

October 10, 2006

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Filing Center  
Oregon Public Utility Commission  
550 Capitol Street NE #215  
PO Box 2148  
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Re: ARB 665 Level 3 Communication's Opening Brief

Dear Sir or Madam:

Enclosed for filing in the above-referenced docket is an original and five copies of Level 3 Communication's Opening Brief. Please contact me with any questions.

Very truly yours,

  
Wendy L. Martin

Enclosures

cc: ARB 665 Service List



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1 **I. INTRODUCTION AND SUMMARY**

2 This case involves two primary and related issues – intercarrier compensation, and  
3 trunking arrangements. More broadly, it deals with the inevitable collision between a century-  
4 old regulated telephone industry and innovative new providers, such as Level 3, engendered by  
5 the Telecommunications Act of 1996.<sup>1</sup>

6 The first main issue is intercarrier compensation for ISP-bound calls. The entire  
7 telecommunications industry has been struggling with this issue for nearly a decade, but a fair,  
8 industry-wide solution remains elusive. To complicate matters, the Federal Communications  
9 Commission (“FCC”) has let this issue lie for more than five years. Its last major  
10 pronouncement on the topic was the April 2001 *ISP Remand Order*<sup>2</sup> which – as subsequent  
11 litigation has shown – left many crucial issues unresolved.

12 With the FCC silent, state commissions are on the front lines – in litigation such as this  
13 proceeding – attempting to carve out a reasonable middle ground, – – one that permits efficient  
14 dial-up access to the Internet for the millions of consumers who depend on it, without unfairly  
15 burdening either ILECs or CLECs with the costs associated with that functionality.

16 What do we know that can help sort out this muddle?

- 17 ◦ We know that ISP-bound calls are not traditional, normal telephone traffic. ISPs  
18 “use” interstate access but are affirmatively exempted from paying carrier access  
19 charges. Calls to ISPs are dialed as local, and perceived as local by end users, but are  
20 neither truly local, nor quite long distance.<sup>3</sup>
- 21 ◦ We know that ISP-bound calls start with individual end users, but these callers can  
22 never know definitively where they end. This is because they *have* no normal end  
23 point.<sup>4</sup>

24 <sup>1</sup> The Smithsonian Institution has recognized the Level 3 Network as an important component of the ongoing  
25 revolution in communications and information technology. In April 2000, the Smithsonian cited Level 3 as a  
26 Computerworld Laureate for its historic achievement in creating a new kind of network infrastructure. The  
Smithsonian noted that Level 3 is changing communications at a fundamental level – and “helping to stimulate the  
biggest change in communications technology in 100 years.”

<sup>2</sup> *Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151  
(2001) (“*ISP Remand Order*”) (subsequent history omitted).

<sup>3</sup> *Bell Atlantic v. FCC*, 206 F.3d 1, 5 (D.C. Cir. 2000); *see also ISP Remand Order, passim*.

<sup>4</sup> *ISP Remand Order, supra*, at ¶¶ 58-59 (“In real time, the web host may request that different pieces of that  
webpage, which can be stored on different servers across the Internet, be sent, also in real time, to the user. ... The

- 1       ◦ We know that dial-up remains the only way that millions of consumers nationwide,  
2       and hundreds of thousands in Oregon, get Internet access – which is becoming more,  
3       not less, important in all of our lives.<sup>5</sup>
- 4       ◦ Finally, we know that dial-up Internet access should be efficient. And the record is  
5       clear that the only efficient way to offer dial-up Internet access – the way Level 3  
6       does it, and the way Qwest does it – is by means of large, centralized facilities to  
7       which dial-up traffic from a wide area is efficiently delivered.

8       Qwest proposes that ISP-bound traffic should incur access charges. Or, Qwest suggests,  
9       Level 3 can avoid access charges by abandoning its own network and becoming a retail customer  
10      of Qwest.<sup>6</sup> However, this “solution” would drastically penalize dial-up Internet access providers  
11      – and limit, if not completely erase, customer choice of ISPs in certain parts of Oregon.

12      It makes no sense to sometimes apply access charges to ISP-bound traffic and sometimes  
13      not, based on idiosyncratic details of an ISP’s technical configuration, or on how a particular  
14      physical interconnection arrangement is characterized for billing and ordering purposes. Yet that  
15      is, in effect, what Qwest proposes.

16      A recent Ninth Circuit case shows us one way to square this circle. In *Verizon*  
17      *California, Inc. v. Peevey*,<sup>7</sup> the Ninth Circuit Court of Appeals approved California’s  
18      compromise approach (which is quite similar to the recent decision in Arizona, and actually  
19      more favorable to the ILEC than decisions in Washington). Key elements of the California plan  
20      approved by the court include: (a) ISP-bound traffic is rated as local to the end user – which  
21      protects end users from toll charges; (b) the originating ILEC must pay (low) FCC-mandated

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22      ‘communication’ taking place is between the dial-up customer and the global computer network of web content, e-  
23      mail authors, game room participants, databases, or bulletin board contributors.”)

24      <sup>5</sup> In 2005, Oregon had 1.42 million households. U.S. Dept. of Commerce, Census Bureau, *2005 American*  
25      *Community Survey, Selected Social Characteristics: Oregon*, available on-line at:  
26      [www.census.gov/acc/www/Area%20Sheets/Area%20Sheet%20OR.doc](http://www.census.gov/acc/www/Area%20Sheets/Area%20Sheet%20OR.doc). About 94.7% of these households have  
27      telephone service. FCC, *2005 Statistics of Common Carriers*, Table 5.9. As of year-end 2005, however, there were  
28      only about 587,000 residential broadband users. FCC, *High-Speed Services for Internet Access, Status as of*  
29      *December 31, 2005* at Table 3. This means that the vast majority of Oregon households – more than 750,000 of  
30      them – either have no Internet access at all, or use dial-up.

31      <sup>6</sup> Transcript of August 30, 2006 Hearing (Tr II), pp. 54-57 (Qwest admits that under its proposal Level 3 can no  
32      longer use its Oregon network as an interconnecting carrier; the only way Level 3 can provide service is as a retail  
33      customer of Qwest). This is true regardless of major technological changes in the provision of ISP-dialup service.  
34      *Id.* at p. 59. It is also true regardless of the fact that it would be economically inefficient. *Id. Id.* at pp. 61-62.

35      <sup>7</sup> *Verizon California, Inc. v. Peevey*, 2006 U.S. App. LEXIS 22742 (9<sup>th</sup> Cir. 2006).

1 intercarrier compensation rates for ISP-bound calls – which ensures that carriers serving ISPs are  
2 fairly compensated for their efforts; and (c) the CLEC is responsible for transporting the traffic  
3 to the Internet from a location at or very near the originating switch – which ensures that the  
4 originating ILEC incurs the lowest possible level of costs in handling this traffic. This balance  
5 struck by the Ninth Circuit ensures continued access to, and choice of, ISPs – while at the same  
6 time adequately compensating the carriers for their role in handling the traffic.

7 Level 3 has proposed exactly this solution here in Oregon. The record shows that for  
8 nearly 98% of Qwest-to-Level-3 ISP-bound traffic, Level 3 picks up cost responsibility for  
9 transporting the traffic out of the Local Calling Area (“LCA”) – by paying for Direct End Office  
10 Trunks (“DEOTs”) – literally at the originating switch. Qwest, “on its own nickel,” so to speak,  
11 doesn’t have to do anything except originating switching of a locally-dialed call. The transport  
12 costs are covered by Level 3. With that split of costs, it is fair and reasonable to apply the FCC’s  
13 unitary compensation rate of \$0.0007 per minute to this traffic – a rate this is heavily discounted  
14 from the “standard” rate of reciprocal compensation for traditional local voice calls.

15 Level 3’s network in Oregon is *not* a traditional “VNXX” arrangement.<sup>8</sup> States have  
16 differed in their treatment of VNXX. This issue has normally arisen in the context of a CLEC  
17 insisting on its right to a single POI per LATA, with the ILEC obliged to bear the costs of  
18 delivering traffic from all over the LATA to that single POI. That is, the controversy over  
19 VNXX has arisen when CLECs insist that the ILEC absorb 100% of the cost of getting traffic  
20 from a dispersed set of end offices to a single, centralized POI. Here Level 3 – the CLEC – is  
21 absorbing those transport costs.

22 Approving this solution, based on the specifics of Level 3’s extensive DEOT architecture  
23 in Oregon, will also largely solve the two other main issues in this case: intercarrier  
24 compensation for VoIP traffic, and combining different “types” of traffic on the same trunk  
25

26 <sup>8</sup> Level 3/800, Wilson/18 (OPUC has never addressed the question of whether Level 3’s establishment of POIs (as well as payment of transport to nearly every Qwest end office in the state) constitutes proscribed FX or VNXX services in Oregon).

1 groups. As to intercarrier compensation for VoIP traffic, Level 3 proposes that the same solution  
2 outlined above for ISP-bound traffic apply to VoIP. Although these two types of traffic are not  
3 identical from an engineering or regulatory point of view, they are close enough that treating  
4 them in a similar manner makes sense. As to combining different “types” of traffic on trunk  
5 groups, the record is quite clear that, Qwest’s objections notwithstanding, there is no legitimate  
6 engineering or business reason to forbid combining access and non-access traffic on the same  
7 “Local Interconnection Service” (“LIS”) trunks. All other major ILECs have agreed to this  
8 approach with Level 3, and there are plain and workable solutions to the various make-weight  
9 objections Qwest has raised.<sup>9</sup>

10 The remainder of this brief is structured as follows.

- 11     ◦ Section II, the “Statement of Facts,” summarizes the key record evidence bearing on  
12 the disputed issues in this case, including the extensive array of “secondary POIs”  
13 that Level 3 has established by paying for DEOTs to nearly every Qwest local calling  
14 area in Oregon.
- 15     ◦ Section III addresses the fair resolution of the issue of compensation for ISP-bound  
16 calls, urging that Oregon follow the very recent guidance from the Ninth Circuit.  
17 Where the CLEC pays for out-of-LCA transport – as both Qwest and Level 3 do in  
18 their operations serving mass-market ISPs – then requiring the ILEC to pay the  
19 FCC’s very modest \$0.0007 per minute rate strikes a fair balance of cost and  
20 operational responsibilities for this unique category of traffic.
- 21     ◦ Section IV explains why it is fair to extend this same approach to the latest class of  
22 jurisdictionally ambiguous traffic – Voice over Internet Protocol. This would  
23 simultaneously permit the development of technologically innovative services while  
24 protecting the ILEC from any substantial financial exposure.
- 25     ◦ Section V explains why it makes no possible sense to require separate trunking for  
26 different “types” of traffic. With DEOT-routed traffic there is no possible basis for  
Qwest’s main concern – being able to send accurate billing information to 3<sup>rd</sup> party  
LECs. This is because DEOTs go to Qwest switches, not 3<sup>rd</sup> party switches. If need  
be, periodic traffic studies on the DEOTs can determine what portion of the traffic is  
subject to access and what portion is subject to the \$0.0007 rate.
- Finally, Section VI deals with the a number of specific aspects of Qwest’s proposed  
contract language that would interfere with the efficiency of Level 3’s  
interconnection. Qwest’s proposals have no basis either in the law or in concerns of  
technical feasibility and must be rejected.

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<sup>9</sup> Level 3/700, Greene/14-16.

1 **II. STATEMENT OF FACTS**

2 Level 3 is one of the largest providers of wholesale dial-up services to ISPs in North  
3 America, and is the primary provider of broadband Internet connectivity for millions of  
4 broadband subscribers through its cable and DSL partners.<sup>10</sup> In addition, Level 3 provides long-  
5 haul carriage and local connectivity for a large number of providers of Voice-over-Internet-  
6 Protocol (“VoIP”) services.<sup>11</sup>

7 Broadband connectivity via DSL or cable modem service is growing in popularity.  
8 However, both currently and for the foreseeable future, a substantial fraction of Oregon  
9 households—and millions of Oregon citizens—will obtain their Internet access via dial-up  
10 connections. Specifically, while there are approximately 1.34 million households in Oregon with  
11 telephone service, there are only about 587,000 residential broadband subscribers. This means  
12 that more than 750,000 Oregon households either have no Internet access at all, or rely on dial-  
13 up.<sup>12</sup> For this reason, the pricing and interconnection policies relevant to dial-up ISP traffic are  
14 critical to the ability of Oregonians to obtain the social, educational and economic benefits of  
15 Internet access.

16 To provide these services, Level 3 has built an international, state-of-the-art, all-IP  
17 network. Level 3’s fiber-optic backbone connects 77 markets in the U.S. and 23 markets in  
18 Europe, with over 33,000-mile broadband fiber-optic network spanning the United States and  
19 Europe (including the trans-Atlantic Yellow undersea cable system). Riding on this fiber  
20 backbone, Level 3 maintains a large IP network composed of high-speed links and core routers.

21  
22 

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<sup>10</sup> Level 3/700, Greene/4.

23 <sup>11</sup> Level 3/300, Ducloo/33-34

24 <sup>12</sup> As noted above, in 2005, Oregon had 1.42 million households. U.S. Dept. of Commerce, Census Bureau, 2005  
25 *American Community Survey, Selected Social Characteristics: Oregon*, available on-line at:  
26 [www.census.gov/acs/www/Area%20Sheets/Area%20Sheet%20OR.doc](http://www.census.gov/acs/www/Area%20Sheets/Area%20Sheet%20OR.doc). Approximately 94.7% of those  
households, or 1.34 million, have some telephone service. FCC, *Statistics of Common Carriers* (2005 edition) at  
Table 5.9. As of year-end 2005, however, there were only about 587,000 residential broadband users. FCC, *High-  
Speed Services for Internet Access, Status as of December 31, 2005* at Table 3. This means that the vast majority of  
Oregon households with telephone service – more than 750,000 of them – either have no Internet access at all, or  
use dial-up.



1 The Level 3 IP backbone connects to carriers worldwide and thus to the public Internet via  
2 hundreds of peering arrangement at Level 3 Gateways, located in 29 metropolitan areas.<sup>13</sup>

3 Level 3's network was designed as a high-speed packet network for carrying IP traffic.  
4 Level 3's network was not designed to carry voice traffic, and indeed is able to do so only when  
5 the voice traffic is converted to IP format. Thus, Level 3's architecture differs from the PSTN  
6 which was designed for voice traffic, and which can carry IP traffic only when the traffic is  
7 converted to TDM.

