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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF LEVEL 3  
COMMUNICATIONS, LLC'S PETITION  
FOR ARBITRATION PURSUANT TO  
SECTION 252(B) OF THE COMMUNICA-  
TIONS ACT OF 1934, AS AMENDED BY  
THE TELECOMMUNICATIONS ACT OF  
1996, AND THE APPLICABLE STATE  
LAWS FOR RATE, TERMS, AND  
CONDITIONS OF INTERCONNECTION  
WITH QWEST CORPORATION**

CASE NO. QWE-T-05-11

**DIRECT TESTIMONY OF LARRY B. BROTHERRSON  
ON BEHALF OF  
QWEST CORPORATION**

**(Disputed Issue Nos. 1a, 3, 4, 10, 11, 12, 14, 15, 16, 19)**

**AUGUST 12th, 2005**

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**I. IDENTIFICATION OF WITNESS**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST.**

A. My name is Larry B. Brotherson. I am employed by Qwest Corporation (Qwest) as a Director Wholesale Advocacy in the Wholesale Markets organization. My business address is 1801 California Street, Room 2350, Denver, Colorado, 80202.

**Q. PLEASE DESCRIBE YOUR EMPLOYMENT BACKGROUND.**

A. Since joining Northwestern Bell Telephone Company in 1979, I have held several positions within Northwestern Bell, U S WEST Communications, and Qwest. Most of my responsibilities and assignments have been within the Law Department. Over the past 20 years, I have been a state regulatory attorney in Iowa, a general litigation attorney, and a commercial attorney supporting several organizations within Qwest. My responsibilities have included advising the company on legal issues, drafting contracts, and addressing legal issues that arise in connection with specific products. With the passage of the Telecommunications Act of 1996 (the Telecom Act), I took on responsibility for providing legal advice and support for Qwest's Interconnection Group. In that role, I was directly involved in working with competitive local exchange carriers (CLECs). I negotiated interconnection agreements with CLECs that implemented various sections of the Act, including the Act's reciprocal compensation

1 provisions. In 1999, I assumed my current duties as director of wholesale  
2 advocacy. My current responsibilities include coordinating the witnesses for all  
3 interconnection arbitrations and for hearings involving disputes over  
4 interconnection issues. Additionally, I work with various groups within the  
5 Wholesale Markets organization of Qwest to develop testimony addressing issues  
6 associated with interconnection services.

7 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

8 A. I received a Bachelor of Arts degree from Creighton University in 1970 and a  
9 Juris Doctor degree from Creighton in 1973.

10 **II. PURPOSE OF TESTIMONY**

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

12 A. This arbitration docket will address numerous disputed paragraphs to be  
13 incorporated into the interconnection agreement between the parties. The purpose  
14 of my testimony is to support the adoption of Qwest's proposed language relating  
15 to several of the specific issues that Qwest and Level 3 have not been able to  
16 reach agreement on. Specifically, I will explain Qwest's positions, and the  
17 policies underlying these positions.

18 Although there are many sub-issues, there are three major areas of dispute  
19 between Level 3 and Qwest.

1 First, Level 3 and Qwest disagree on a variety of issues related to VoIP (Voice  
2 over Internet Protocol), including the definition of VoIP; whether (assuming  
3 traffic is properly categorized as VoIP traffic) interexchange calls between local  
4 calling areas ("LCAs") are exempt from access charges if the call is ultimately  
5 from a VoIP provider; how and under what circumstances access charges or  
6 reciprocal compensation apply to VoIP traffic; the proper routing of VoIP traffic,  
7 and other issues.

8 Second, Level 3 and Qwest disagree on the treatment of and compensation for  
9 VNXX traffic (traffic that does not originate and terminate in the same LCA, even  
10 though the telephone numbers of the called and calling parties would lead the  
11 calling party to believe the call was a local call).

12 Finally, Level 3 and Qwest disagree on the proper type of and responsibility for  
13 the trunks carrying toll traffic and how Qwest should be compensated for the use  
14 of its network.

