



**Qwest**  
421 Southwest Oak Street  
Suite 810  
Portland, Oregon 97204  
Telephone: 503-242-5420  
Facsimile: 503-242-8589  
e-mail: carla.butler@qwest.com

**Carla M. Butler**  
Sr. Paralegal

June 6, 2005

Vikie Bailey-Goggins  
Oregon Public Utility Commission  
550 Capitol St., NE  
Suite 215  
Salem, OR 97301

Re: New Docket: IC-\_\_\_\_\_

Dear Ms. Bailey-Goggins:

Enclosed for filing please find an original and (5) copies of Qwest Corporation's Complaint against Level 3 Communications, LLC for Enforcement of Interconnection Agreement, along with a certificate of service.

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

Sincerely,

A handwritten signature in black ink that reads "Carla". The signature is written in a cursive, flowing style.

Carla M. Butler  
Sr. Paralegal

CMB:

Enclosure

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**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

QWEST CORPORATION,  
Complainant,  
v.  
Level 3 Communications, LLC,  
Defendant.

**DOCKET IC \_\_\_\_\_**

**QWEST CORPORATION'S  
COMPLAINT FOR ENFORCEMENT  
OF INTERCONNECTION  
AGREEMENT**

**INTRODUCTION**

1. This complaint presents an important issue to this Commission. In fact, it is one that the Commission is familiar with and has previously addressed in docket UM 1058 and Order No. 04-504. Indeed, for the reasons set forth below, Qwest will show that Level 3 is in violation of that order in the manner in which it is operating in Oregon today.

2. When a person places a long distance call to a computer, or Internet Service Provider (“ISP”) server (“ISP Server”),<sup>1</sup> may the carrier connecting the call to the computer treat the call according to the *ISP Remand Order* for compensation and access charge purposes?<sup>2</sup> The answer is clearly no. However, Level 3 claims that a call to an ISP Server, at least when the ISP Server is used to connect to the Internet, is, according to the *ISP Remand Order*, to be treated

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<sup>1</sup> Level 3 has used the term “ISP equipment,” which is functionally the same thing as a computer that connects to the Internet. The more common term is “ISP Server,” which will be used through the remainder of this complaint.

<sup>2</sup> See *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, 16 FCC Rcd 9151, 9163-81 ¶¶ 23-65, 9186-90, ¶¶ 77-84 (2001), *remanded sub nom, WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *reh’g en banc denied* (D.C. Cir. Sept. 24, 2002), *cert. denied*, 538 U.S. 1012 (May 5, 2003).

under the process described in that Order, *no matter where the ISP Server is located*. This Level 3 position, as well as its billing to Qwest for such calls, necessitates this complaint by Qwest.<sup>3</sup>

3. Level 3's position is that the called ISP Server could be located in San Francisco, Seattle, or Honolulu, and all calls to the ISP Server (and through the ISP Server to the Internet) would be treated for compensation purposes precisely in the same fashion as if both the caller and the ISP Server were located in Portland. This is clearly not the law, and the Federal Communications Commission ("FCC") has made it clear for more than 20 years that a call to a computer (including a call to an ISP Server used to provide information or enhanced services) is to be rated based on the *location* of the ISP Server itself, and not the location of any further end point with which the ISP Server may communicate, or to which the computer may direct the call. Level 3's argument is that the FCC somehow accidentally reversed this consistent precedent, and thus that the FCC has ruled that *all* calls to ISP Servers are to be treated according to the scheme in the *ISP Remand Order*, no matter where the ISP Server is located.

4. This issue is important to Level 3 because, if its position were to be accepted, Level 3 would be able to reap significant financial advantages at the expense of Qwest and the public. Not only would customers calling Level 3's ISP avoid paying toll charges for such calls, but Qwest also would be required (after an amendment to the parties' interconnection agreement) to compensate Level 3 for "terminating" the calls at the FCC's *ISP Remand Order* rate of \$0.0007 per minute.

5. Level 3's position is directly contrary to FCC precedent, which requires that a computer (such as an ISP Server) be treated exactly the same as other end-user customers in

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<sup>3</sup> Qwest notes that Level 3 has filed a complaint before the Minnesota Public Utilities Commission claiming that Qwest has refused to pay intercarrier compensation for such traffic, and has advised of its intent to file a complaint before the Washington Utilities and Transportation Commission. Qwest is currently defending the Minnesota complaint, and has asserted counter-claims similar to the affirmative claims in this complaint.

determining whether a call to the computer is treated as a toll call or a local call. This is the basis for the so-called “ESP Exemption,” which requires exactly that.

6. The federal ESP Exemption prevents a LEC from charging switched access charges for a call made to a local computer on the basis that the computer ultimately directs the call to an end point (e.g., another computer) or to another station located in another state. This is part of the same rule that held that calls to or from local Private Branch Exchanges (“PBXs”) would not be required to pay switched access charges, even if the calls were connected to another line and ultimately transferred to a distant location. The ESP Exemption never said, explicitly or implicitly, that calls to or from computers (or PBXs) were “local calls,” no matter where the computers (or PBXs) were located. Level 3, however, attempts to argue that the FCC, without analysis or even intent, has accidentally changed the entire landscape of access charges, and thus issued a blanket exemption for all calls to and from all computers, no matter where located (as long as they send the call to the Internet). Nothing supports Level 3’s position that the FCC has made such a major policy shift.

7. Level 3 also ignores Oregon statutes and this Commission’s rulings in the virtual NXX number (“VNXX”) proceeding (docket UM 1058) and in the AT&T arbitration proceeding (docket ARB 527) dealing with VNXX assignment, as well as a recent federal court decision on this issue. As this Commission knows, VNXX is a vehicle by which a carrier obtains a number for one local calling area, and assigns that number to serve a customer physically located in another geographic area. In the UM 1058 proceeding, however, this Commission determined in Order No. 04-504 that a CLEC engaging in VNXX traffic would be violating two of the standard conditions in their certificates of authority. This Commission also ruled in Order No. 04-272 in docket ARB 527 (the AT&T/Qwest arbitration) that the definition of local exchange service would remain traffic that originates and terminates within the same Commission-determined local calling area

(thus rejecting AT&T's request that the Commission exempt VNXX traffic from these requirements).<sup>4</sup> Finally, a federal court in Oregon recently concluded that the Commission's previous decision in Order No. 04-504 ruled that VNXX traffic is, by definition, *not* "local traffic," by expressly agreeing with Qwest that no reciprocal compensation was due for VNXX traffic because VNXX traffic is not local traffic. Accordingly, a CLEC's VNXX offerings that do not provide for toll payments, or an appropriate substitute, are improper under Oregon law.

8. Level 3 also simply ignores the plain language of the parties' interconnection agreement ("ICA") regarding the types of traffic that the parties have agreed to exchange. The traffic types that the parties have agreed to exchange over the local interconnection trunks and through the ICA Single Point of Presence ("SPOP") amendment is very specifically delineated in the ICA. As is discussed below, the traffic that Qwest complains about does not match the traffic types that the parties agreed to exchange under the ICA. Due to Level 3's purposeful misuse and improper assignment of telephone numbers, the traffic that Level 3 expects Qwest to exchange does not match any of the specifically defined traffic types, and therefore, is not traffic that the parties have agreed to exchange under the ICA. The solution to this dispute is quite simple; if Level 3 assigns telephone numbers based on the actual physical location of the ISP Server, then the traffic will be properly routed consistent with the definitions in the ICA.

9. In sum, this complaint represents an important issue from a policy and financial perspective. Ultimately, this Commission should rule in favor of Qwest and thus determine that Level 3 is not entitled to unilaterally change the ICA. The Commission should further rule that Level 3 is not entitled to fundamentally shift the toll compensation structure in this state as a matter of federal and state law, as well as a matter of sound policy.

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<sup>4</sup> Level 3's interconnection agreement has the same definition of "exchange service" language as that which is in the AT&T interconnection agreement. (See e.g., fn. 17, *infra*.)

## JURISDICTION

10. Both Qwest and Level 3 are authorized to provide local exchange service in the state of Oregon pursuant to certificates of authority issued by this Commission.

11. Pursuant to section 252 of the Telecommunications Act of 1996 (“the Act”), in October 2001, Qwest and Level 3 entered into an arbitrated ICA. This ICA was based on the Commission’s Order No. 01-809 on September 13, 2001 in docket ARB 332, in which the Commission adopted the Arbitrator’s Decision of August 15, 2001. The ICA was filed with the Commission on or about October 19, 2001, and approved by Commission Order No. 01-968 on November 16, 2001.<sup>5</sup> True and correct copies of the relevant portions of the ICA are attached as Exhibit A to the Complaint and are incorporated herein.

12. State commissions have the authority to interpret and enforce agreements they approve when post-approval disputes arise. *Michigan Bell Tel. Co. v. Strand*, 305 F.3d 580, 583 (6th Cir. 2002); *Michigan Bell Tel. Co. v. Climax Tel. Co.*, 202 F.3d 862, 968 (6th Cir. 2000); *cert. denied*, 531 U.S. 816. This Commission is also authorized to resolve complaints pursuant to ORS 756.500 and to enforce ICAs that it approves pursuant to OAR 860-016-0050. Moreover, in Order No. 04-504 in docket UM 1058, the Commission also ruled that “the most appropriate means for dealing with allegations relating to such activity would be in the context of a *complaint* or a petition for arbitration.” Order No. 04-504, p. 5. (Emphasis added.)

13. Accordingly, the Commission has jurisdiction to interpret the terms of the ICA as alleged herein.

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<sup>5</sup> Level 3 subsequently filed a federal court action with the United States District Court for the District of Oregon, Case No. CV01-1818, essentially appealing Order Nos. 01-809 and 01-968. However, the federal court affirmed the Commission’s orders.

## **PARTIES**

14. Qwest is an incumbent local exchange carrier (“ILEC”) and telecommunications utility as defined in ORS 759.005(1)(a), with its principal place of business in Colorado. Qwest is authorized to provide local exchange service, exchange access and intrastate interexchange service in Oregon.

Correspondence regarding this Complaint should be sent to Qwest at the following addresses:

Alex M. Duarte, OSB No. 02045

Qwest

421 SW Oak Street, Suite 810

Portland, Oregon 97204

(503) 242-5623

(503) 242-8589 (facsimile)

[Alex.Duarte@qwest.com](mailto:Alex.Duarte@qwest.com)

Jeffrey T. Nodland

Qwest

1801 California Street, 10th Floor

Denver, Colorado 80202

(303) 383-6657

(303) 295-6973 (facsimile)

[Jeff.Nodland@qwest.com](mailto:Jeff.Nodland@qwest.com)

15. Level 3 is a competitive local exchange carrier (“CLEC” or “competitive provider”), with its principal place of business in Colorado. On information and belief, Qwest alleges that Level 3 is certified to provide local exchange service, exchange access and intrastate interexchange service in Oregon. Pursuant to the notice provision of its interconnection agreement with Qwest, section 5.22, correspondence regarding this Complaint should be sent to Level 3 at the following addresses:

Level 3 Communications, Inc.

Director- Interconnection Services

Attention: Roger DuCloo

1025 Eldorado Blvd.

Broomfield, CO 80021

Level 3 Communications, Inc.

Attention: Erik Cecil, Regulatory Counsel

and Rick Thayer, Director- Interconnection and Public Policy

1025 Eldorado Blvd.

Broomfield, CO 80021

**GOOD FAITH ATTEMPT TO RESOLVE PURSUANT TO OAR 860-016-0050(3)(a)**

16. Pursuant to OAR 860-016-0050(3)(a), Qwest has conferred with Level 3 in good faith in an attempt to resolve these disputes. Despite Qwest's good faith attempts to resolve these disputes, the parties have failed to resolve them, thus necessitating this Complaint.

17. Specifically, Qwest notified Level 3 in a January 27, 2005 letter that it was formally disputing the VNXX traffic that Level 3 has charged to Qwest. Qwest further advised Level 3 of ways that Level 3 could remedy the issues through proper renumbering of the terminating numbers or rerouting the traffic over the appropriate Feature Group D trunks. Since that January 27th notification, and pursuant to the ICA's dispute resolution provision, Qwest and Level 3 have held several conference calls and meetings between their respective representatives, up to and including at the Vice President level, in attempts to resolve these disputes. Although each company has suggested various alternatives to resolve these disputes, they have not been able to reach agreement, and thus Qwest is compelled to seek relief through the appropriate regulatory intervention.

**WRITTEN NOTICE PURSUANT TO OAR 860-016-0050(3)(b)**

18. Pursuant to OAR 860-016-0050(3)(b), Qwest has given Level 3 10-days written notice of Qwest's intent to file this complaint for enforcement of the parties' interconnection agreement. (A true and correct copy of Qwest's May 27, 2005 notice letter is attached hereto as Exhibit B to the Complaint and is incorporated herein.)

**STATEMENT OF PERTINENT FACTS**

**Background**

19. This dispute arises because Level 3 has engaged in a practice of providing a service to its ISP customers which enables the ISP's customers (who are also Qwest local telephone customers) who are located in a particular local calling area to dial a local number to reach the



ISP. The ISP, however, is actually located in a different local calling area, or possibly even a different state. Level 3 does this by assigning telephone numbers to Level 3 ISP customers based on where the call originates, thus allowing the calls to terminate in a different local calling area. Level 3 then knowingly misuses Qwest's Local Interconnection Service ("LIS") so that Qwest will believe it is obligated to route and transport calls to Level 3 disguised as "local" calls (or, as Level 3 would try to define them, "ISP-Bound" calls) when, in fact, the calls should be treated as *toll* calls. While Level 3 seeks this treatment of ISP-bound calls, other carriers seek the same treatment of intercity calls not bound for the Internet. Fe, some carriers' VNXX calls might be bound for an inbound telemarketing center, a "help desk," or a voice messaging system.

20. This practice has widespread and significant impact on the entire access compensation system established in Oregon and elsewhere. Level 3 seeks to benefit not once, but twice. Level 3 not only wants to allow its ISP customer and its ISP's customers to avoid paying toll charges for long distance calls, but it also seeks to force ILECs like Qwest to pay Level 3 for the privilege of routing and transporting toll calls. Such an approach leads to severe financial repercussions for the industry, erodes the financial support that originating access provides to local rates, and further distorts the compensation scheme underlying the public switched telephone network including universal service funding.

21. Level 3's practices raise a wide variety of policy issues. Those issues are being dealt with and litigated vociferously before the FCC and the courts. Nonetheless, while those proceedings are pending, Level 3 seeks to sidestep them by charging Qwest without satisfying the change of law process provided for in the ICA. Level 3's effort is not supported by state law, federal law or the parties' ICA, and thus the Commission should order that Level 3 cease such practices while the issues are sorted out.

22. Because of the status of the law, Qwest has refused both to pay Level 3's inaccurate intercarrier compensation bills for VNXX traffic and to pay Level 3's improper bills sent prior to the parties' ICA being amended under the change in law provisions of the agreement. Qwest has, nevertheless, offered Level 3 an ICA amendment that is consistent with recent FCC, Commission and court decisions. Level 3, however, has refused to negotiate such an amendment.

23. Thus, the primary issue raised here is whether or not a call bound for the ISP Server should be subject to the FCC's *ISP Remand Order* rate of \$0.0007 per minute rate, regardless of the location of the person placing the call compared to the location of the ISP Server. The FCC has addressed this issue. This Commission has also recently issued decisions regarding the definition of a local call.

### **Treatment of Calls Bound for ISPs**

#### **Federal authority**

24. The FCC has a long history of determining the appropriate treatment of traffic bound for "enhanced service providers" or "ESPs" (i.e., providers of communications that modify content). In 1983, the FCC issued an order creating the so-called "ESP Exemption."<sup>6</sup> The ESP Exemption was not really an exemption, but rather a decision, based on a number of policy considerations, that enhanced service providers were entitled to connect their points of presence through tariffed local retail services (rather than through tariffed feature group access services that interexchange carriers were required to purchase), even though the facilities were really being used for services classified as interstate.<sup>7</sup> The FCC assigned the same status to private telecommunications networks or

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<sup>6</sup> See *In the Matter of MTS and WATS Market Structure*, Third Report and Order, 93 FCC 2d 241, 254-255, ¶ 9 and fn. 15, 320, ¶ 269 (1983); *modified on recon.*, 97 FCC 2d 682 (1984) ("*First Order on Reconsideration*"), *further modified on recon.*, 97 FCC 2d 834 (1984) ("*Order on Further Reconsideration*"), *aff'd in principal part and remanded in part sub nom.*, *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

<sup>7</sup> See, e.g., *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, First Report and Order, 12 FCC

systems (e.g., PBX systems) that accessed local exchange systems for connecting interstate calls.<sup>8</sup> In other words, the FCC treated the point of presence of an enhanced service provider as if that point of presence were the location of a retail customer.

25. The FCC applied the same approach under the 1996 Telecommunications Act when it dealt with traffic routed to the Internet. The FCC determined that Internet Service Providers (ISPs), the heirs to the old “enhanced service provider” designation, were entitled to the same treatment for compensation purposes. Thus, when an ISP is served by a CLEC, the same analysis applies under section 251(g) of the Act. The ISP Server is treated as an end-user location for the purposes of compensation, but the call does not terminate at this location. The ISP may purchase services from its telecommunications provider for the purpose of getting its incoming calls to the ISP’s Server. Compensation between the ISP’s provider (Level 3) and the LEC (Qwest) that serves the customer that originated the call is based on the geographic location of the two ends of the call.<sup>9</sup>

26. In late 2003, Level 3 brought a petition before the FCC that requested forbearance from the FCC’s ESP Exemption and its application to calls bound for the Internet.<sup>10</sup> While that petition was pending, the FCC issued its Notice of Further Proposed Rulemaking in its Intercarrier Compensation docket to consider these issues as a part of an overall examination of intercarrier compensation.<sup>11</sup> Level 3 later withdrew its petition. Nevertheless, as of today, the applicable law has

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Rcd 15982, 16131-34, ¶¶ 341-48 (1997); see also, generally, *In the Matter of Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers*, Order, 3 FCC Rcd 2631 (1988).

<sup>8</sup> See *In the Matter of WATS-Related and Other Amendments of Part 69 of the Commission’s Rules*, Memorandum Opinion and Order, 2 FCC Rcd 7424, 7425, ¶¶ 13-15 (1987).

<sup>9</sup> See *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, 16 FCC Rcd 9151, 9163-81 ¶¶ 23-65, 9186-90, ¶¶ 77-84 (2001), *remanded sub nom. WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *reh’g, en banc, denied* (D.C. Cir. Sept. 24, 2002), *cert. denied*, 538 U.S. 1012 (May 5, 2003).

<sup>10</sup> *In the Matter of Petition of Level 3 Communications LLC for Forbearance under 47 U.S.C. Section 160(c)*, WC Docket No. 03-266; *In the Matter of IP-Enabled Services*, WC Docket No. 04-36.