8 Level 3's ISP customers – who provide the link between the Internet and end users  
9 connected to the traditional PSTN – must be able to receive dial-up modem traffic from  
10 customers who access the Internet without a broadband connection. Indeed, 90% of the traffic  
11 Level 3 exchanges with Qwest comes from end users reaching the Internet via dial-up  
12 connections.<sup>14</sup> In addition, Level 3's VoIP customers must be able to send traffic to and receive  
13 traffic from the PSTN. Thus, in addition to transporting data traffic in IP format, Level 3 must  
14 provide translation services between the PSTN and its IP network.<sup>15</sup>

15 **A. Level 3's Oregon Architecture**

16 Level 3 exchanges traffic with Qwest at numerous points of interconnection ("POIs")  
17 located throughout the state.

18 A POI is the location where two carriers connect their networks for the purpose of  
19 exchanging traffic. Each party pays for the network resources on its side of the POI. This allows  
20 each party to provide service according to the technical requirements of its respective networks.  
21 A POI can be comprised of various types of leased or owned facilities, including a fiber meet  
22 point, a collocation arrangement or at other mutually agreed-to points. The POI also defines the  
23 point at which each company takes control of its traffic from a financial point of view.<sup>16</sup>

24  
25 <sup>13</sup> Level 3/300, Ducloo/37.

26 <sup>14</sup> Transcript of August 29, 2006 Hearing (Tr I) p. 79.

<sup>15</sup> Level 3/300, Ducloo/38-39.

<sup>16</sup> Level 3/800, Wilson/4.

1 Level 3 has established a large number of POIs in Oregon which can be broken down into  
2 two categories. Primary POIs have been constructed in 12 cities in Oregon.<sup>17</sup> Many of these are  
3 located in Qwest tandem offices. Those that are not are served by special access trunks that  
4 Level 3 has leased from Qwest or from other providers. Level 3 pays for all transport to and from  
5 these POIs on the Level 3 side.<sup>18</sup> For example, Portland is one of the locations in Oregon where  
6 Level 3 maintains a Primary POI. In Portland Level 3 collocates multiplexing equipment at the  
7 Qwest tandem office, and transports its traffic from that point.

8 In addition, in order to avoid putting pressure on Qwest's tandems, and to improve the  
9 overall efficiency of traffic routing, in those end offices where the traffic from Qwest customers  
10 to Level 3 reaches a certain level,<sup>19</sup> Level 3 has established what it refers to as "Secondary  
11 POIs." At these Secondary POIs, Level 3 pays Qwest for Direct End Office Trunks ("DEOTs")  
12 from the Qwest End Office back to a Primary POI. These DEOTs are used to transport Qwest-  
13 originated traffic from the Local Calling Area ("LCA") served by the Qwest End office back to  
14 the Level 3 Primary POI, which will often be located in a different LCA. Thus, this traffic is  
15 transported out of the local calling area at Level 3's expense. It never even hits Qwest's tandem.  
16 Qwest calls this trunking Direct Trunked Transport ("DTT") and that is how Level 3 purchases it  
17 from Qwest.<sup>20</sup>

18 Level 3 Exhibit 701 provides a graphic illustration of Level 3's Primary and Secondary  
19 POI architecture in Qwest territory in Oregon.

## 20 **B. Level 3's ISP Services**

21 Today, virtually all ISPs outsource a significant portion of their retail functionalities to  
22 providers like Level 3. Indeed, Level 3 serves the top 10 largest ISPs.<sup>21</sup>

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25 <sup>17</sup> Level 3/719, Greene/2.

<sup>18</sup> Level 3/800, Wilson/4.

<sup>19</sup> See footnote 110, *infra*.

26 <sup>20</sup> Level 3/800, Wilson/5.

<sup>21</sup> Tr. I at pp. 61-62.

1 Level 3 markets its dial-up Internet services to ISP customers under the product name  
2 “(3)Connect Managed Modem Product” (“Managed Modem”). ISPs that purchase this product  
3 receive a bundle of services including: (a) Direct Inward Dial (“DID”) Service in each LCA  
4 where its customers reside; (b) Transport from the LCA to the Level 3 Network; (c) Conversion  
5 of the Time Division Multiplex Protocol (“TDM”) based modem connection to IP; (c)  
6 Authentication Services; (d) Operations Support; and (e) Access to the Internet.<sup>22</sup> Level 3  
7 provides these ISPs with phone numbers local to those LCAs where the ISPs’ end-user  
8 subscribers reside, to allow them to make local calls to the ISPs.<sup>23</sup> Neither Level 3 nor its ISP  
9 customers impose any sort of toll or long distance charges on the end-users.<sup>24</sup> Indeed, it is  
10 undisputed in this case that per-minute metering of Internet access is completely unacceptable in  
11 the consumer marketplace.<sup>25</sup>

12 The routing of an ISP-bound call initiated by a Qwest local service customer is illustrated  
13 in Level 3 Exhibits 703 and 719. If the customer resides in an LCA in which Level 3 maintains a  
14 Primary POI, the call is directed by the Qwest switch serving the customer to Level 3’s  
15 collocated equipment and transported on Level 3’s network from the LCA. If the customer  
16 resides in an LCA where Level 3 maintains a Secondary POI, the call is directed by the Qwest  
17 switch to a DEOT paid for by Level 3, and transported by Level 3 from the LCA to a Level 3  
18 Primary POI. The call is then routed over Level 3’s network to the Level 3 Soft Switch platform  
19 and Media Gateways in Seattle.<sup>26</sup> Here, the soft switch communicates with the Qwest network  
20 via Session Initiation Protocol (“SIP”), and signals to the Media Gateway to accept a call on a  
21 particular path.<sup>27</sup> The media gateway performs the protocol conversion from TDM to IP.<sup>28</sup>

22 <sup>22</sup> Level 3/700, Greene/7-8.

23 <sup>23</sup> None of the ISPs served by Level 3 in Oregon maintain modem banks within the local calling areas where their  
customers are located. Tr. I at p. 80. Most large ISPs have centralized their servers, either at their headquarters, or  
near one of the coasts. Tr. I at p. 60.

24 <sup>24</sup> Level 3/700, Greene/8.

25 <sup>25</sup> Tr. II at p. 61; Level3/700, Greene/8.

26 <sup>26</sup> Level 3/700, Greene/10. This Media Gateway in Seattle has vast capacity and serves not only Oregon and  
Washington, but Idaho and parts of Montana as well. Tr. I at p. 82.

27 <sup>27</sup> Tr. I at pp. 30-31.

28 <sup>28</sup> Tr. I at p. 35.

1 This is a very different network and routing architecture than applies to calls involved in  
2 what has become known as “VNXX” routing. VNXX stands for “Virtual NXX,” and the term  
3 came into use to describe situation where, by assigning numbers associated with one LCA to  
4 customers located in another LCA, a CLEC with few or no transmission facilities in a LATA  
5 could create a LATA-wide “virtual presence” for its customers. In a typical VNXX  
6 arrangement, the ILEC is both financially and operationally responsible for delivering all traffic  
7 from around a LATA to a single CLEC POI.

8 Relevant to this case, Level 3’s arrangements normally do not even resemble VNXX; the  
9 only exception is those few LCAs in Oregon where traffic volumes are so low that Level 3 does  
10 not maintain either a Primary or Secondary POI. In those LCAs, an end user customer of, for  
11 example, Earthlink, an ISP served by Level 3, could call Earthlink using a local number.  
12 Because Level 3 does not maintain either a Primary or Secondary POI in the LCA, Qwest would  
13 be required to transport the call out of the LCA to a POI with Level 3.<sup>29</sup> ILECs such as Qwest  
14 have opposed CLECs employing such routing, arguing that it unfairly imposes upon them the  
15 responsibility to transport the call outside of the LCA without payment. Level 3 and other  
16 CLECs have pointed out that the practice imposes no additional costs beyond those that would  
17 be imposed by other local traffic, given the ILECs’ responsibility to transport ILEC originated  
18 traffic to the CLEC POI at its own costs.<sup>30</sup> At any rate because Level 3 has agreed to pay access  
19 charges on this “true” VNXX traffic, the Commission need not address the dispute.

### 20 C. Qwest ISP Service

21 Putting aside Qwest’s position as the dominant provider of traditional, TDM-based voice  
22 services in Oregon, Qwest is also one of Level 3’s primary competitors in Oregon for the  
23 business of ISP customers seeking connectivity to the PSTN.<sup>31</sup> Through its affiliate, QCC,  
24

25 <sup>29</sup> Level 3/300, Ducloo/50-51.

26 <sup>30</sup> Level 3, 300, Ducloo/50-51. In this case, given the small volume of traffic involving end offices where Level 3 has neither a Primary nor Secondary POI, Level 3 submits that it would be appropriate to treat that traffic on a bill-and-keep basis. These few, insignificant exceptional cases are not separately addressed in this brief.

<sup>31</sup> Level 3/700, Greene/4.

1 Qwest offers its ISP customers a product called Wholesale Dial. Wholesale Dial is the  
2 functional equivalent of Level 3's Managed Modem product. Significantly, the network  
3 architecture by which Qwest serves its ISP customers is functionally and technically identical to  
4 Level 3's.<sup>32</sup>

5 As is the case with Level 3's Managed Modem product, when a Qwest ISP customer  
6 purchases Wholesale Dial, Qwest provides the customer with phone numbers local to the LCAs  
7 in which the ISP customers reside – even though the ISP has no equipment or other physical  
8 presence there – so that those customers can make a local call to their ISPs. Indeed, neither QCC  
9 nor its ISP customers maintain equipment (modems, servers, media gateways) in all of those  
10 LCAs.<sup>33</sup> On the contrary, like Level 3, QCC maintains centralized Media Gateway equipment—

11 **Begin Confidential\*\*\*\*\*End**

12 **Confidential.**<sup>34</sup> QCC connects to these distant LCAs by connecting ISDN PRI trunks to  
13 interoffice transport connections.<sup>35</sup> Qwest claims that using PRIs (instead of the DEOTs Level 3  
14 uses) provides a “local presence” that DEOTs do not provide, sufficient to treat the ISP-bound  
15 calls as local rather than “long distance”—which is the categorization Qwest seeks to apply to  
16 Level 3's DEOT architecture.<sup>36</sup>

17 In fact, the PRIs used by Qwest to provide local connectivity to ISP customers are  
18 technically and functionally identical to the DEOTs used by Level 3 to provide local  
19 connectivity.<sup>37</sup> Both PRIs and DEOTs provide basic connectivity or capacity from one office to  
20 another office.<sup>38</sup> Both types of trunk groups are sized to meet the traffic requirements that the  
21 company estimates are necessary for good service. Both PRIs and DEOTs connect to end office  
22 switching functionality so that ISP subscribers can call a local number and get connected to the  
23

24 <sup>32</sup> Level 3/800, Wilson/6.

25 <sup>33</sup> Level 3/716, Greene/24, and Tr. II at p. 32.

26 <sup>34</sup> Level 3/717, Greene/3.

<sup>35</sup> Level 3/800, Wilson/6.

<sup>36</sup> Level 3/700, Greene/26.

<sup>37</sup> Tr. II at p. 40.

<sup>38</sup> Tr. II at pp. 33, 36-38 (QCC PRIs support connections to multiple ISPs).

1 Internet through the ISP.<sup>39</sup> And, both DEOTs and PRIs use trunk ports on the end office switch  
2 as a physical means of obtaining connectivity. The trunk ports for DEOTs and PRIs are  
3 generally provisioned on the same type of trunk port “cards”—all that is required to distinguish  
4 them is slightly different software settings. While PRI trunks use ISDN PRI protocol, and  
5 DEOT trunks use SS7 protocol, ISDN PRI protocol is based on SS7 protocol and both provide  
6 basically the same functions.<sup>40</sup>

#### 7 **D. Level 3’s VoIP Service**

8 To the end-user customer, VoIP service, is, increasingly, indistinguishable from a typical  
9 phone call. VoIP calls can be initiated from a handset that looks and feels like a typical  
10 telephone, and the quality of the voice signal is usually identical to a typical phone call. But  
11 from a technical and physical standpoint, VoIP is dramatically different.

12 The PSTN is a circuit based network that employs an analog protocol called Time  
13 Division Multiplexing (TDM) to transmit voice messages. When one customer calls another  
14 customer using the PSTN, an actual circuit (physical connection) must be established between  
15 the two callers, and that circuit remains in place for the duration of the call. Thus when such a  
16 call is made, each party’s loop is dedicated to that communication for the duration of the call, as  
17 are portions of the switches and interoffice trunks and other facilities through which the call is  
18 routed.<sup>41</sup> VoIP, on the other hand does not require a dedicated physical circuit. Rather, in a  
19 VoIP call, the voice signal is broken down into digital packets in a format known as Internet  
20 Protocol, or “IP,” and instead of passing over a single circuit, each packet is capable of  
21 independently traveling a different route than the other packets. Once the packets are created,  
22 they are individually forwarded onto the Internet by means of routers. A party initiating or  
23 receiving a call in VoIP format will require special IP customer equipment and a broadband  
24 connection.<sup>42</sup>

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25 <sup>39</sup> Level 3/800, Wilson/9.

26 <sup>40</sup> Level 3/800, Wilson/7-8.

<sup>41</sup> Qwest/28, Brotherson/33.

<sup>42</sup> Qwest/28, Brotherson/34; Level 3/300, Ducloo/31-33.

