applicable technical parameters.

7.2.2.11 Mileage Measurement. Where required, the mileage measurement for LIS rate elements is determined in the same manner as the mileage measurement for V & H methodology as outlined in NECA Tariff No. 4.

7.3 Reciprocal Compensation

7.3.1 Interconnection Facility Options

The Reciprocal Compensation Provisions of this Agreement shall apply to the exchange of Exchange Service (EAS/Local) traffic between Level 3's network and Qwest's network. Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective Tariffs or contractual offerings for such third party terminations. Absent a separately negotiated agreement to the contrary, the Parties will directly exchange traffic between their respective networks without the use of third party transit providers.

7.3.1.1 Entrance Facilities

7.3.1.1.1 Recurring and nonrecurring rates for Entrance Facilities are specified in Exhibit A and will apply for those DS1, DS3, or OCn facilities dedicated to use by LIS.

7.3.1.1.2 If Level 3 chooses to use an existing facility purchased as Private Line Transport Service from the state or FCC Access Tariffs, the rates from those Tariffs will apply. However, if such facilities are to be used solely for Interconnection EAS/Local Trunk groups, Level 3 may request that such facilities be converted by Qwest at the rates specified for entrance facilities in Exhibit A. To conform with this request, Level 3 will need to disconnect the Private Line Transport Service facilities as a finished service and order the same facilities as an Interconnection Entrance Facility service. Appropriate non-recurring rates for a record change will apply to this conversion. If Level 3 is purchasing such facilities as Private Line Transport Service under a tariff term commitment (i.e., not on a month-to-month basis), and Level 3 expressly requests to have such facilities provided at the rates set forth in Exhibit A, Level 3 shall be responsible for any termination liability that may apply pursuant to the relevant Tariff for early termination of the tariff term commitment.

7.3.1.1.3 If the Parties elect to establish LIS two-way trunks, for reciprocal

exchange of Exchange Service (EAS/Local) traffic, the cost of the LIS two-way facilities shall be shared among the Parties by reducing the LIS two-way EF rate element charges as follows:

7.3.1.1.3.1 The provider of the LIS two-way Entrance Facility (EF) will initially share the cost of the LIS two-way EF by assuming an initial relative use factor of 50% for a minimum of one quarter. The nominal charge to the other Party for the use of the EF, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other party will be according to this initial relative use factor for a minimum of one quarter. The initial relative use factor will continue for both bill reduction and payments until a new factor is calculated, based upon actual minutes of use data. The new factor will be calculated based upon the proportional actual originating minutes of use data for each party excluding Internet Related traffic. The new factor shall be calculated during the fourth month following execution of the Agreement based upon non-Internet Related minutes of traffic exchanged over all two-way EF during the first three months. (For example, if Level 3 originates 600 minutes of traffic and Qwest originates 400 minutes of traffic over the two-way EF, the new relative use factor for Level 3 would be 60% and the new relative use factor for Qwest would be 40%. Level 3 would then bear 60% of the cost of the two-way EF, and Qwest would bear 40% of the cost.) The new factor shall then be applied thereafter until either Party requests recalculation based upon more recent originating minutes usage data. The use of this factor shall not be deemed in any way to compromise or waive Qwest's position that Internet Related Traffic is interstate in nature.

7.3.1.2 Collocation

7.3.1.2.1 When Collocation is used to facilitate interconnection, the EICT rate elements, as specified in Exhibit A, will apply per DS1 and DS3.

7.3.2 Direct Trunked Transport

7.3.2.1 Either Party may elect to purchase Direct Trunked Transport from the other Party.

7.3.2.1.1 Direct Trunked Transport (DTT) is available between the Serving Wire Center of the POI and the terminating Party's tandem or end office switches where facilities exist. The applicable rates are described in Exhibit A. DTT facilities are provided as dedicated OC12, OC3, DS3, or DS1 facilities. Until such time as ordering and provisioning processes may be established, Qwest will accept and process orders for OCn level DTT on an individual case basis. For Level 3, interim applicable optical rates for OC3 and OC12 DTT can be found in Exhibit A under Unbundled Dedicated Interoffice Transport (UDIT). The rates for the DS1 electrical facility from the Qwest central office optical remote node into the Qwest end office switch will also be found under the DS1 UDIT rates in Exhibit A. This electrical facility shall also be subject to the same relative use calculation applicable to DTT facilities under this Agreement. The Parties agree that the rates for OC3 or OC12 DTT will be temporary until the appropriate interconnection rates are approved in a cost docket. Once the appropriate rates are approved, these rates will be applied upon the effective date of the cost

docket. If Level 3 chooses to order OCn level DTT, these facilities will only be used to support LIS trunk groups, including EAS/Local Trunk groups and intraLATA toll Trunk groups. Qwest reserves the right to audit the use of these facilities pursuant to Section 18 of this Agreement.

7.3.2.1.2 When DTT is provided to a local or access tandem for Exchange Service (EAS/local traffic), or to an access tandem for Exchange Access (IntraLATA Toll), or Jointly Provided Switched Access traffic, the applicable DTT rate elements apply between the Serving Wire Center and the tandem. Additional rate elements for delivery of traffic to the terminating end office are Tandem Switching and Tandem Transmission. These rates are described below.

7.3.2.1.3 Mileage shall be measured for DTT based on V&H coordinates between the Serving Wire Center and the local/access tandem or end office.

7.3.2.1.4 Fixed Charges per DS0, DS1 or DS3 and per mile charges are defined for DTT in Exhibit A of this Agreement.

7.3.2.2 If the Parties elect to establish LIS two-way DTT trunks, for reciprocal exchange of Exchange Service (EAS/Local) traffic, the cost of the LIS two-way DTT facilities shall be shared among the Parties by reducing the LIS two-way DTT rate element charges as follows:

a) The provider of the LIS two-way DTT facility will initially share the cost of the LIS two-way DTT facility by assuming an initial relative use factor of 50% for a minimum of one quarter. The nominal charge to the other Party for the use of the DTT facility, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one quarter. The initial relative use factor will continue for both bill reduction and payments until a new factor is calculated based upon actual minutes of use data. The new factor will be calculated based upon the proportional actual originating minutes of use data for each party excluding Internet Related traffic. The new factor shall be calculated during the fourth month following execution of the Agreement based upon non-Internet Related minutes of traffic exchanged over all two-way DTT during the first three months. (For example, if Level 3 originates 600 minutes of traffic and Qwest originates 400 minutes of traffic over the two-way DTT, the new relative use factor for Level 3 would be 60% and the new relative use factor for Qwest would be 40%. Level 3 would then bear 60% of the cost of the two-way DTT, and Qwest would bear 40% of the cost.) The new factor shall then be applied thereafter until either Party requests recalculation based upon more recent originating minutes usage data. The use of this factor shall not be deemed in any way to compromise or waive Qwest's position that Internet Related Traffic is interstate in nature.