<sup>11</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (rel. Mar. 3, 2005) (“Further Notice”).

not changed. The ISP's Server should be considered a retail location for the purposes of appropriate number assignment and determining intercarrier compensation.<sup>12</sup>

27. Level 3 has attempted to ignore this regulatory history by charging Qwest at the *ISP Remand Order* rate for VNXX traffic. Level 3 has argued that the FCC's *ISP Remand Order* and a recent FCC decision related to a forbearance petition by Core Communications fundamentally change this analysis.<sup>13</sup> Level 3 argues that *all* traffic bound for the Internet must be treated as subject to the FCC *ISP Remand Order* \$.0007 per minute rate, regardless of whether such traffic originated from next door, across the state, or even across the country. Its position is simply wrong, and is in violation of the FCC's rules (i.e., the FCC ESP Exemption rule).

28. In fact, if Level 3 delivered traffic to its ISP customers' server located in the *same local calling area* as where the calls originated, Level 3 would be correct that under existing rules, the call would be treated as subject to the FCC \$.0007 per minute rate.<sup>14</sup> However, Level 3's ISP customers' equipment is *not* located in the same local calling area as that of many of the Qwest customers that call Level 3's ISP customers. Thus, Level 3 seeks to collect compensation to which it is not entitled.<sup>15</sup>

29. Level 3's approach ignores long-standing FCC precedent, as well as recent Commission and Oregon court decisions on these issues. In describing ISP-bound traffic in the

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<sup>12</sup> For a more detailed analysis of these legal issues, see the *Ex Parte* that Qwest filed with the FCC on March 11, 2005 in Level 3's forbearance petition proceeding, which is attached as Exhibit C to the Complaint.

<sup>13</sup> See *Petition of Core Communications for Forbearance under 47 USC § 160(c) from the Application of the ISP Remand Order*, Order FCC 04-241, WC Docket No. 03-171 (rel. October 18, 2004) ("*Core Forbearance Order*").

<sup>14</sup> Such a change would still require an ICA amendment.

<sup>15</sup> Based on Qwest's December 2004 CroSS7 reports, Level 3 in Oregon sent no minutes of use (MOUs) to Qwest that month. Of the 138,418,557 MOUs that Qwest sent to Level 3 in December 2004, 70,627,161 were VNXX minutes, or approximately 51% of Level 3's total MOUs. Level 3 has a switch in San Francisco that supports LIS trunks in the 670 LATA, and it uses a Portland switch to support LIS trunks in the 672 LATA. Many of the cities and towns in the 672 LATA, however, are not within the Portland metro local calling area.

Further, for the first four months of 2005, Qwest has identified 275,851,823 VNXX MOUs in Oregon. This amounts to approximately \$193,096.28 of charges at the *ISP Remand Order* \$.0007 rate. On an annual basis, the amount for VNXX MOUs would be approximately \$580,000.

background section of the order, the FCC states that “*an ISP’s end-user customers typically access the Internet through an ISP Server located in the same local calling area,*” and that the end users pay the local exchange carrier for connections to the “local ISP.” *ISP Remand Order*, ¶ 10. The FCC defines ISPs as “one set of enhanced service providers.” *Id.*, ¶ 11. (Emphasis added.) The FCC specifically identified the issue that it was addressing as “whether reciprocal compensation obligations apply to the delivery of calls from *one LEC’s end-user customer to an ISP in the same local calling area* that is served by a competing LEC.” *Id.*, ¶ 13. (Emphasis added.) Thus, in examining ISP traffic, the *ISP Remand Order* did not address the situation where a CLEC’s ISP server is located *outside* of the local calling area of both its assigned telephone number(s) and the originating caller.

30. Similarly, the *Core Forbearance Order* dealt with the application of the *ISP Remand Order*. It addressed whether certain provisions in the *ISP Remand Order* should continue to apply to CLECs serving ISPs. Because the *ISP Remand Order* did not address the treatment of calls from one local calling area to an ISP with equipment in *another* local calling area, the *Core Forbearance Order* did not address the issue either.

31. Qwest’s position of the FCC’s actions gains support from the appeal of the *ISP Remand Order*. *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *reh’g en banc denied* (D.C. Cir., Sept. 24, 2002), *cert. denied*, 538 U.S. 1012 (May 5, 2003). In *WorldCom*, the court unequivocally stated that the FCC’s *ISP Remand Order* dealt with calls made to ISPs located *within* the *same* local calling area as the originating caller. *WorldCom*, 288 F.3d at 430. Thus, there is a lack of support for the interpretation that Level 3 advocates that the FCC, in the *ISP Remand Order*, somehow summarily changed the long history of determining the appropriate treatment of traffic bound for enhanced service providers.

## State Authority

32. The jurisdictional question regarding intercarrier calls has been an issue, and has been resolved, in several proceedings in Oregon.

33. First, the Commission last year issued its Order No. 04-504 in docket UM 1058, which was its investigation of VNXX calling patterns in Oregon. In that order, the Commission ruled that a CLEC engaging in VNXX traffic would be violating two of the standard conditions in their certificates of authority (pertaining to local exchange boundaries and EAS routes to distinguish between local and toll services, and limiting NXX codes to a single local exchange or rate center).

34. Specifically, the Commission ruled in Order No. 04-504:

A plain reading of these conditions leads to the conclusion that any carrier engaging in the conduct described by OTA in its Petition [i.e., VNXX traffic] would clearly be in *violation of its certificate*. Order No. 04-504, p. 5. (Emphasis added.)<sup>16</sup>

See also ORS 759.005(2)(c) (defining “local exchange telecommunications service” as

“telecommunications service provided *within the boundaries of exchange maps filed with and approved by the commission*”); OAR 860-032-0001 (referring to the statutory definition of “local exchange telecommunications service”). (Emphasis added.) The Commission also ruled that “the most appropriate means for dealing with allegations relating to such activity would be in the context of a *complaint* or a petition for arbitration.” Order No. 04-504, p. 5. (Emphasis added.)

35. Further, prior to Order No. 04-504, the Commission had adopted the Arbitrator’s Decision in the AT&T/Qwest arbitration (docket ARB 527), in which the Arbitrator had refused to

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<sup>16</sup> The two standard conditions (nos. 7 and 8) that the Commission mentioned are as follows:

7. For purposes of distinguishing between local and toll calling, applicant shall adhere to *local exchange boundaries* and Extended Area Service (EAS) routes *established by the Commission*. Further, applicant shall *not* establish an EAS route from a given local exchange *beyond the EAS* area for that exchange.

8. When applicant is assigned one or more NXX codes, applicant *shall limit each of its NXX codes to a single local exchange or rate center*, whichever is larger, and shall establish a toll rate center in each exchange or rate center proximate to that established by the telecommunications utility or cooperative corporation serving the exchange or rate center. Order No. 04-504, p. 5. (Emphasis added.)

alter the definition of “local exchange service” (i.e., traffic that originates and terminates within the same Commission-determined local calling area) by rejecting AT&T’s request that the Commission exempt VNXX traffic from these requirements. See Arbitrator’s Decision, docket ARB 527 (April 19, 2004), pp. 6-7; see also Order No. 04-272 (Commission order adopting Arbitrator’s Decision). The same definition has been part of the Qwest/Level 3 interconnection agreement since October 2001.<sup>17</sup>

36. Finally, a recent decision by a federal court in Oregon confirmed the Commission’s previous decision in Order No. 04-504 that VNXX traffic is, by definition, *not* “local traffic.” In *Qwest Corporation v. Universal Telecom, Inc.*, United States District Court, District of Oregon, Case No. 6:04-CV-6047-AA, the court expressly agreed with Qwest that no reciprocal compensation is due for VNXX traffic because VNXX traffic is not local traffic.

37. Specifically, the court in *Universal* recognized that the definition of “local traffic” in the ICA was the definition which was listed in Qwest’s Oregon tariff at the time the ICA became effective (just as it is here). The court then concluded: “VNXX traffic *does not meet the definition of local traffic* because it does not originate and terminate in the same LCAs [local calling areas] and EASs [Extended Area Service areas].” *Opinion and Order*, p. 24. (Emphasis added.) The court further rejected Universal’s argument that the Commission’s *MFS* decision in 1996 applied to VNXX traffic. *Id.*, pp. 25-26. Finally, the court in *Universal* ruled that the Commission’s recent decision in docket UM 1058 (Order No. 04-504) “len[t] further support to [its] conclusion” that VNXX traffic is not local traffic. *Id.*, p. 26, fn. 4.<sup>18</sup>

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<sup>17</sup> Section 4.23 provides: “‘Exchange Service’ or ‘Extended Area Service (EAS)/Local Traffic’ means traffic that is originated and terminated within the local calling area which has been defined by the Commission and documented in applicable tariffs.”

<sup>18</sup> Finally, Qwest also notes that, although it dealt with the *relative use* calculation for trunking and facilities and not reciprocal compensation for ISP traffic or VNXX traffic, this Commission has previously ruled, in the arbitration proceeding between *Level 3 and Qwest* themselves that led to the ICA between them (docket ARB 332), that “‘Internet related traffic should be excluded when determining relative use of the entrance facilities and direct trunk transport.’” See Order No. 01-809, pp. 3-5, adopting Arbitrator’s Decision, pp. 5-9. The Commission ruled that it was the FCC’s interpretation of section 251 in its *ISP Remand Order* that set forth the policies that the Arbitrator applied in

38. As such, the Commission and the only Oregon federal court addressing the issue have ruled that VNXX traffic is *not* “local” traffic, and it is irrelevant that such non-local traffic may also happen to carry ISP-bound traffic. Oregon law could not be more clear on this issue. Although Level 3 will undoubtedly attempt to distinguish this precedent (such as, for example, by arguing that this traffic is bound for the Internet, and thus that it is somehow exempt from these Oregon definitions), the fact is that Oregon law makes no such distinction. Nor has the FCC made such a distinction. If VNXX traffic is allowed to flow between carriers, it should not be routed over LIS facilities, and thus should not be treated as “local” traffic under the parties’ ICA.

### **Treatment of ISP Bound Traffic under the ICA**

39. Further still, Level 3’s conduct violates the parties’ ICA. The ICA itself does not specifically define “ISP bound traffic.” It does provide, however, that “[t]erms not otherwise defined here but defined in the Act shall have the meaning defined there.” (Ex. A, ICA, § 4.70.) The ICA defines “Act” as “the Communications Act of 1934 (47 U.S.C. 151, *et. seq.*), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Oregon Public Utility Commission.” (*Id.*, § 4.3.)

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the case, and it quoted from the Arbitrator’s Decision discussion of the arbitration possibilities regarding the allocation of ILEC facilities’ costs on the basis of relative use for ISP traffic. Order No. 01-809, p. 4. The Arbitrator (Administrative Law Judge Allan Arlow) had found that it is the FCC’s interpretation of sections 251(b)(5) and 251(g) that largely governed the result reached on this issue. Arbitrator’s Decision, p. 7. The Arbitrator went on to quote from the FCC’s *ISP Remand Order* (paragraphs 21 and 23), in which the FCC discussed the distortions of traditional traffic assumptions, regulatory arbitrage and uneconomic results as a result of Internet usage, and concluded that ISP-bound traffic is not subject to reciprocal compensation. *Id.*, pp. 7-8. Thus, the Arbitrator concluded that the language that Qwest had proffered most closely reflected “the policies of both the FCC and the Commission by removing the incentives for uneconomic behavior in the provision of telecommunications services to Internet Service Providers.” *Id.*, p. 9.

Level 3 then sought judicial review of Order No. 01-809, but the federal court affirmed the order. Specifically, the court discussed the relative use of ISP traffic on the facilities at issue, and “who pays for it,” and stated as follows: But, there is a catch. Most of Level 3’s customers are Internet Service Providers (ISPs), which act as gateways to the Internet. ISPs receive vast quantities of incoming local calls from persons trying to access the Internet, but ISPs make few (if any) outgoing local calls. As a result, telephone traffic flows almost exclusively one-way. Qwest customers are expected to place many calls to Level 3 customers, but very little traffic will flow in the opposite direction. If the cost of the equipment at issue is allocated based on the relative percentage of calls originated on each network, then Qwest will have to pay virtually the entire cost. *Opinion and Order*, p. 6.



40. Level 3, however, seeks to sweep aside these definitions by assuming that traffic bound for the Internet automatically falls within the definition of ISP-bound traffic, regardless of where the traffic originates and terminates. Indeed, Level 3 ignores the FCC history of defining ISP-bound traffic as traffic that travels solely within a local calling area prior to being delivered to the ISP Server. Level 3 also ignores long-standing industry practice of treating calls dialed as 1+ calls to the Internet as being toll calls. Level 3 then hides this practice by improperly assigning local numbers (through its VNXX schemes).

### **VNXX Traffic over LIS Trunks**

41. Level 3 has argued in other jurisdictions that the parties have agreed to exchange VNXX traffic over LIS Trunks. Qwest disagrees with these arguments. Section 7.2.1.2 of the parties' ICA specifically delineates the types of traffic that are to be exchanged under the ICA. (See Ex. A, § 7.2.1.2.) With respect to the traffic and disputes at issue in this matter, there are three relevant types of traffic which are appropriately exchanged under the agreement and under the parties' SPOP amendment to the ICA: (1) Exchange Access Service (intraLATA Toll, non IXC) traffic, (2) Jointly Provided Switched Access (interLATA and intraLATA IXC) traffic and (3) Exchange Service or EAS/Local Traffic. (SPOP Amendment, Attachment 1, § 1.1, attached as Exhibit D.)<sup>19</sup>

42. The ICA defines those categories of traffic as follows:

- “Exchange Access (IntraLATA Toll)” is defined in accordance with Qwest’s current IntraLATA toll serving areas, as determined by Qwest’s state and interstate Tariffs and excludes toll provided using Switched Access purchased by an IXC. (ICA, Ex. A, § 4.34.)
- “Switched Access Service” means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, 8XX access, and 900 access and their successors or similar Switched Access

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<sup>19</sup> The parties entered into the SPOP Amendment in June 2002 and Qwest filed it with the Commission on July 18, 2002. The Commission approved the amendment on September 5, 2002 in Order No. 02-619 in docket ARB 332.

Services. (*Id.*, § 4.62.)

- “Exchange Service” or “Extended Area Service (EAS)/Local Traffic” means traffic that *is originated and terminated within the local calling area* which has been defined by the Commission and documented in applicable tariffs. (*Id.* § 4.23 (emphasis added).)

43. As stated, “ISP-bound traffic” is not defined in the ICA. The ICA, however, provides that “[t]erms not otherwise defined here but defined in the Act shall have the meaning defined there.” (Ex. A, ICA, § 4.70.) As already discussed above, Level 3’s contention that the traffic at issue is entitled to treatment and compensation according to the *ISP Remand Order* traffic is incorrect and not an appropriate reading of that order, and is in violation of the Commission findings in Order No. 04-504 docket UM 1058.

44. It is possible that Level 3 may claim, as some other carriers have attempted to claim, that this traffic is “Exchange Service” traffic, commonly referred to as “EAS/Local traffic.” This traffic is defined in section 4.23 of the ICA as “traffic that is originated and terminated *within* the local calling area which has been defined by the Commission and documented in applicable tariffs.” (See Ex. A, § 4.23.) Even a cursory examination of the traffic at issue, however, shows that it does not meet this definition. See also ORS 759.005(2)(c); OAR 860-032-0001. Level 3 acknowledges that it forces Qwest to exchange traffic that is not terminated at the ISP Server in the same local calling area as the originating caller (identical to VNXX traffic), but Level 3 has nevertheless claimed that it is ISP-bound traffic. Thus, there should be no contention as to whether the VNXX traffic at issue is “Exchange Service” traffic.

45. A traffic type that *may superficially appear* to functionally apply to the VNXX traffic at issue is under the definition of “Exchange Access” traffic, which is defined in section 4.34 of Level 3’s ICA as being “in accordance with Qwest’s current IntraLATA toll serving areas, as determined by Qwest’s state and interstate tariffs and excludes toll provided using Switched

Access purchased by an IXC.” (See Ex. A, § 4.34.) While this may appear functionally appropriate, upon closer examination the traffic does not meet this definition either.

46. As a threshold matter, only Level 3 knows the exact location of the end-user ISP Server or modem bank for this traffic. Thus, Qwest cannot completely determine for any given call whether the call is bound for a location within the LATA or in a different LATA. Qwest only knows how far it carried the call before handoff to the interconnected carrier, where that carrier’s serving switch is located, and whether traffic is one-way or two-way. In addition, even for that traffic which functionally does appear to match the definition, Level 3’s purposeful misuse of telephone numbers makes it difficult to track this traffic. Level 3 clearly does not intend for the traffic to be treated as “Exchange Access” traffic under the ICA, as evidenced by its misuse of telephone numbers. Thus, it is apparent this definition does not match the traffic either.

47. Finally, the last possible traffic type, “Jointly Provided Switched Access” traffic (or “Meet-Point Billing” traffic), does not match up at all to the VNXX traffic at issue either. This is so because no IXC is involved, as only Level 3 and Qwest are involved in the carriage of the traffic, which is contrary to the definition of the traffic in section 4.43 of the ICA. (See Ex., § 4.43.)

48. Therefore, in reviewing the plain language of the ICA and the VNXX traffic that Level 3 causes Qwest to exchange, none of the traffic types that the parties specifically agreed to exchange match this VNXX traffic. Since Level 3 can easily remedy the situation by properly assigning telephone numbers based on the actual location of its end-user customers, it is incumbent upon Level 3 to ensure that the exchange of traffic under the agreement follows the terms and conditions of the agreement. In the end, Level 3 is simply attempting to exchange traffic that the parties never agreed to exchange under the terms of the ICA.

## CLAIMS

49. Qwest brings this Complaint against Level 3 as a result of Level 3's violation of federal law, violations of state law, and breach of the terms and conditions of the parties' interconnection agreement. This Complaint consists of five counts, as follows:

### COUNT 1 (Violation of Federal Law)

50. Qwest has set forth the applicable federal law regarding calls made to the Internet.

51. Level 3's assignment of local telephone numbers and NPA/NXXs in local calling areas other than the local calling area where ISP Server is located, its misuse of such telephone numbering resources, and its subsequent attempts to bill Qwest the *ISP Remand Order* rate for such VNXX traffic, are violations of federal law. The Commission should order Level 3 to cease assigning NPA-NXXs in local calling areas other than the local calling area where ISP Server is located, and cease charging Qwest for such traffic, and further, should require that Level 3 properly assign telephone numbers based on the actual physical location of its end-user or terminating customer.

### COUNT 2 (Violation of State Law)

52. Qwest has set forth the applicable state law regarding calls made to the Internet and calls using VNXX traffic, including the Commission's recent orders in dockets UM 1058, ARB 537 and ARB 332, and a recent federal court decision on VNXX traffic.

53. Level 3's assignment of local telephone numbers and NPA/NXXs in local calling areas other than the local calling area where ISP Server is located, its misuse of such telephone numbering resources, and its subsequent attempts to bill Qwest the *ISP Remand Order* rate for such VNXX traffic, are violations of Oregon law. The Commission should order Level 3 to cease assigning NPA-NXXs in local calling areas other than the local calling area where ISP Server is located, and cease charging Qwest for such traffic, and further, should require that Level 3 properly assign telephone numbers based on the actual physical location of its end-user or terminating customer.

**COUNT 3 (Violation of the Change in Law Provisions of the ICA)**

54. Level 3 has sent or will bill Qwest approximately \$693,013.45 from December 2004 (based on November 2004 MOUs) through May 2005, based on the FCC's *Core Forbearance Order* decision. Of this amount, Qwest believes that approximately \$351,436.86 is from VNXX traffic.