1 Level 3 provides both wholesale and retail VoIP services.<sup>43</sup> The service that Level 3  
2 provides to its VoIP customers includes translation, or protocol conversion, that allows  
3 communications between end users of the PSTN and the Internet.<sup>44</sup> VoIP requires specialized  
4 customer premises equipment (CPE). Standard touch tone or dial pulse phones will not work on  
5 a VoIP network unless they are connected to a computer or other device that can handle VoIP  
6 format. Special phones called SIP phones can be used for VoIP. These phones have small  
7 computers built into them that packetize the voice signal and generate SIP messages.<sup>45</sup>  
8 Computers with headsets and microphones can also be used for VoIP.<sup>46</sup> These SIP or computer  
9 phones can be plugged into any broadband connection to receive VoIP service, and thus the user  
10 can send and receive calls from any location with a broadband connection.<sup>47</sup> At present, the  
11 geographic location of a VoIP user is indeterminate.<sup>48</sup>

12 Confidential Exhibits 704 and 705, respectively, describe in detail the call path of an IP  
13 to PSTN, and PSTN to IP VoIP call on Level 3's network. At a very high level, in the case of an  
14 IP-PSTN call, the VoIP end user will use a broadband connection to access a VoIP feature  
15 server. Level 3's VoIP network converts the IP-format dialing data into SS7 signaling and  
16 converts the IP format voice signals into PSTN-format TDM signals. For calls to Qwest in  
17 Oregon, these IP-based signals are all routed to the Level 3 Softswitch and Media Gateway in  
18 Seattle<sup>49</sup> which sets up a normal TDM call with Qwest's network. The outbound call is handed  
19 off in Oregon at the Primary or Secondary POI nearest the Qwest end user receiving the call.<sup>50</sup>  
20 The Qwest switch then sends the call on to the Qwest end user in precisely the same manner as it  
21 would any other voice traffic.<sup>51</sup>

22 \_\_\_\_\_  
<sup>43</sup> Tr. I at p. 43.

23 <sup>44</sup> Level 3/300, Ducloo/33.

24 <sup>45</sup> Level 3/300, Ducloo/35.

25 <sup>46</sup> *Id.*

26 <sup>47</sup> Level 3/300, Ducloo/36.

<sup>48</sup> *Id.*

<sup>49</sup> The same Media Gateway as performs the protocol conversions for Level 3's ISP-bound traffic. See Level 3/700, Greene/10-12.

<sup>50</sup> Level 3/300, Ducloo, 39.

<sup>51</sup> Level 3/300, Ducloo/39.

1 In the example of a PSTN-IP call, the process is simply reversed. Qwest initiates the call  
2 in TDM, and routes the TDM signal to Level 3 at the POI nearest the Qwest end user. Level 3  
3 then performs the same protocol conversion in reverse and initiates the VoIP session. Additional  
4 explanations of the call paths of these VoIP calls both initiated from and terminating to Level 3  
5 customers in Oregon are shown in Level 3 Exhibits 709, 710 and 711.<sup>52</sup>

6 Level 3 employs the same interconnection network architecture to carry both VoIP and  
7 ISP-bound traffic. Therefore, when an end user served by a Level 3 VoIP customer makes a call  
8 to a Qwest “regular” TDM end user, Level 3 delivers the call to Qwest in TDM format at a  
9 Primary or Secondary POI in the terminating end user’s LCA.

#### 10 E. Qwest’s VoIP Service

11 Qwest offers VoIP services to both residential and business customers in Oregon (again,  
12 through its affiliate, QCC) with its Qwest OneFlex product.<sup>53</sup> In addition to “unlimited local  
13 calls and calls to other OneFlex users (Business and Residential)”<sup>54</sup> OneFlex customers can  
14 purchase up to five “Virtual Numbers” described as follows:

15 Virtual numbers are alias phone numbers that can be associated with your  
16 OneFlex phone number. Your friends and family can dial your Virtual  
17 phone number and avoid incurring long-distance charges. For example if  
18 you live in Denver and your primary # is a 303.xxx.xxxx and your family  
19 lives in Omaha, your family has to call long-distance. With OneFlex, you  
20 can get a virtual phone number assigned to your account with an Omaha  
21 area code, so your family doesn’t have to pay long distance charges.<sup>55</sup>

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25 <sup>52</sup> Level 3/709-711, Greene.

26 <sup>53</sup> Tr. II at pp. 86-87; Level 3 Cross Exhibit 112.

<sup>54</sup> Level 3 Cross Exhibit 112, p.1.

<sup>55</sup> Id., at 10.



1 **III. ARGUMENT**

2 **Issue Nos. 3B; 1G; 3C; 4**

3 **A. The Commission Should Adopt Level 3’s Proposal Regarding**  
4 **Compensation for ISP-Bound Calls:**

5 **The FCC has ruled that ISP-bound calls from local telephone customers to**  
6 **the Internet are jurisdictionally interstate and are subject to a federally-**  
7 **mandated compensation of \$0.0007 per minute. Qwest takes the position**  
8 **that the FCC’s mandated rate does not apply to VNXX-routed traffic. Level**  
9 **3 disagrees; the terms of the ISP Remand Order encompass all ISP-bound**  
10 **traffic, including VNXX-routed traffic. However, there is no need to resolve**  
11 **that debate in this case, given that Level 3’s offer to maintain its extensive**  
12 **network of Primary and Secondary POIs in the State ensures that all ISP-**  
13 **bound traffic exchange occurs on a local basis. In short, Level 3’s network is**  
14 **built out to virtually every Qwest Local Calling Area in the State, allowing**  
15 **Level 3 to pick up all ISP-bound traffic within the Qwest LCAs on Level 3’s**  
16 **“own nickel.” Under these circumstances, Level 3’s compromise position –**  
17 **one very similar to the arrangement recently approved by the 9<sup>th</sup> Circuit – is**  
18 **to apply the FCC’s compensation rate to all ISP-bound traffic where Level 3**  
19 **picks up the traffic at a Primary or Secondary POI. This compromise will**  
20 **ensure that (a) Level 3 is fairly compensated for completing ISP-bound calls**  
21 **initiated by Qwest’s local customers; (b) Qwest will not be required to**  
22 **transport ISP-Bound calls beyond LCA boundaries; and, (c) Oregon dial-up**  
23 **Internet access services remain available free of onerous per-minute long**  
24 **distance charges..**

17 The main issue in this case is intercarrier compensation for ISP-bound calls, an issue that  
18 has confounded the industry for nearly a decade. The FCC has not spoken definitively on this  
19 issue for more than five years; its last major pronouncement was the *ISP Remand Order* from  
20 April 2001.<sup>56</sup> As a result of the FCC’s relative silence on this question, state commissions are on  
21 the front lines – in litigation such as this proceeding – trying to find a reasonable middle ground.

22 On the one hand, CLECs typically argue that because ISP-bound calls are dialed, routed  
23 and billed to end users like traditional “local” calls, the ILEC’s obligation with respect to them

25 <sup>56</sup> *ISP Remand Order, supra*. Although the FCC’s reasoning was rejected in some potentially significant ways, the  
26 federal court reviewing the *ISP Remand Order* allowed it to remain in effect while the FCC further considered the  
issues. *See WorldCom v. FCC*, 288 F.3d 429 (2002). In addition, the FCC modified its rules for intercarrier  
compensation for ISP-bound traffic to expand the realm of compensable traffic in the *Core Forbearance Order*, 19  
FCC Rcd 20179 (2004).

1 should mirror traditional local traffic in every way – including the ILEC’s obligation to deliver  
2 traffic, free of charge, to a centrally located CLEC POI and to pay intercarrier compensation to  
3 the CLEC for such traffic. On the other hand, ILECs emphasize the fact that while we know  
4 were an ISP-bound call begins – with the end user – we know it doesn’t end in the same LCA  
5 where it starts. So, since the traffic can’t really be considered traditional “local” traffic, the  
6 ILECs argue, it should be subject to access charges.

7 **1. Level 3 Has Proposed A Reasonable Compromise**  
8 **Consistent With What Other States Have Done.**

9 In this case, Level 3 has proposed a sensible, middle-ground alternative to the positions  
10 outlined above. Under this approach, ISP-bound traffic will be rated to the end user as local.  
11 But Level 3 – not Qwest – will bear financial responsibility for getting the traffic from the  
12 originating LCA to the ISP that connects the end user to the Internet. Where Level 3 takes on  
13 this responsibility, the traffic will be subject to normal “local” intercarrier compensation, at the  
14 FCC’s low rate of \$0.0007 per minute. On the other hand, for ISP-bound traffic that Level 3  
15 does *not* pick up at the originating LCA, Level 3 will exchange traffic on a bill and keep  
16 basis.<sup>57 58</sup>

17 This basic approach reflected in Level 3’s compromise proposal has recently been  
18 approved both by the Arizona Corporation Commission (ACC) in an arbitration between Level 3  
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21

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22 <sup>57</sup> To highlight the reasonableness of Level 3’s contract proposals, consider that that several Circuit Courts of  
23 Appeal have unambiguously required Single POI per LATA, even where ISP-bound traffic is involved. *See, e.g.*  
24 *TSR Wireless, LLC v. U.S. West Commun’s, Inc.*, 15 FCC Rcd 11166, ¶ 31 (2000); *Virginia Arbitration Order*, 17  
25 FCC Rcd 27039 (2002); *Southwestern Bell Tel. Co. v. Publ. Utils. Comm’n of Tex.*, 348 F.3d 482, 484 (5<sup>th</sup> Cir.  
26 2003); *MCIMetro Access Transmission Services, Inc. v. BellSouth Telecommun’s Inc.*, 352 F.3d 872, 876-881 (4<sup>th</sup>  
Cir. 2003) (Single POI required for all traffic routed from BellSouth to a single MCI switch serving the entire North  
Carolina LATA; court rejected NCUC requirement that MCI pay BST’s transport costs, even where calls carried  
hundreds of miles, as contrary to FCC Rule 51.703(b)); *Mountain Commun’s, Inc. v. FCC*, 355 F.3d 644 (D.C. Cir.  
2004)

<sup>58</sup> This is far more generous to Qwest than the agreement Level 3 made with SBC, Verizon and Bell South in 34  
states. It is generous because in those agreements Level 3 is not required to pay to pick up traffic from every single  
switch, but was sill compensated albeit at a slightly lower rate for ISP-bound traffic. Tr 1, p. 72.

1 and Qwest,<sup>59</sup> and by the Ninth Circuit, which approved the California Public Utilities  
2 Commission’s approach to this issue.<sup>60</sup> Level 3 urges the OPUC to adopt this approach as well.

3 In *Verizon California v. Peevey*, the California PUC had imposed this solution over the  
4 objection of both the ILEC (Verizon California) and the affected CLEC (PacWest). Specifically,  
5 under the California PUC’s compromise approach, end users are billed for locally-dialed calls to  
6 ISPs as local calls,<sup>61</sup> and, in accordance with that basic economic arrangement, the ILEC pays  
7 the FCC’s low intercarrier compensation rate to the CLEC for such calls.<sup>62</sup> However, while the  
8 California PUC recognized – and did not seek to prevent – the efficiency of allowing the CLEC  
9 to have a single physical POI for an entire LATA, it did not view it to be fair to require the ILEC  
10 to bear the full cost of getting all that ISP-bound traffic to the central POI. Therefore, to the  
11 extent that the ILEC carries traffic beyond the boundaries of the affected local calling area, the  
12 CLEC must pay the ILEC cost-based (TELRIC) rates for the “excess” transport.<sup>63</sup>

13 The Ninth Circuit recognized – – and approved – – the hybrid nature of this solution.  
14 That is, if the traffic involved were purely and unequivocally “local” in nature (in some  
15 traditional sense), then the FCC’s normal rule against an ILEC imposing traffic origination  
16 charges on a CLEC would have barred the California PUC’s arrangement. However, the  
17 essentially *sui generis* nature of ISP-bound traffic – which led the FCC to re-think its basic  
18 intercarrier compensation rules in the *ISP Remand Order* – made this arrangement permissible  
19 for this type of traffic.<sup>64</sup>

20 The ACC recently approved a very similar arrangement in an arbitration between Level 3  
21 and Qwest. Specifically, in Arizona, ISP-bound traffic is treated as “local” for purposes of end  
22 user billing and intercarrier compensation as long as Level 3 picks up the traffic within the

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23 <sup>59</sup> In the Matter of the Petition of Level 3 Communications, LLC for Arbitration of an Interconnection Agreement  
24 with Qwest Corporation Pursuant to Section 252(b) of the Telecommunication Action of 1996, Docket No. T-  
0365A-05-0350, T-01051B-05-0350 (hereinafter, Level 3 Arizona Arbitration).

25 <sup>60</sup> 2006 U.S. App. LEXIS 22742 (9<sup>th</sup> Cir. 2006).

26 <sup>61</sup> *Id.* at [\*32] – [\*33].

<sup>62</sup> *Id.* at [\*34] – [\*36].

<sup>63</sup> *Id.* at [\*37] – [\*39].

<sup>64</sup> *Id.* at [\*39] – [\*42].

1 originating LCA – either at the originating end office itself, or, if the relevant tandem switch is  
2 located in the LCA, at the tandem. Where Level 3 pays for DEOTs to a particular end office,  
3 Qwest isn't subjected to the cost of hauling the traffic outside the LCA, so there is no logical  
4 reason to impose any additional charges on Level 3 – and certainly no justification for imposing  
5 access charges.<sup>65</sup> Notably, Arizona approved this arrangement in order to facilitate fair and  
6 efficient dial-up access to the Internet, even though it shares some of Oregon's concerns about  
7 VNXX-type arrangements as a general matter.<sup>66</sup>

8 This is precisely the arrangement that Level 3 has proposed in this case. As the record  
9 shows, with its extensive network of Primary and Secondary POIs, in the overwhelming majority  
10 of cases, Level 3 is already fully responsible for the costs of transporting ISP-bound calls from  
11 the originating LCA to the Internet. In those cases it makes no sense to impose high, non-cost-  
12 based access charges on this traffic.

13 In this regard, Level 3's proposal here is more favorable to the ILEC than the California  
14 Plan approved by the 9<sup>th</sup> Circuit in *Peevey*. There, the ILEC was responsible for all transport of  
15 ISP-bound traffic within the bounds of an LCA – which, under California PUC rules, extends for  
16 12 miles beyond the physical location of the originating switch. By contrast, here Level 3, by  
17 establishing a Secondary POI at an end office switch by means of a DEOT, takes on cost  
18 responsibility for transporting ISP-bound traffic from the originating switch itself.

19 Level 3's proposal here is also much more favorable to the ILEC than the arrangement  
20 approved by the Washington state regulators. Washington regulators take the view that all  
21 locally-dialed ISP-bound traffic should be subject to compensation under the FCC's regime  
22 established in the *ISP Remand Order* – including traffic that is hauled by the ILEC to a centrally  
23 located CLEC POI.<sup>67</sup> In Washington, therefore, Level 3 would have no obligation to establish  
24

25  
26 <sup>65</sup> See Level 3 Arbitration, Decision No. 68817.