7.3.2.3 Multiplexing options (DS1/DS3 MUX or DS0/DS1 MUX) are available at rates described in Exhibit A.

7.3.3 Trunk Nonrecurring charges

7.3.3.1 Neither Party will charge the other Party nonrecurring charges for the

installation of LIS trunks.

7.3.3.2 Neither Party will charge the other Party nonrecurring charges for the rearrangement of LIS trunks.

7.3.4 Exchange Service (EAS/Local) Traffic

7.3.4.1 End Office Call Termination

7.3.4.1.1 The per minute of use call termination rates as described in Exhibit A of this Agreement will apply reciprocally for Exchange Service (EAS/Local) traffic terminated at a Qwest or Level 3 end office.

7.3.4.1.2 For purposes of call termination, the Level 3 switch(es) shall be treated as end office switch(es), unless Level 3's switch(es) meet the definition of tandem switch in this Agreement at 4.11.2.

7.3.4.1.3 Intentionally left blank for numbering consistency.

7.3.4.1.4 Neither Party shall be responsible to the other for call termination charges associated with third party traffic that transits such Party's network.

7.3.4.2 Tandem Switched Transport

7.3.4.2.1 For traffic delivered through a Qwest or Level 3 tandem switch (as defined in this Agreement), the tandem switching rate and the tandem transmission rate in Exhibit A shall apply per minute in addition to the end office call termination rate described above so long as the terminating Party switches the traffic at both its tandem switch and its end office switch. If Level 3 seeks both end office switching and tandem switching compensation for switching functions performed by a single switch, and the Parties cannot agree on the level of compensation, Level 3 will seek Commission approval as to its ability to impose both end office and tandem switching charges under such circumstances. Level 3 will not seek to impose both end office and tandem switching charges for the functions performed by a single switch until it obtains Commission approval.

7.3.4.2.2 Mileage shall be measured for the tandem transmission rate elements based on V&H coordinates between the tandem and terminating end office.

7.3.4.2.3 When a Party terminates traffic to a remote switch, tandem transmission rates will be applied for the mileage between the host switch and the remote switch as long as the identity of each is filed in the NECA 4 Tariff.

7.3.4.2.4 When Qwest receives a unqueried call from Level 3 to a number that has been ported to another Qwest central office within the EAS/Local calling area, and Qwest performs the query, mileage

sensitive tandem transmission rates will apply which reflect the distance to the end office to which the call has been ported.

7.3.4.2.4.1 To determine the responsible originating carrier of all calls for billing purposes, Qwest and Level 3 are required to utilize the Number Portability Administration Center (NPAC) database, or another database that is supported by OBF.

7.3.4.3 The Parties agree to exchange all EAS/Local (§251(b)(5)) and ISP-bound traffic (as that term is used in the FCC ISP Order) at the FCC ordered rate, pursuant to the FCC ISP Order. The FCC ordered rate for ISP-bound traffic will apply to EAS/Local and ISP-bound traffic in lieu of End Office call termination and Tandem Switched Transport. See Section 7.3.6 of this Agreement for FCC-ordered rates.

7.3.5 Miscellaneous Charges

7.3.5.1 Cancellation Charges will apply to cancelled LIS trunk orders, based upon the critical dates, terms and conditions described in Oregon Access Service Tariff, Section 5.2.3, and the Trunk Nonrecurring Charges referenced in this Agreement.

7.3.5.2 Expedites for LIS trunk orders are allowed only on an exception basis with executive approval within the same timeframes as provided for other designed services. When expedites are approved, expedite charges will apply to LIS trunk orders based on rates, terms and conditions described in Exhibit A.

7.3.5.3 Construction charges are described in Exhibit A of this Agreement.

7.3.6 ISP-Bound Traffic

7.3.6.1 The Parties shall exchange ISP-bound traffic pursuant to the compensation mechanism set forth in the FCC ISP Order.

7.3.6.2 For States where the Parties were exchanging traffic pursuant to interconnection agreements prior to April 18, 2001, compensation for traffic exchanged under this Agreement shall be as set forth in the following paragraphs.

7.3.6.2.1 Identification of ISP-bound traffic -- Qwest will presume traffic delivered to Level 3 that exceeds a 3:1 ratio of terminating (Qwest to Level 3) to originating (Level 3 to Qwest) traffic is ISP-bound traffic. Either Party may rebut this presumption by demonstrating to the state Commission that the traffic above this ratio is in fact EAS/Local (§251(b)(5)) Traffic delivered to non-ISP customers, which is subject instead to the compensation mechanisms set forth in Section 7.3.4.3. The same identification procedures and presumption shall apply for Level 3 traffic delivered to Qwest in terminating traffic as well.

7.3.6.2.2 Growth Ceilings for ISP-Bound Traffic -- Intercarrier compensation for ISP-bound traffic originated by one Party and terminated by the other Party will be subject to a growth ceiling, as

defined in Section 7.3.6.2.2.1. The originating carrier shall not be required to pay intercarrier compensation to the terminating carrier for ISP-bound MOUs exceeding this growth ceiling.

7.3.6.2.2.1 For 2001, each Party will pay the other Party compensation for ISP-bound minutes up to the growth ceiling. The growth ceiling is equal to, on an annualized basis, the number of ISP-bound minutes for which the terminating Party was entitled to compensation from the originating Party during first calendar quarter 2001, plus a ten percent (10%) growth factor.

7.3.6.2.2.2 For 2002 and each subsequent year thereafter, until further FCC action on intercarrier compensation, the originating Party will pay the terminating Party compensation for ISP-bound minutes up to the 2001 growth ceiling, plus another ten percent (10%) growth factor.