55. The parties have not reached agreement on an ICA amendment pursuant to that order. Specifically, Qwest has proposed an amendment to comply with the order, but Level 3 has rejected it.

56. Pursuant to Section 2.2 of the ICA, Level 3 is required to bring this dispute to this Commission to resolve the dispute in appropriate language:

. . . . To the extent that the Existing [laws] are changed, vacated, dismissed, stayed or modified, then this Agreement and all contracts adopting all or part of this 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 this Agreement... (Ex. A, ICA, § 2.2.)

Level 3, however, has attempted to subvert this process by instead billing Qwest for traffic that Qwest contends is not covered by the *Core Forbearance Order*.

57. Level 3's actions amount to a willful and intentional violation of its obligations under Section 2.2. The Commission should issue an order finding Level 3 in breach of its contractual obligations, in violation of the findings in the Commission Order in Order No. 04-504 in docket UM 1058, and further, should invalidate Level 3's bills.

**COUNT 4 (Violation of Section 13.4 of the ICA)**

58. Level 3 is assigning local numbers to ISP Servers located outside the local area to which the number is assigned. Level 3 is acting willfully and intentionally.

59. Section 13.4 of the ICA provides that "[e]ach Party is responsible for administering the NXX codes assigned to it." (Ex. A, ICA, § 13.4.) Further, it requires that each party "shall

provide . . . all required information regarding its network for maintaining the LERG in a timely manner.” (*Id.*) Through its actions described above, Level 3 is knowingly and intentionally violating these obligations. This Commission should issue an order finding Level 3 in breach of its contractual obligations and further, should invalidate Level 3’s bills.

**COUNT 5 (Improper Routing of Traffic over LIS Trunks)**

60. Section 1.1 of Attachment A of the SPOP Amendment authorizes the parties to exchange the following categories of traffic over LIS Trunks: (1) Exchange Access Service traffic (intraLATA Toll, non IXC), (2) Jointly Provided Switched Access (interLATA and intraLATA IXC) traffic and (3) Exchange Service EAS Local Traffic. (Ex. D, SPOP Amendment, Attachment A, § 1.1.)

61. The ICA defines those categories of traffic as follows:

- “Exchange Access (IntraLATA Toll)” is defined in accordance with the Act and Qwest’s current intraLATA toll serving areas, as determined by Qwest’s state and interstate tariffs and excludes toll provided using Switched Access purchased by an IXC. (Ex. A, ICA, § 4.34.) “
- “Switched Access Service” means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, 8XX access, and 900 access and their successors or similar Switched Access services. (*Id.*, § 4.62.)
- “Exchange Service” or “Extended Area Service (EAS)/Local Traffic” means traffic that is originated and terminated within the local calling area which has been defined by the Commission and documented in applicable tariffs. (*Id.*, § 4.23.)

62. “ISP-bound traffic” is not defined in the ICA. The ICA, however, provides that “[t]erms not otherwise defined here but defined in the Act shall have the meaning defined there.” (Ex. A, ICA, § 4.70.) VNXX traffic, even if it is ISP bound, fits in none of these categories.

63. Accordingly, Level 3 is willfully and intentionally violating its ICA and Commission directives related to VNXX traffic by attempting to obligate Qwest to send non-local ISP traffic over LIS trunks. The Commission should order Qwest to cease routing VNXX traffic over LIS trunks to Level 3, and further, should invalidate Level 3’s bills to Qwest.

**RELIEF REQUESTED**

64. WHEREFORE, Qwest respectfully requests that the Commission provide the following relief:

a. Issue an order (1) prohibiting Level 3 from assigning NPA-NXXs in local calling areas other than the local calling area where the ISP Server is located, (2) requiring that Level 3 cease its misuse of such telephone numbering resources, and (3) requiring that Level 3 properly assign telephone numbers based on the location of the ISP Server;

b. Issue an order that the parties' ICA does not require any compensation for Level 3's VNXX traffic;

c. Direct Level 3 to follow the change of law procedures contained in its interconnection agreement with Qwest to implement the *Core Forbearance Order*;

d. Invalidate all Level 3 bills to Qwest seeking or charging reciprocal compensation or the *ISP Remand Order* rate of \$.0007 per minute for any of the VNXX traffic described above;

e. Issue an order prohibiting Qwest from routing VNXX traffic to Level 3 utilizing LIS facilities; and

f. Any and all other equitable relief that the Commission deems appropriate.

**REQUEST FOR HEARING**

65. Finally, Qwest believes that based on the claims it has raised, there are likely to be various factual issues in dispute, and thus an evidentiary hearing may be necessary. Accordingly, to the extent there are factual issues in dispute, Qwest respectfully requests an evidentiary hearing of this matter.

DATED: June 6, 2005

Respectfully submitted,



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Alex M. Duarte, OSB No. 02045  
Qwest  
421 SW Oak Street, Suite 810  
Portland, Oregon 97204  
(503) 242-5623  
(503) 242-8589 (facsimile)  
[Alex.Duarte@qwest.com](mailto:Alex.Duarte@qwest.com)

Jeffrey T. Nodland  
Qwest  
1801 California Street, 10th Floor  
Denver, Colorado 80202  
(303) 383-6657  
(303) 295-6973 (facsimile)  
[Jeff.Nodland@qwest.com](mailto:Jeff.Nodland@qwest.com) ]

Attorneys for Qwest Corporation



**AFFIDAVIT OF LARRY BROTHERSON**

I, Larry Brotherson, being duly sworn, hereby affirm that I am Senior Staff Advocate, Qwest Corporation. I hereby affirm that the factual assertions and contents of Qwest Corporation's Complaint for Enforcement of Interconnection Agreement against Level 3 Communications, LLC before the Oregon Public Utility Commission are true and accurate to the best of my knowledge.

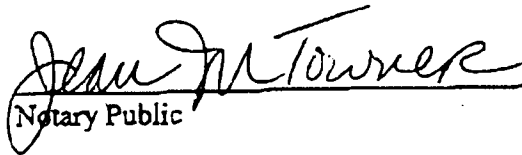
**FURTHER THE AFFIANT SAITH NOT.**

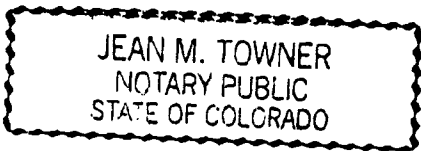
Dated this <sup>1<sup>st</sup></sup> 6 day of June, 2005

  
Larry Brotherson

STATE OF COLORADO    )  
                                      ) ss.  
COUNTY OF DENVER     )

Subscribed and sworn to before me this 6th day of June, 2005 by Larry Brotherson, who personally appeared before me and certifies that the foregoing is true and correct to the best of his knowledge and belief.

  
Notary Public



JEAN M. TOWNER  
My Commission Expires  
April 13, 2006

**AGREEMENT  
FOR INTERCONNECTION, UNBUNDLED NETWORK ELEMENTS, ANCILLARY  
SERVICES, AND RESALE OF TELECOMMUNICATIONS**

**BETWEEN**

**QWEST CORPORATION**

**AND**

**LEVEL 3 COMMUNICATIONS, LLC**

**IN THE STATE OF OREGON**

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## Section 1.0 - GENERAL TERMS

1.1 This Interconnection Agreement is between Level 3 Communications, LLC, ("Level 3") a Delaware limited liability company, and Qwest Corporation (formerly known as U S WEST Communications) ("Qwest"), a Colorado corporation, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of interconnecting the Parties' networks for the exchange of traffic and permitting Level 3 to purchase unbundled network elements, services for resale and other ancillary services from US WEST.

1.2 This Agreement sets forth the terms, conditions and pricing under which Qwest and Level 3 will interconnect their networks and Qwest will offer and provide to Level 3 access to unbundled network elements, Ancillary services, and Telecommunications Services available for resale within the geographical areas in which both Parties are providing local exchange service at that time, and for which Qwest is the incumbent Local Exchange Carrier within the state of Oregon for purposes of providing local Telecommunications Services. This Agreement is available for the term set forth herein.

1.3 Qwest and Level 3 mutually agree as follows:

## Section 2.0 - INTERPRETATION AND CONSTRUCTION

2.1 This Agreement includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including Qwest or other third party offerings, guides or practices), statute, regulation, rule or tariff applies to such agreement, instrument, statute, regulation, rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision). In cases of conflict between Qwest guides on the one hand and this Agreement on the other, the rates, terms, and conditions of this Agreement shall prevail over such guides, subject to the following exceptions: (1) new rates, terms, or conditions set forth in the guides shall prevail if they are a product of a change in Existing Rules as set forth in Section 2.2 below; (2) the rates, terms, or conditions set forth in the guides shall prevail if the Parties mutually agree in writing that the rates, terms, or conditions in the guides should prevail in a specific instance; and (3) the service intervals and due dates addressed in Sections 7.4.6 and 7.4.7 shall be determined in accordance with those sections.

2.2 The provisions in this Agreement are based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the "Existing Rules"). Among the Existing Rules are the results of arbitrated decisions by the Commission which are currently being challenged by Qwest or Level 3. Among the Existing Rules are certain FCC rules and orders that are the subject of, or affected by, the opinion issued by the Supreme Court of the United States in *AT&T Corp., et al. v. Iowa Utilities Board, et al.* on January 25, 1999. Nothing in this Agreement shall be deemed an admission by either Party concerning the interpretation or effect of the Existing Rules or an admission by either Party that the Existing Rules should not be vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or Level 3 from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, dismissed, stayed or modified. To the extent that the Existing Rules are changed, vacated, dismissed, stayed or modified, then this Agreement and all contracts adopting all or part of this 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 this Agreement. It is expressly understood that this Agreement will be amended to reflect the outcome of generic proceedings ("Generic Order") by the Commission for pricing, service standards, or other matters covered by this Agreement. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the Generic Order, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. This Section 2.2 shall be considered part of the rates, terms and conditions of each interconnection, service and network element arrangement contained in this Agreement, and this Section 2.2 shall be considered legitimately related to the purchase of each interconnection, service and network element arrangement contained in this Agreement.

## Section 3.0 - IMPLEMENTATION SCHEDULE

3.1 Except as otherwise required by law, Qwest will not provide or establish Interconnection, unbundled network elements, ancillary services and/or resale of Telecommunications Services in accordance with the terms and conditions of this Agreement prior to Level 3's execution of this Agreement. The date on which Level 3 signs and delivers an executed copy of this Agreement, in accordance with Section 1, shall hereafter be referred to as the "Effective Date" of the Agreement between Qwest and Level 3. Thereupon, the Parties shall complete Qwest's "CLEC Questionnaire" prior to placing orders for services under this Agreement and negotiate an interconnection implementation schedule as it applies to Level 3's obtaining of Interconnection, unbundled network elements, ancillary services, and/or resale of Telecommunications Services hereunder; provided that if the Parties have completed the CLEC Questionnaire and interconnection implementation schedule for the state of Oregon under a prior interconnection agreement, the Parties will not be required to complete such documents again for purposes of this Agreement. Both Parties will use good faith, commercially reasonable efforts to complete, if required, the CLEC Questionnaire and interconnection implementation schedule in a timely manner, and the Parties shall discuss disaster recovery provision escalations.

3.2 The CLEC Questionnaire will be used to:

- Determine geographical requirements;
- Identify Level 3 Identification Codes;
- Determine Qwest system requirements to support Level 3's specific activity;
- Collect credit information;
- Obtain billing information;
- Create summary bills;
- Establish input and output requirements;
- Create and distribute Qwest and Level 3 contact and escalation lists (including telephone numbers, e-mail addresses, and back-up contacts); and
- Identify Level 3 hours and holidays.

3.3 Where the Parties have not already completed an interconnection implementation schedule pursuant to a prior interconnection agreement, and provided that both Parties make good faith, commercially reasonable efforts to finalize such a schedule, such schedule must be finalized prior to placing any orders for services under this Agreement. Subject to the terms and conditions of this Agreement, each Party shall exercise reasonable efforts to adhere to the interconnection implementation schedule.

3.4 Level 3 will provide an initial nonbinding two year forecast prior to placing any orders for service under this Agreement. During the first year of the term of this Agreement, the forecast shall be updated and provided to Qwest on a quarterly basis. During the remaining term of this Agreement, Level 3 will provide updated nonbinding forecasts from time to time, as requested by Qwest, but no more frequently than quarterly. The information provided pursuant to this paragraph shall be considered Proprietary Information pursuant to Section 5.8 of this Agreement. The initial forecast will minimally provide:

3.4.1 The date service will be offered (by city and/or state);

3.4.2 The type and quantity of service(s) which will be offered;



3.4.3 Level 3's anticipated order volumes; and

3.4.4 Level 3's key contact personnel.

## Section 4.0 - DEFINITIONS

4.1 "Access Service Request" or "ASR" means the industry standard forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between the Level 3 and Qwest for Local Interconnection Service.

4.2 "Access Services" refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

4.3 "Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Oregon Public Utility Commission.

4.4 Intentionally left blank for numbering consistency.

4.5 "Automatic Number Identification" or "ANI" means a Feature Group D signaling parameter which refers to the number transmitted through a network identifying the billing number of the calling party.

4.6 "Basic Exchange Features" are optional end user switched services that include, but are not necessarily limited to: Automatic Call Back; Call Trace; Caller ID and Related Blocking Features; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.

4.7 "Basic Exchange Telecommunications Service" means a service offered to end users which provides the end user with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services.

4.8 Intentionally left blank for numbering consistency.

4.9 "Bona Fide Request" or "BFR" means a request for a new interconnection or unbundled element not already available in this Agreement for the provision of local telecommunications services.

4.10 "Busy Line Verify/Busy Line Interrupt" or "BLV/BLI Traffic" means a call to an operator service in which the caller inquires as to the busy status of or requests an interruption of a call on another end user's Basic Exchange Telecommunications Service line.

4.11 "Calling Party Number" or "CPN" is a Common Channel Signaling ("CCS") parameter which refers to the number transmitted through a network identifying the calling party. Reference U S WEST Technical Publication 77342.

4.12 "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

4.12.1 "End Office Switches" which are used to terminate end user station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and

4.12.2 "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. A Level 3 switch shall be considered a Tandem Office Switch to the extent such switch actually serves the same geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches, except to the extent otherwise determined by the Commission. In cases of dispute as to whether a Level 3 switch shall be considered a Tandem Office Switch, the Parties shall utilize the dispute resolution process as set forth herein. Except as otherwise provided in Section 7, access tandems provide connections for exchange access and toll traffic, and Jointly Provided Switched Access traffic while local tandems provide connections for Exchange Service EAS/Local Traffic.

4.13 "Collocation" is an arrangement where space is provided in a Qwest Premises for the placement of Level 3's equipment to be used for the purpose of Interconnection or access to Qwest unbundled network elements. Qwest offers six Collocation arrangements: Virtual Collocation, Caged Physical Collocation, Cageless Physical Collocation Shared, Adjacent, and Interconnection Distribution Frame Collocation.

4.14 "Commission" means the Oregon Public Utility Commission.

4.15 "Common Channel Signaling" or "CCS" means a method of digitally transmitting call set-up and network control data over a special signaling network fully separate from the public voice switched network elements that carry the actual call.

4.16 "Competitive Local Exchange Carrier" or "CLEC" refers to a party that has submitted a request, pursuant to the Act, to obtain Interconnection, access to unbundled network elements, ancillary services, or resale of Telecommunications Services pursuant to the terms of this Agreement. A CLEC is an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier ("ILEC").

4.17 "Designed, Verified and Assigned Date" or "DVA" means the date on which implementation groups are to report that all documents and materials have been received and are complete.

4.18 "Digital Signal Level 0" or "DS0" is the 64 Kbps standard speed for digitizing one voice conversation using pulse code modulation. There are 24 DS0 channels in a DS1.

4.19 "Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing. There are 28 DS1s in a DS3.

4.20 "Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

4.21 "Enhanced Services" means any service offered over common carrier transmission facilities used in interstate communications which employ computer processing applications that act on format, content, code, protocol or similar aspects of the subscriber's transmitted information; that provide the subscriber additional different or restructured information; or involve subscriber interaction with stored information.

4.22 "Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Bellcore document that defines industry standards for exchange message records.

4.23 "Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the local calling area which has been defined by the Commission and documented in applicable tariffs.

4.24 "Facility Complete Date" or "FCD" means the date all pre-service tests are performed, including stress tests.

4.25 "Firm Order Confirmation Date" or "FOC" means the notice Qwest provides to Level 3 to confirm that Level 3 Local Service Order (LSR) or Access Service Request ("ASR") has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the provisioning of the service requested.

4.26 Intentionally left blank for numbering consistency.

4.27 Intentionally left blank for numbering consistency.

4.28 "Information Services Providers" or "ISPs" are providers of Information Services.

4.29 "Integrated Digital Loop Carrier" means a subscriber loop carrier system, which integrates multiple voice channels within the switch on a DS1 level signal.

4.30 "Interconnect & Resale Resource Guide" is a Qwest document that provides information needed to request services available under this Agreement. It is available on Qwest's Web site: <http://www.uswest.com/carrier/guides/interconnect/index.html>.

4.31 "Interconnection" 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, Exchange Access and Jointly Provided Switched Access traffic.

4.32 "Interexchange Carrier" (IXC) means a carrier that provides interLATA or IntraLATA Toll services.

4.33 "Internet Related Traffic" includes ISP-bound traffic and refers to dial-up access through an entity which may include computer processing, protocol conversions, information storage or routing with transmission to enable users to access internet content or data services.

4.34 "Exchange Access (IntraLATA Toll)" is defined in accordance with the Act and Qwest's current intraLATA toll serving areas, as determined by Qwest's state and interstate tariffs and excludes toll provided using Switched Access purchased by an IXC.

4.35 "Local Exchange Carrier" (LEC) means any carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a carrier insofar as such carrier is engaged in the provision of a commercial mobile service under Section

332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

4.36 "Local Interconnection Service (LIS) Entrance Facility" is a DS1, DS3 or OCn facility that extends from Level 3's switch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Qwest Serving Wire Center.

4.37 "Local Interconnection Service (LIS)" is a terminating, trunk-side service provided between the POI of Level 3's network and Qwest's network for the purpose of completing calls from Level 3's end user customers to Qwest's end user customers. Exchange Service (EAS/Local) calls begin and end within a Local Calling Area or Extended Area Service (EAS) area which has been defined by the Commission. Trunking connections for these local calls may exist between Level 3 and Qwest's End Offices or Local Tandem, or as otherwise provided in Section 7. Exchange Access (IntraLATA and Toll) or Jointly Provided Switched Access calls may be completed with trunking connections either to the access tandem or to the end office.

4.38 "Local Loop Transmission" or "Loop" or "Unbundled Loop" means the entire transmission path which extends from the network interface device or demarcation point at an end user's premises to the Main Distribution Frame or other designated frame or panel in a Party's Wire Center which serves the end user.

4.39 "Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

4.40 "Main Distribution Frame" or "MDF" means a Qwest distribution frame (*e.g.*, COSMIC frame) used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.

4.41 "MECAB" refers to the Multiple Exchange Carrier Access Billing (MECAB) document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), that functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an Access Service.

4.42 "MECOD" refers to the Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), that functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The MECOD document establishes recommended guidelines for processing orders for Access Service.