<sup>66</sup> See discussion in Section III.A.2, *infra*.

<sup>67</sup> Level v. Qwest, Washington Utilities and Transportation Commission, UT 053039, Order No. 06.

1 more than one Primary POI, or any Secondary POIs at all (although it might do so for its own  
2 network management reasons).

3 As a result, in addition to meeting with the approval of the 9<sup>th</sup> Circuit, as shown by the  
4 decision in *Peevey*, Level 3’s proposal is clearly reasonable. It strikes a fair balance between the  
5 interests of consumers in being able to call ISPs on a “local” basis; the interest of Level 3 in  
6 being compensated (at the low FCC rate of \$0.0007 per minute) for its effort in delivering dial-  
7 up traffic to ISPs; and the interest of Qwest in not having to haul large amounts of traffic outside  
8 of the local calling area in which it originates. As a pure “policy” matter, therefore, the OPUC  
9 should adopt Level 3’s proposal as a fair compromise solution to this perennial controversy.<sup>68</sup>

10 **2. This Is Not “VNXX” Traffic And It Is Not “Illegal.”**

11 Qwest has taken the position throughout this litigation that (a) the Commission has  
12 deemed so-called VNXX traffic to be illegal, and that (b) Level 3’s proposed arrangement  
13 amounts to illegal VNXX.<sup>69</sup> Qwest is wrong.

14 **a. VNXX Arrangements.**

15 VNXX arrangements, as traditionally analyzed, are, in effect, a substitute for a traditional  
16 FX line. In an FX arrangement an end user in one calling area buys a private line into another  
17 calling area and receives dial tone from that distant area. This means that callers in the distant  
18 area can dial the FX user as a local call, since the FX user is getting dial tone from that same  
19 local switch.<sup>70</sup> From one perspective, customers in the distant calling area get to make “toll  
20 calls” to the FX user for free, but that’s because the FX user – by virtue of the private line  
21 connection – is paying for the “long distance” transport.

22  
23  
24 <sup>68</sup> The position adopted by the Washington regulators shows that, in this proceeding, Level 3 is willing to accept a  
25 compromise that actually gives it fewer interconnection rights than those to which it would be entitled. Level 3 does  
26 not waive its interconnection rights, however, and reserves the right to pursue them if its compromise solution is  
rejected.

<sup>69</sup> Qwest/28, Brotherson/22-25.

<sup>70</sup> From this perspective, the FX user can be viewed as in fact *being* a customer of the distant local calling area, but  
simply having a very, very long “loop” – the private line from the distant switch to the FX user’s premises.

1 VNXX arrangements, although not identical, can be viewed as broadly similar. A CLEC  
2 with a centrally located switch serving a large area can assign telephone numbers associated with  
3 one local calling area to a customer physically located in another local calling area. In the  
4 Commission’s words, “a customer physically located in Portland might order a phone number  
5 from a CLEC with a Salem NXX rate center code. Calls between that Portland customer’s  
6 phone and other Salem area customers would be treated as if they were local calls ...”<sup>71</sup> This  
7 arrangement is possible because NXX codes do not in any real sense “reside” in particular  
8 geographic areas; they “reside” in network switches. For this reason, where a CLEC uses a  
9 single switching device to serve a large area, it makes no difference, as a technical matter,  
10 whether the numbers assigned to a particular customer “match” the geographical location of that  
11 customer. As a purely technical matter, any customer served by a given switch can be easily  
12 assigned a telephone number from any NXX code handled by that switch.<sup>72</sup>

13 Where a customer located in one area is assigned a telephone number with an NXX code  
14 from another area, end users from the second area can call the VNXX customer’s telephone  
15 number as a local call – just like in an FX arrangement. However, under normal FCC rules, the  
16 ILEC is responsible for getting traffic from its network to the CLEC’s network at no charge. So,  
17 whereas in a traditional FX arrangement the end user getting the FX service pays for transport  
18 beyond the local calling area where his FX number is “located,” with VNXX the cost of  
19 transport is borne by the originating ILEC. As Level 3 understands the applicable law, discussed  
20 briefly below, this result is completely in accord with the FCC’s rules and expectations. It is,  
21 however, a cause for concern among ILECs.

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26 <sup>71</sup> Investigation into the use of Virtual NPA/NXX Calling Patterns, ORDER, UM-1058 (September 7, 2004).

<sup>72</sup> See *id.* at 1 (CLECs “wishing to provide local service in multiple exchanges from a single central office need to have a separate NXX code for each rate center”).

1  
2 **b. Pre-1996-Act Considerations.**

3 The root of this Commission’s discomfort with VNXX routing can be traced back to  
4 1983, when it banned traditional FX service.<sup>73</sup> At that time the Commission grandfathered all  
5 traditional FX customers and ordered that in the future, customers receiving FX must begin  
6 paying switched access charges on all FX traffic.

7 This decision was motivated by the substantial changes to the telecommunications  
8 industry created by divestiture. Prior to divestiture, local exchange companies participated in  
9 providing toll services, but the billing was handled by AT&T Long Lines or, for intrastate  
10 services, the large Bell companies (such as, in Oregon, Pacific Northwest Bell). Through the  
11 “Division of Revenues” process, revenues derived from toll calls were split with the local  
12 exchange carriers involved in handling the calls.<sup>74</sup> With divestiture, PNB would no longer be  
13 able to offer interLATA toll services within Oregon, which meant that it and other local carriers  
14 would no longer have as many toll revenues to share. The Commission at that time  
15 simultaneously approved an intrastate access charge regimes, - to make up some of the lost toll  
16 revenues - but also took steps, based on the monopoly environment at the time, to ensure that  
17 carriers could not avoid access charges on what would otherwise be toll calls.<sup>75</sup>

18 The Commission was not at all pleased with this disruption in handling toll calls and  
19 sharing toll revenues. It worried that the replacement of the old system would leave less money  
20 to subsidize the cost of local basic service.<sup>76</sup> It decried the perceived “inefficiencies and  
21 inequities” visited by Judge Greene through the creation of LATA system. The Commission  
22 explained:

23  
24 <sup>73</sup> In the Matter of Access Provisions and Charges of Telephone Utility Companies in Oregon, Public Utility  
Commission of Oregon, UT 5, Order No. 83-869. The Commission grandfathered FX service for those customers  
already subscribed to FX service.

25 <sup>74</sup> See also In the Matter of MTS and WATS Market Structure, *Third Report and Order*, 93 F.C.C.2d 241 (1983)  
26 (“Access Charge Order”) at ¶¶ 1-8, 11, 37-39 (describing new access charge system, and the “Division of  
Revenues” system it replaced).

<sup>75</sup> *Id.*, passim.

<sup>76</sup> *Id.*, at 2.

1           Essentially these LATAs were created only for one reason: To limit the size of  
2           the area within Oregon in which Pacific Northwest Bell could carry long-distance  
3           traffic. PNB is prohibited from carrying telephone messages between the two  
4           LATAs, and thus loses revenues this traffic would provide. . . . Keeping PNB out  
5           as a competitor diminishes its ability to generate revenue that would help  
6           subsidize basic service for its own customers and for customers of Oregon  
7           independent companies as well. I argued to the federal judge that it would be  
8           inequitable to prohibit PNB from competing for this traffic. The judge was not  
9           moved.<sup>77</sup>

10           Considering the context of this ruling and the concerns underlying it, it actually shows  
11           why it makes no sense to extend or apply a general ban on FX or VNXX arrangements to calls  
12           used to access the Internet. As noted, the key concern of the Commission at that time was  
13           ensuring that local carriers got their fair share of toll revenues in the post-divestiture world. The  
14           underlying assumption of the Commission’s ruling was that there would, indeed, be toll revenues  
15           earned by *some* carriers; the only question was making sure that access charges or other rules  
16           brought a fair share of those revenues back to the local carriers involved in originating or  
17           terminating the toll calls.<sup>78</sup>

18           Here, the record makes clear that consumers will not make toll calls to access the  
19           Internet, and that per-minute pricing of Internet access is simply not acceptable in the  
20           marketplace. What this means is that, unlike the situation with long distance calling at  
21           divestiture – when pre-existing toll revenues were being taken away from the local exchange  
22           carriers, and access charges were the main way to try to get them back – here there is no  
23           preexisting pot of toll revenues associated with ISP-bound calls that can be or should be  
24           recaptured for the benefit of the ILECs. To the contrary, there are no toll revenues associated

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25 <sup>77</sup> *Id.*, at 3.

26 <sup>78</sup> Legally, today, access charges apply to “telephone toll service,” which is telephone service between calling areas, for which an actual toll charge is applied. *See* 47 U.S.C. §§ 153(16) (definition of “exchange access”); (48) (definition of “telephone toll service”). In 1983, the FCC created access charges based on its authority under 47 U.S.C. § 201(a) to establish the division of payments from customers in the case of a “through route,” which was a situation where end-to-end service was provided by more than one carrier. *See Access Charge Order* at ¶¶37-41.



1 with ISP-bound calling at all. So the fundamental policy considerations that led the Commission  
2 to ban FX in 1983 simply do not apply to this class of traffic.<sup>79</sup>

3 The Commission has not yet drawn the legally compelled link between the existence of  
4 toll charges, on the one hand, and the assessment of access charges, on the other. Instead, in  
5 cases such as UM-1058, the Commission has expressed concern that VNXX arrangements might  
6 be depriving ILECs of access charges, without recognizing that without toll revenues, there is no  
7 legal or economic basis to impose access charges in the first place. In that case, the Commission  
8 ultimately agreed with the CLECs that it had no jurisdiction to adopt compensation rules for ISP-  
9 bound traffic in a generic proceeding. However, the Commission did observe that it “appreciated  
10 the position in which the ILECs were placed, and our decision was reached with neither  
11 satisfaction or enthusiasm.”<sup>80</sup>

12 Level 3 submits that the Commission’s concern was misplaced. At least in the case of  
13 ISP-bound calling, there are no toll revenues to be had, and so there is no economic or legal basis  
14 to be concerned about the lack of payment of access charges. This is particularly clear in the  
15 case of Level 3’s specific proposal in this case. With both FX and traditional VNXX  
16 arrangements, the ILEC actually transports traffic across LCA boundaries at its expense – even if  
17 no actual “toll” call is made. Under Level 3’s proposal, by contrast, Level 3, not Qwest, takes  
18 full responsibility for transporting traffic across LCA boundaries. This further confirms that  
19 there is no “toll” call here to support the imposition of access charges.

---

23 <sup>79</sup> As a legal matter, as noted above, by definition access charges only apply to the origination or termination of a  
24 “toll” service, which is defined as a service for which there is a separate toll charge. Since there are no toll charges  
25 associated with VNXX- or VNXX-like arrangements to support dial-up Internet access, there are no toll revenues to  
26 share, so access charges cannot apply. Of course, this was the rule in 1983 as well. As Judge Harold Greene  
observed, “Local communications services are the ordinary telecommunications services used in most homes and  
businesses *for which generally no long distance rates are charged.*” *United States v. AT&T*, 524 F. Supp. 1336,  
1346 n.17 (D.D.C. 1981) (emphasis added). In other words – just like today’s statutory definitions – what  
distinguished the local market from the long distance market was whether a toll was assessed.

<sup>80</sup> *Id.* at 3.

1                                   **c.       The Commission Should Embrace Level 3’s Proposal.**

2           As discussed above, Level 3 fully recognizes that VNXX arrangements have generated  
3 their share of controversy, both here in Oregon and elsewhere.<sup>81</sup> Level 3 is specifically mindful  
4 that this Commission has raised concerns regarding the impact of VNXX on the ILECs, and on  
5 numbering resources.<sup>82</sup> Even so, it is clear that, as both a factual and legal matter, the ISP-bound  
6 traffic at issue in this case is quite different from what the Commission had in mind when it  
7 expressed its reservations about VNXX traffic in the past.

8           First, as noted above, the *sine qua non* of a VNXX arrangement is a customer in one  
9 definite physical location that wants to receive “local” calls from a different local calling area.  
10 For example, the Commission’s own description of VNXX began with “a customer physically  
11 located in Portland....”<sup>83</sup> However, unlike either FX or VNXX arrangements, with ISP-bound  
12 traffic it makes no sense to try to define either a specific “customer” to whom the call is being  
13 placed or a specific place where the call “ends.” As the FCC explained in the *ISP Remand*  
14 *Order*, to the extent an ISP-bound call has a “destination,” it is the Internet site that the end user  
15 is trying to access – not a normal telephone customer at all. But, as the FCC also pointed out,  
16 during one call the end user may well connect to a number of different (and physically quite  
17 diverse) Internet sites; and, indeed, any one site, such as a web page, may contain information  
18 that is served up simultaneously from computers in a number of different locations:<sup>84</sup>

19           In real time, the web host may request that different pieces of that webpage,  
20 which can be stored on different servers across the Internet, be sent, also in real  
21 time, to the user. For example, on a sports page, only the format of the webpage  
22 may be stored at the host computer in Chicago. The advertisement may come  
23 from a computer in California (and it may be a different advertisement each time  
24 the page is requested), the sports scores may come from a computer in New York

23 \_\_\_\_\_  
24 <sup>81</sup> Qwest raises a number of claims against what it calls Level 3’s use of “VNXX” arrangements. We address these  
25 claims briefly below, although we expect to provide a more detailed response to Qwest’s views after we have seen  
26 those views elaborated in Qwest’s brief.

<sup>82</sup> See, e.g., In the Matter of the Investigation into the Use of Virtual NPA/NXX Calling Patterns, UM 1058; In the  
Matter of Qwest Corporation’s Petition for Arbitration of Interconnection Rates, Terms, Conditions and Related  
Arrangements with Universal Telecommunications, Inc., ARB 671, Order No. 06-190.

<sup>83</sup> Investigation into the use of Virtual NPA/NXX Calling Patterns, ORDER, UM-1058 (September 7, 2004).

<sup>84</sup> *ISP Remand Order* at ¶¶ 58-59 (footnotes omitted, emphasis added).