15 My testimony will address the first two issues relating to VoIP and VNXX. Mr.  
16 Easton will address Level 3's reluctance to place toll traffic on Feature Group D  
17 ("FGD") trunks and pay Qwest for the use of its network. Mr. Linse will address  
18 network issues related to all three areas.

1 **Q. HOW HAVE YOU ORGANIZED YOUR TESTIMONY?**

2 A. During the negotiation period, Qwest provided Level 3 with a matrix similar in  
3 format to others it has used in many other arbitrations with CLECs. The matrix  
4 showed Qwest's proposed language, and then incorporated Level 3's proposed  
5 additions in a strikethrough format. Because the Qwest proposed matrix also  
6 followed the contract numbering order, issues dealing with paragraph 5.2 would  
7 be addressed before issues dealing with paragraph 6.4 or 7.1. Level 3 objected to  
8 this format and proposed its own matrix and format. In an effort to advance the  
9 negotiations, Qwest agreed to the use of Level 3's matrix format. Unfortunately,  
10 the structure that Level 3 uses in its matrix format is difficult to follow.

11 Level 3 groups contract paragraphs into what it has characterized as "Tier 1"  
12 issues and "Tier 2" issues. In Level 3's words, Tier 2 issues are "derived" from  
13 Tier 1 issues. Therefore, the language sections in Level 3's matrix do not flow in  
14 the order of the disputed issues in the contract; instead they follow the order in the  
15 tier structure. Level 3 is, of course, free to use the format it prefers; however, in  
16 order for me to respond to Level 3's issues in an orderly sequence, it is necessary  
17 to address the competing language in a different order so that necessary pre-  
18 requisite issues are dealt with first. For example, the Level 3 matrix shows the  
19 first issue dealing with VoIP as language in contract sections 7.1.1.1 and 7.1.1.2,  
20 which deal with operational audits and certification. Before discussing audits of

1 VoIP, it is obviously necessary to understand what VoIP is, how the FCC  
2 describes VoIP, and what disagreements exist between the parties as to the  
3 requirements for a call to qualify as VoIP. Therefore, my testimony will start by  
4 addressing Issue 16: the definition of VoIP. Only after the Commission  
5 understands what each party claims are the proper elements of VoIP, will other  
6 VoIP issues be meaningful, such as the issue of the necessity of certification that  
7 VoIP traffic complies with the FCC definition of VoIP. My testimony will  
8 address each disputed paragraph in the agreement related to VoIP and VNXX  
9 even though I address the contract sections in a different order from Level 3's  
10 matrix. My testimony will describe the parties' positions for each disputed  
11 paragraph and demonstrate why Qwest's language is the appropriate language and  
12 should be adopted by the Commission.

13 **III. EXECUTIVE OVERVIEW**

14 **Q. PLEASE PROVIDE A GENERAL SUMMARY OF THE ISSUES YOU**  
15 **ADDRESS IN YOUR TESTIMONY.**

16 **A.** Although I address a variety of sub-issues, my testimony addresses two major  
17 issues that are critical to the interconnection agreement: (1) Voice over Internet  
18 Protocol ("VoIP") issues and (2) Virtual NXX ("VNXX") issues.

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VoIP Issues:

- The first issue I address is the proper definition of VoIP. True VoIP calls are calls initiated through the use of IP-compatible equipment over a broadband connection. Calls initiated over typical customer premises equipment (“CPE”) on the public switched telephone network (“PSTN”) are not VoIP calls. Through my exhibits, I illustrate valid VoIP calls and describe other calls that Level 3 improperly claims are VoIP.
- I point out that VoIP is treated as an information service under FCC rules, which means that the “Enhanced Services Provider (“ESP”) exemption” applies to VoIP calls under certain circumstances. Under the exemption, the location of the ESP point of presence (“POP”) (also referred to as the “VoIP provider POP”), rather than the VoIP customer, is treated as the end user customer for purposes of determining whether a call is local or interexchange. Level 3’s position is based on an erroneously broad reading of the ESP exemption. Contrary to Level 3’s position, there is no FCC rule or policy that “exempts” information service providers or calls from the normal rules governing classification of calls as local or interexchange—the rule simply moves the customer premises for analysis purposes from the actual VoIP customer’s premises to the location of the ESP POP.
- I comment on a variety of specific language submitted by Qwest and Level 3 related to VoIP issues and demonstrate that Level 3’s proposed language would treat all VoIP calls as though they were local. I demonstrate that this is merely a convenient fiction to avoid appropriate intercarrier compensation. When a Qwest end user customer originates a call destined for a remote VoIP POP (that is, a POP located outside of the local calling area (“LCA”) of the originating caller), that call must be treated as an interexchange call for all purposes. Likewise, when Qwest receives a call from a remote VoIP POP for termination in a different LCA that call should also be treated as an interexchange call for all purposes.
- By essentially pretending that VoIP calls from one LCA to another LCA are local calls, Level 3 seeks special treatment for calls that, from the perspective of the PSTN, are no different than other interexchange calls. Level 3’s proposals, if adopted, would dramatically undermine existing intercarrier compensation and subject carriers to disparate treatment and would create a windfall for Level 3 at the expense of Qwest’s customers.

- 1           •       Qwest's proposed language treats VoIP calls consistently with current  
2                   intercarrier compensation plans. Local VoIP calls should be treated like  
3                   other local calls, including making them subject to reciprocal  
4                   compensation, while VoIP calls that are interexchange in nature should be  
5                   subject to appropriate state and federal access charges.

6           VNXX Issues:

- 7           •       I first define VNXX, which is the inappropriate use by CLECs of local  
8                   telephone numbers that CLECs are able to obtain for calls that are actually  
9                   terminated to customers (usually ISPs) located in different LCAs than the  
10                  party making the call.
- 11          •       I demonstrate that the proper means of determining whether a call is local  
12                   or interexchange is based on the physical locations of the parties to the call  
13                   and not, as Level 3 proposes, based on the telephone numbers. Level 3's  
14                   proposal would result in calls that are interexchange in nature being  
15                   treated as though they were local calls.
- 16          •       Level 3's language acknowledges that with VNXX traffic the called and  
17                   calling parties are in different LCAs. Nevertheless, Level 3 would require  
18                   treating the call as local and the payment of reciprocal compensation on all  
19                   VNXX traffic. By, in effect, treating such traffic as local in nature, Level  
20                   3 creates a convenient fiction that dramatically changes the distinction  
21                   between local and interexchange calls. Thus, Qwest would be required to  
22                   transport large amounts of traffic from distant towns to Level 3 for free,  
23                   and then be required to pay intercarrier compensation to terminate the  
24                   traffic. Yet all of this traffic is generated by customers who, for the most  
25                   part, are calling into ISP customers of Level 3. Such a result would be  
26                   unfair and inconsistent with current law including a recent decision of the  
27                   Commission.
- 28          •       I describe Qwest's foreign exchange ("FX") service and point out the  
29                   critical distinctions between FX and VNXX traffic: a Qwest FX customer  
30                   (1) actually buys a local connection in each of the LCAs it wants local  
31                   access to at local exchange rates and (2) bears the full financial  
32                   responsibility to transport that traffic from each LCA back to the LCA  
33                   where the call is answered. Under VNXX, the CLEC does neither.

1 Other Issues:

- 2 • I address numerous other issues, most of them definitional in nature, that  
3 relate to the VNXX and VoIP issues. In most cases, the Level 3 language  
4 is designed to provide special treatment to its VoIP and VNXX traffic,  
5 while Qwest's language, which has been adopted in many other  
6 interconnection agreements and is consistent with SGAT language  
7 approved by the Commission, is designed to treat Level 3's traffic in a  
8 manner consistent with how the Commission has determined how local  
9 and interexchange traffic should be handled with other carriers.