7.3.6.2.3 Rate Caps -- Intercarrier compensation for ISP-bound traffic exchanged between Qwest and Level 3 will be billed as follows:

7.3.6.2.3.1 \$.0015 per MOU for six (6) months from June 14, 2001 through December 13, 2001

7.3.6.2.3.2 \$.001 per MOU for eighteen (18) months from December 14, 2001 through June 13, 2003

7.3.6.2.3.3 \$.0007 per MOU from June 14, 2003 until thirty six (36) months after the effective date of the FCC ISP Order or until further FCC action on intercarrier compensation, whichever is later.

7.3.6.2.3.4 The rates set forth in this Section 7.3.6.2.3 shall apply to all minutes of ISP-bound traffic originated by one Party and terminated by the other Party, subject to the growth ceiling.

7.3.6.3 For States where the Parties were not exchanging traffic pursuant to interconnection agreements prior to April 18, 2001, Sections 7.3.6.2, and 7.3.6.2.2 through 7.3.6.2.4 shall not apply. Instead, all ISP-bound traffic shall be exchanged without intercarrier compensation being payable by the originating Party to the terminating Party in connection with the terminating minutes of use. This provision includes Level 3's expansion into a State in which it had not exchanged traffic with Qwest under an interconnection agreement prior to April 18, 2001.

7.3.7 Transit Traffic.

The following rates will apply:

7.3.7.1 Local Transit: The applicable LIS tandem switching and tandem transmission rates at the assumed mileage contained in Exhibit A of this Agreement, apply to the originating Party. The assumed mileage will be modified to reflect actual mileage, where the mileage can be measured, based on negotiations between the Parties.

7.3.7.2 IntraLATA Toll Transit: The applicable Qwest Tariffed Switched Access tandem switching and tandem transmission rates apply to the originating CLEC or LEC. The assumed mileage contained in Exhibit A of this Agreement shall apply.

7.3.7.3. Jointly Provided Switched Access: The applicable Switched Access rates will be billed by the Parties to the IXC based on MECAB guidelines and each Party's respective FCC and state access Tariffs.

7.3.8 Signaling Parameters: Qwest and Level 3 are required to provide each other the proper signaling information (e.g., originating call party number and destination call party number, etc.) to enable each Party to issue bills in a complete and timely fashion. All CCS signaling parameters will be provided including Calling Party Number (CPN), originating line information (OLI), calling party category, charge number, etc. All privacy indicators will be honored. If either Party fails to provide CPN or reasonable alternative (i.e., charge number), and cannot substantiate technical restrictions (i.e., MF signaling) such traffic will be billed as Switched Access. Traffic sent to Level 3 without CPN (valid originating information) will be handled in the following manner. The transit provider will be responsible for only its portion of this traffic, which will not exceed more than 5% of the total Exchange Service (EAS/Local) and Exchange Access (IntraLATA Toll) traffic delivered to the other party. Qwest will provide to Level 3, upon request, information to demonstrate that Qwest's portion of no-CPN traffic does not exceed five percent (5%) of the total traffic delivered.

7.3.9 Percent Local Use (PLU) Factoring. To the extent an originating Party combines Exchange Service (EAS/Local), Exchange Access (IntraLATA Toll carried solely by Local Exchange Carriers), and Jointly Provided Switched Access (InterLATA and IntraLATA calls exchanged with a third-party IXC) traffic on a single LIS trunk group, and the originating Party provides monthly PLU(s) verifiable with individual call record detail, the terminating Party should apportion per minute of use (MOU) charges appropriately. Verification should follow the process described at Section 18 of this Agreement.

7.4 Ordering

7.4.1 When ordering LIS, the ordering Party shall specify requirements on the Access Service Request (ASR). When the ordering Party requests facilities, routing, or optional features different than those determined to be available, the Parties will work cooperatively in determining an acceptable configuration, based on available facilities, equipment and routing plans.

7.4.2 For each NXX code assigned to Level 3 by the NANPA, Level 3 will provide Qwest with the CLLI codes of the Qwest tandems and the Level 3 POI to which traffic associated with

the NXX will be routed. For NXX codes assigned to existing LIS trunk groups, Level 3 will also provide Qwest with the Qwest assigned Two-Six Code (TGSN) to which each NXX will be routed. Information that is not currently available in the LERG may be provided via the Routing Supplemental Form-Wireline available on the Qwest web site: www.uswest.com/carrier/bulletins/process.html.

7.4.3 When the CLEC has a DS3 Entrance Facility or has purchased a DS3 private line facility, the CLEC will order the appropriate DS1 facility required and identify the channels of the DS3 to be used to provide circuit facility assignments. Also, if the CLEC has a DS1 Entrance Facility or has purchased a DS1 private line facility, CLEC will be responsible for identification of the DSO channels of the DS1 private line to be used to provide circuit facility assignment.

7.4.4 Where Level 3 has not previously established a POI and operated in a LATA, or where a new POI is being established in a given LATA, or where Level 3 is providing a new forecast or requests changes to an existing forecast, a joint planning meeting will precede initial trunking orders. These meetings will result in agreement and commitment that both parties can implement the proposed plan and the transmittal of Access Service Requests (ASRs) to initiate order activity. A Party requesting tandem Interconnection will provide its best estimate of the traffic distribution to each end office subtending the tandem.

7.4.5 Trunks will be ordered either to Qwest's end offices directly or to Qwest's local tandem for Exchange Service (EAS/Local) traffic. Except as provided for in Section 7.2.2.9.6.1, separate trunks will be ordered to Qwest's access tandem only for Exchange Access (IntraLATA toll) and Jointly Provided Switched Access traffic.

7.4.6 Qwest and other parties are currently developing performance measures in the Oregon Commission's wholesale service quality rulemaking docket and in Oregon workshops relating to Qwest's application pursuant to section 271 of the Telecommunications Act of 1996. The Parties will amend this Agreement to incorporate all aspects of the Commission's final decisions in these proceedings relating to performance measures for the establishment of trunking arrangements. Until the Oregon Commission issues final decisions in these proceedings and those decisions are incorporated into this Agreement through an amendment, Qwest will provision pursuant to a performance objective of establishing trunking arrangements for Level 3 in Oregon within average monthly intervals that are at parity with the average monthly intervals Qwest achieves in Oregon for establishing Feature Group D type trunking arrangements.¹ Qwest will use good faith efforts to meet this performance objective and to meet the provisioning intervals for establishing trunking arrangements that are set forth in Qwest's Interconnect and Resale Resource Guide (IRRG), which is available on Qwest's web site. Qwest will provide Level 3 with monthly reports of performance results relating to the intervals for establishing trunking arrangements in Oregon.