4.43 "Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

4.44 "Mid-Span Meet" is a Point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

4.45 "North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.

4.46 "NXX" means the fourth, fifth and sixth digits of a ten-digit telephone number.

4.47 "Party" means either Qwest or Level 3 and "Parties" means Qwest and Level 3.

4.48 "Plant Test Date" or "PTD" means the date acceptance testing is performed with the end-user.

4.49 "Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two LECs (including a LEC and CLEC). The POI is that point where the exchange of traffic takes place.

4.50 "Premises" refers to USW's central offices and serving wire centers, as well as all buildings or similar structures owned or leased by USW that house its network facilities, and all structures that house USW facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures.

4.51 "Port" means a line or trunk connection point on a central office switch but does not include switch features.

4.52 "Proof of Authorization" ("POA"). POA shall consist of verification of the end user's selection and authorization adequate to document the end user's selection of its local service provider. Section 5.3 of this Agreement lists acceptable forms of documentation.

4.53 "Rate Center" means the specific geographic point (associated with one or more specific NPA-NXX codes and various Wire Centers), being used for billing and measuring Telecommunications Service. For example, a Rate Center will normally include several Wire Centers within its geographic area, with each Wire Center having one or more NPA-NXXs.

4.54 "Rate Center Area" is the geographic area within which basic exchange services are provided for NPA-NXX designations associated with a particular Rate Center.

4.55 "Records Issue Date" or "RID" means the date that all design and assignment information is sent to the necessary service implementation groups.

4.56 "Reseller" is a category of local exchange service provider that obtains dial tone and associated Telecommunications Services from another provider through the purchase of finished services for resale to its end users.

4.57 "Scheduled Issued Date" or "SID" means the date the order is entered into Qwest's order distribution system.

4.58 "Service Control Point" or "SCP" means a signaling end point that acts as a database to provide information to another signaling end point (*i.e.*, Service Switching Point or another SCP) for processing or routing certain types of network calls. A query/response mechanism is typically used in communicating with an SCP.

4.59 "Serving Wire Center" denotes the Wire Center from which dial tone for local exchange service would normally be provided to a particular end-user premises.

4.60 "Service Date" or "SD" means the date service is made available to the end-user. This also is referred to as the "Due Date."

4.61 "Signaling Transfer Point" or "STP" means a signaling point that performs message routing functions and provides information for the routing of messages between signaling end points. An STP transmits, receives and processes Common Channel Signaling ("CCS") messages.

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

4.63 "Tariff" as used throughout this Agreement refers to Qwest interstate Tariffs and state Tariffs, price lists, price schedules and catalogs, except to the extent the context requires a different interpretation.

4.64 "Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

4.65 "Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

4.66 "Unbundled Network Element Platform (UNE-P)" – is a combination of unbundled network elements, including Unbundled Loop, Unbundled Local Switching and Shared Transport. There are several forms of UNE-P, including single line residence, single line business, and PBX Trunks.

4.67 "UNE Combination" means a combination of legally binding and effective Section 251(c)(3) unbundled network elements that have been defined to meet the necessary and impair requirements of Section 251(d)(91). UNE Combinations are provided to Level 3 in a combined state, and at Section 252(d)(1) rates. UNE combinations include UNE-P and Private Line Combinations.

4.68 "Wire Center" denotes a building or space within a building that serves as an aggregation point on a given carrier's network, where transmission facilities are connected or

switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located.

4.69 "Wired and Office Tested Date" or "WOT" means the date by which all intraoffice wiring is completed, all plug-ins optioned and aligned, frame continuity established, and the interoffice facilities, if applicable, are tested. This includes the date that switching equipment, including translation loading, is installed and tested.

4.70 Terms not otherwise defined here but defined in the Act shall have the meaning defined there.



5.17.2 Severability. If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or circumstances other than those to which it is held invalid, shall not be affected thereby. In the event that any one or more of the provisions contained herein shall for any reason be held unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein.

## 5.18 Survival

5.18.1 Any liabilities or obligations of a Party for acts or omissions prior to the completion of the term, and any obligation of a Party under the provisions regarding indemnification, Confidential or Proprietary Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

## 5.19 Disclaimer of Agency

5.19.1 Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

## 5.20 Waivers

5.20.1 A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall not be construed as a waiver of such provisions or options.

## 5.21 Governing Law

5.21.1 This Agreement is offered by Qwest and accepted by Level 3 in accordance with the terms of the Act, as interpreted by courts and regulatory agencies of competent jurisdiction, and the state law of Oregon. It shall be interpreted solely in accordance with the terms of the Act, as interpreted by courts and regulatory agencies of competent jurisdiction, and the state law of Oregon.

## 5.22 Notices

5.22.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and sent to the following addresses:

**Qwest Corporation**  
Director - Interconnect  
1801 California, #2410  
Denver, CO 80202

With copy to:  
Qwest Legal Department  
Corporate Counsel, Interconnection  
1801 California Street, 38<sup>th</sup> Floor  
Denver, CO 80202

**LEVEL 3 Communications, Inc.**  
Director - Interconnection Services  
1025 Eldorado Blvd.  
Broomfield, CO 80021  
Telephone: (720) 888-6330  
Facsimile: (720) 888-5134

With copy to:  
**LEVEL 3 Communications, Inc.**  
Attention: Michael Romano, Attorney  
1025 Eldorado Blvd.  
Broomfield, CO 80021  
Telephone: (720) 888-7015  
Facsimile: (720) 888-5134

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

## **5.23 Responsibility for Environmental Contamination**

5.23.1 Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any environmental hazard that either Party, its contractors or agents, did not introduce to the affected work location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any environmental hazard that the indemnifying Party, its contractors or agents introduce to the work locations or (ii) the presence or release of any environmental hazard for which the indemnifying Party is responsible under applicable law.

## **5.24 Responsibility of Each Party**

5.24.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or knowingly assume control over at work locations, and (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal, and (ii)

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

## **Section 13.0 - ACCESS TO TELEPHONE NUMBERS**

13.1 Nothing in this Agreement shall be construed in any manner to limit or otherwise adversely impact either Party's right to request an assignment of any NANP number resources including, but not limited to, central office (NXX) codes pursuant to the Central Office Code Assignment Guidelines published by the Industry Numbering Committee ("INC") as INC 95-0407-008 (formerly ICCF 93-0729-010). The latest version of the Guidelines will be considered the current standard.

13.2 Both Parties agree to comply with Industry guidelines and Commission rules, including those sections requiring the accurate reporting of data to the Central Office Code Administrator.

13.3 It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the Local Exchange Routing Guide (LERG) to recognize and route traffic to the other Party's assigned NXX codes. Neither Party shall impose any fees or charges whatsoever on the other Party for such activities. The Parties will cooperate to establish procedures to ensure the timely activation of NXX assignments in their respective networks.

13.4 Each Party is responsible for administering NXX codes assigned to it. Each Party is responsible for updating the LERG data for NXX codes assigned to its switches. Each Party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide through an authorized LERG input agent, all required information regarding its network for maintaining the LERG in a timely manner.

13.5 Each Party shall be responsible for notifying its end users of any changes in numbering or dialing arrangements to include changes such as the introduction of new NPAs or new NXX codes.

**Qwest**

421 SW Oak Street  
Suite 810  
Portland, Oregon 97204  
Telephone: 503-242-5623  
Facsimile: 503-242-8589  
E-mail: Alex.Duarte@qwest.com



**Alex M. Duarte**  
Corporate Counsel

**VIA FACSIMILE (720-888-5134), EMAIL AND U. S. MAIL**

May 27, 2005

Level 3 Communications, LLC  
Attention: Roger DuCloo  
Director- Interconnection Services  
1025 Eldorado Blvd.  
Broomfield, CO 80021

Level 3 Communications, LLC  
Attention: Erik Cecil, Regulatory Counsel  
and Rick Thayer, Director- Interconnection and Public Policy  
1025 Eldorado Blvd.  
Broomfield, CO 80021

Re: Qwest's 10-day Notice Letter of Intent to File Interconnection Enforcement Complaint

Dear Level 3:

I am Corporate Counsel for Qwest Communications International, Inc. for the state of Oregon. I am writing on behalf of Qwest Corporation ("Qwest") to provide you with ten (10) days written notice of Qwest's intent to file an interconnection enforcement complaint against Level 3 Communications, LLC ("Level 3") with the Oregon Public Utility Commission. This notice is sent to you pursuant to OAR 860-032-0050(3).

The dispute concerns Level 3's repeated misuse of telephone numbering resources (NPA-NXXs and telephone numbers) used for Level 3's improper exchange of Virtual NXX ("VNXX") traffic with Qwest over its Local Interconnection Services ("LIS") trunks, as well as Level 3's continued improper billing of such non-local VNXX traffic destined for Internet Service Providers ("ISPs") to Qwest, and the resulting complete lack of compensation for use of Qwest's transport facilities (whether end-user customer compensation in payment of Qwest toll charges for Qwest's carrying these non-local toll calls or other appropriate compensation to Qwest for use of its transport facilities). Level 3's conduct in engaging in these VNXX schemes is in contravention of federal law (including the FCC's *ISP Remand Order*), Oregon law (including the Oregon Commission's orders in dockets UM 1058 and ARB 527 and a recent federal court decision on VNXX traffic) and the parties' Oregon interconnection agreement ("ICA") that was arbitrated by the Oregon Commission in docket ARB 332 in 2001.



The claims that will be presented in the complaint that Qwest intends to file should come as no surprise to Level 3. These claims will be similar to the counter-claims that Qwest has asserted in its recent answer to Level 3's complaint before the Minnesota Public Utilities Commission.

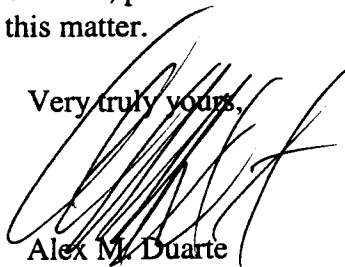
Pursuant to OAR 860-016-0050(3)(a), the sections of the parties' ICA that will be at issue in Qwest's complaint include (but are not limited to) the following: sections 7.2.1.2, 4.34, 4.23, 4.62, 4.73, 2.2, and 13.4, as well as the ICA's Single Point of Presence ("SPOP") amendment.

Pursuant to OAR 860-016-0050(3)(a), Qwest has conferred with Level 3 in good faith in an attempt to resolve these disputes. Despite Qwest's good faith attempts to resolve these disputes, the parties have failed to resolve them, thus necessitating Qwest's filing of a complaint. Specifically, Qwest notified Level 3 in a January 27, 2005 letter that it was formally disputing the VNXX traffic that Level 3 has charged to Qwest, and it further advised Level 3 of ways Level 3 could remedy the issues through proper renumbering of the terminating numbers or rerouting the traffic over the appropriate Feature Group D trunks. Since that January 27th notification, and pursuant to the ICA's dispute resolution provision, Qwest and Level 3 have held several conference calls and meetings between their respective representatives, up to and including at the Vice President level, in attempts to resolve these disputes. Although each company has suggested various alternatives to resolve these disputes, they have not been able to reach agreement, and thus Qwest is compelled to seek relief through the appropriate regulatory intervention.

Finally, section 5.12 of the ICA addresses the parties' dispute resolution procedures, of which Qwest has complied in good faith. Section 5.12.3 further provides that either party may seek relief from the Oregon Commission for disputes arising under the ICA. In light of the inability of Qwest and Level 3 to resolve this dispute through negotiations, Qwest is compelled to exercise its rights to seek regulatory intervention of the Oregon Commission as provided by state law and the ICA itself. The relief that Qwest will seek in the complaint will be consistent with the ICA's dispute resolution provisions. Accordingly, Qwest intends to file an interconnection enforcement complaint against Level 3 regarding these issues at the appropriate time.

If you have any questions regarding this matter, please feel free to call me at your convenience. Thank you for your attention to this matter.

Very truly yours,



Alex M. Duarte

cc: OPUC Administrative Hearings Division  
Mr. Phil Nyegaard, OPUC Staff  
Mr. Dave Booth, OPUC Staff



**Qwest**  
607 14<sup>th</sup> Street, NW, Suite 950  
Washington, DC 20005  
Phone 202.429.3121  
Fax 202.293.0561

**Cronan O'Connell**  
Vice President-Federal Regulatory

*EX PARTE*

Electronic Filing via ECFS

March 11, 2005

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Room TW B-204  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RE: *In the Matter of Petition of Level 3 Communications LLC for  
Forbearance Under 47 U.S.C. Section 160(c) -- WC Docket  
No. 03-266; In the Matter of IP-Enabled Services -- WC Docket  
No. 04-36*

Dear Ms. Dortch:

Enclosed with this letter is the *Ex Parte* Presentation of Qwest. Please include this submission in each of the records of the above-captioned proceedings.

In accordance with FCC rule 1.49(f), this *ex parte* submission is being filed electronically *via* the Electronic Comment Filing System pursuant to FCC Rule 1.1206(b)(1).

Sincerely,

/s/ Cronan O'Connell

Enclosure

Copies to:

Scott Bergmann ([scott.bergmann@fcc.gov](mailto:scott.bergmann@fcc.gov))  
Daniel Gonzalez ([daniel.gonzalez@fcc.gov](mailto:daniel.gonzalez@fcc.gov))  
Christopher Libertelli ([christopher.libertelli@fcc.gov](mailto:christopher.libertelli@fcc.gov))  
John Stanley ([john.stanley@fcc.gov](mailto:john.stanley@fcc.gov))  
Jessica Rosenworcel ([jessica.rosenworcel@fcc.gov](mailto:jessica.rosenworcel@fcc.gov))  
Jeffrey Carlisle ([jeffrey.carlisle@fcc.gov](mailto:jeffrey.carlisle@fcc.gov))  
Lisa Gelb ([lisa.gelb@fcc.gov](mailto:lisa.gelb@fcc.gov))  
Tamara Preiss ([tamara.preiss@fcc.gov](mailto:tamara.preiss@fcc.gov))



**Qwest**  
1801 California Street, 10<sup>th</sup> Floor  
Denver, Colorado 80202  
Phone 303-383-6650  
Facsimile 303-896-1107

**Robert B. McKenna**  
Associate General Counsel

## ***EX PARTE PRESENTATION***

**DATE:** March 11, 2005

**RE:** *In the Matter of Petition of Level 3 Communications LLC for  
Forbearance Under 47 U.S.C. Section 160(c) -- WC Docket  
No. 03-266; In the Matter of IP-Enabled Services – WC Docket  
No. 04-36*

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The purpose of this presentation is to address several recent *ex parte* filings made by Level 3 Communications LLC (“Level 3”) in support of its Petition for Forbearance from the legal requirement that interstate and intrastate feature group access charges be assessed and paid on certain carrier traffic that makes use of local exchange switching facilities to originate and terminate calls carrying “IP voice” communications. As Qwest has pointed out in the past, all of the legitimate concerns raised by Level 3 are already dealt with effectively by proper application of the so-called “ESP exemption.” Level 3’s Petition would expand the scope of the rules flowing from the ESP exemption into areas where they are unnecessary and would be harmful. Given the language of the new Level 3 *ex parte* presentations, it is now likely that grant of the Petition would also act to dramatically undermine the existing interstate access structure, a disruption that would be particularly egregious today now that the FCC is acting to rationalize the entire structure in a fair and neutral manner. The Level 3 Petition should be denied, and the relief that Level 3 seeks should not be resurrected through some other means (such as “interim rules” effectively granting the Petition).

In this regard, Chairman Powell’s parting comment, as quoted in the telecommunications trade press, that the ILEC and the IP voice communities should “‘find the common ground somewhere in the middle . . . Right now we’re stuck with binary choices’ between high access charges and ‘free’ [IP voice access]”<sup>1</sup> resonates with considerable force with Qwest. By suggesting that the proper treatment of IP voice pending long term resolution of the intercarrier compensation proceeding should be based on a current and consistent application of the ESP exemption, Qwest has in fact proposed exactly the “middle ground” that the Chairman has suggested. This *ex parte* presentation deals with several aspects of the Level 3 Petition that are contrary to law and reason. The solution that Qwest has proposed presents a far superior solution to the issues that Level 3 raises.

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<sup>1</sup> TRDaily, March 8, 2005 (second article entitled “Powell Proud of FCC’s VoIP Approach”).

## I. Introduction.

The Level 3 Forbearance Petition<sup>2</sup> requests that the FCC “forbear” from various provisions of the Act and the FCC’s rules relating to the application of tariffed feature group access charges to carriers handling “Voice-embedded IP traffic that originates or terminates on the PSTN . . .”<sup>3</sup> It has never been exactly clear just what rules Level 3 was seeking forbearance from, or what the regulatory structure it sought would ultimately look like.<sup>4</sup> However, it has been clear from the outset that Level 3 seeks a regulatory structure whereby CLECs who carry IP Voice traffic, either acting as their own ISP or for unaffiliated VoIP providers, are entitled to entirely special treatment outside of the existing regulatory structure. Level 3 has been able to make a facially plausible argument for this position only by misconstruing both the nature of the existing regulatory environment (the ESP exemption that has been in place for over 20 years) and the sweeping and potentially destructive impact which grant of its petition could have on the public interest.

To a large extent Level 3’s position is based on the assumption that, if IP Voice providers are not granted special treatment under today’s access structure not available to any other providers, including providers of all other IP-enabled services, the deployment of IP voice technology and service will be fatally wounded. This is a questionable assumption even if IP voice providers were not currently treated in the same manner as other providers of IP enabled services under the “ESP exemption” and the regulatory structure that is based on that rule.<sup>5</sup> But the ESP exemption does dictate how ISP access (including IP voice access) to the local exchange is handled, and Level 3’s position borders on the ridiculous when the Level 3 Petition is compared to the actual regulatory structure from which Level 3 seeks forbearance. The current rules actually provide Level 3 with all the protection that it (and other providers of IP voice applications, including Qwest Communications Corporation, the long distance affiliate of Qwest Corporation), are entitled to and realistically need. They provide the common ground somewhere in the middle, that the Chairman said was necessary. This is especially true while the FCC develops a long-term intercarrier compensation plan that takes IP voice and other IP-enabled services into account. It is the disjunction between the Level 3 relief and its proclaimed flaws in the existing

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<sup>2</sup> In the Matter of Level 3 Communications LLC’s Petition for Forbearance Under 47 U.S.C. § 160(c) and Section 1.53 of the Commission’s Rules from Enforcement of Section 251 (g), Rule 51.701(b)(i), and Rule 69.5(b), WC Docket No. 03-266, filed Dec. 23, 2003.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> Compare the actual Petition with the Level 3 *ex parte* presentation of December 22, 2004 (claiming that its Petition did not apply to carriers who actually purchased tariffed feature group access services) (“December 22 *ex parte*”).

<sup>5</sup> In fact, any claim that IP Voice providers are languishing is contradicted by all evidence, not the least of which is provided by IP Voice providers themselves. See Ben Charny, Cable Raises its Voice, *c/net news.com*, [http://news.com.com/Cable+raises+its+voice/2100-7352\\_3-5579111.html](http://news.com.com/Cable+raises+its+voice/2100-7352_3-5579111.html), March 3, 2005; Steven Lawson, SPRING Von: VOIP players gear up fast for fast-growing market, *IT World.com Site Network*, [www.itworld.com/Net/3303/050307von/pfindex.html](http://www.itworld.com/Net/3303/050307von/pfindex.html), March 7, 2005.

structure that have made it so difficult to actually determine just what Level 3 is asking for in its Petition and, more significantly, to fully grasp the dangers inherent in a grant of the Petition.