10 **IV. DISPUTED ISSUE 16: DEFINITION OF VOIP**

11 **Q. BEFORE DEALING WITH THE DEFINITIONAL DISPUTES RELATING**  
12 **TO VOIP, PLEASE PROVIDE A BRIEF GENERIC DESCRIPTION OF**  
13 **VOIP.**

14 A. I will begin by describing the manner in which voice communications have taken  
15 place on the public switched telephone network (PSTN) for decades. The PSTN  
16 is a circuit based, switched network that employs an analog protocol called Time-  
17 Division Multiplexing ("TDM") to transmit voice messages. When one customer  
18 calls another customer under these circumstances, an actual circuit must be  
19 established between the two callers that remains in place for the duration of the  
20 call. Thus, when such a call is made, each party's loop is used for the duration of  
21 the call as are the switches and other facilities through which the call is routed.  
22 Such calls, because of the physical circuit that must be connected from end to end,  
23 are often referred to as "circuit-switched."

1 Both physically and conceptually, VoIP is different. Rather than being based on  
2 an actual physical circuit, VoIP is based on digital packets that are created in a  
3 digital format known as Internet Protocol or "IP." Thus, a VoIP call must be  
4 initiated by an end user customer in IP through the use of IP compatible  
5 equipment,<sup>1</sup> which converts the conversation into multiple digital IP packets of  
6 information (each of which represents a small digitized portion of the voice call  
7 between the parties). Instead of passing over a single circuit, each packet is  
8 capable of independently traveling a different route than other packets. Once the  
9 packets are created by the IP-compatible CPE, they are individually forwarded  
10 onto the Internet by routers. As noted, because no specific circuit must be  
11 established, a traditional circuit switch is not necessary to establish a circuit and  
12 the packets do not necessarily follow the same path (this is one of the reasons the

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<sup>1</sup> The FCC, in its recent VoIP 911 order, described IP Compatible equipment:

"The term "IP-compatible CPE" refers to end-user equipment that processes, receives, or transmits IP packets. Users may in some cases attach conventional analog telephones to certain IP-compatible CPE in order to use an interconnected VoIP service. For example, IP-compatible CPE includes, but is not limited to, (1) terminal adapters, which contain an IP digital signal processing unit that performs digital-to-audio and audio-to-digital conversion and have a standard telephone jack connection for connecting to a conventional analog telephone; (2) a native IP telephone; or (3) a personal computer with a microphone and speakers, and software to perform the conversion (softphone).

First Report and Order and Notice of Proposed Rulemaking, *In the Matters of IP-Enabled Services E911 Requirements for IP-Enabled Service Providers*, FCC 05-116, ¶ 24, n. 77 (June 3, 2005) (citations omitted) ("*FCC VoIP 911 Order*").

1 Internet is often depicted as a cloud rather than a physical connection from one  
2 point to another).

3 Thus, the first distinguishing characteristic of VoIP is that it must be initiated at  
4 the end user customer's premises in IP using IP-compatible CPE. The second  
5 characteristic is that the VoIP call must be initiated over a broadband connection  
6 such as cable modem or DSL that does not pass through the PSTN local switch.

7 There are two types of VoIP calls that meet these two defining characteristics of  
8 VoIP. One of the types is irrelevant to this case, while the other type of VoIP call  
9 is at the very center of the VoIP issues before the Commission in this docket.

10 The first type of VoIP call takes place between two VoIP customers, both served  
11 by a broadband connection. The call is, of course, initiated in IP over a broadband  
12 connection. When the called party is also a VoIP customer on a broadband  
13 connection, the call is never converted into TDM (the language of the circuit-  
14 switched PSTN). Instead, the packets are transported over the Internet directly to  
15 the called party, where the called party's IP compatible equipment reassembles the  
16 packets in the proper order so they become a voice conversation again. The  
17 breakdown into IP packets, the transmission of the individual packets, and the  
18 reassembly of the IP packets into voice sounds all take place on the Internet or a  
19 private IP network. If, as in the foregoing example, a call goes from one IP  
20 capable piece of equipment to another IP capable piece of equipment, over

1 broadband connections through transmission IP packets, the call is completed  
2 without ever touching the circuit switched PSTN. Thus, this type of call is a VoIP  
3 call, but it does not interconnect with the PSTN in any manner. Because such  
4 calls originate and terminate in IP format, they are often referred to as "IP-IP  
5 calls." They occur entirely over the Internet, are not exchanged between carriers,  
6 and there are therefore no intercarrier compensation or other interconnection  
7 issues that result from IP-IP traffic. Such calls are therefore completely irrelevant  
8 to the issues in this case.