7.4.7 Qwest will provide Level 3 with a specific due date for each order that Level 3 submits for the establishment of trunking arrangements. These due dates will be determined on an individual case basis and will be in accordance with the guidelines for LIS trunks contained in the IRRG. Qwest will provide notice to Level 3 of any changes to the LIS trunk intervals

¹ When monthly order volumes are greater than 30, parity will be determined using the modified statistical "Z" test, with the critical Z value established using a confidence level of ninety-five percent. When monthly order volumes are between one and 30, parity will be determined using the permutation test (for interval measurements) or proportions test (for measurements reported as percentages).

consistent with the change management process applicable to the IRRG. When the Oregon Commission issues the final decisions referred to above in section 7.4.6, Qwest will implement any changes to the IRRG that are necessary to conform with the Commission's final decisions relating to performance measures for establishing trunking arrangements.

7.4.9 A party may cancel an order at any time prior to notification that service is available. If a Party is unable to accept service within thirty (30) calendar days after the original service date, a Party has the following options:

- a) The order will be canceled; cancellation charges as noted in 7.3.5.1 apply; or
- b) Billing for the service will commence.

In such instances, the cancellation date or the date billing is to commence, depending on which option is selected, will be the 31st calendar day beyond the original service date.

7.5 Jointly Provided Switched Access Services

7.5.1 Jointly Provided Switched Access Service is defined and governed by the Parties' FCC and State Access Tariffs, Multiple Exchange Carrier Access Billing (MECAB) and Multiple Exchange Carrier Ordering and Design (MECOD) Guidelines, and is not modified by any provisions of this Agreement. Both Parties agree to comply with such guidelines. A summary of applicable guidelines is available in the Interconnect & Resale Resource Guide.

7.5.2 Qwest will agree to function as the Access Service Coordinator (ASC) as defined in the Multiple Exchange Carrier Ordering and Design Guidelines (MECOD)(Technical Reference SR-TAP-000984). Qwest will provide the operational, technical and administrative support required in the planning, provisioning and maintenance involved in the joint access provisioning process to the IXCs. Qwest will be unable to fulfill the role of ASC if Level 3 does not fully comply with MECOD requirements, including filing the Level 3 end offices and billed percentages (BPs) in the NECA 4 Tariff.

7.5.3 Qwest and Level 3 will each render a separate bill to the IXC, using the multiple bill, multiple tariff option.

7.5.4 A charge will apply for Category 11-01-XX and 11-50-XX records sent in an EMR mechanized format. These records are used to provide information necessary for each Party to bill the Interexchange Carrier for Jointly Provided Switched Access Services and 8XX database queries. The charge is for each record created and transmitted and is listed in Exhibit A of this Agreement.

7.6 Transit Records

7.6.1 Qwest and Level 3 will exchange wireline network usage data originated by a wireline Local Exchange Carrier (LEC) where the NXX resides in a wireline LEC switch, transits Qwest's network, and terminates to Level 3's network. Each party agrees to provide to the other this wireline network usage data when Qwest or Level 3 acts as a transit provider currently or in the future. The parties understand that this information is carrier protected information under §222 of the Communications Act and shall be used solely for the purposes of billing the wireline LEC. Level 3 will provide to Qwest information to be able to provide transit records on a mechanized

basis when technically feasible. This includes, but is not limited to: service center information, Operating Company Number and state jurisdiction. Qwest and Level 3 agree to exchange wireline network usage data as Category 11-01-XX.

7.6.2 Qwest and Level 3 will exchange wireless network usage data originated by a Wireless Service Provider (WSP) where the NXX resides in a WSP switch, transits Qwest's network, and terminates to Level 3's network. Each party agrees to provide to the other this wireless network usage data when Qwest or Level 3 acts as a transit provider currently or in the future. The parties understand that this information is carrier protected information under §222 of the Communications Act and shall be used solely for the purposes of billing the WSP. Level 3 will provide to Qwest information to be able to provide transit records on a mechanized basis when technically feasible. This includes, but is not limited to: service center information, Operating Company Number and state jurisdiction. Qwest and Level 3 agree to exchange wireless network usage data as Category 11-50-XX.

7.6.3 A charge will apply for Category 11-01-XX and 11-50-XX records sent in an EMR mechanized format. These records are used to provide information necessary for each Party to bill the Originating Carrier for transit when technically feasible. The charge is for each record created and transmitted and is listed in Exhibit A of this Agreement.

7.7 Local Interconnection Data Exchange for Billing

7.7.1 There are certain types of calls or types of Interconnection that require exchange of billing records between the Parties, including, for example, alternate billed and Toll Free Service calls. The Parties agree that all call types must be routed between the networks, accounted for, and settled among the Parties. Certain calls will be handled via the Parties' respective operator service platforms. The Parties agree to utilize, where possible and appropriate, existing accounting and settlement systems to bill, exchange records and settle revenue.

7.7.2 The exchange of billing records for alternate billed calls (e.g., calling card, bill-to-third-number and collect) will be distributed through the existing CMDS processes, unless otherwise separately agreed to by the Parties.

7.7.3 Inter-Company Settlements ("ICS") revenues will be settled through the Calling Card and Third Number Settlement System ("CATS"). Each Party will provide for its own arrangements for participation in the CATS processes, through direct participation or a hosting arrangement with a direct participant.

7.7.4 Non-ICS revenue is defined as IntraLATA collect calls, calling card calls, and billed to third number calls which originate on one service provider's network and are billed by another service provider located within the same Qwest geographic specific region. The Parties agree to negotiate and execute an agreement for settlement of non-ICS revenue. This separate arrangement is necessary since existing CATS processes do not permit the use of CATS for non-ICS revenue. The Parties agree that current message distribution processes, including the CMDS system or Qwest in-region facilities, can be used to transport the call records for this traffic.

7.7.5 Both Parties will provide the appropriate call records to the intraLATA Toll Free Service provider, thus permitting the service provider to bill its end users for the inbound Toll Free Service. No adjustments to bills via tapes, disks or NDM will be made without the mutual agreement of the Parties.