In two recent *ex parte* presentations,<sup>6</sup> Level 3 has elaborated on its position in a manner that highlights both the fatal flaws in the Level 3 position and the problems inherent in any approach to IP voice access issues, even on an interim basis, which is not part of and consistent with a comprehensive approach to the intercarrier compensation regulatory structure. Pending development of an intercarrier compensation structure, clarification and continued application of the existing rules, as embedded in the so-called “ESP exemption,” provides a logical and reasonably fair method of treating all IP-enabled services.<sup>7</sup> Qwest’s position is simple. True IP voice services<sup>8</sup> are “enhanced services<sup>9</sup> under the Commission’s rules. They are customarily used by customers and ISP providers alike in conjunction with a multitude of other IP-enabled services. There is no logical reason to treat IP voice applications any different than other IP-enabled services for purposes of determining the correct access charge or intercarrier compensation mechanism. Namely, for “true IP voice” services when a call originating in IP terminates on the PSTN, the ISP POP<sup>10</sup> is treated as an end user for both access charge application and determination of whether, when multiple LECs are involved, a call is subject to the access charge regime or Section 251(b)(5) of the Act.

Appended hereto as Attachment A is a brief description of the background of the ESP exemption as it applies to IP-enabled services today. This attachment provides the backdrop for the analysis that follows.

## **II. Level 3 Now Effectively Concedes That The Relief It Seeks Would Potentially Undercut The Existing Access Charge Structure By Allowing Carriers To Utilize Local Exchange Switching Facilities To Originate And Terminate Interstate Interexchange Telecommunications Outside Of The Carrier Access Charge Structure.**

The legal treatment of an ISP POP as an end-user premise for access charge (and reciprocal compensation) purposes enabled the carrier access charge system to remain intact even while ISPs were able to purchase local access for interstate service. The analysis is simple: end users

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<sup>6</sup> Letter from John T. Nakahata to Marlene H. Dortch, March 2, 2005 (March 2 *ex parte*); Letter from John T. Nakahata to Marlene H. Dortch, February 23, 2005 (February 23 *ex parte*).

<sup>7</sup> True IP voice services are voice applications originating in the Internet protocol over a broadband connection.

<sup>8</sup> See Reply Comments of Qwest Communications International Inc., WC Docket No. 04-36, filed July 14, 2004 at 5.

<sup>9</sup> See 47 C.F.R. § 64.702(a).

<sup>10</sup> POP is short for “point of presence.” In the context of an ISP or an interexchange carrier, the term POP is used to designate the location of the place or places where an ISP or IXC receives traffic from or delivers traffic to a local exchange carrier. In the case of a CLEC, that point is customarily referred to as a “point of interconnection.”

are entitled to purchase retail local access services to interconnect with local exchanges for services within a properly designated local calling area, while carriers are not (and must purchase feature group services for such access).<sup>11</sup> Because an ISP POP is treated as an end user premise for access charge purposes, when an ISP POP is connected to a local exchange, it may do so through the purchase of the same retail (business) services as are available to other end users, and thereby receive the same access to a local calling area as an end user receives. If the ISP makes or receives a call from another end user within the same LATA but within a different local calling area, the call is deemed to be an interexchange call and proper toll charges are assessed. The same analysis applies when interconnection by an ISP to a local exchange is through another carrier even when that carrier is interconnected via a single point of interconnection within the LATA: if the call is from an end user NOT in the same local calling area as the ISP POP, it would be rated as a toll call,<sup>12</sup> and the call treated under the access charge rules (as jointly provided access generally)<sup>13</sup> rather than under the reciprocal compensation rules that dictate the exchange of non-toll traffic.<sup>14</sup>

The ESP exemption does not exempt a carrier transporting ISP traffic from payment of a tariffed rate for services that it orders to originate or terminate that traffic, nor does it permit a carrier to purchase local service when terminating a call from or originating a call to an ISP POP in a different local calling area. It simply permits the ISP to purchase local services as if it were an end user -- something that a carrier cannot do. It similarly permits a CLEC to treat local ISP traffic (*i.e.*, traffic where the ISP POP is located within the same local calling area as the called or calling party) as subject to the compensation provisions of Section 251(b)(5) rather than the access charge structure (*i.e.*, jointly provided switched access).

Level 3 has been somewhat evasive on this critical issue -- whether its Petition includes a request for a ruling that a carrier carrying an intraLATA toll call to or from an ISP POP in a different local calling area would be "exempt" from the access structure. In December, Level 3 came very close to agreeing, at least with regard to traffic originating on the PSTN, that, even if its forbearance petition were to be granted, the POPs of IP-enabled service providers would nevertheless be rated as end user premises and carriers transporting ISP calls to or from an ISP POP in another local calling area would have that call rated as an interexchange call. Most significantly, Level 3 seemed to indicate in its December *ex parte* that the originating end of a 1+ call destined to an IP Voice provider would be subject to the tariffed rate for access:

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<sup>11</sup> Feature group access customarily covers an entire LATA, not just a local calling area.

<sup>12</sup> We note here that the phrase "toll" and "interexchange" are used interchangeably in this paper. Common usage often refers to interLATA calls as "interexchange calls" and intraLATA toll calls as "toll calls." For purposes of our analysis, the terms are identical. The provision in 47 U.S.C. Section 153(48) that "telephone toll service" includes a "separate charge not included in contracts with subscribers for exchange service" is not relevant to the issues raised in the Level 3 Petition.

<sup>13</sup> In the case of jointly provided access, each carrier bills the customer -- in this case the ISP.

<sup>14</sup> See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, FCC 05-33, *Further Notice of Proposed Rulemaking*, CC Docket No. 01-92 ¶¶ 141-43 ("*Intercarrier Compensation FNPRM*").

Level 3 is not seeking forbearance from the applicability of originating interstate and intrastate access charges with respect to traffic that reaches Level 3 or any other carrier serving a VoIP provider via the calling party's pre-subscribed or dial-around interexchange carrier ("IXC"). When such "1+" traffic or "10-XXX" traffic is exchanged between the originating LEC and the intermediary IXC (such as for an intraLATA toll call placed to a VoIP number), originating access charges would continue to apply as between the originating LEC and the IXC[.]<sup>15</sup>

In its March 2 *ex parte*, Level 3 withdrew from this position, and now claims that a carrier carrying an IP voice call could claim that a call was local for access charge and reciprocal compensation purposes solely on the basis that the call was "VoIP traffic," without regard to the actual location of the ISP POP, the configuration of the traffic, or rating of the NPA/NXXs. And Level 3 now also includes interexchange carriers within the ambit of those brought within the reciprocal compensation structure of the rules:

If the Commission were to grant forbearance, any telecommunications carrier -- including but not limited to CLECs -- would be able to exchange traffic with LECs pursuant to interconnection agreements under which reciprocal compensation would govern the exchange of VoIP traffic. Section 251(b)(5) is not limited to traffic exchanges between LECs or LECs and CMRS carriers. Nor is Level 3's Petition -- rather, it expressly applies to Level 3 and "*any other telecommunications carrier* handling [IP-enabled services] traffic that originates or terminates on the PSTN."<sup>16</sup>

This, of course, puts Level 3 back in its original position -- that IP voice traffic should simply be "exempted" from paying the proper rate for access no matter what services a carrier carrying traffic for an IP voice provider purchases or is required to purchase from an ILEC or CLEC. This would apparently include allowing a carrier interconnecting with an ILEC in a manner governed by the rules regarding access and jointly provided switched access to treat even 1+ dialed access traffic as local. It is not a responsible position. It is on its face also quite opposed to Level 3's December 22 position.

But the difficulty is not so much that Level 3 has been unable to articulate its position with consistency. Rather, the problem is that the current broad and destructive sweep of the Level 3 Petition is the natural consequence that would result from any effort to "exempt" IP-enabled services from access charges instead of keeping them in harmony with the structure growing from the ESP exemption. The complexity of the undertaking suggested by Level 3 is breathtaking and doomed to failure -- at least if failure is defined as bringing about results that have no relationship to those that were intended. For all of its flaws, the ESP exemption is at

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<sup>15</sup> See December 22 *ex parte* at ¶ 2.

<sup>16</sup> March 2 *ex parte* at 6 [italics and brackets in original; footnote omitted]. It is possible to read the Level 3 *ex parte* as limited to terminating traffic, but, even if Level 3 meant to bring only terminating IXC access traffic into the sphere of reciprocal compensation, the fact that it could not say so plainly emphasizes the serious problems that would be raised by a grant of its Petition.

least comprehensible. Creating an “exemption” from access charges, no matter how styled, is bound to go far beyond any legitimate application of the already extensive rights enjoyed by IP-enabled services providers and carriers to which they connect. This is particularly true in the case of the Level 3 Petition, because it appears to apply to calls that are not “true VoIP” -- that is, calls that originate on the PSTN, using 1+, 10XXX and even VNXX calls, and are terminated to a VoIP customer.

An example of the application of how the ESP exemption works with regard to traffic originating and terminating on the PSTN can be seen in Attachment B.<sup>17</sup> In Attachment B-1, an IP voice customer in Denver, CO calls a PSTN customer in Washington, DC. The call travels over the Internet and other facilities to the ISP POP located within the local calling area of the called customer. As the ISP POP is treated as an end user premise for access purposes, the connection between the ISP POP and the end user is treated as a local call whenever the two are located in the same local calling area, whether the call is routed directly to the called party by local connection to the terminating ILEC, or through a CLEC. If the ISP POP were located in a different local calling area than the called party, the call between those two locations would not be treated as local.

In Attachment B-2, a PSTN end user in Denver calls an IP voice customer in DC by dialing the standard 1+ dialing code. This call travels from the customer in Denver to a long distance carrier, which then carries the call to Washington, DC where the number resides.<sup>18</sup> The LEC in Denver charges the IXC for originating access, and the two LECs in DC charge the IXC for terminating access. The IXC then normally recovers its costs from the end user in Denver. In other words, the call is treated like any other call from a PSTN end user in Denver to the IP voice provider’s ISP POP.

If the Level 3 arguments are accepted, this call, which today is a normal long distance call subject to assessment of carrier access charges, could be converted to a different compensation scheme based solely on the fact that it terminates to an ISP POP for further delivery to an IP voice customer. The network components have not changed, the carriers involved have not changed, the services passing over the network have not changed, and the location of the ISP POP (end user) has not changed, and the dialing pattern has not changed. In fact, given the technological reality of 1+ dialing, it appears that the IXC would have been required to order FGD from the originating LEC in Denver and from the terminating LEC in DC in order for the originating and terminating parts of the call to be routed properly. While this scenario would not arise under the December 22 *ex parte*, it seems inescapable under the March 2 *ex parte*. Under these circumstances Level 3’s Petition would create a special class of long distance carriers that

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<sup>17</sup> Attachment B-1, appended hereto, and entitled “True-VoIP-Originated Call to PSTN End User; Attachment B-2, appended hereto, and entitled “PSTN-originated Call to VoIP End User in Different Local Calling Area (LCA).”

<sup>18</sup> We recognize that the number of an IP voice customer may not be in the same area code as the location of the customer. However, in such an event an ISP facility would be required in the geographic location to which the number is assigned, and the same analysis would apply to delivery of the call to that location. The routing shown on Attachment B-2 would also not be possible if the IP voice customer’s number were assigned to a different area code.



were “exempt” from payment of proper switched access charges based solely on the content (*i.e.*, IP voice content) of the messages that they were carrying. There is simply neither justification nor reason to allow this scenario to develop.

### **III. Level 3 Misstates The Current Treatment Of Local Calls Under Existing Rules.**

In its February 23 *ex parte*, Level 3 distorts the manner in which compensation for local and non-local traffic is currently calculated and assessed among carriers, the apparent import of which is to claim that the existing rules do not adequately protect providers of IP-enabled services from arbitrary assessment of unwarranted charges for access. The ESP exemption, properly interpreted, provides a reasonable way to treat IP-enabled services, including IP voice applications, while final intercarrier compensation rules are developed. But it must be properly interpreted and uniformly applied.

Level 3 starts with the proposition that the differentiation between local calls and non-local calls for purposes of access and reciprocal compensation currently specified in the Commission’s rules is “absurd.”<sup>19</sup> Level 3’s support for this claim is the fact that, under the current rules, a call between two parties in the same local calling area is a local call, and a call between two parties in different local calling areas is an interexchange or toll call. But local calls and interexchange calls are always evaluated based on the end points of the call, and it is absurd not to continue to do so in the context of the ESP exemption. It is just that, in the case of an ISP call, for access charge purposes, the ISP POP is one of the call’s two end points, and must be evaluated as such. If a local call traverses a CLEC switch, the location of the CLEC switch (assuming that it is in the same LATA as the ILEC) does not determine whether the call is local, and calls within a LATA are treated either as access (*i.e.*, they are interexchange or toll calls) or reciprocal compensation based on the location of the end points.<sup>20</sup> This is exactly the same whether the end users are traditional end users or ISP POPs. This principle is neither complicated nor absurd.

Level 3 next compounds this error by claiming that treating IP voice providers as end users violates the rights of CLECs to demand interconnection with an ILEC at a single point of interface within a LATA.<sup>21</sup> The problem with Level 3’s position here is that Level 3 totally misconstrues the right of a CLEC to a single point of interconnection, and the cases it relies on stand for exactly the opposite proposition than that for which they are cited by Level 3. Level 3 contends that it has a right to interconnect at a single point of interface within a LATA (which Qwest does not contest under the current rules). But rather than recognizing that this single point of interface does not transform interexchange calls between end users into local calls, Level 3 argues that the right to a single point of interconnection now should be dramatically expanded to require treatment of all traffic within a LATA as local traffic. This is simply not true. Under all of Qwest’s interconnection agreements, when toll traffic is exchanged between two LECs, it is exchanged on an access basis, not a reciprocal compensation basis. Toll traffic is measured based on the locations of the two end points of the call.

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<sup>19</sup> February 23 *ex parte* at 2-3.

<sup>20</sup> *See id.* at Exhibit A.

<sup>21</sup> *Id.* at 3-5.

Attachment C, appended hereto, demonstrates how this scenario is played out in real life based on Qwest's actual network configurations and Qwest's actual interconnection agreements. Attachment C-1 shows a local call when the ISP POP is in the same local calling area as the other party to the call, compared to the same result (in Attachment C-3) when a traditional called party or PBX is in the same local calling area. Attachment C-2 and Attachment C-4 show the converse—with an ISP POP, a PBX or a traditional end user in a local calling area that is different from the local calling area of the other party. The treatment is identical, and clearly consistent with the right of a CLEC to a single point of interconnection within a LATA. Level 3's support for the proposition that relying on state designated local calling areas to determine the status of a call between two end points is unlawful is predicated on the decision of the Fourth Circuit Court of Appeals in *MCIMetro Transmission Services Inc. v. BellSouth Telecommunications, Inc.*<sup>22</sup> Level 3 contends that this case, in which an effort by BellSouth to charge a CLEC for the cost of delivering traffic to the CLEC's single point of interconnection was rebuffed by the Court based on the existing rules of the Commission,<sup>23</sup> somehow implicates the definitions of local and toll traffic in terms of determining whether the reciprocal compensation or the jointly provided switched access rules apply. It appears that Level 3 contends that these decisions somehow grant to ISPs (rather than CLECs) the right to maintain a single POP within a LATA and to use this single POP to avoid toll charges. The right to maintain a single point of interconnection within a LATA is a right reserved to carriers. In fact, the proper application of the ESP exemption to ISP POPs does not implicate the right of a CLEC to a single point of interconnection within a LATA at all, and Level 3 has simply misconstrued a CLEC's interconnection rights and improperly sought to apply them to an ISP.

The *MCIMetro* decision does not hold to the contrary. That case dealt with whether an ILEC could, under the FCC's current rules, charge a CLEC to deliver traffic to a remote CLEC single point of interconnection. The case actually focused on calls where both end points were within a single local calling area, but the CLEC switch was in a different local calling area, and had nothing to do with the principle for which Level 3 cites the case.<sup>24</sup> This point was emphasized even more strongly in the D.C. Circuit case of *Mountain Communications, Inc. v. FCC*,<sup>25</sup> in which the Court repeatedly noted that the calls in question, while delivered to a CLEC single point of interconnection in a local calling area other than the location of the originating caller, were ultimately between end points in "the same local calling area." Whether an ILEC can charge a CLEC for delivering traffic to a remote CLEC single point of interconnection is a very

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<sup>22</sup> *MCIMetro Access Transmission Services, Inc. v. BellSouth Telecommunications, Inc.*, 352 F.3d 872 (4<sup>th</sup> Cir. 2003).

<sup>23</sup> The Commission is currently studying under what circumstances an ILEC may lawfully charge a CLEC for delivery of traffic to a remote single point of interconnection, especially when the single point of interconnection is located in another calling area. *Intercarrier Compensation FNPRM* ¶¶ 91-7.

<sup>24</sup> See *MCIMetro*, 352 F.3d at 877, describing the calls at issue in the case as being between "neighbors."

<sup>25</sup> *Mountain Communications, Inc. v. FCC*, 355 F.3d 644, 646, 647 (D.C. Cir. 2004).

important issue. But it has nothing to do with whether a call between two end points in two different local calling areas is a local call or a toll (interexchange) call.

There is no reason in law or logic why these principles should apply any differently when one of the end points of a call is an ISP POP (designated as an end user under the ESP exemption) than is the case when both end points are more traditional end users.

#### **IV. Conclusion.**

It is true, as Chairman Powell has noted, that the issues raised by access charges as applied to IP-enabled services, including IP voice applications, are often polarized and are always controversial. But the Level 3 Petition serves to create controversy where there is no need for it. While Qwest completely agrees that it is vital that the Commission act promptly and decisively to devise a comprehensive intercarrier compensation regime that includes the IP-enabled services discussed by Level 3, it is not necessary, and indeed would be affirmatively harmful, to take action along the lines requested by Level 3. There is neither need nor reason for a special status for IP voice applications that is different from that afforded to other IP-enabled services through the ESP exemption. In fact, granting such a status to providers of IP voice services (even assuming that this could be accomplished without dragging the entirety of other IP-enabled services with them) would dramatically undercut the existing access structure and undermine the Commission's ultimate efforts to rationalize the access infrastructure in the intercarrier compensation docket.

The Level 3 Petition should be denied, and the temptation to grant some of Level 3's relief through "interim rules" should be resisted. On the other hand, the Commission should eliminate any uncertainty as to the proper application of the ESP exemption in the context of IP-enabled services through an appropriate clarifying order.