9 The second type of VoIP is central to the VoIP issues in this docket. This is a call  
10 that is initiated through IP-compatible CPE over a broadband connection, but the  
11 called party is not a VoIP customer. Instead, the called party is a typical customer  
12 served on the PSTN by a loop attached to a circuit switch and whose CPE is not  
13 IP-compatible. In this situation, the exchange of traffic is completely different  
14 than in the first type of call. In order to complete the call, the IP packets created  
15 by the equipment of the calling party must, at some point (a function of the VoIP  
16 provider's equipment) be converted into a TDM voice format, transferred to the  
17 PSTN on a connection that will route through circuit switches to the end office  
18 serving the customer, and finally sent over the loop to the customer. This type of  
19 call, which is often referred to as an "IP-TDM call" because it was originated in IP  
20 format and terminated to the PSTN in TDM format, is a VoIP call because it

1 meets the criteria of originating in IP format using IP-compatible CPE over a  
2 broadband connection. It is terminated, however, using local switching and loops.  
3 This type of call creates intercarrier compensation and other issues that must be  
4 dealt with in this docket.

5 There is a third type of call that, while it is not a VoIP call, is an issue here  
6 because of the manner in which Level 3 has defined VoIP traffic. In this type of  
7 call, the call is originated in TDM format, but the carrier (most likely for network  
8 efficiency reasons) decides to transport the call from two points in IP before  
9 reconverting it into TDM for delivery. Although this call was in IP format for part  
10 of the transmission, it both originates and terminates in TDM. Such calls are  
11 often referred to as "TDM-IP-TDM calls" or as "IP in the middle" calls. Because  
12 such calls do not meet the criteria for VoIP described above, they are not VoIP.

13 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE**  
14 **16.**

15 **A.** Issue 16 focuses on the appropriate definition of VoIP in the context of the second  
16 type of call described above, traffic originating from a VoIP customer in IP that is  
17 terminated over the PSTN in TDM. It is this type of traffic that raises issues in  
18 this docket. The first type (IP-IP), because it never enters the PSTN, is not  
19 addressed by the interconnection agreement.

1 **Q. WITH THAT BACKGROUND, PLEASE DESCRIBE THE ISSUES THAT**  
2 **ARE RAISED BY THE COMPETING VOIP DEFINITIONS.**

3 A. The ultimate issues relate to intercarrier compensation. Qwest's definition centers  
4 on two basic issues related to VoIP:

5 1) What requirements must be met to permit a VoIP provider to terminate  
6 calls using a local exchange product for its connection rather than a Switched  
7 Access (Feature Group D) connection?

8 2) Assuming a VoIP provider is qualified to purchase a connection out of the  
9 local exchange catalogs, how are calls that terminate within and outside the local  
10 calling area ("LCA") in which the VoIP provider is physically located handled?

11 **Q. WHY DOES THE QWEST DEFINITION REQUIRE THAT A VOIP CALL**  
12 **ORIGINATE IN IP OVER A BROADBAND FACILITY USING IP**  
13 **EQUIPMENT IN ORDER TO BE ENTITLED TO TERMINATION**  
14 **THROUGH A LOCAL NETWORK CONNECTION?**

15 A. The first reason is simply that this definition appears to be consistent with the way  
16 the FCC has thus far defined VoIP.

17 The second reason is far more complicated. It relates to a historic category of  
18 providers known as ESPs. Under current FCC rules (all of which are subject to  
19 being changed when the FCC makes its final decisions on these issues) providers

1 of VoIP are considered to be ESPs. ESPs are entitled to terminate calls through a  
2 connection to the PSTN purchased through a local service connection under  
3 certain circumstances. But a VoIP provider is considered an ESP only if the call  
4 meets the fundamental requirements to qualify as VoIP: the call must originate in  
5 IP through the use of IP-compatible CPE over a broadband facility. This is the  
6 only type of call that meets the definition of VoIP proposed by Qwest and is thus  
7 the only type of traffic that qualifies for the ESP exemption.