EXHIBIT B
TO LEVEL 3'S ANSWER AND
COUNTERCLAIMS

December 13, 2004

Qwest Corporation
Director – Interconnect
1801 California St., # 2410
Denver, CO 80202

Dear Director of Interconnection:

On October 18, 2004 the Federal Communications Commission (FCC) released its Order in the matter of the Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the *ISP Remand Order*, 2004, in Docket No. 03-171, such order being effective on October 8, 2004 (the "Order").

In its Order the FCC found, among other things, that application of the growth caps and new markets rules in respect to compensation for ISP Bound Traffic as outlined in the ISP Remand Order was no longer necessary, therefore that forbearance was warranted in this regard.

Pursuant to Section 2.2. of the Interconnection Agreement by and between Qwest Corporation and Level 3 Communications dated November 16, 2001, Level 3 is seeking an amendment to reflect the above referenced change in law (the "Amendment"). Accordingly, Level 3 would like to commence the negotiations to effect said Amendment. Please inform us as to who will be your representative for the negotiation of this Amendment.

Insofar as the Order was effective on October 8, 2004, Level 3 will immediately commence billing Qwest for that ISP Bound traffic in the state of Oregon for which the growth caps and new market restrictions have been lifted by virtue of the Order. With the heightened concern in the telecommunications industry for proper accounting practices, we wanted to bring this to your attention as soon as possible. We currently estimate the increase in monies owed Level 3 to be approximately \$1.1 million on an annualized basis.

We look forward to completing the Amendment process as expeditiously as possible. Should you have any questions, please feel free to contact me.

Sincerely,

Rogier Ducloo
Director – Interconnection Services
Level 3 Communications, LLC
Phone: 720-888-1114
Email: roger.ducloo@level3.com

Cc: Qwest Law Department



January 27, 2005

RECEIVED

FEB 8 2005

LEVEL 3 COMMUNICATIONS

General Counsel
Level 3 Communications
1025 Eldorado Blvd.
Broomfield, CO 80021
USA

To: General Counsel

Announcement Date:	January 27, 2005
Effective Date:	Immediately
Document Number:	PROD.01.25.05.A.001303.LIS_LOCAL
Notification Category:	Product Notification
Target Audience:	CLEC
Subject:	VNXX on LIS Trunks

Local Interconnection Service (LIS) trunks are to be used only for the mutual exchange of Exchange Service (Local), Exchange Access, and Jointly Provided Switched Access Services. Calls that originate in one local calling area and terminate to an end user located in another local calling area are not Exchange Service calls, regardless of the NPA-NXX used for those calls, and should properly be treated as long distance calls. Therefore, these types of calls should be rated using Qwest's Switched Access tariffs with appropriate provisioning of interexchange transport.

Qwest has become aware that Level 3 Communications is utilizing LIS trunking for the termination of inappropriate long distance traffic. This inappropriate use of LIS trunking is achieved by obtaining local NPA-NXXs and filing the NPA-NXXs in the Local Exchange Routing Guide (LERG), to give the appearance of a local dialing pattern for these intraLATA or interLATA toll calls. The industry now refers to this type of toll traffic as Virtual NXX (or "VNXX") traffic. **No interconnection agreement between Qwest and any party permits or requires the exchange of VNXX traffic, and LIS trunking should not be utilized for the exchange of VNXX traffic. This restriction includes Single Point of Presence (SPOP) LIS trunking arrangements.**

Please see the attached VNXX service example.

It is Level 3 Communications's responsibility to ensure that VNXX traffic is not exchanged via LIS trunking arrangements. To resolve any potential misuse of LIS trunking arrangements, Level 3 Communications can take the following step:

- You can modify your assignment of telephone numbers to your end-user customers to ensure that they are only receiving a phone number with an NXX assigned to the rate center where they are physically located. This would modify the dialing patterns (to 1+) for your current VNXX traffic and either migrate the traffic from LIS to tariffed Switched Access Feature Group D trunks for interLATA traffic or appropriately use the LIS trunking if the traffic is Exchange Access traffic.

By this letter, Qwest is initiating a dispute with Level 3 Communications pursuant to the dispute resolution provisions of Level 3 Communications's interconnection agreement with Qwest. Qwest requires that Level 3 Communications cease its use of VNXX architecture such that Qwest is forced to send VNXX traffic to Level 3 Communications. In addition, Qwest will be taking the following steps:

1. Cessation of payment of reciprocal compensation for VNXX traffic. Should Level 3 Communications dispute Qwest's findings with respect to the determination of VNXX traffic versus Exchange Service, Exchange Access or Jointly Provided Switched Access traffic, Qwest will, in good faith, work with Level 3 Communications to resolve that dispute;
2. Continuation of the Dispute Resolution process in Level 3 Communications's interconnection agreement with Qwest, including but not limited to filing complaints regarding this dispute with the appropriate state regulatory agency; and
3. Any other appropriate actions that Qwest may deem necessary to cease the exchange of VNXX traffic with Level 3 Communications and appropriately compensate Qwest for use of its facilities. Qwest does not waive and specifically reserves any claims, rights and actions it may have against Level 3 Communications regarding the exchange of VNXX traffic, including but not limited to seeking compensation for Level 3 Communications's use of Qwest facilities in exchanging this interexchange VNXX traffic.

Therefore, as discussed above, this letter serves to open the applicable dispute timeframes in Level 3 Communications's interconnection agreement with Qwest. Qwest must receive written confirmation no later than February 15, 2005, that Level 3 Communications has either ceased forcing Qwest to exchange VNXX traffic with Level 3 Communications or a specific date upon which Level 3 Communications will cease doing so. If Level 3 Communications fails to provide this written notice by February 15, 2005, to Dan Hult, Director, Carrier Relations, at dan.hult@qwest.com or at 1314 Douglas Street, Omaha, NE 68102, Qwest will continue to pursue all of the actions discussed above, including but not limited to filing of complaints with the appropriate regulatory agencies. It is necessary that Level 3 Communications and Qwest begin working immediately on a cooperative solution that follows the requirements of the interconnection agreement between Level 3 Communications and Qwest. Please work with Dan Hult as Qwest's initial contact for this dispute, who can be reached at dan.hult@qwest.com. Thank you in advance for your cooperation on this issue.

Best regards,

Steven Hansen
Vice President – Carrier Relations
Wholesale Markets
Qwest Services Corporation

cc: , Liz Stamp
Renee Virlee

Note: In cases of conflict between the changes implemented through this notification and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement.