# ATTACHMENT A

## The ESP Exemption

### I. BACKGROUND

The Commission has been wrestling with the issue of how providers of “enhanced services” should pay for interstate use of local exchange switching facilities and services since the very beginning of the access charge regime.<sup>1</sup> The “interim” solution to enhanced services access was the so-called “ESP exemption,” whereby enhanced service providers were entitled to connect their “POPs” to local exchanges via local exchange services (as opposed to the tariffed feature group services that carriers were required to purchase), even though they used the local exchange facilities for interstate access.<sup>2</sup> The ESP exemption was never really an “exemption” at all -- it was simply a regulatory decision that, for a variety of policy reasons, interstate access by ESPs located within the local calling area of a customer would be treated as local for the purpose of assessing the correct access charge, at least if local service were ordered. The same status was accorded to private networks that accessed local exchanges for interstate origination and termination of interstate calls -- these private networks were likewise treated as end users for access charge purposes based on the location of the PBX or other terminating device (including Centrex) through which the traffic was delivered into a local exchange.<sup>3</sup> In both cases, interstate cost recovery was designed to be achieved through assessment of a special access surcharge on ILEC interstate special access lines used by ESPs or “leaky PBXs”.<sup>4</sup>

This “local” designation of an ESP POP carried over into the telecommunications environment established in the 1996 Telecommunications Act. Information service providers (ISPs), the heirs of the old enhanced service provider moniker, are entitled to have their ISP POPs treated as end-user premises under the ESP exemption. Thus, ISPs can order local service to ISP POPs in the same manner as such service can be ordered to other end user premises. When the ISP is served by a CLEC and matters of reciprocal compensation under Section 251(b)(5) of the Act arise, the

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<sup>1</sup> See *In the Matter of MTS and WATS Market Structure, Third Report and Order*, 93 FCC 2d 241, 254-55 ¶ 39 and n.15, 320 ¶ 269 (1983); *modified on recon.*, 97 FCC 2d 682 (1984) (“*First Order on Reconsideration*”), *further modified on recon.*, 97 FCC 2d 834 (1984) (“*Order on Further Reconsideration*”), *aff’d in principal part and remanded in part sub nom., NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

<sup>2</sup> See, e.g., *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, First Report and Order*, 12 FCC Rcd 15982, 16131-34 ¶¶ 341-48 (1997); see, also, generally, *In the Matter of Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers, Order*, 3 FCC Rcd 2631 (1988).

<sup>3</sup> See *In the Matter of WATS-Related and Other Amendments of Part 69 of the Commission’s Rules, Memorandum Opinion and Order*, 2 FCC Rcd 7424, 7425 ¶¶ 13-15 (1987).

<sup>4</sup> See *First Order on Reconsideration*, 97 FCC 2d at 714-15 ¶ 82, 743 ¶ 151; *Order on Further Reconsideration*, 97 FCC 2d at 867-78 ¶¶ 107-39.

ESP exemption analysis carries over into the current realm under Section 251(g) of the Act. Subject to modification by the FCC and the interim ISP reciprocal compensation rules,<sup>5</sup> the end-user designation of an ISP POP also allows for reasoned analysis of the rights and obligations of local exchange carriers when exchanging ISP traffic with each other. In such an event the ISP POP is treated as an end user for analytical purposes. Based on the location of the ISP POP, whatever mechanism is used to treat calls between traditional end users (reciprocal compensation, tariffed access, *i.e.*, jointly provided switched access paid by the ISP to both carriers, or some other approach) is applied to this traffic and used by the respective carriers to recover the costs incurred in exchanging the ISP traffic.

The key of course is that an ISP POP is not the same thing as an IXC POP or a CLEC point of interface, because neither an IXC POP nor a CLEC point of interface is treated as an end user for access purposes and neither is entitled to purchase retail services reserved for end users (although CLECs may purchase local services for resale under Section 251(c)(4) of the Act). There must always be an ISP POP in the case of an IP-enabled service, even if that POP is collocated at the same premise with an IXC POP or a CLEC point of interface. When reciprocal compensation is paid by one carrier to another for delivering a call between two end points in a specific local calling area, compensation under Section 251(b)(5) of the Act, as clarified by the interim rules regarding ISP reciprocal compensation, is likewise paid when the end-user premise is an ISP POP. When the call to an end user is interexchange in nature (for calls within a LATA, this is designated as “toll” traffic whether or not a separate toll charge is actually assessed), it is delivered via jointly provided switched access. Jointly-provided switched access is the compensation vehicle when two LECs combine to provide access to an interexchange carrier, and is the proper compensation mechanism whenever the ISP POP is located in a calling area other than the one in which the LEC’s customer is located. The LECs do not bill each other—they bill the IXC. This is important because it is well agreed that, when two LECs collaborate to complete a toll call (*i.e.*, any call between two local calling areas, whether a toll charge is assessed to the end user or not), the reciprocal compensation rules do not apply and instead the call is billed under access principles. In the case of a call where the LEC is often also the toll carrier (a common scenario in the case of intraLATA toll calls), access charges are assessed based on the toll carriage (*i.e.*, which carrier actually provides the toll service to the end user).

Because “true IP voice” service (a voice application originating in Internet Protocol over a broadband line) is an information service, IP voice providers and carriers carrying their traffic operate under the ESP exemption. Thus, while an IP-voice provider can, of course, purchase feature group services to originate or terminate calls to and from their ISP POPs, they are entitled to purchase local service under the ESP exemption, and calls to and from IP-voice providers are treated in the same fashion as calls to other ISP POPs under the principles stated in this memorandum.

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<sup>5</sup> See *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*, 16 FCC Rcd 9151, 9163-81 ¶¶ 23-65, 9186-90 ¶¶ 77-84 (2001), *remanded sub nom. WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *reh’g, en banc, denied* (D.C. Cir. Sept. 24, 2002), *cert. denied*, 538 U.S. 1012 (May 5, 2003).

The appropriate rules can be summarized as follows:

- All IP-enabled traffic, including true VoIP traffic, is currently treated as an information service under the Commission's rules. The principles that guide the pricing of interconnection to a local exchange by a VoIP provider are derived from the ESP exemption.
- The ESP exemption is something of a misnomer. It is not an exemption from the payment of access. Rather it is a regulatory structure that treats ISP POPs as if they were end-user premises for the purpose of assessing access charges. Because of this status, ISPs are entitled to purchase exchange access from ILECs out of ILEC end-user tariffs under the same terms and conditions as other end users. Any special access services they purchase from an ILEC to connect their ISP POPs to an IXC or other carriers of traffic are subject to the "special access surcharge" rules.<sup>6</sup>
- In addition, when an ISP POP is served by a CLEC, the CLEC is entitled to treat that ISP POP as an end-user premise for purposes of determining whether the rules regarding reciprocal compensation (47 U.S.C. § 251(b)(5)) or access (jointly provided switched access) apply. The compensation levels for ISP traffic are treated under the interim rules respecting ISP reciprocal compensation.
- Under these circumstances, unlike the LATA-wide access available through ILEC tariffed switched access services, an end user generally has LATA-wide access only through the purchase of toll service. If an ISP POP is located in a local calling area that is within the same LATA as a terminating caller, but which requires a toll call between the ISP POP and the terminating caller, the ISP POP is still treated as an end user and the proper toll charges to the ISP are assessed. Access charges are then assessed to the toll carrier.
- This is consistent with the right of a CLEC to establish a single point of interconnection within a LATA. The existence of such a single point of interconnection does not affect the basic differentiation between local and toll (intra and interexchange) calls. An ISP POP is entitled to "LATA-wide termination," but the rates are different than the LATA-wide termination provided pursuant to ILEC access tariffs. Specifically, an ISP POP's connections within a LATA are governed by the same rules that govern other end users.<sup>7</sup>
- It is vital to remember that, whenever an ISP orders service from an ILEC access tariff, it must pay the tariffed rate for the service that it ordered. There is a prevalent misconception to the effect that the ESP exemption permits an ISP to order a tariffed feature group service and not pay for it. This is totally wrong. The ESP exemption permits an ISP to order local service under circumstances where a carrier does not have

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<sup>6</sup> 47 C.F.R. § 69.115.

<sup>7</sup> The right of a purchaser of interstate switched access to "LATA wide termination" is of course irrelevant to this analysis. No one doubts the ability of an ISP to purchase access service pursuant to the ILEC feature group services so long as it pays the proper tariffed rate for service.

the same right to order local service. The ESP exemption does not allow an ISP to pay a non-tariffed rate for a tariffed service that it has ordered, and the ISP choosing to order FGD service, for example, must pay the tariffed rate for service. In fact, as an ISP is treated as an end user, the ISP must pay the tariffed rate for services it orders from ILECs -- it has no right to bargain for any different rate.<sup>8</sup>

- When IP voice traffic is delivered to an ILEC, either directly from the ISP POP or through a CLEC, these principles apply. The ISP POP is treated like any other end-user premise. If the IP voice provider is purchasing access service directly from an ILEC, it may do so as an end user subject to the normal rules regarding local and toll service. If the IP-voice provider purchases service from a CLEC and the IP-voice traffic is exchanged with an ILEC, whether the access rules or the intercarrier compensation rules apply depends entirely on the location of the IP voice provider's ISP POP.

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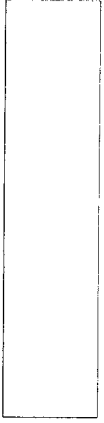
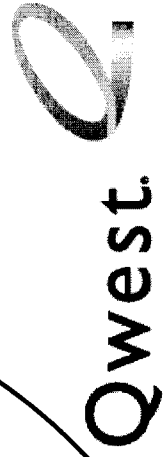
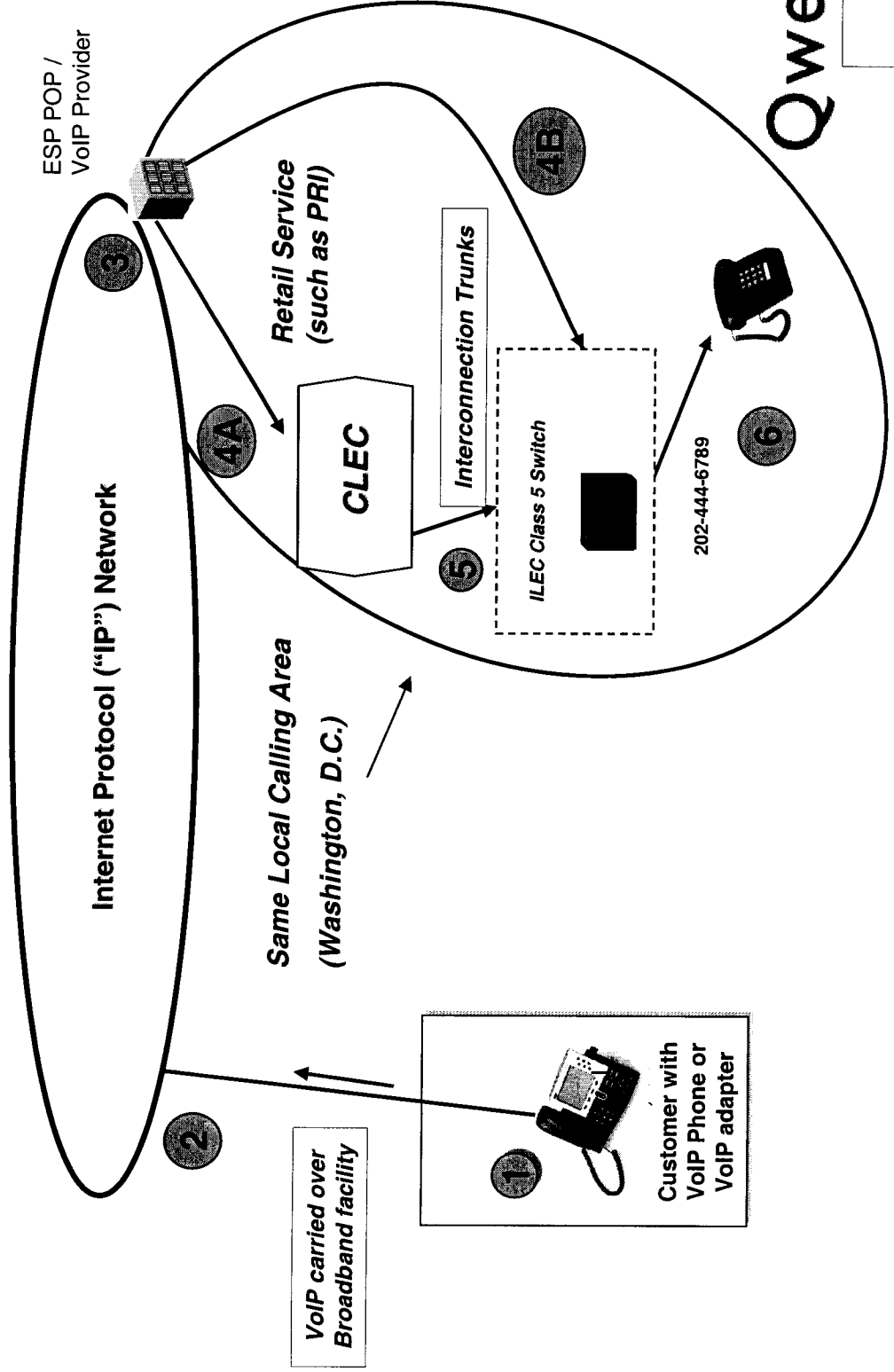
<sup>8</sup> Unlike carriers, end users generally do not have the statutory ability to contract with dominant carriers for tariffed services at other than the tariffed rates. *See American Broadcasting Companies, Inc. v. FCC*, 643 F.2d 818, 822-24 (D.C. Cir. 1980).

# True-VoIP-Originated Call to PSTN End User

## Attachment B-1

### ESP POP and Terminating End User in the Same LCA

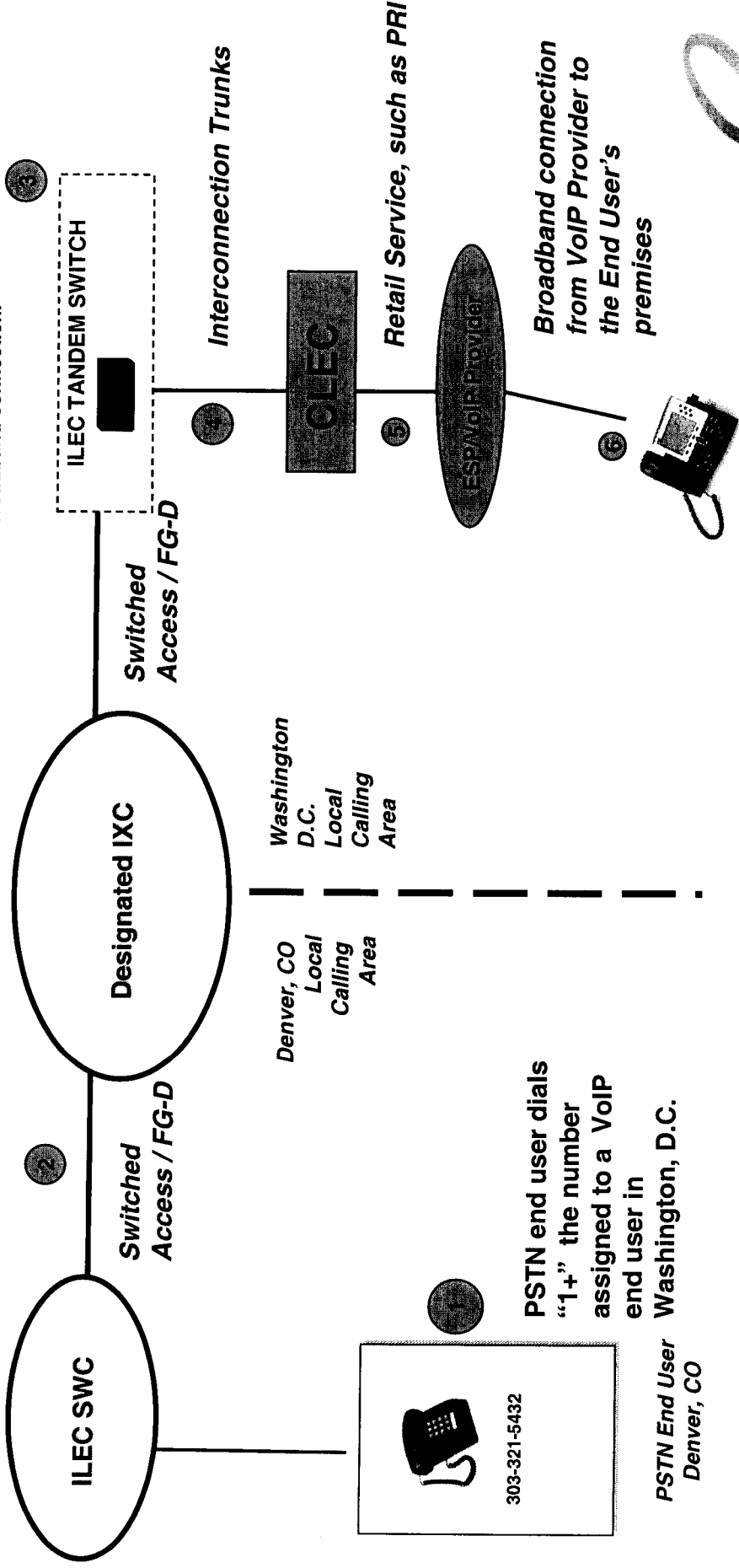
1. VoIP Phone or VoIP Adapter at Customer Premises
2. Call initiated in IP over a Broadband Connection (e.g. IP over: DSL, T1, or Cable modem)
3. Call is routed via the Internet Protocol Network to an Enhanced Service Provider/VoIP Provider's POP located in the same Local Calling Area as the terminating PSTN end user
4. ESP/VoIP Provider purchases Retail Service (PRIs) to connect to CLEC (4A) or alternatively purchases PRIs to connect to the ILEC (4B).
5. CLEC passes traffic to ILEC via Interconnection Trunks. Reciprocal Compensation applies
6. ILEC terminates call to end user.





# PSTN-originated Call to VoIP End User in Different Local Calling Area (LCA)

1. End user in Denver dials a "1+" call to an end user in Washington, D.C. Call is transported in TDM. The originating end user has purchased a telecom service from the originating ILEC
2. Call routes from ILEC SWC to designated IXC. Switched access / FG-D charges apply.
3. IXC carries call from Denver to Washington, D.C. and hands the call off to Washington, D.C.-based ILEC. Jointly provided switched access charges apply
4. The ILEC sends traffic via its tandem to the CLEC switch. Jointly provided switched access charges apply.
5. CLEC sends the call to the ESP/VoIP Provider via a Retail Service (such as PRI) offered via contract or tariff.
6. ESP/VoIP provider converts the call to IP and terminates the call to its VoIP end user customer via a broadband connection.