1 City, and a part of the webpage that measures Internet traffic and records the  
2 user's visit may involve a computer in Virginia. If the user decides to buy  
3 something from this webpage, say a sports jersey, the user clicks on the purchase  
4 page and may be transferred to a secure web server in Maryland for the  
5 transaction. A single web address frequently results in the return of information  
6 from multiple computers in various locations globally. These different pieces of  
7 the webpage will be sent to the user over different network paths and assembled  
8 on the user's display. ... The "communication" taking place is between the dial-  
9 up customer and the global computer network of web content, e-mail authors,  
10 game room participants, databases, or bulletin board contributors. *Consumers  
11 would be perplexed to learn regulators believe they are communicating with  
12 ISP modems, rather than the buddies on their e-mail lists. The proper focus for  
13 identifying a communication needs to be the user interacting with a desired  
14 webpage, friend, game, or chat room, not on the increasingly mystifying  
15 technical and mechanical activity in the middle that makes the communication  
16 possible.*

11 The emphasized language makes clear that for this unique type of traffic it is simply irrational to  
12 try to assign any particular "end point." As a result, ISP-bound calling – unlike an FX or VNXX  
13 arrangements – does not involve a customer trying to appear to be in one place when it is really  
14 located in some other place.<sup>85</sup> To the contrary, with ISP-bound calling, it simply makes no sense  
15 to speak of the call having a "termination point" at all.<sup>86</sup> For this reason alone, whatever types of  
16 customers and calls the Commission might have been focusing on when it defined VNXX as it  
17 did in 2004, that definition simply does not apply to modern, centralized provision of dial-up  
18 Internet access of the sort at issue in this case.<sup>87</sup>

19 Second, as the quotes from the Commission order above show, one key concern –  
20 probably *the* key concern – underlying the Commission's hesitations about VNXX arrangements  
21 is their potential to deprive the underlying ILECs of originating toll revenues (and associated  
22

23 <sup>85</sup> At the hearings, Qwest's witness Mr. Brotherson completely ignored this succinct FCC description of the  
24 ambiguity surrounding the "end point" of an ISP-bound call and, instead, suggests that the "end point" should be  
25 deemed to be the ISP's modem location. *See, e.g.,* Tr. II at p. 80. The Commission should reject this attempt to  
26 artificially create an "end point" for this kind of traffic which, in fact, has none.

<sup>86</sup> *Cf. Firesign Theater, How Can You Be Two Places At Once When You're Not Anywhere At All?*

<sup>87</sup> As noted below in Section III.A.3., *Qwest's* provision of dial-up Internet access services to ISP customers is  
essentially identical to Level 3's. Given the size and importance of these two suppliers, a decision that this type of  
arrangement is illegal or inappropriate would essentially shut down a vast portion of dial-up Internet access in  
Oregon.

1 access revenues). The record makes clear, however, that this is a totally illusory concern in this  
2 case. Putting the matter bluntly, consumers simply will not use dial-up Internet access if they are  
3 subject to a toll charge or if the ISP is forced to pay access charges (directly or indirectly) and is  
4 therefore forced to assess per-minute charges on end users. Dial-up calls to ISPs will be made  
5 and charged on a local basis, or they will not be made at all. There simply is no pot of toll or  
6 access revenue for the ILEC to capture or retain. Neither Qwest nor any other ILEC is getting  
7 such revenue now, and the effect of a ruling either banning local dialing for Internet access or  
8 imposing access charges on such traffic will be to suppress the traffic, not to bring revenues to  
9 the ILEC.

10 Third, unlike the typical VNXX situation where a CLEC is seeking to require an ILEC to  
11 bear the cost of bringing the traffic to the CLEC's single, central POI, here Level 3 – not Qwest  
12 – will bear the costs of transporting the traffic outside the originating local calling area. So, just  
13 as efficient, centralized dial-up Internet access is physically and technically different from  
14 VNXX traffic, so too is Level 3's proposal for handling this traffic very different from that  
15 normally applicable to VNXX arrangements. In purely legal/regulatory terms, to the extent that  
16 Level 3 has the right to insist on Qwest bearing the cost of getting ISP-bound traffic from the  
17 originating calling area to a single, central POI in a LATA – as, for example, Washington  
18 regulators require – Level 3's proposal is more favorable to Qwest, because Level 3 has  
19 established numerous Primary and Secondary POIs. It therefore becomes unnecessary even to  
20 decide the outer bounds of Level 3's right to have Qwest deliver traffic to a single, central POI in  
21 a LATA. That legal issue aside, however, this differing economic set-up means that this  
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1 arrangement for ISP-bound calls is not properly viewed as VNXX – it is, like ISP-bound calling  
2 itself, *sui generis*.<sup>88</sup>

3 Fourth, Qwest has argued that the use of VNXX dialing arrangements violate  
4 Commission rules which define local service as calls “provided within the boundaries of  
5 exchange maps.”<sup>89</sup> This claim might have some validity if Level 3 were offering VNXX  
6 arrangements to normal business customers who wanted to “appear” to have a local presence in  
7 one calling area while actually being located in another. Such business customers would be  
8 buying intrastate business services that would be subject to the Commission’s jurisdiction. One  
9 thing that the FCC made completely clear in its *ISP Remand Order*, however, is that all ISP-  
10 bound traffic is inherently and unavoidably jurisdictionally *interstate* in nature.<sup>90</sup> For that  
11 reason, the Commission simply has no authority to ban an entity like Level 3 (or like Qwest)  
12 from offering PSTN connectivity services to ISPs, any more than the Commission has the  
13 authority to ban Level 3 from offering interstate toll services.<sup>91</sup>

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15 <sup>88</sup> Indeed, with a focus on Internet access, even states that have been skeptical of VNXX arrangements in general  
16 have acknowledged that the specific class of *ISP-bound* VNXX traffic is covered by the FCC’s compensation  
17 regime. See, e.g., *Southern New England Telephone Company v. MCI WorldCom Communications, Inc.*, 359 F.  
18 Supp. 2d 229 (2005) (holding, for Connecticut, that all ISP-bound traffic, including VNXX traffic, is subject to  
19 compensation; see *infra*); *Pac-West Telecom, Inc. v. Qwest Corporation*, Docket No. UT-053036, Order No. 03,  
20 *Recommended Decision to Grant Petition* (Aug. 23, 2005) at ¶¶ 31, 37; In the matter of the application of TELNET  
21 WORLDWIDE, INC., for arbitration of interconnection rates, terms, and conditions and related arrangements with  
22 VERIZON NORTH INC. and CONTEL OF THE SOUTH, INC., d/b/a VERIZON NORTH SYSTEMS, Case No.  
23 U-13931 2004 Mich. PSC LEXIS 356 (Michigan PSC October 14, 2004); Investigation as to Whether Certain Calls  
24 are Local; Independent Telephone Companies and Competitive Local Exchange Carriers - Local Calling Areas,  
25 *Final Order*, DT 00-223; DT 00-054; ORDER NO. 24,080, 2002 N.H. PUC LEXIS 165 (N.H. PUC October 28,  
26 2002). Even if, in general, Oregon does not favor VNXX arrangements for intrastate traffic, that does not mean that  
VNXX-like arrangements should not be embraced with respect to this unique class of traffic.

21 <sup>89</sup> Qwest/28, Brotherson/21.

22 <sup>90</sup> *ISP Remand Order* at ¶¶ 52-65. It is no answer to this plain assertion of federal jurisdiction to say that under the  
23 so-called “ESP Exemption,” ISPs are really buying a local or intrastate service under state jurisdiction. As the FCC  
24 stated, “The ESP exemption was and remains an affirmative *exercise* of federal regulatory authority over interstate  
25 access service under section 201, and, in affirming pricing under that exemption, the D.C. Circuit expressly  
26 recognized that ESPs use *interstate* access service.” *Id.* at ¶ 55 (footnote omitted, emphasis in original).

24 <sup>91</sup> The fact that the Commission has been delegated authority under Sections 251 and 252 of the Communications  
25 Act to arbitrate interconnection agreements between ILECs and CLECs, including aspects of those agreements that  
26 relate in some ways to jurisdictionally interstate traffic, does not empower the Commission to authorize or ban the  
provision by such entities of interstate services. In this regard, Section 253(a) of the Act provides that a state may  
not directly or indirectly prohibit any entity from providing any interstate or intrastate telecommunications service.  
Putting aside the question whether a ban on FX arrangements established in 1983 can survive the enactment of this  
provision, it clearly prohibits the extension of that ban to *interstate* VNXX or VNXX-like services.

1 Fifth, there is no basis to conclude that VNXX-like arrangements to facilitate dial-up  
2 Internet access in any way contravene the FCC’s governing regulations regarding the assignment  
3 of telephone numbers. Those regulations require numbers to be made available in a manner that  
4 accomplishes three purposes: (a) facilitating entry into the market; (b) not unduly favoring any  
5 particular group of consumers or providers; and (c) not unduly favoring any particular  
6 technology. 47 C.F.R. § 52.9(a). Yet Qwest wants the Commission to destroy Level 3’s ability  
7 to serve ISP customers by providing dial-up Internet access by, essentially, denying Level 3 the  
8 right to use numbering resources for its IP-based services. Moreover, since Qwest wants the  
9 Commission to (at least implicitly) *approve of* Qwest’s nearly identical means of providing dial-  
10 up access (*see below*), Qwest effectively wants the Commission to *unduly favor Qwest* by  
11 protecting Qwest from competition; and, at bottom, it wants the Commission to *unduly favor*  
12 *circuit-switched over IP-based technology* by eliminating the advantages of IP-enabled calling.  
13 It is simply impossible to square what Qwest is asking the Commission to do – interfere with  
14 Level 3’s ability to offer its services, by denying it access to numbers – with the Commission’s  
15 plain obligation under federal numbering regulations.

16 Finally, as suggested above, VNXX-routed ISP-bound traffic is included within the scope  
17 of the *ISP-Remand Order’s* compensation regime. As the *ISP Remand Order* states, ISP-bound  
18 traffic is “information access.”<sup>92</sup> As that order acknowledges, *see id.* at ¶¶ 39, 42-43, the term  
19 “information access” derives from the “Modification of Final Judgment” or “AT&T Consent  
20 Decree” that broke up the old Bell System. The AT&T Consent Decree was not concerned with  
21 ILEC local calling areas. It was concerned with LATAs. The divested Bell ILECs were  
22 permitted to offer services *within* LATAs, but were not permitted to offer service across LATA  
23 boundaries.<sup>93</sup> As a result, “information access” under the AT&T Consent Decree referred to the  
24 provision of links between an end user and an information service provider (such as an ISP)

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26 <sup>92</sup> See *ISP Remand Order* at ¶¶ 47-47.

<sup>93</sup> See *United States v. AT&T*, 552 F. Supp. 131, 141 (D.D.C. 1982). See also *id.* at 142-43 (analogizing LATA-wide access provided to interexchange carriers to access to be provided to information service providers).

1 *within the same LATA.* Nothing in the AT&T Consent Decree suggests or requires that the  
2 provision of “information access” (or any other kind of access) conform to ILEC local calling  
3 areas (which varied considerably among the divested companies).<sup>94</sup> It follows that any  
4 intraLATA ISP-bound traffic, VNXX-routed or not, is “information access” covered by the *ISP*  
5 *Remand Order’s* compensation regime. The status of the traffic as “local” or not, with reference  
6 to the ILEC’s local calling areas, is simply irrelevant to that regime.<sup>95</sup>

7 In short, there is no rational basis to conclude that Level 3’s proposed solution for dealing  
8 with dial-up Internet access in any way runs afoul of Oregon law. The service is interstate in  
9 nature so the Commission’s policies regarding intrastate services don’t really apply. The  
10 underlying policy concerns – potential loss of ILEC toll and access revenues, and potential ILEC  
11 costs in carrying traffic to a central POI at the ILEC’s expense – do not arise, because dial-up  
12 Internet access simply will not occur if subjected to toll or access charges, and Level 3, not  
13 Qwest, has agreed to pay for transport from the originating end office. And using PSTN  
14 numbers to facilitate Internet access does not contravene any applicable numbering rule or  
15 regulation. For all these reasons, the Commission should approve Level 3’s proposal on this  
16 subject and reject Qwest’s attempt to shoe-horn this *sui generis* arrangement within the scope of  
17 a Commission ban devised for other services in other circumstances.

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19 <sup>94</sup> The definition of “information access” in the AT&T Consent Decree is “the provision of specialized [intraLATA]  
20 telecommunications services by a [Bell ILEC] in [a LATA] in connection with the origination, termination,  
21 transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of  
22 information services.” *Id.* at 229. The actual language of the decree speaks of “exchange telecommunications  
23 services” in “an exchange area.” “Exchange area,” however, is also a defined term, and is, specifically, the decree’s  
24 term for “LATA.” *Id.* at 228. In other words, from the very beginning, the concept of “information access” has  
25 always referred to a service offered on a LATA-wide basis, not on the basis of originating ILEC local calling areas.  
26 LATAs are, and always have been, quite different from (and large than) local calling areas. See *United States v. Western Electric Co.*, 569 F. Supp. 990, 994-95 (D.D.C. 1983).

<sup>95</sup> The subsequent history of the *ISP Remand Order* further confirms this. In *WorldCom v. FCC*, 288 F.3d 429  
(D.C. Cir. 2002), the court ruled that the FCC’s holding that “information access” was excluded from Section  
251(b)(95) was “precluded.” The *ISP Remand Order* must be read in light of the D.C. Circuit’s ruling in *WorldCom*.  
In that ruling, the court excised the key erroneous element of the FCC’s thinking – that “information access” traffic  
isn’t covered by 47 U.S.C. § 251(b)(5). By cutting out *only that element* of the FCC’s analysis, while leaving the  
rest intact, the court eliminated any logical basis, going forward, for excluding *any* “information access” traffic from  
reciprocal compensation under § 251(b)(5). It follows that once traffic is properly characterized as “information  
access,” it must be treated as subject to the FCC’s compensation regime – which the court allowed to remain in  
place.

1                   **3. It Would Be Grossly Discriminatory To Fail To**  
2                   **Approve Level 3's Proposal, Given Qwest's Own**  
3                   **Arrangements For Serving ISPs.**

4                   Aside from the fact that Level 3's proposal for handling ISP-bound calls is substantively  
5 fair, there is another reason that the OPUC should approve it: failing to do so would be grossly  
6 discriminatory, given how Qwest itself handles arrangements for calls to ISPs where Qwest, not  
7 Level 3, serves the ISP.