8 If a call originates as a voice call on the PSTN and is then terminated as a voice  
9 call on the PSTN, this is a TDM-IP-TDM or "IP in the middle" call, which is  
10 subject to typical intercarrier compensation rules: if it is a local call, it is subject to  
11 reciprocal compensation; if it is an interexchange (toll) call it is subject to access  
12 charges such as Feature Group D. The FCC ruled in the *AT&T Declaratory*  
13 *Ruling* that this type of call is not a VoIP call even if at some point during the call  
14 it was converted to IP because, before delivery, it was reconverted to TDM and  
15 delivered over the PSTN.<sup>2</sup> Since, in this proceeding, we are only addressing the  
16 calls that Qwest is being asked to terminate on the PSTN, the termination of each  
17 call is in TDM over the PSTN. Thus, if the call is not originated in IP over a

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<sup>2</sup> Order, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, 19 FCC Rcd 7457, ¶¶ 12-13 (April 14, 2004) (ruling that AT&T's service was a telecommunications service and is subject to access charges) ("*AT&T Declaratory Ruling*").

1 broadband facility, it will be both originating and terminating in traditional PSTN  
2 format, thus losing its current status as an enhanced or information service call,  
3 and access charges will apply.

4 **Q. YOU MENTIONED THE ESP EXEMPTION. CAN YOU DESCRIBE IT**  
5 **FOR US?**

6 A. First, the ESP exemption is relevant to this docket because, under current rules  
7 that are the subject of ongoing FCC consideration, true VoIP service qualifies as  
8 an "information service." Thus, VoIP providers served by Level 3 are entitled to  
9 receive service pursuant to the ESP exemption, but only in very specific  
10 circumstances. All of this ultimately becomes relevant to how VoIP is defined  
11 and to the intercarrier compensation regime that applies under certain  
12 circumstances. Thus, it is important for the Commission to understand the  
13 fundamentals of the ESP exemption.

14 The ESP exemption has a long history with the FCC. It was originally established  
15 at the time access charges were established following the Modified Final  
16 Judgment (MFJ) that governed the divestiture of the old Bell System. While  
17 establishing the access charge regime in use today for all interexchange carriers  
18 ("IXCs"), the FCC permitted ESPs to connect their POP to the local network via  
19 local exchange service as opposed to feature group services that IXCs were (and  
20 still are) required to purchase, even though the ESPs used the local exchange

1 facilities for interstate access. The ESP exemption was never really an exemption  
2 at all—it was simply a regulatory decision that, for a variety of policy reasons,  
3 interstate access by ESPs located within a LCA would be treated as local for  
4 purposes of assessing the correct access charge. Thus, under the exemption, the  
5 ESP can order a local service connection to its POP in the same manner as the  
6 service can be ordered by other end user customers located within a particular  
7 LCA. In other words, under the ESP exemption, the ESP is treated like an end  
8 user customer as opposed to an IXC for purposes of obtaining access to a LCA.  
9 In that LCA, the ESP can obtain the same business services that any other end  
10 user business can obtain on a retail basis. The effect of the exemption, then, is  
11 that unlimited calls may be terminated by the ESP within such LCAs and it will be  
12 charged typical retail business rates instead of access charges to do so. But that is  
13 the extent of the exemption. For example, to the extent the ESP seeks to  
14 terminate calls to customers within the LATA but outside that LCA, the  
15 exemption does not apply and the calls will be handed off to the end user  
16 customer's (i.e. the ESP's) Primary Interexchange Carrier ("PIC") choice for  
17 delivery to the other LCA. Qwest Exhibit No. 301 depicts the two examples. In  
18 Qwest Exhibit No. 301, I depict the termination of VoIP calls from the Internet  
19 through valid routing. When the VoIP provider and the end user customer are in  
20 the same LCA, the ESP (Level 3 in the exhibit) obtains a local connection to the  
21 network by purchasing Local Interconnection Service ("LIS") in Boise. In this

1 example, the call is handed off by the ESP within the Boise LCA for termination  
2 to a Qwest end user customer also in the Boise LCA via the LIS trunk. The  
3 exhibit further shows a call where the ESP is within the Boise LCA and the Qwest  
4 end user customer is located in the Twin Falls LCA. The call is routed through  
5 use of the PICed IXC using FGD trunks for termination to the end user customer.  
6 This is explained in more detail in the following section.