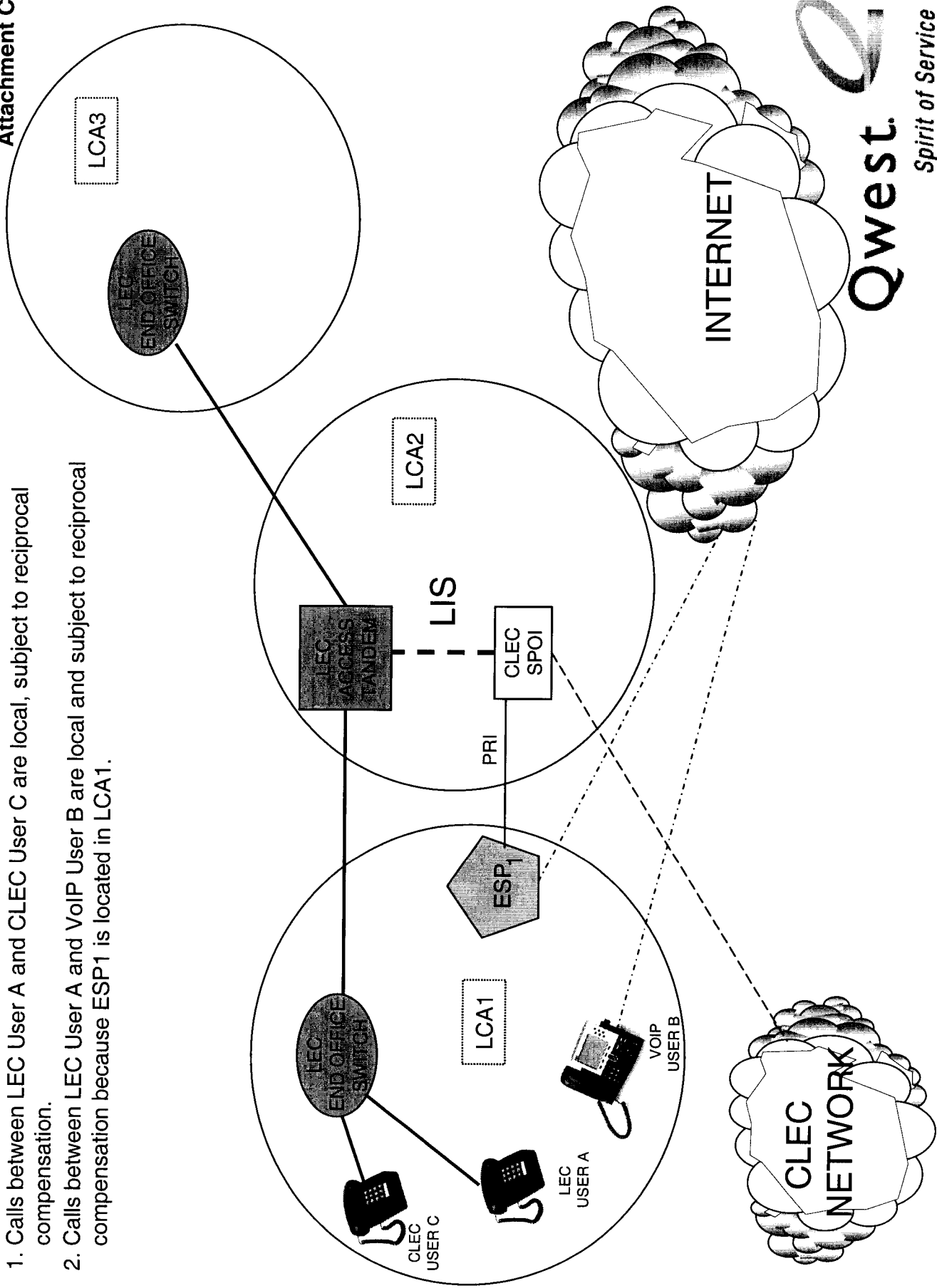
VoIP End User:  
202-444-6789  
Washington, D.C.



Spirit of Service

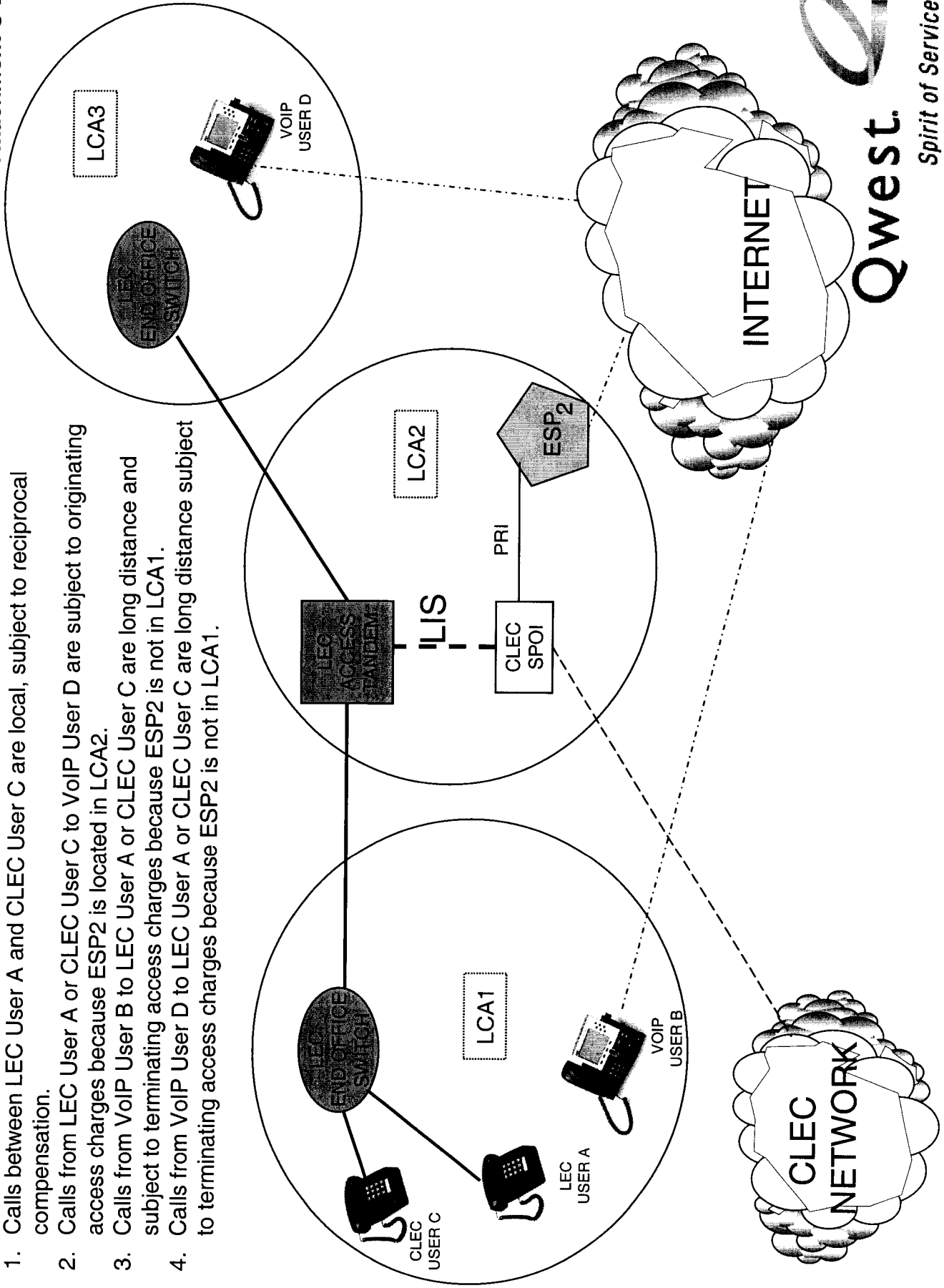
**Attachment C-1**

1. Calls between LEC User A and CLEC User C are local, subject to reciprocal compensation.
2. Calls between LEC User A and VoIP User B are local and subject to reciprocal compensation because ESP1 is located in LCA1.



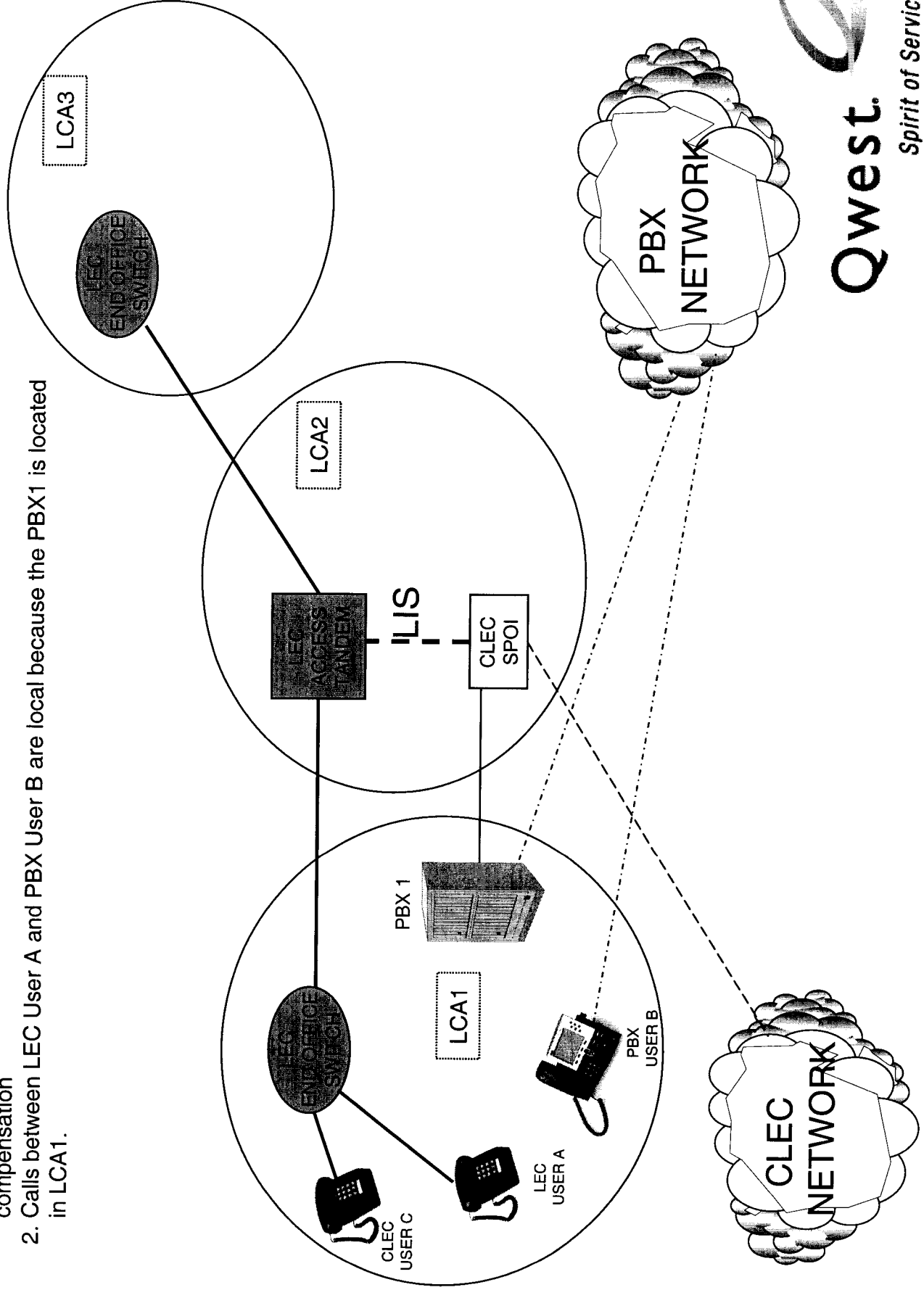
**Attachment C-2**

1. Calls between LEC User A and CLEC User C are local, subject to reciprocal compensation.
2. Calls from LEC User A or CLEC User C to VoIP User D are subject to originating access charges because ESP2 is located in LCA2.
3. Calls from VoIP User B to LEC User A or CLEC User C are long distance and subject to terminating access charges because ESP2 is not in LCA1.
4. Calls from VoIP User D to LEC User A or CLEC User C are long distance subject to terminating access charges because ESP2 is not in LCA1.



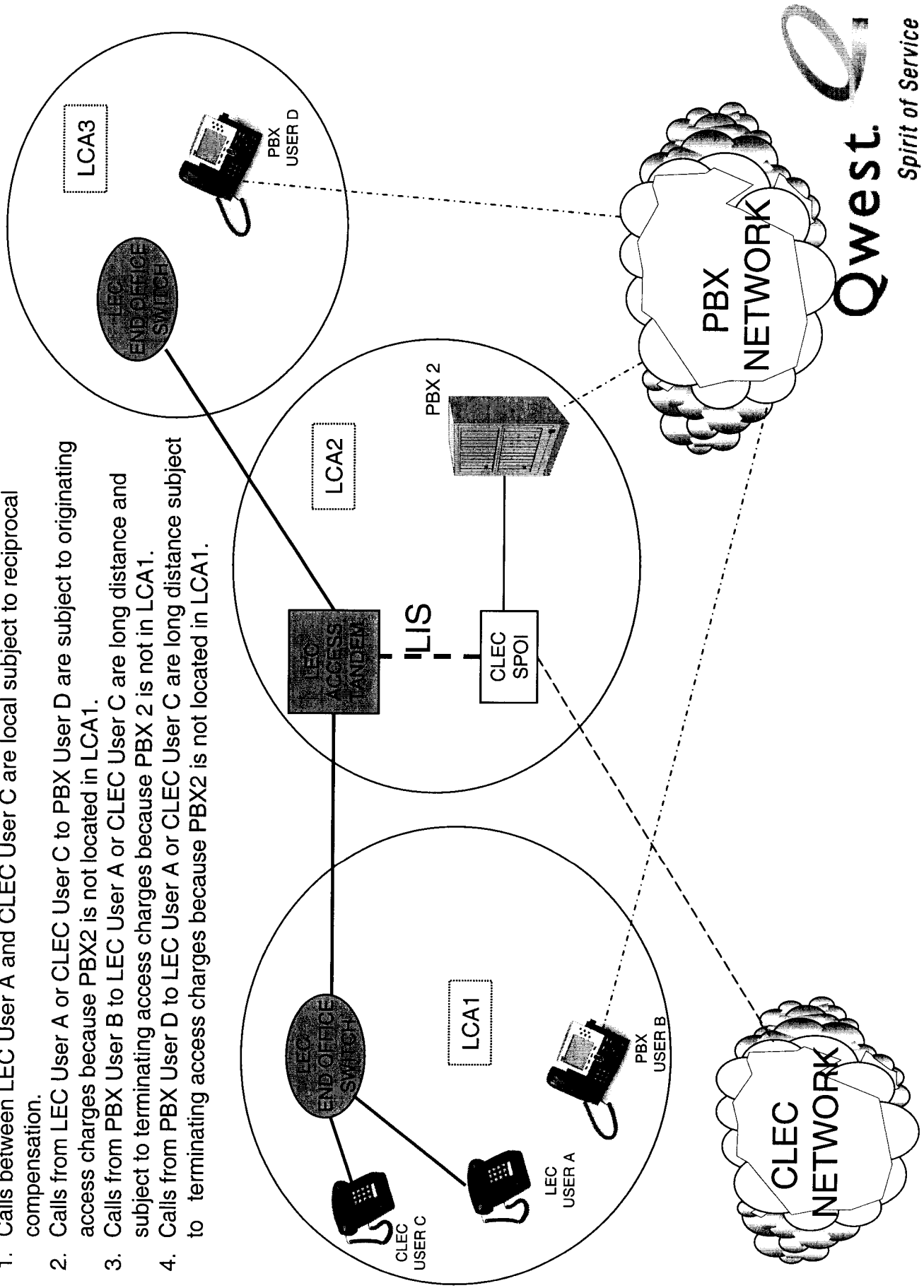
**Attachment C-3**

1. Calls between LEC User A and CLEC User C are local, subject to reciprocal compensation
2. Calls between LEC User A and PBX User B are local because the PBX1 is located in LCA1.



**Attachment C-4**

1. Calls between LEC User A and CLEC User C are local subject to reciprocal compensation.
2. Calls from LEC User A or CLEC User C to PBX User D are subject to originating access charges because PBX2 is not located in LCA1.
3. Calls from PBX User B to LEC User A or CLEC User C are long distance and subject to terminating access charges because PBX 2 is not in LCA1.
4. Calls from PBX User D to LEC User A or CLEC User C are long distance subject to terminating access charges because PBX2 is not located in LCA1.



**Single Point of Presence (SPOP) Amendment  
To the Interconnection Agreement  
Between  
Level 3 Communications, LLC  
And Qwest Corporation  
For the State of Oregon**

This Amendment ("Amendment") is made and entered into by and between Level 3 Communications, LLC ("CLEC") and Qwest Corporation ("Qwest").

WHEREAS, CLEC and Qwest entered into that certain Interconnection Agreement for service in the state of Oregon, which was approved by the Oregon Public Utility Commission ("Commission") on November 16, 2001, as referenced in Order No. 01-968 (the "Agreement"); and

WHEREAS, CLEC and Qwest desire to amend the Agreement by adding the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Amendment Terms.**

This Amendment is made in order to add terms, and conditions for Single Point of Presence ("SPOP") in the LATA as set forth in Attachment 1 and Exhibit A attached hereto and incorporated herein.

Neither Party shall lose any of its rights from the original contract by entering into this Amendment for SPOP.

**2. Effective Date.**

This Amendment shall be deemed effective upon approval by the Commission; however, the Parties may agree to implement the provisions of this Amendment upon execution. To accommodate this need, CLEC must generate, if necessary, an updated Customer Questionnaire. In addition to the Questionnaire, all system updates will need to be completed by Qwest. CLEC will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met.

**3. Further Amendments.**

Except as modified herein, the provisions of the Agreement shall remain in full force and effect. Neither the Agreement nor this Amendment may be further amended or altered except by written instrument executed by an authorized representative of both Parties. This Amendment shall constitute the entire agreement between the

Parties, and supersedes all previous agreements and amendments entered into between the Parties with respect to the subject matter 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**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name Printed/Typed

L. T. Christensen  
\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Title

Director – Business Policy  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Attachment 1

Single Point of Presence (SPOP) in the LATA is a Local Interconnection Service (LIS) Interconnection trunking option that allows CLEC to establish one physical point of presence in the LATA in Qwest's territory. Qwest and CLEC may then exchange traffic at the SPOP utilizing trunking as described below.

- 1.1 By utilizing SPOP in the LATA, CLEC can deliver both Exchange Access (IntraLATA Toll Non-IXC) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic and Exchange Service EAS/Local traffic at Qwest's Access Tandem Switches. CLEC can also utilize Qwest's behind the tandem infrastructure to terminate traffic to specific end offices. The SPOP is defined as the CLEC's physical point of presence.
- 1.2 SPOP in the LATA includes an Entrance Facility (EF), Expanded Interconnect Channel Termination (EICT), or Mid Span Meet POI and Direct Trunked Transport (DTT) options available at both a DS1 and DS3 capacity.
- 1.3 Where there is a Qwest local tandem serving an end office that CLEC intends to terminate traffic, the following conditions apply:
  - 1.3.1 CLEC may interconnect at either the Qwest local tandem or the Qwest access tandem for the delivery of local exchange traffic. When CLEC is interconnected at the access tandem and where there would be a DS1's worth of local traffic (512 CCS) between CLEC's switch and those Qwest end offices subtending a Qwest local tandem, CLEC will order a trunk group to the Qwest local tandem. As an alternative, CLEC shall terminate traffic on Qwest end office switches. When Qwest lacks available capacity at the access tandem, Qwest will arrange local tandem or end office Interconnection at the same cost to the CLEC as Interconnection via the Qwest access tandem.
    - 1.3.1.1 Qwest will allow interconnection for the exchange of local traffic at Qwest's access tandem without requiring interconnection at the local tandem, at least in those circumstances when traffic volumes do not justify direct connection to the local tandem and regardless of whether capacity at the access tandem is exhausted or forecasted to exhaust unless Qwest agrees to provide interconnection facilities to the local tandems or end offices at the same cost to the CLEC as the interconnection at the access tandem.
    - 1.3.1.2 When a CLEC has an NXX that subtends a local tandem, but the anticipated traffic to and from the NXX is less than 1 DS1s (512 CCS) worth of traffic, the CLEC may choose to use the access tandem for local traffic in the circumstances described above in 1.3.1. The CLEC will be required to submit an electronic letter on CLEC letterhead to Qwest stating at which local tandems they will not interconnect. This letter should include, the local tandem CLLI(s) and the CLEC specific NPA-NXXs for the local tandems. In addition, CLEC will provide a revised electronic letter to Qwest of any changes in the network configuration or addition/deletions of NPA-NXXs of the aforementioned local tandems.