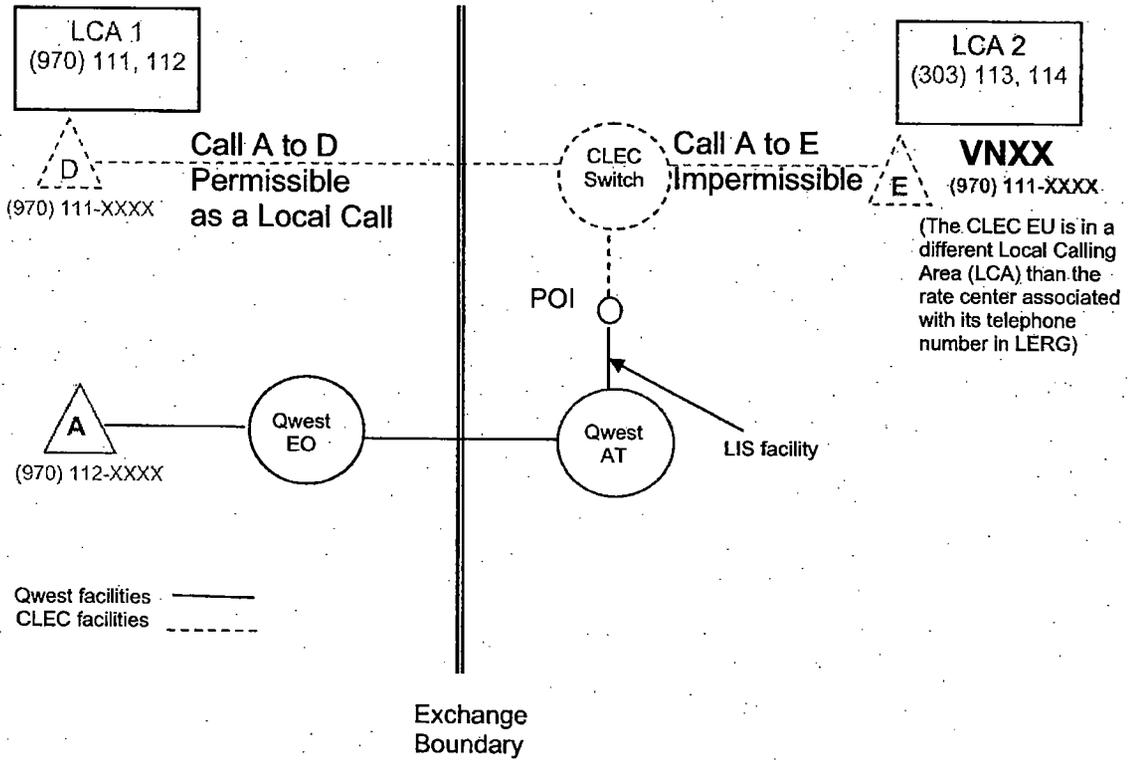
The Qwest Wholesale Web Site provides a comprehensive catalog of detailed information on Qwest products and services including specific descriptions on doing business with Qwest. All information provided on the site describes current activities and process.

Prior to any modifications to existing activities or processes described on the web site, wholesale customers will receive written notification announcing the upcoming change.

If you would like to unsubscribe to mailouts please go to the "Subscribe/Unsubscribe" web site and follow the unsubscribe instructions. The site is located at:

<http://www.qwest.com/wholesale/notices/cnla/maillist.html>

VNXX SERVICE EXAMPLE





March 31, 2005

VIA FACSIMILE & OVERNIGHT DELIVERY

Mr. Dan Hult
Director, Carrier Relations
Qwest Wholesale Markets
1314 Douglas on the Mall
Room 1330
Omaha, NE 68102

Re: Request to Amend Agreements Pursuant to Core Order

Dear Mr. Hult:

On or about December 13, 2004 Level 3 Communications, LLC ("Level 3") notified Qwest Corporation ("Qwest") that the parties should revise their interconnection agreements in Arizona, Idaho, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming to reflect the fact that effective October 8, 2004, the Federal Communications Commission ("FCC") lifted caps and new markets exclusions restrictions on intercarrier compensation for ISP-bound traffic.¹

Level 3 notes that on January 27, 2005 Qwest notified Level 3 that it was triggering dispute resolution on this and related matters, including that Qwest would longer pay reciprocal compensation on certain classes of ISP-bound traffic. Since that time Qwest has further notified Level 3 of Qwest's withholding compensation in all states where the companies exchange traffic.

¹ *Petition of Core Communications, Inc. For Forbearance Under 47 U.S.C. § 160(C) From Application of The ISP Remand Order, 19 FCC Rcd. 20,179, 20,189 (2004) ("IT IS FURTHER ORDERED, pursuant to section 10 of the Communications Act of 1934, 47 U.S.C. 160, and section 1.103(a), that the Commission's forbearance decision SHALL BE EFFECTIVE on October 8, 2004." (emphasis in original)).*

Pursuant to Section 11 of Part A of the interconnection agreements² between Level 3 and Qwest and Section 5 of the ISP-Bound Traffic Amendment³ in each of the states named above, Level 3 demands that Qwest update all contracts according to the relevant change in law provisions. Accordingly, and for avoidance of any doubt, Level 3 reasserts its prior notifications on change of law and further provides an amendment specific to the FCC's Core Communications Order. A copy of that proposed amendment is attached.

Level 3 reiterates that Qwest's unilateral refusal to pay compensation for ISP Bound traffic constitutes a material and substantial breach of the agreements between Qwest and Level 3, and a violation of federal law.

We look forward to completing the amendment process as expeditiously as possible. Should you have any questions, please feel free to contact me.

Sincerely,



Andrea L. Gavalas
Vice President, Interconnection Services
Level 3 Communications, LLC

cc: Larry Christensen, Director, Interconnection Agreements, Qwest Corporation
Erik Cecil, Regulatory Counsel, Level 3 Communications, LLC

² See, e.g., *In the matter of the Joint Application for Approval of an Adoption of Agreement for Local Wireline Interconnection between Level 3 Communications, LLC and Qwest Corporation*, Docket No. P57733,421/IC-01-321 (March 6, 2001) (the "Agreement") (Part A Section 11 provides in part that "The parties agree to seek expedited resolution by the Commission, and shall request that resolution occur in no event later than sixty days (60) from the date of the submission of such dispute. If the Commission appoints an expert(s) or other facilitator(s) to assist in decision making, each Party shall pay half of the fees and expenses so incurred.").