8                   As noted above, Qwest is one of Level 3's primary competitors in Oregon for the  
9 business of ISP customers seeking connectivity to the PSTN. Where Qwest (through an affiliate)  
10 provides PSTN connectivity to ISPs, the record establishes that it does so using essentially  
11 identical routing arrangements to those used by Level 3. Through its affiliate, QCC, Qwest  
12 offers a its ISP customers a product called "Wholesale Dial," which is functionally identical to  
13 the "Managed Modem" service that Level 3 provides to ISP customers.<sup>96</sup>

14                   A Qwest ISP customer does not have to have any equipment or facilities in a local calling  
15 area in order for customers to be able to call the ISP on a "local" basis.<sup>97</sup> Also, the Qwest ISP  
16 customer does not have to pay access charges to receive the calls. With Qwest's "Wholesale  
17 Dial" service, the ISP customer is assigned phone numbers in the LCAs in which the ISP's end  
18 user customers reside – even though the ISP has no equipment or other physical presence there.  
19 Locally-dialed ISP-bound calls from these end users are directed by the originating switch to a  
20 trunk port attached to an interoffice transport trunk, and then routed the ISP for further delivery  
21 to the Internet sites the end user is trying to reach. This is just like Level 3's arrangement, where  
22 the locally-dialed ISP-bound calls are directed to a trunk port attached to the DEOTs/DTTs for  
23 which Level 3 pays.

24                   Obviously, it would be blatantly discriminatory to say that Qwest can use this  
25 arrangement for its own ISP customers without the arrangement being deemed "illegal" VNXX  
26 and without QCC (the Qwest affiliate serving the ISPs) having to pay access charges to the

<sup>96</sup> Level 3/800, Wilson, p. 6.

<sup>97</sup> Level 3/716, Greene, p. 24, and Tr. II at p. 32.



1 Qwest ILEC entity, if Level 3 cannot do so as well. To avoid this result, Qwest throws up a  
2 regulatory fig leaf, claiming that the trunk ports that *QCC* uses are *ISDN PRI* ports, not plain-  
3 vanilla trunk ports like the ones Level 3 uses.<sup>98</sup>

4 But this, in a word, is bogus. The record makes clear that the PRI ports Qwest uses to  
5 provide connectivity for ISPs are technically and functionally the same as the DEOT/DTT ports  
6 Level 3 uses. Both PRI and DTT/DEOT ports provide basic connectivity from one central office  
7 to another. The trunk groups connected to those ports are engineered in the same way, based on  
8 the same traffic considerations. And both are connected to end office switching functionality to  
9 allow end users to call a local number and to connect to the Internet through the ISP.<sup>99</sup> As a  
10 matter of physical network engineering, trunk ports for DTTs and PRIs are provisioned on the  
11 same type of trunk port “cards,” using slightly different software settings. While PRI trunks use  
12 ISDN PRI protocol, and DTT trunks use SS7 protocol, ISDN PRI protocol is based on SS7  
13 protocol and both provide basically the same functions.<sup>100</sup>

14 In these circumstances it would be plainly and blatantly discriminatory to allow Qwest’s  
15 arrangements for serving ISPs to remain in place while not approving Level 3’s proposal. While  
16 Level 3 urges the OPUC to approve its proposal, therefore, if for some reason it does not, OPUC  
17 must simultaneously subject Qwest’s own arrangements for serving ISPs to identical (onerous)  
18 economic conditions. Level 3 strongly suspects that faced with such a prospect, Qwest would  
19 abandon any objection it might have to Level 3’s proposal.

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26 <sup>98</sup> Level 3/700, Greene, p. 26.

<sup>99</sup> Level 3/800, Wilson, p. 9.

<sup>100</sup> Level 3, Exhibit 800, Wilson, pp. 7-8.

1 **Issue No. 16**

2 **B. The Commission Should Adopt Level 3's Proposal Regarding**  
3 **Intercarrier Compensation For VoIP Traffic.**

4 **Reciprocal compensation for VoIP traffic should be handled in precisely that**  
5 **same way that ISP-bound traffic is handled; that is, so long as the VoIP**  
6 **traffic is exchanged with Qwest at a Primary or Secondary POI, the call**  
7 **should be subject to reciprocal compensation at the FCC-mandated \$.0007**  
8 **per-minute rate. In the case of those two LCAs in the State served by Level 3**  
9 **or its customers where Level 3 does not maintain a POI, Level 3 will Level 3**  
10 **agree to agree pay access charges on VoIP calls until such time as network**  
11 **connections into those local calling areas are established. This resolution**  
12 **makes sense given that VoIP traffic is "nomadic" in nature and it would be**  
13 **impossible to attempt to nail down the geographic endpoint of the broadband**  
14 **end of the call. Moreover, given that there is authority to suggest that VoIP**  
15 **traffic is not subject to access charges at all, Level 3's proposal represents a**  
16 **reasonable compromise.**

17 Although a large majority of the traffic that Qwest and Level 3 exchange is ISP-bound  
18 calls from Qwest's end users to ISPs served by Level 3, a growing fraction of the traffic is VoIP  
19 calls bound from end users served by Level 3 itself, or Level 3's VoIP-provider customers,  
20 bound for Qwest end users. It is therefore necessary to decide what intercarrier compensation  
21 arrangements apply to this type of traffic.<sup>101</sup>

22 Level 3 submits that the best answer here is to treat VoIP traffic just like ISP-bound.  
23 That is, as long as the traffic is exchanged with Qwest at a Primary or Secondary POI, it should  
24 be subject to "local" treatment for purposes of intercarrier compensation. To the extent, however  
25 that Level 3 asks Qwest to carry such traffic outside the bounds of a local calling area (in this  
26 case, from a distant POI into such an area), Level 3 would agree to pay access charges with  
respect to it.

Level 3 submits that this is reasonable for several reasons. First, although VoIP calls are  
perhaps not as utterly divorced from notions of defined beginning and end points as ISP-bound

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<sup>101</sup> Note that Level 3 recognizes that so-called "IP in the middle" traffic is to be treated as normal long distance traffic subject to normal access charges. The question at issue here is how to handle traffic that originates as VoIP traffic on a VoIP end user's broadband connection, bound for a Qwest end user on the PSTN, or vice-versa.

1 traffic, it remains true that a VoIP call can originate from any broadband connection anywhere in  
2 the world, and that the “telephone number” associated with such a call will bear no particular  
3 relationship to where the calling party happens to be.<sup>102</sup> So, the only result of trying to nail down  
4 “where” a particular VoIP call begins or ends will not be clarity but, instead, contention and  
5 disputes between the parties.<sup>103</sup>

6 Second, the regulatory status of VoIP calls remains highly ambiguous.<sup>104</sup> In this regard,  
7 however, the most recent court to try to clarify the matter concluded that VoIP traffic is  
8 “information services” traffic, not subject to access charges at all.<sup>105</sup> Level 3’s proposal would  
9 be more favorable to Qwest than this recent court case would suggest, in that Level 3 would only  
10 avoid access charges on VoIP calls handed off to Qwest if the calls were handed off at the  
11 appropriate Primary or Secondary POI.<sup>106</sup>

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18 <sup>102</sup> The evidence shows that the same VoIP end user with the same associated telephone number can make calls  
19 from a different broadband connection at different times, when, for example, a VoIP user with a SIP phone makes a  
20 call from a home broadband connection, then later makes a call from a hotel or business broadband connection using  
21 the same SIP phone.

22 <sup>103</sup> For this reason, Qwest’s suggestion that VoIP traffic be carefully parsed into different categories based on the  
23 precise type of equipment used to enable that traffic, where that particular equipment is located, etc., is totally  
24 unworkable. It is impossible to know, in that level of detail, what “type” of VoIP traffic is at issue. It is, however,  
25 possible to include an identifier with the SS7 message associated with a VoIP call that it is, in fact, a VoIP call.  
26 Level 3 is prepared to provide this indicator to Qwest, if Qwest wants to receive it, in order to facilitate identifying  
VoIP calls.

<sup>104</sup> As noted above, the FCC’s last effort to clarify how to handle ISP-bound calls occurred in 2001. It is probably  
fair to say that the FCC’s last remotely comprehensive attempt to discuss the regulatory classification of VoIP traffic  
was even earlier, in 1998. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to  
Congress, 13 FCC Rcd 11501 (1998).

<sup>105</sup> See *Southwestern Bell v. Missouri PSC*, No. 4:05-CV-1264-CAS (E. D. Mo. Sept. 14, 2006), slip. Op. at 37-46.

<sup>106</sup> Qwest wishes to limit the definition of VoIP traffic to traffic that originates in IP. Accordingly Qwest would  
deny a VoIP designation to a call from a Qwest local service customer that originates in TDM but terminates to a  
VoIP customer in IP. See, Qwest/28, Brotherson/39-40. Given that calls either originating or terminating on a  
broad band connection are technically indistinguishable, Qwest’s position makes no sense.

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**Issue Nos. 1A; 2A; 2B; 18**

**C. The Commission Should find that Level 3 is Allowed to Combine all of its Traffic Destined to Qwest Customers onto a Single Trunk Group:**

**Qwest cannot lawfully compel Level 3 to establish separate trunk groups for different regulatory “types” of traffic. Legally, “interconnection” under the Act specifically includes “exchange access” traffic. Thus, Qwest is legally obligated to handle both local and toll traffic on “interconnection” trunks. Moreover, there is no technical reason to require separate trunking, which in fact severely degrades network efficiency. Qwest’s only reason for separate trunk groups is its purported inability to properly rate access and non-access traffic on “local” trunks. The record shows, however, that (a) Qwest has combined all traffic on Feature Group D trunks for other carriers, such as AT&T, for many years and has used factors to rate and bill these calls; (b) all other major ILECs are able to accommodate combined traffic on local trunks; (c) Level 3 employs a single interconnection network between its Portland facilities and Verizon’s Beaverton territory over which Level 3 terminates IXC traffic while also exchanging ISP-bound and VOIP traffic; (d) the parties could apply percent-of-use factors to the traffic; and/or (e) Qwest can easily activate the required recording capabilities on the “local” trunk ports on its switches. Level 3’s proposal can be easily and inexpensively accomplished. On the other hand, Qwest’s proposal, is technically indefensible, would introduce significant points of failure into the network and would cost Level 3 millions of dollars each year in Oregon alone and should be rejected.**

Trunk groups are logical paths between switches. A common analogy is the lane lines painted onto a multi-lane highway. The highway itself is the physical transmission facility – here, a fiber optic or metallic connection physically connecting two switches. A trunk group is like an express lane on the highway, with traffic in that lane routed to a particular point.

When two carriers interconnect, their technical personnel need to cooperate to establish whatever trunk groups are required. This is because, in order to function, a trunk group must have one “end” at a trunk port on one carrier’s switch, and another “end” at a trunk port on the other carrier’s switch. Both carriers’ switches have to know that traffic going out on that particular trunk port will always go to the switch at the other end, and that traffic coming in on that trunk port will always be coming from the switch at the other end.

1 A “trunk” is literally a single voice-grade path between two switches. A trunk “group” is  
2 a collection of trunks – perhaps a very large collection – that are all going between the same two  
3 switches and that are administered as a single unit.<sup>107</sup> For various technical reasons, for any  
4 given volume of traffic between two switches, it takes fewer total trunks to carry that volume of  
5 traffic on an integrated trunk group than if the traffic is split up into smaller groups. For  
6 example, if adequate quality service (that is, a tiny enough fraction of blocked calls) can be  
7 provided on a route with an integrated trunk group comprised of 100 trunks, it would not be  
8 possible to get the same quality of service (that is, the same low fraction of blocked calls) by  
9 splitting that trunk group into two groups of 50 trunks each. To the contrary, to maintain the  
10 same level of service might require two groups of 55 or 60 trunks each.<sup>108</sup>

11 Because of the inefficiency of multiple small trunk groups, as compared to one large one,  
12 Level 3 has a strong and legitimate interest in combining as much traffic as possible into a single  
13 trunk group linking Level 3’s network with any particular Qwest switch. Establishing multiple  
14 trunk groups will require both carriers to waste trunk ports on their switches (since more total  
15 trunk ports will be required) and will require Level 3 to pay for more DEOTs along a given route  
16 than the traffic level would justify as an engineering matter.<sup>109</sup>

17 The record shows that the vast majority of Level 3’s traffic is ISP-bound and VoIP  
18 traffic.fff However, Level 3 also has some traditional InterLATA traffic that it carries for IXCs  
19 that must be delivered to Qwest customers. Level 3 currently routes this traffic to 3<sup>rd</sup> party IXCs  
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21 <sup>107</sup> Level 3/300, Ducloo/10.

22 <sup>108</sup> These numbers are examples only. Precisely how many additional trunks are required if a large, efficient trunk  
group is split up will depend on a number of technical characteristics of the traffic being carried.