- 1.3.2 Connections to a Qwest local tandem may be two-way or one-way trunks. These trunks will carry Exchange Service EAS/Local traffic only.
- 1.3.3 A separate trunk group to the Qwest access tandem is necessary for the exchange of non-local Exchange Access (IntraLATA Toll Non-IXC) traffic and jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic.
- 1.4 Where there is no Qwest local tandem serving a Qwest end office, CLEC may choose from one of the following options:
  - 1.4.1 A two-way CLEC LIS/Type 2 trunk group to the Qwest access tandem for CLEC traffic terminating to, originating from, or passing through the Qwest network that combines Exchange Service EAS/ Local, Exchange Access (IntraLATA Toll Non-IXC) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic.
  - 1.4.2 A two-way CLEC LIS/Type 2 trunk group to the Qwest access tandem for CLEC Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic terminating to and originating from the IXC Feature Group (FG) A/B/D network through the Qwest network and an additional two-way trunk group to the Qwest access tandem for the combined Exchange Service EAS/ Local and Exchange Access (IntraLATA Toll Non-IXC) traffic terminating to, originating from, and transiting the Qwest network.
    - 1.4.2.1 If the CLEC uses two way trunking, Qwest will send all Exchange Service EAS/Local, Exchange Access (IntraLATA Toll Non-IXC) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic delivered to the Qwest access tandem on the same combined trunk.
  - 1.4.3 A one-way terminating CLEC LIS/Type 2 trunk group to the Qwest access tandem for CLEC traffic destined to or through the Qwest network that combines Exchange Service EAS/Local, Exchange Access (Intra LATA Toll Non-IXC) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic.
  - 1.4.4 CLEC may utilize a one-way LIS/Type 2 trunk group to the Qwest access tandem for Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic terminating to the IXC FG A/B/D network through the Qwest network, and an additional one-way trunk group to the Qwest access tandem for the combined Exchange Service EAS/ Local, Exchange Access (IntraLATA Toll Non-IXC) traffic terminating to, originating from, and transiting the Qwest network.
    - 1.4.4.1 If CLEC orders either of the above one-way trunk options, Qwest will return the traffic via one combined Exchange Service EAS/ Local, and Exchange Access (IntraLATA Toll Non-IXC) trunk group.
  - 1.4.5 To the extent Qwest 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/Type 2 trunk group, Qwest, at CLEC's request, will declare a percent local use factor (PLU). Such PLU(s) will be verifiable with either call summary records utilizing Calling Party Number information for jurisdictionalization or call detail samples. CLEC should apportion per minute of use (MOU) charges appropriately.

- 1.5 CLEC must have SS7 functionality to use SPOP in the LATA.
- 1.6 Qwest assumes CLEC will be originating traffic destined for end users served by each Qwest access tandem in the LATA, therefore, CLEC must order LIS/Type 2 trunking to each Qwest access tandem in the LATA to accommodate routing of this traffic. Additionally, when there is more than one Qwest access tandem within the LATA boundary, the CLEC must order LIS/Type 2 trunking to each Qwest access tandem that serves its end-user customers' traffic to avoid call blocking. Alternatively, should the CLEC accept the conditions as outlined in the SPOP Waiver (Exhibit A), trunking will not be required to each Qwest access tandem in a multi-access tandem LATA. The CLEC needs trunking to each local tandem where they have a customer base if not utilizing the option of interconnecting at the access tandem for local as described in 1.3.1. The 512 CCS rule and other direct trunking requirements will apply for direct trunking to Qwest end offices.
- 1.7 If Direct Trunked Transport is greater than 50 miles in length, and existing facilities are not available in either Party's network, and the Parties cannot agree as to which Party will provide the facility, the Parties will construct facilities to a mid-point of the span.
- 1.8 CLEC will provide notification to all Co-Providers in the local calling areas of CLEC's change in routing when CLEC chooses to route its traffic in accordance with Qwest's SPOP interconnection trunking.
- 1.9 Ordering
  - 1.9.1 SPOP in a LATA will be ordered based upon the standard ordering process for the type of facility chosen. See the Qwest Interconnection and Resale Resource Guide for further ordering information.
  - 1.9.2 CLEC will issue ASRs to disconnect/new connect existing access tandem trunk groups to convert them to SPOP trunk groups.
  - 1.9.3 In addition, the ASR ordering SPOP trunks will include SPOP Remarks "Single POP in LATA " and the SPEC Field must carry "SPOLATA ."

**EXHIBIT A**  
**SINGLE POINT OF PRESENCE WAIVER**

Qwest will waive the requirement for CLEC to connect to each Qwest Access Tandem in the LATA with this waiver amendment.

CLEC certifies that it will not originate any traffic destined for subtending offices of Qwest's Access Tandems for which CLEC seeks a waiver. Or, if CLEC does originate such traffic, that CLEC will route such traffic to a Non-Qwest network. In addition, CLEC certifies that it has no end users in the serving area of the Qwest Access Tandem for which CLEC seeks a waiver.

CLEC will send an electronic letter to Qwest indicating the Qwest access tandems subject to this waiver at the time of ordering trunks required to implement SPOP in the LATA. In addition, CLEC will provide a revised electronic letter to Qwest advising of any changes in the network configuration of the aforementioned access tandems. Should CLEC desire to begin serving end users in the serving area of a Qwest access tandem currently under this waiver, CLEC must first establish trunking to the Qwest access tandem. Additionally, should CLEC desire to originate traffic destined to a Qwest end office subtending a Qwest access tandem currently under this waiver, CLEC must first establish trunking to the Qwest access tandem.

Under this waiver any CLEC originated traffic destined for an end office subtending a Qwest tandem under this waiver will be billed separately, by Qwest to CLEC, via a manual bill.

Misrouted usage under this waiver will be billed, a penalty of \$.21 per MOU.

Additionally, a manual handling fee of \$100 or 10% of total billing, whichever is greater, will be charged for each such manual bill rendered.

Late Payment charges will apply as outlined in the existing Interconnection Agreement currently in effect between the Parties.

Should this traffic occur, the Parties agree to meet within forty-five (45) days of Qwest's identification of such misrouted traffic to discuss methods for avoiding future misrouting on that trunk group or groups. CLEC will then have thirty (30) days from the date of meeting to correct such misrouting on that trunk group or groups. If further misrouting occurs or continues after that date on the same trunk group or groups as the original misrouting identified, the Parties agree to meet again within thirty (30) days of Qwest's identification of such misrouted traffic to discuss methods for avoiding future misrouting on that trunk group or groups. CLEC will then have thirty (30) days from the date of meeting to correct such misrouting. If further misrouting occurs or continues after that date on the same trunk group or groups, Qwest will consider this waiver null and void and all requirements in Attachment 1 or in the existing Interconnection Agreement currently in effect between the Parties will be reinstated. If the parties disagree about whether the traffic identified by Qwest was actually misrouted, the Parties agree to avail themselves of the dispute resolution provision of their interconnection agreement. Nothing in this provision affects or alters in any way CLEC's obligation to pay the rates, the manual handling fee, and the late payment charges specified above for misrouted traffic.

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

QWEST CORPORATION,  
Complainant,  
v.  
Level 3 Communications, LLC,  
Defendant.

DOCKET IC \_\_\_\_\_

**QWEST CORPORATION'S  
EXECUTIVE SUMMARY IN SUPPORT  
OF COMPLAINT FOR ENFORCEMENT  
OF INTERCONNECTION AGREEMENT**

Pursuant to OAR 860-014-0050(2)(g), Complainant Qwest Corporation ("Qwest") hereby submits its Executive Summary and Outline of Issues and Relief Requested in support of its complaint for enforcement of interconnection agreement filed herewith ("Complaint").

**EXECUTIVE SUMMARY**

This Complaint presents an important issue to this Commission. In fact, it is one that the Commission is familiar with and has previously addressed in Order No. 04-504 in docket UM 1058. Indeed, for the reasons set forth in Qwest's Complaint, Qwest will show that Level 3 is in violation of that order in the manner in which it is operating in Oregon today.

When a person places a long distance call to a computer (or Internet Service Provider (ISP) server (hereafter "ISP Server")), may the carrier connecting the call to the computer treat the call according to the *ISP Remand Order* for compensation and access charge purposes? The answer is clearly no. However, Level 3 claims that a call to an ISP Server, at least when the ISP Server is used to connect to the Internet, is, according to the *ISP Remand Order*, to be treated under the process described in that Order, no matter where the ISP Server is located. This Level 3 position, as well as its billing to Qwest for such calls, is what necessitates this complaint by Qwest.

Level 3's position is that the called ISP Server could be located in San Francisco, Seattle, or Honolulu, and all calls to the ISP Server (and through the ISP Server to the Internet) would be

treated for compensation purposes precisely in the same fashion as if both the caller and the ISP Server were located in Portland. This is clearly not the law, and the Federal Communications Commission (“FCC”) has made it clear for more than 20 years that a call to a computer (including a call to an ISP Server used to provide information or enhanced services) is to be rated based on the *location* of the ISP Server itself, and not the location of any further end point with which the ISP Server may communicate, or to which the computer may direct the call. Level 3’s argument is that the FCC somehow accidentally reversed this consistent precedent, and thus that the FCC has ruled that *all* calls to ISP Servers are to be treated according to the scheme in the *ISP Remand Order*, no matter where the ISP Server is located.

This issue is important to Level 3 because, if its position were to be accepted, Level 3 would be able to reap significant financial advantages at the expense of Qwest and the public. Not only would customers calling Level 3’s ISP avoid paying toll charges for such calls, but also Qwest would be required (after an amendment to the parties’ interconnection agreement) to compensate Level 3 for “terminating” the calls at the FCC’s prescribed local ISP traffic rate of \$0.0007 per minute.

Level 3’s position is directly contrary to FCC precedent, which requires that a computer (such as an ISP Server) be treated exactly the same as other end-user customers in determining whether a call to the computer is treated as a toll call or a local call. This is the basis for the so-called “ESP Exemption,” which requires exactly that.

The federal ESP Exemption prevents a LEC from charging switched access charges for a call made to a local computer on the basis that the computer ultimately directs the call to an end point (e.g., another computer) or to another station located in another state. This is part of the same rule that held that calls to or from local Private Branch Exchanges (“PBXs”) would not be required to pay switched access charges, even if the calls were connected to another line and ultimately transferred to a distant location. The ESP Exemption never said, explicitly or implicitly,

that calls to or from computers (or PBXs) were “local calls,” no matter where the computers (or PBXs) were located. Level 3, however, attempts to argue that the FCC, without analysis or even intent, has accidentally changed the entire landscape of access charges, and thus issued a blanket exemption for all calls to and from all computers, no matter where located (as long as they send the call to the Internet). Nothing supports Level 3’s position that the FCC has made such a major policy shift.

Level 3 also ignores Oregon statutes and this Commission’s rulings in the virtual NXX number (“VNXX”) proceeding (docket UM 1058) and in the AT&T arbitration proceeding (docket ARB 527) dealing with VNXX assignment, as well as a recent federal court decision on this issue. As this Commission knows, VNXX is a vehicle by which a carrier obtains a number for one local calling area, and assigns that number to serve a customer physically located in another geographic area. In the UM 1058 proceeding, however, this Commission determined in Order No. 04-504 that a CLEC engaging in VNXX traffic would be violating two of the standard conditions in their certificates of authority. This Commission also ruled in Order No. 04-272 in docket ARB 527 (the AT&T/Qwest arbitration) that the definition of local exchange service would remain traffic that originates and terminates within the same Commission-determined local calling area (thus rejecting AT&T’s request that the Commission exempt VNXX traffic from these requirements). Finally, a federal court in Oregon recently concluded that the Commission’s previous decision in Order No. 04-504 ruled that VNXX traffic is, by definition, *not* “local traffic,” by expressly agreeing with Qwest that no reciprocal compensation was due for VNXX traffic because VNXX traffic is not local traffic. Accordingly, a CLEC’s VNXX offerings that do not provide for toll payments, or an appropriate substitute, are improper under Oregon law.

Level 3 also simply ignores the plain language of the parties’ interconnection agreement (“ICA”) regarding the types of traffic that the parties have agreed to exchange. The traffic types

that the parties have agreed to exchange over the local interconnection trunks and through the ICA Single Point of Presence (“SPOP”) amendment is very specifically delineated in the ICA. As is discussed below, the traffic that Qwest complains about does not match the traffic types that the parties agreed to exchange under the ICA. Due to Level 3’s purposeful misuse and improper assignment of telephone numbers, the traffic that Level 3 expects Qwest to exchange does not match any of the specifically defined traffic types, and therefore, is not traffic that the parties have agreed to exchange under the ICA. The solution to this dispute is quite simple; if Level 3 assigns telephone numbers based on the actual physical location of the ISP Server, then the traffic will be properly routed consistent with the definitions in the ICA.

In sum, this complaint represents an important issue from a policy and financial perspective. Ultimately, this Commission should rule in favor of Qwest and thus determine that Level 3 is not entitled to unilaterally change the ICA. The Commission should further rule that Level 3 is not entitled to fundamentally shift the toll compensation structure in this state as a matter of federal and state law, as well as a matter of sound policy.

### **ISSUES AND RELIEF REQUESTED FOR EACH ISSUE**

#### **Issue**

Whether Level 3’s assignment of local telephone numbers and NPA/NXXs in local calling areas other than the local calling area where ISP Server is located, its misuse of such telephone numbering resources, and its subsequent attempts to bill Qwest the *ISP Remand Order* rate for such VNXX traffic, are violations of federal law?

#### **Relief Requested**

Qwest believes that the answer to this question is yes. Thus, Qwest respectfully submits that the Commission should order Level 3 to cease assigning NPA-NXXs in local calling areas other than the local calling area where ISP Server is located, and cease charging Qwest for such

traffic, and further, should require that Level 3 properly assign telephone numbers based on the actual physical location of its end-user or terminating customer.

**Issue**

Whether Level 3's assignment of local telephone numbers and NPA/NXXs in local calling areas other than the local calling area where ISP Server is located, its misuse of such telephone numbering resources, and its subsequent attempts to bill Qwest the *ISP Remand Order* rate for such VNXX traffic, are violations of Oregon law?

**Relief Requested**

Qwest believes that the answer to this question is yes. Thus, Qwest respectfully submits that the Commission should order Level 3 to cease assigning NPA-NXXs in local calling areas other than the local calling area where ISP Server is located, and cease charging Qwest for such traffic, and further, should require that Level 3 properly assign telephone numbers based on the actual physical location of its end-user or terminating customer.

**Issue**

Whether Level 3's actions described above and in the Complaint amount to a willful and intentional violation of its obligations under Section 2.2 of its interconnection agreement with Qwest?

**Relief Requested**

Qwest believes that the answer to this question is yes. Thus, Qwest respectfully submits that the Commission should issue an order finding Level 3 in breach of its contractual obligations, in violation of the findings in the Commission Order in docket UM1058, and should invalidate Level 3's bills for the traffic at issue in this Complaint.



**Issue**

Whether, by Level 3's actions described above and in the Complaint, Level 3 is knowingly and intentionally violating its obligations under section 13.4 of its interconnection agreement with Qwest?

**Relief Requested**

Qwest believes that the answer to this question is yes. Thus, Qwest respectfully submits that the Commission should issue an order finding Level 3 in breach of its contractual obligations under section 13.4 of its interconnection agreement with Qwest, and thus should invalidate Level 3's bills.

**Issue**

Whether, by Level 3's actions described above and in the Complaint, Level 3 is willfully and intentionally violating its interconnection agreement and Commission directives related to VNXX traffic by attempting to obligate Qwest to send non-local ISP traffic over LIS Trunks?

**Relief Requested**

Qwest believes that the answer to this question is yes. Thus, Qwest respectfully submits that the Commission should order Qwest to cease routing VNXX traffic over LIS trunks to Level 3, and should invalidate Level 3's bills to Qwest.

**RELIEF REQUESTED**

WHEREFORE, Qwest respectfully requests the Commission provide the following relief:

1. Issue an order (a) prohibiting Level 3 from assigning NPA-NXXs in local calling areas other than the local calling area where the ISP Server is located, (b) requiring that Level 3 cease its misuse of such telephone numbering resources, and (c) requiring that Level 3 properly assign telephone numbers based on the location of the ISP Server;

2. Issue an order that the parties' ICA does not require any compensation for Level 3's VNXX traffic;
3. Direct Level 3 to follow the change of law procedures contained in its interconnection agreement with Qwest to implement the *Core Forbearance Order*;
4. Invalidate all Level 3 bills to Qwest seeking or charging reciprocal compensation or the *ISP Remand Order* rate of \$.0007 per minute for any of the VNXX traffic described above;
5. Issue an order prohibiting Qwest from routing VNXX traffic to Level 3 utilizing LIS facilities; and
6. Any and all other equitable relief that the Commission deems appropriate.

DATED: June 6, 2005

Respectfully submitted,



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Alex M. Duarte, OSB No. 02045  
Qwest  
421 SW Oak Street, Suite 810  
Portland, Oregon 97204  
(503) 242-5623  
(503) 242-8589 (facsimile)  
[Alex.Duarte@qwest.com](mailto:Alex.Duarte@qwest.com)

Jeffrey T. Nodland  
Qwest  
1801 California Street, 10th Floor  
Denver, Colorado 80202  
(303) 383-6657  
(303) 295-6973 (facsimile)  
[Jeff.Nodland@qwest.com](mailto:Jeff.Nodland@qwest.com) ]

Attorneys for Qwest Corporation

**CERTIFICATE OF SERVICE**

IC \_\_\_\_\_

I hereby certify that on the 6<sup>th</sup> day of June 2005, I served the foregoing **QWEST CORPORATION'S COMPLAINT FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT** in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

Erik Cecil  
Rick Thayer  
Level 3 Communications, LLC  
1025 Eldorado Blvd.  
Broomfield, CO 80021

Roger DuCloo  
Level 3 Communications, LLC  
1025 Eldorado Blvd.  
Broomfield, CO 80021

DATED this 6<sup>th</sup> day of June, 2005.

**QWEST CORPORATION**



By: \_\_\_\_\_  
ALEX M. DUARTE, OSB No. 02045  
421 SW Oak Street, Suite 810  
Portland, OR 97204  
Telephone: 503-242-5623  
Facsimile: 503-242-8589  
e-mail: alex.duarte@qwest.com  
Attorney for Qwest Corporation