³ See, e.g., *In the matter of the Joint Application for Approval of the Agreement to Amend an Interconnection Agreement between Qwest Corporation and Level 3 Communications, LLC*, Docket No. P57733,421/IC-02-1972 (November 22, 2001) ("ISP-Bound Traffic Amendment") (Section 5 provides in part that "The provisions in the Agreement and this Amendment are based, in large part, on the existing state of law and interpretations thereof, as of the date hereof (the Existing Rules). To the extent that the Existing Rules are changed, vacated, dismissed, stayed or modified, then the Agreement and all Amendments and all contracts adopting all or party of the Agreement shall be amended to reflect such modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the modification or change of the Existing Rules, it shall be resolved in accordance with the Dispute Resolution provision of the Agreement.").

First Amendment to the Interconnection Agreement
Between Qwest Corporation and
Level 3 Communications, LLC. for the State of _____

This amendment (“Amendment”) amends the Interconnection Agreement for the State of Minnesota between Qwest Corporation (“Qwest”) and Level 3 Communications, LLC (“Level 3”). Qwest and Level 3 may be referred to individually as “Party”, or collectively as the “Parties”.

Recitals

WHEREAS, Qwest and Level 3 entered into interconnection agreements pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended (“the Act”) which was approved by the Minnesota Public Utilities Commission (“Commission”) on or about April 20, 2001, as referenced in Docket No. P-5733,421/IC-01-321 (hereinafter the “Agreement”); and

WHEREAS, the Federal Communications Commission (“FCC”) issued an Order, in WC Docket No. 03-171 effective October 18, 2004 (*Core Order*)¹; and

WHEREAS, the Parties wish to amend the Agreement to reflect the aforementioned order under the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, for and in consideration of the promises and covenants contained in this Amendment, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the language as follows in lieu of existing contract language:

1. Definitions

For purposes of this Amendment, the following definitions apply:

- 1.1. New Markets Rule – In the 2001 ISP Remand Order the FCC concluded that different interim intercarrier compensation rules should apply if two carriers were not exchanging traffic pursuant to an interconnection agreement prior to the adoption of the FCC’s ISP Remand Order.² This rule applied, for example, when a new carrier entered a market or an existing carrier expanded into a market it

¹ *Petition of Core Communications, Inc. For Forbearance Under 47 U.S.C. § 160(C) From Application of The ISP Remand Order*, 19 FCC Rcd. 20,179, 20,189 (2004).

² *In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996, Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, 2001 WL 455869 (F.C.C.), 16 FCC Rcd. 9151 (2001).

previously had not served. In the Core Order, effective October 8, 2004, the FCC has removed this restriction.

- 1.2. **Growth Caps** - In the ISP Remand Order, the FCC also imposed a cap on total ISP-bound minutes for which a LEC could receive compensation equal to the total ISP-bound minutes for which the LEC was previously entitled to compensation, plus a 10 percent growth factor.

2.0 ISP-Bound Traffic

- 2.1 The Parties shall exchange ISP-bound traffic pursuant to the compensation mechanism set forth in the FCC *Core Order*.
- 2.2 Compensation for ISP-bound traffic will be at the rate of \$0.0007 per minute of without limitation as to the number of MOU ("minutes of use") or whether the MOU are generated in "new markets" as that term has been defined by the FCC.
- 2.3 Notwithstanding any other term or provision of the Agreement, and for the removal of any doubt, it is the Parties intention to eliminate minute of use growth caps and new market restrictions, as applicable, for intercarrier compensation between the Parties for Information Access Traffic.

3.0 Effective Date

3. This Amendment shall be deemed effective upon approval by the Commission; however Qwest will adopt the rate-affecting provisions for ISP-bound traffic as of October 8, 2004, the effective date of the Order.

This Amendment constitutes the full and entire understanding and agreement between the Parties with regard to the subject of this Amendment and supersedes any prior understandings, agreements, amendments or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject of this Amendment. The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Level 3 Communications, LLC

Signature: _____

Date: _____

Title: _____

Qwest Corporation

Signature: _____

Date: _____

Title: _____

EXHIBIT E
TO LEVEL 3'S ANSWER AND
COUNTERCLAIMS

	<u>Invoice</u> <u>Number</u>	<u>ISP-bound</u> <u>Traffic</u>	<u>Payment</u> <u>Received</u>	<u>Open</u> <u>Balance</u>
<u>Oregon</u>				
November	36946	91,422.65	-	91,422.65
December	37016	96,474.28	-	96,474.28
January	37136	101,223.38	-	101,223.38
February	37256	79,361.25	-	79,361.25
March	37377	96,764.23	-	96,764.23
April	37537	150,956.31	-	150,956.31
		616,202.10	-	616,202.10

First Amendment to the Interconnection Agreement
Between Qwest Corporation and
Level 3 Communications, LLC. for the State of Oregon

This amendment ("Amendment") amends the Interconnection Agreement for the State of Oregon between Qwest Corporation ("Qwest") and Level 3 Communications, LLC ("Level 3"). Qwest and Level 3 may be referred to individually as "Party", or collectively as the "Parties".

Recitals

WHEREAS, Qwest and Level 3 entered into an interconnection agreement pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended ("the Act") which was approved by the Oregon Public Utilities Commission ("Commission") on or about November 16, 2001, as referenced in Order No. 01-968. (hereinafter the "Agreement"); and

WHEREAS, the Federal Communications Commission ("FCC") issued an Order, in WC Docket No. 03-171 effective October 18, 2004 (*Core Order*)¹; and

WHEREAS, the Parties wish to amend the Agreement to reflect the aforementioned order under the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, for and in consideration of the promises and covenants contained in this Amendment, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the language as follows in lieu of existing contract language:

1. Definitions

For purposes of this Amendment, the following definitions apply:

- 1.1. New Markets Rule – In the 2001 ISP Remand Order the FCC concluded that different interim intercarrier compensation rules should apply if two carriers were not exchanging traffic pursuant to an interconnection agreement prior to the adoption of the FCC's ISP Remand Order.² This rule applied, for example, when a new carrier entered a market or an existing carrier expanded into a market it

¹ *Petition of Core Communications, Inc. For Forbearance Under 47 U.S.C. § 160(C) From Application of The ISP Remand Order*, 19 FCC Rcd. 20,179, 20,189 (2004).