23 <sup>109</sup> Looking only at Level 3’s costs, it would be most efficient for Level 3 to establish a single, massive trunk group  
between its network and each Qwest tandem switch in a LATA. This, however, would require Qwest to switch  
24 every Level-3-bound call twice – once at the originating end office, and then again at the tandem. Network  
engineers generally accept that when traffic between two switches reaches a certain level, it makes sense to establish  
25 a direct trunk between those switches, rather than rely on an intervening tandem. For this reason, Level 3 has agreed  
with Qwest to establish DEOTs to each Qwest end office where traffic reaches that level. This sound engineering  
understanding is what led the parties to develop the extensive collection of Secondary POIs – end offices to which  
26 Level 3 has established a DEOT. While financial responsibility for these DEOTs is sometimes controversial, in this  
case Level 3 has agreed that it will pay for the DEOTs (at TELRIC rates) as part of an overall resolution of the issue  
of intercarrier compensation for ISP-bound and VoIP traffic. *See supra.*

1 for completion to Qwest. These IXC's price this service at relatively high rates. Level 3 would  
2 like to route all of this traffic directly to Qwest over its existing LIS trunks. Level 3 proposes  
3 that the traffic be rated and billed using factors, subject to audits and true-up. Level 3's proposal  
4 is technically feasible, efficient for both Level 3 and Qwest, and will provide Qwest with all of  
5 the information it requires to bill for the traffic. Accordingly, Level 3's proposed language  
6 allows all traffic types to be exchanged over a single trunking network—whether comprised of  
7 LIS trunks or Feature Group D trunks:

8 **7.2.2.9.3.2 CLEC may combine Exchange Service (EAS/Local) traffic, ISP-**  
9 **Bound Traffic, Exchange Access (IntraLATA Toll carried solely by Local**  
10 **Exchange Carriers) VoIP Traffic and Switched Access Feature Group D**  
11 **traffic including Jointly Provided Switched Access traffic on the same**  
12 **Feature Group D trunk group or over the same interconnection trunk**  
13 **groups as provided in Section 7.3.9.<sup>110</sup>**

14 Qwest wants to require the parties to forgo the substantial network efficiencies of large,  
15 efficient trunk groups between switches.<sup>111</sup> Instead, Qwest wants Level 3 to establish, for each  
16 switch, one trunk group for traffic subject to access charges, and another for other traffic.  
17 Specifically, Qwest is proposing in this case that Level 3 separate the switched access traffic and  
18 send it over Feature Group D Trunks.<sup>112</sup> The Commission should reject this Qwest argument  
19 and specifically require the parties' interconnection agreement to permit the establishment of  
20 combined trunk groups using Qwest's "Local Interconnection Service," or LIS, trunks.

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21 <sup>110</sup> Additional contract sections affected by this dispute are: 7.1.1; 7.2.2.9.3.1; 7.3.6.3; 7.3.9.

22 <sup>111</sup> Level 3/300, Ducloo/12. In this regard, Qwest is reluctant to accept incoming IP-enabled traffic at all, but to the  
23 extent it is willing to accept it, it wants to do so on separate trunk groups. Tr. I at pp. 100-102. This proposal makes  
24 no sense, either technically, economically, or legally. VoIP traffic will be subject to some form of intercarrier  
25 compensation, so it needs to be tracked so that it can be billed. Level 3/300, Ducloo/13.

26 <sup>112</sup> There is certainly no reason, as a matter of network engineering, for distinguishing different types of traffic and  
placing them on different trunk groups. In network terms, all traffic is either IP or TDM. Regulatory categories are  
irrelevant to the photons and electrons that make up a communication-in-progress, and network switches and  
transmission gear are only capable of handling photons and electrons – not regulatory categories trumpeted by  
Qwest lawyers. The only thing that matters from a network engineering perspective is where the traffic is going.  
There is no technical reason why these calls cannot all be routed over the same trunk groups. In this regard,  
although some calls that Level 3 delivers to Qwest might *begin* in IP format, Level 3 delivers all traffic to Qwest in  
standard PSTN circuit switched format and standard SS7 signaling., and receives all traffic from Qwest in that same  
format. See Level 3/300, Ducloo/13.

1 Qwest cannot deny that requiring separate trunk groups for different types of traffic  
2 would be grossly technically inefficient. Its proposal would force Level 3 to order, build, and  
3 provision additional trunk groups to each Qwest tandem and, over time, to each end office in  
4 Oregon.<sup>113</sup> This would require needless duplication of both transport and switch facilities, and  
5 would lower the blocking grade of service.<sup>114</sup> And it would be economically inefficient, costing  
6 Level 3 millions of dollars per month.<sup>115</sup>

7 Qwest claims, however, that the technical inefficiency of multiple trunk groups – which,  
8 again, the record shows would cost Level 3 literally millions of dollars per month – is justified  
9 because the switch ports to which its LIS trunks are attached are unable to generate the detailed  
10 recordings (supposedly) needed to bill for switched access traffic. In Qwest’s mind, this  
11 administrative problem with Qwest’s network supposedly justifies imposing enormous burdens  
12 on Level 3. In fact, however, Qwest has no leg to stand on, either legally or technically.

13 As a legal matter Qwest’s assertion that its LIS trunks are not configured to record access  
14 traffic is baffling. Qwest created LIS trunks, presumably, as a way to meet its responsibilities  
15 under Section 251 of the Telecommunications Act. Section 251(c)(2) specifically requires that  
16 Qwest “provide ... interconnection ... for the transmission and routing of telephone exchange  
17 service *and* exchange access.” 47 U.S.C. § 251(c)(2)(A) (emphasis added). It is obvious under  
18 this language that access traffic would be flowing over the trunks Qwest sets up to exchange  
19 traffic with CLECs. This clear legal requirement is now more than a decade old. If Qwest has  
20 failed to properly configure its LIS trunks – again, the type of trunks it has supposedly set up for  
21 interconnection under the Act – to handle access traffic, there is no possible reason to penalize  
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23 <sup>113</sup> Level 3 and Qwest do agree that it makes sense to establish separate trunks (DEOTS or DTTs) to carry traffic  
24 between Level 3 and particular Qwest end office switches when traffic exceeds a certain threshold. Specifically, the  
25 Parties have agreed that when Level 3 is interconnected at the access tandem, and when there is a DS1 level of  
26 traffic (512 BHCCS) over three consecutive months, between Level 3’s switch and Qwest’s End Office Switch,  
Qwest may request CLEC to order a direct trunk group to the Qwest End Office Switch. Section 7.2.2.9.6.  
Establishing a direct end office trunk in such circumstances removes traffic from Qwest’s tandem switches, allowing  
more efficient call routing and saving Qwest the cost of growing or replacing its tandems.

<sup>114</sup> Level 3/300, Ducloo/14-19.

<sup>115</sup> Level 3/712, Greene.

1 **Level 3** for Qwest’s plain failure to meet its legal obligations. If Qwest has chosen not to  
2 acknowledge its statutory duty, that is simply a self-inflicted wound.

3 In this regard, FCC Rules 51.305(c), (d) and (e) (47 C.F.R. §§ 51.305(c), (d), (e)) are  
4 instructive. Under those rules, successful interconnection at a particular point on any ILEC’s  
5 network using “particular facilities” or adhering to “the same interface or protocol” creates a  
6 presumption that such an interconnection arrangement is technically feasible for *all* ILECs.  
7 Here, the evidence shows that Level 3 has established a unified interconnection network using  
8 local interconnection trunks, not FGD trunks, with SBC, Verizon and BellSouth in dozens of  
9 other states.<sup>116</sup>

10 Indeed, Level 3 has been using single, combined trunking arrangements in Oregon with  
11 Verizon for over a year.<sup>117</sup> This single, unified interconnection network – connecting Portland to  
12 Beaverton and other Verizon territory within Oregon – supports the billing and payment of  
13 switched access charges (which, as we understand it, is Qwest’s only real concern.<sup>118</sup>

14 Given this success with other carriers, including Verizon in Oregon, Qwest bears a heavy  
15 burden – which is plainly did not meet here – of trying to show that what is perfectly feasible for  
16 SBC and Verizon and BellSouth is somehow beyond Qwest’s capabilities. Without such proof,  
17 which Qwest did not supply, the FCC’s rules essentially mandate that the Commission here  
18 approve Level 3’s proposal for handling all types of traffic on LIS trunks.

19 To the extent that Qwest’s worries about billing can even be regarded as a “technical”  
20 issue, the record here makes clear that there are a number of straightforward solutions that avoid  
21 the massive inefficiency of separate trunk groups.

22 First, long industry practice – and Level 3’s successful experience with other large ILECs  
23 – shows that billing concerns can be resolved by using “factors” to allocate the traffic exchanged  
24 over a combined trunk group into different billing categories. In this regard, Level 3 maintains

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25 <sup>116</sup> Tr. at p. 121.

26 <sup>117</sup> Tr. I at pp. 49-50, 94 (interconnection network with Verizon in Oregon is exactly the same as represented in  
diagram 701), 96.

<sup>118</sup> *Id.* at 96.



1 billing tables that indicate which NPA-NXXs are “local” to which other NPA-NXXs, and which  
2 ones (by default) are toll. Qwest does the same thing. Over a period of time, Level 3 can collect  
3 all call data on calls exchanged between the parties. Once this data is collected, Level 3 will, in  
4 accordance with industry standard practices, calculate and report the Percent Interstate Usage  
5 (PIU) Percent Local Usage (PLU)<sup>119</sup> In addition, Level 3 can identify the percent of IP-enabled  
6 traffic (PIPU). *Id.* Level 3 is also proposing that these factors be verified on a monthly basis.<sup>120</sup>  
7 Level 3’s calculations can be audited by Qwest if there is any doubt as to their validity.

8 For example, in Verizon territory in Oregon, and pursuant to an agreement that has been  
9 in place over 18 months, Level 3 exchanges all traffic with Verizon over a single trunk group.  
10 Level 3 carries traffic from Verizon end users dialing the Internet over the same trunks as carry  
11 the interexchange, VoIP and traditional local traffic flowing from Level 3 end users to Verizon  
12 end users.<sup>121</sup> Level 3 uses the same system of factors proposed here in order to ensure that  
13 Qwest is paid appropriate amounts, including access charges, for the calls.<sup>122</sup> Level 3 has the  
14 employed the same arrangement with Bell South and SBC, in numerous states, all without  
15 problems.<sup>123</sup>

16 Indeed – and tellingly – this is precisely the process Qwest used for years with AT&T.  
17 When AT&T’s CLEC affiliates began carrying local traffic AT&T requested that it be allowed to  
18 combined local and long-distance traffic on its Feature Group D trunks. Qwest agreed and used  
19 factors to bill for the combined traffic.<sup>124</sup>

20 If Qwest does not want to use factors for some (inexplicable) reason, the fact remains that  
21 it is trunk ports on *Qwest’s* switches that lack the recording capability that Qwest supposedly  
22 desires. Qwest, of course, is in control of and responsible for its own switches, and is fully  
23 capable of programming its LIS switch ports to have the recording capability it says it needs. In

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24 <sup>119</sup> Level 3/300, Ducloo/42.

25 <sup>120</sup> Level 3/300, Ducloo/42.

26 <sup>121</sup> Tr. I at p. 95.

<sup>122</sup> Level 3/700, Greene/14-15

<sup>123</sup> Tr. I at p. 121.

<sup>124</sup> Tr. II at pp. 108-109.

1 order to provide LIS trunks with the same billing capability as FGD trunks, Qwest could simply  
2 program its switches to treat the LIS trunks as FGD trunks, for purposes of recording, by  
3 “turning on” the correct feature in the switch and in the recording equipment. No software or  
4 hardware development would be required. All that would need to occur would be to impose the  
5 correct price (LIS, not Feature Group D) on Level 3. This could be handled accurately by simple  
6 ratios on the billing spread sheet.<sup>125</sup> In this regard, the difference between Qwest’s Feature  
7 Group D trunks (which have the relevant recording features) and its LIS trunks (which  
8 apparently do not), is not large in real, physical terms. To the contrary, it is simply a designation  
9 on the switch to which the trunk is attached. (Of course, Qwest does charge substantially more  
10 for the Feature Group D trunks.) Otherwise these two trunk “types” are identical.<sup>126</sup>

11 Other than a desire to avoid these modest reprogramming costs – which Qwest did not  
12 even attempt to quantify in the record – it is hard to see why Qwest is pressing its inefficient  
13 trunking plan. But, as noted above, the record is clear that it will cost Level 3 millions of dollars  
14 a month to *comply* with Qwest’s plan. So even if Qwest is correct that it must have recording  
15 capability on any trunks that carry access or combined traffic – and Qwest has not remotely  
16 established that claim in the record – then the just and reasonable way for Qwest to obtain that  
17 capability is not to force Level 3 to inefficiently configure its network; it is to call on Qwest to  
18 reprogram its LIS ports so that they can do whatever it is that Qwest, for its own purposes, wants  
19 them to do.<sup>127</sup>

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21 <sup>125</sup> Tr. I at pp. 146-147

22 <sup>126</sup> Tr. I at p. 146.

23 <sup>127</sup> In legal terms, Qwest is seeking to impose a particular, inefficient interconnection “term” or “condition” on  
24 Level 3, based on Qwest’s billing-related concerns. Any terms and conditions related to interconnection  
25 arrangements must, under 47 U.S.C. § 215(c)(2), be “just” and “reasonable.” It is not “just” to require Level 3 to  
26 incur millions of dollars of costs related to network inefficiency because Qwest has failed to configure its own LIS  
trunk ports to be able to meet Qwest’s own stated billing needs for access traffic, when the very same statute makes  
clear that Qwest will be exchanging access traffic with CLECs. Moreover, it cannot be “reasonable” to require  
Level 3 to incur millions of dollars of monthly costs in order to allow Qwest to avoid some one-time programming  
costs that are not even quantified in the record, but which are clearly relatively modest. Qwest’s proposal, therefore,  
is simply inconsistent with the requirements of the Telecommunications Act of 1996 as they relate to  
interconnection terms and conditions.

1 In this regard, the record shows that even if Qwest wants to bill access charges to Level 3  
2 based on full call detail records (CDRs) rather than factors, that too is achievable without  
3 imposing massive technical inefficiencies on Level 3. Specifically, Level 3 can provide CDRs to  
4 Qwest covering the traffic the parties exchange. In this regard, the Ordering and Billing Forum  
5 (OBF) of ATIS (Alliance for Telecommunications Industry Solutions) – of which Qwest is a  
6 member<sup>128</sup> – has developed an electronic message specification providing guidance as to how  
7 carriers should exchange call detail records with one another. The standard adopted is referred to  
8 as Form 110101, and it provides all information required to measure and rate a call (including  
9 the originating and terminating numbers; the time and duration of the call; and whether or not the  
10 call was delivered using an ESP). Level 3 can provide these records per the industry standard.<sup>129</sup>

11 Finally, Qwest has asserted that it expects difficulty with IXCs and other CLECs that  
12 expect to receive recording data from the Qwest tandem switch within an IXC terminates traffic  
13 to such other carriers through Qwest's network. This problem is illusory, however, because  
14 Level 3 has agreed not to send toll traffic that does not terminate to Qwest end users or  
15 UNE/resale customers to Qwest end office switches.<sup>130</sup> Specifically, Level 3's proposed contract  
16 language ensures that Level 3 will terminate traffic only to Qwest; no 3<sup>rd</sup> party carriers would be  
17 involved.<sup>131</sup> Instead, Level 3 can efficiently use a single IXC to terminate traffic to 3<sup>rd</sup> party  
18 carriers, nationwide, as shown in Level 3 Exhibit 108.<sup>132</sup>

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20 <sup>128</sup> Tr. I at p. 202.

21 <sup>129</sup> Tr. I at p. 99.

22 <sup>130</sup> Level 3/300, Ducloo/24-25. In this regard, even if Level 3 were to adopt Qwest's proposal regarding the routing  
23 of Internet-bound traffic – that is, the purchase of PRI trunks – that would not solve the 3<sup>rd</sup>-party-billing problem  
24 Qwest claims to be concerned about. This is because a PRI is a retail line; it is not normally used for  
25 interconnection. So, from a technical perspective, there is no way to pass the required billing data if we use this  
26 approach. Tr. I at pp. 100-101. On the other hand, if the parties adopt Level 3's solution – the same solution that  
Level 3 has used over the past 18 months and continues to use with Verizon in today – Level 3's network can  
capture and provide EMI 11-01-01 records that Qwest can pass on to any affected third party carrier. *Id.* at pp. 96-  
101.

<sup>131</sup> *Id.* at 104.

<sup>132</sup> *Id.* at 105-14. Indeed, not only does Exhibit 108 show how Level 3 would address routing of IXC traffic to  
numbers not homed to Qwest switches, it actually demonstrates how that interconnection works today with Verizon  
in Oregon, as well as how Level 3 terminates IXC traffic with SBC and Bellsouth, throughout their respective  
territories.

1           There are other, affirmative benefits to adopting Level 3’s proposed “single trunking”  
2 plan as well. A single, integrated trunking network is particularly efficient in this case because  
3 Level 3’s interconnection network in Oregon is vast. It can support every resident in Oregon  
4 surfing the Internet via dialup for 45 minutes each in a 24 hour period.<sup>133</sup> Because of people’s  
5 Internet usage habits, however, that capacity is largely idle during the daytime. Level 3 would  
6 like to use that idle capacity to terminate long distance calls when everyone is at work during the  
7 day.<sup>134</sup> This is also efficient because overall, the use of dial-up Internet access has peaked and is  
8 declining; an integrated trunking arrangement would allow Level 3 to make use of the network it  
9 has built.<sup>135</sup> And, due to consolidation in the industry, we anticipate that IXC terminations will  
10 increase.<sup>136</sup>

11           Not only does Level 3’s “single trunking network” proposal work in Oregon and  
12 throughout the nation, it saves Qwest money. This is because Qwest’s IXC billing is not  
13 accurate. Due to the volume and nature of IXC billing, Qwest employs many tens of people to  
14 review exceptions to the IXC bills. This is a labor intensive process. Moreover, sometimes the  
15 billing systems do not provide the correct data, resulting in a re-run of the bills known as a  
16 “chron job”. This was so expensive Qwest moved the operation offshore.<sup>137</sup> By contrast, Level  
17 3’s factor methods eliminates the need for reviewing every single detailed record. So long as  
18 carriers can agree on reliable and verifiable factors, there is no need for mechanized billing that  
19 Qwest says it prefers. Moreover, Level 3 has conducted extensive testing with Verizon, SBC  
20 and Bellsouth and found its factor methods to be reliable.<sup>138</sup>

21           In sum, it is unclear to Level 3 why Qwest is so opposed to allowing Level 3 to transport  
22 its traffic in the efficient and effective fashion Level 3 has proposed. Not only has Level 3  
23 proposed more than one solution to Qwest’s perceived billing concerns—it has also pointed out

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24 <sup>133</sup> Tr. I at p. 82.

25 <sup>134</sup> *Id.* at 96.

26 <sup>135</sup> *Id.* at 102.

<sup>136</sup> *Id.* at 102-03.

<sup>137</sup> *Id.* at 118-21.

<sup>138</sup> *Id.* at 122-23.

1 that Qwest's proposal will increase Qwest's own costs and burden its own network. Whatever  
2 Qwest's reasons, its proposal constitutes an unnecessary and unacceptably inefficient and costly  
3 process for Level 3 and must be rejected.  
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**Issue Nos. 1B; 1D; 20; 30**

**D. Interconnection Issues**

Finally, there are a number of sections in the proposed agreement in which Level 3 has asked Qwest for specific language acknowledging what Level 3 believes are fundamental interconnection and related rights. These are discussed below.

**1. Issue 1B: Interconnection Rights Pursuant to the Act.**

In its proposed section 7.1.2, Qwest seeks to condition Level 3’s right to interconnect on whether it has a “local customer” in the LATA. This proposal is problematic because the parties do not agree on what constitutes a “local” call or a “local” customer. Nothing in the Act requires “local” customers as an interconnection condition. But there is no need to litigate that issue. Instead, the best solution is to simply state that the parties will negotiate interconnection “in each LATA CLEC wishes to Interconnect pursuant to Sections 251 and 252 of the Act.” This language will preserve Level 3’s rights to interconnect under the Act as the Act is interpreted by this Commission, the FCC and the courts.

**2. Issue 1B: Right to Interconnect at Any Technically Feasible Point.**

In *its* proposed Section 7.1.2, Level 3, seeks the right to interconnect with Qwest’s network via a DS1, DS3, OC-3 or other higher speed optical connection—as it deems efficient in a particular point. Qwest, however, seeks to limit Level 3’s right to interconnection to the lower speeds – via a DS1 or DS3 facility. Qwest’s proposal would allow Level 3 to interconnect using other technically feasible methods, but only through the Bona Fide Request (BFR) process and then only through a Qwest-provided facility. Qwest has offered no legitimate reason, and there is not, that would permit Qwest to limit Level 3’s rights under the Act in this manner. OC-3 and higher level optical connections are common and technically feasible in the telecommunications industry, and there is no reason to treat them as anything other than one among many technically feasible interconnection methods. Further complicating matters, Qwest’s language seems to suggest that Level 3 may only use the BFR process to order a

1 “product” already developed by Qwest. Ultimately, Qwest’s efforts to impose *any* restriction on  
2 Level 3’s right to technically feasible methods of interconnection is inconsistent with the Act and  
3 should be rejected.

4 **3. Issue 1B, 1D: Right to TELRIC Pricing.**

5 Also in Section 7.1.2, Level 3 wishes to be clear that when it chooses to interconnect with  
6 Qwest via Qwest-ordered facilities, Level 3 may order such facilities under Sections 251 and 252  
7 of the Act, at TELRIC prices, *or, at Level 3’s option*, through Qwest’s FCC Tariff 1. This  
8 matters because the TELRIC pricing applicable to interconnection arrangements under the Act is  
9 typically much lower than Qwest’s tariffed rates.<sup>139</sup> Similarly, in Section 7.2.2.1.2.2, Level 3  
10 wishes to clarify that it has the option to establish a POI with Qwest by purchasing transport  
11 services at TELRIC rates, or by ordering a private line other facilities from Qwest’s tariff. There  
12 is no good reason for Qwest to oppose this language that serves to clarify rights that Level 3  
13 indisputably possesses.

14 **4. Issue 20: Signaling Parameters for VoIP Traffic**

15 Section 7.3.8 requires Qwest and Level 3 to provide each other with the proper signaling  
16 information per 47 CFR 64.1601 to enable each party to issue bills in a complete and timely  
17 fashion. In particular, this section specifies that the provided signaling parameters will include  
18 Calling Party Number (CPN), Originating Line Information Parameter (OLIP) on calls to 8XX  
19 numbers, calling party category charge number, etc., and that any calls without the proper  
20 substantiating information will be charged as interstate switched Access. The parties agree to the  
21 language of this section with one exception. Level 3 had proposed that where VoIP traffic  
22 lawfully originates but without CPN, it not be subject to penalties associated with intentional or  
23 careless removal of CPN data.

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26 <sup>139</sup> The federal case from Missouri discussed above, *SBC v. Missouri PSC*, also addressed the question of pricing interconnection facilities and reaffirmed that when a CLEC uses entrance facilities for interconnection (as opposed to access to network elements) the ILEC must provide those facilities at TELRIC rates. *See id.*

1 Due to its technical nature, VoIP traffic may appropriately and lawfully lack CPN. An  
2 example is where a computer (as opposed to a SIP phone) is originating a call and the VoIP  
3 service the caller is subscribed to is outbound only—such as Skype.<sup>140</sup> This should not be of  
4 concern to Qwest because, as explained above, Level 3 direct trunks to Qwest end offices.  
5 Qwest will know where the traffic comes from because it will originate with Level 3. Moreover,  
6 Level 3 would agree to provide billing parameters, compliant with EMI 11-01-01 records  
7 showing such traffic as IP-originated. Lastly, Level 3 will terminate NPA-NXX codes not  
8 homed to Qwest via separate arrangements with third party IXCs. In those cases, therefore,  
9 Level 3 proposes that the traffic not be subject to penalties normally associated with intentional  
10 or careless removal of CPN data.

#### 11 **5. Issue 30: Single Set of Quad Links**

12 Level 3 proposed Sections 7.2.2.6.1-3 to govern provisioning of SS7 signaling. Section  
13 7.2.2.6.1 establishes Level 3's right to choose, at its option, to obtain SS7 signaling from Qwest  
14 under Qwest's tariff, from a third party, or to provide its own SS7 signaling via a single set of  
15 Quad Links. Sections 7.2.2.6.2 and 3 provide that if Level 3 provides signaling by constructing  
16 its own Quad Links, the parties will negotiate agreeable terms. Qwest's proposal, on the other  
17 hand, would require the parties to set up and maintain separate sets of Quad Links for toll and  
18 local traffic.<sup>141</sup> Qwest's proposal should be rejected.

19 The SS7 network is part of the PSTN that allows switches and databases to communicate  
20 with each other. Its main function is for call setup and take-down, but it is also used for database  
21 look-up such as required by 800 service. SS7 Quad Links are the data links that connect two  
22 SS7 networks. Without these links, neither Qwest nor Level 3 could complete calls to the other's  
23 network.<sup>142</sup>

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26 <sup>140</sup> Level 3/800, Greene/18.

<sup>141</sup> Level 3/500, Ducloo/19.

<sup>142</sup> Level 3/500, Ducloo/20.



1 Using a single set of links for both local and toll set up messages will save Qwest and  
2 Level 3 transmission links and ports on their SS7 switches. Since transmission links and SS7  
3 ports are already provisioned in a redundant manner for reliability purposes, the Qwest proposal  
4 will waste a significant number of transmission links and ports on both networks, doubling the  
5 links and ports that are needed.<sup>143</sup>

6 There is no technical reason that Qwest even needs to distinguish between SS7 messages  
7 relating to local calls and messages relating to toll calls, much less to require that such messages  
8 be sent on separate facilities. To the extent that Qwest has a right to charge different amounts for  
9 an SS7 message based on the nature of the call setting up, the same PLU and PIU factors that are  
10 used to correctly bill access charges for the underlying calls themselves can be used to charge for  
11 SS7 messages.<sup>144</sup> Nor is there any reason why SS7 used for toll traffic cannot be used for IP  
12 traffic, as Qwest suggests.<sup>145</sup> Thus, the Commission should rule in favor of Level 3's proposed  
13 language, which presents an efficient and fair way of managing the SS7 network, and saving  
14 transmission links and SS7 switch ports in both the Level 3 and Qwest networks.

#### 15 **IV. CONCLUSION**

16 As noted at the outset, one of the key issues in dispute between Qwest and Level 3 is the  
17 proper compensation for ISP-bound calls. Level 3 has proposed a reasonable solution to this  
18 problem, a solution that is at least as favorable to Qwest as the plans adopted in Washington,  
19 Arizona and California. Indeed, by taking on more transport costs than CLECs do under the  
20 California plan just approved by the 9<sup>th</sup> Circuit, Level 3 is clearly proposing a solution that is not  
21 only fair, but one which is well within the bounds of what can reasonably be required of ILECs  
22 under federal law, but still consistent with state law. Under Level 3's proposal, ISP-bound  
23 traffic, which has no particular identifiable end point, will be treated as subject to the FCC's  
24 \$0.0007 rate, but only where Level 3 picks that traffic up within the calling area of the  
25

26 <sup>143</sup> Level 3/500, Ducloo/20; Level 3/800, Greene/18.

<sup>144</sup> Level 3/500, Ducloo/21.

<sup>145</sup> *Id.*

1 originating Qwest end office – either on a DEOT for which it pays, or on its own facilities. For  
2 the small portion of ISP-bound traffic that Qwest actually has to carry “on its own nickel”  
3 outside a local calling area, Level 3 will exchange the traffic on a bill and keep basis until Level  
4 3 completes facilities arrangements for the two LCAs where no Primary or Secondary POIs yet  
5 exist. For these reasons, and also because the regulatory status of VoIP traffic is ambiguous and  
6 confused in many of the same ways as the status ISP-bound traffic, it makes sense to extend the  
7 same arrangement regarding compensation for ISP-bound traffic to VoIP traffic as well.

8         The second major issue in dispute between the parties is Qwest’s proposal to require  
9 separate trunk groups to be established to carry different regulatory “types” of traffic. As  
10 explained above, however, the photons and electrons that make up communications in a network  
11 are unaware of what “type” they are, and network equipment does not recognize different  
12 “types” either. All inter-carrier traffic along a particular route should be carried on a single,  
13 integrated trunk group. Signaling data associated with individual calls can be used, either in real  
14 time or after-the-fact, to properly allocate minutes to regulatory categories for billing purposes.  
15 Qwest’s claims that this is problematic are overblown – all the other major ILECs seem to be  
16 able to handle this issue.

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1 Finally, the OPUC should adopt Level 3's proposals on the specific individual issues identified  
2 in Section VI.

3  
4 Respectfully submitted this 10<sup>th</sup> day of October, 2006

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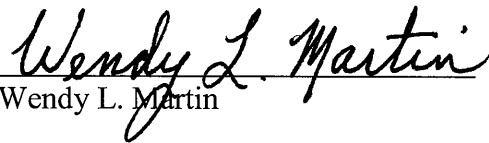
**CERTIFICATE OF SERVICE**  
**ARB 665**

I hereby certify that a true and correct copy of **OPENING BRIEF** was served via U.S. Mail on the following parties on October 10, 2006:

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