² *In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 2001 WL 455869 (F.C.C.), 16 FCC Rcd. 9151 (2001).

previously had not served. In the Core Order, effective October 8, 2004, the FCC has removed this restriction.

- 1.2. Growth Caps - In the ISP Remand Order, the FCC also imposed a cap on total ISP-bound minutes for which a LEC could receive compensation equal to the total ISP-bound minutes for which the LEC was previously entitled to compensation, plus a 10 percent growth factor.

2.0 ISP-Bound Traffic

- 2.1 The Parties shall exchange ISP-bound traffic pursuant to the compensation mechanism set forth in the FCC *Core Order*.
- 2.2 Compensation for ISP-bound traffic will be at the rate of \$0.0007 per minute of without limitation as to the number of MOU (“minutes of use”) or whether the MOU are generated in “new markets” as that term has been defined by the FCC.
- 2.3 Notwithstanding any other term or provision of the Agreement, and for the removal of any doubt, it is the Parties intention to eliminate minute of use growth caps and new market restrictions, as applicable, for intercarrier compensation between the Parties for Information Access Traffic.

3.0 Effective Date

3. This Amendment shall be deemed effective upon approval by the Commission; however Qwest will adopt the rate-affecting provisions for ISP-bound traffic as of October 8, 2004, the effective date of the Order.

This Amendment constitutes the full and entire understanding and agreement between the Parties with regard to the subject of this Amendment and supersedes any prior understandings, agreements, amendments or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject of this Amendment. The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Level 3 Communications, LLC

Qwest Corporation

Signature: _____

Signature: _____

Date: _____

Date: _____

Title: _____

Title: _____

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 **IC 12**

4 In the Matter of

5 QWEST CORPORATION,

6 Complainant

7 v.

8 LEVEL 3 COMMUNICATIONS, LLC,

9 Defendant

10 Complaint for Enforcement of
Interconnection Agreement

AFFIDAVIT OF ANDREA L. GAVALAS

11
12 I, Andrea L. Gavalas, do hereby depose and say:

13 1. I am employed by Level 3 Communications LLC (“Level 3”) as the Vice
14 President of Interconnection Services.

15 2. Prior to October 2004, Level 3 did not invoice Qwest Corporation (“Qwest”) for
16 transport and termination of Qwest-initiated ISP-bound traffic in Oregon.¹ This situation arose
17 because, under the *FCC’s ISP Remand Order*,² the FCC established preemptive federal rules
18 for compensation of ISP-bound traffic, and those rules provided that incumbents such as Qwest
19 were not required to compensate competitors such as Level 3 for ISP-bound traffic where the
20 competitor had not been receiving ISP-bound traffic as of April 21, 2001. This exclusion to the
21 intercarrier compensation requirements is commonly referred to as the *ISP Remand Order*
22 “New Market Exclusion.”

23 ¹ Qwest and Level 3 are collectively referred to herein as the “Parties.”

24 ² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier*
25 *Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001),*
remanded, WorldCom v. FCC, 288 F.3d 429 (D.C. Cir 2002), cert. den. 538 U.S. 1012 (2003) (“ISP Remand
Order”).

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3. On October 18, 2004, the FCC issued its decision in *Petition of Core Communications, Inc., for Forbearance under 47 U.S.C. §160 from Application of the ISP Remand Order*³ (“*Core Forbearance Order*”). Among other actions, the FCC eliminated the New Market Exclusion in the *Core Forbearance Order*. For that reason, beginning on that same date, Level 3 began to invoice Qwest for intercarrier compensation for all ISP-bound traffic.

4. On December 13, 2004, Rogier Ducloo, Director of Interconnection Services for Level 3, sent a letter to Qwest requesting an amendment to the Interconnection Agreement between Level 3 and Qwest (“Interconnection Agreement”) to reflect the *Core Forbearance Order*. See December 13, 2004 letter from Roger Ducloo, Director of Interconnection Services, to Qwest, attached as Exhibit B to Level 3’s Answer and Counterclaims.

5. On January 27, 2005, Steve Hansen, Vice President of Carrier Relations for Qwest, sent a letter to Level 3 initiating the dispute resolution process outlined in the Interconnection Agreement to address issues with the exchange of VNXX traffic. See January 27, 2005 letter from Steve Hansen to Level 3, attached as Exhibit C to Level 3’s Answer and Counterclaims. Moreover, in this same letter Qwest demanded that Level 3 cease using Local Interconnection Service trunk facilities that connected the Parties’ network to exchange certain forms of ISP-bound traffic. Mr. Hansen stated that if Level 3 did not capitulate to Qwest’s demands, Qwest would take “any other appropriate actions that Qwest may deem necessary to cease the exchange of VNXX [ISP-bound] traffic with Level 3.”

6. On March 31, 2005, Level 3 delivered to Qwest an amendment to the Parties’ Interconnection Agreement that would implement the *Core Forbearance Order*. See March 31,

³ FCC 04-241, WC Docket No. 03-171 (rel. Oct. 18, 2004).

1 2005 letter from Andrea Gavalas, Vice President of Interconnection Services, to Dan Hult of
2 Qwest, attached as Exhibit D to Level 3's Answer and Counterclaims.

3
4 7. Despite Level 3's efforts, Qwest has refused to agree to an amendment
5 implementing the *Core Forbearance Order* and has refused to pay Level 3 invoices for the
6 Qwest-originated ISP-bound traffic.

7
8 8. During the period from October 8, 2004, to date ("the Disputed Period"),
9 Level 3 has terminated millions of minutes of Qwest-originated ISP-bound traffic, for which
10 Level 3 received no payment from Qwest. As reflected in Exhibit E to the Answer and
11 Counterclaims, the unpaid charges for transport and termination of Qwest-originated ISP-
12 bound traffic during the Disputed Period exceeds \$616,202.10 as of April 30, 2005, exclusive
13 of late payment charges.

14 DATED this 20th day of June, 2005.

15 LEVEL 3 COMMUNICATIONS, LLC

16 _____
17 Andrea L. Gavalas
18 Level 3 Communications, LLC
19 Vice President, Interconnection Services

20 SUBSCRIBED AND SWORN TO before me this 20th day of June, 2005.

21 _____
22 Notary Public for _____
23 My commission expires: _____
24
25