7 **Q. CAN YOU DESCRIBE THE REQUIREMENT THAT CALLS WITHIN**  
8 **THE LCA WHERE THE VOIP PROVIDER PURCHASES A LOCAL**  
9 **CONNECTION ARE LOCAL AND CALLS BOUND FOR LOCATIONS**  
10 **OUTSIDE THE LCA ARE TOLL?**

11 A. Yes. Under current rules, a voice call between separate LCAs is a toll call and  
12 must be treated as such. This rule applies equally to VoIP. Thus, when a call is  
13 originated in IP format on IP-compatible equipment and is handed off to Qwest  
14 within a LCA where the ESP is located, but the call is being sent for termination  
15 to another LCA, the provider is not entitled to free transport to the terminating  
16 LCA under the ESP exemption or on any other basis, nor is it allowed to connect  
17 to the terminating LCA as an end user customer under the ESP exemption if it  
18 does not have a physical presence in that LCA. Calls of this sort are properly  
19 classified as interexchange traffic and must be handed off to an IXC, which must  
20 connect to Qwest typically via a Feature Group connection. Assuming a call is

1 VoIP, and has been converted from IP protocol to PSTN protocol, the call can be  
2 delivered to Qwest over Local Interconnection Service (LIS) trunks if, and only if,  
3 the hand off to Qwest is for termination of the call within the same LCA as the  
4 VoIP provider's POP. Because the VoIP provider (as an ESP) purchases its  
5 connection to the local network as an end user customer, the call will be treated as  
6 a local call and no access charges would apply if the call is sent to a party  
7 physically located in the same LCA as the VoIP provider's POP. It would also be  
8 treated as a local call for section 251(b)(5) reciprocal compensation purposes. If  
9 the hand off is for termination at a distant local exchange outside of the LCA  
10 where the VoIP POP is located, the call must be delivered to Qwest on FGD for  
11 termination to that LCA. The second call example on Qwest Exhibit No. 301  
12 shows a call from a VoIP provider's POP (end user customer) in Boise who seeks  
13 to complete a call to Twin Falls. In that example the call is handed off to the IXC  
14 PICed by the end user customer (or VoIP Provider), and the IXC delivers the call  
15 to Twin Falls over Feature Group D. If the VoIP Provider purchases a local  
16 connection from its POP to the Qwest local switch in Boise, then Qwest's switch  
17 will recognize the call to Twin Falls as a toll call and route the call to the  
18 appropriate IXC. If the VoIP Provider purchases a local connection from its POP  
19 to the Level 3 switch in Boise then Level 3's switch is required to route the call to  
20 an IXC.

1           Because the ESP is entitled to purchase a local connection in the Boise LCA  
2           rather than a FGD connection to terminate VoIP traffic in the Boise LCA, the calls  
3           from the Boise VoIP POP to Boise residents are treated as local calls. This is true  
4           whether the VoIP provider purchases that local connection from Qwest or Level 3.  
5           But the ESP exemption does not extend beyond the LCA in which the ESP has a  
6           presence. Thus, calls from a VoIP POP in Boise to Qwest end user customers in  
7           Twin Falls, or, for that matter, to end user customers in New York or Hong Kong,  
8           is required to be routed to an IXC for completion. In those cases, the IXC, not the  
9           VoIP provider, will pay access charges associated with transporting and  
10          terminating the call. The foregoing examples demonstrate the status of the proper  
11          application of the FCC ESP exemption and the proper routing and intercarrier  
12          compensation for interexchange calls under current rules.

13   **Q.   THE FCC HAS DISTINGUISHED VOIP TRAFFIC THAT CONNECTS**  
14   **TO THE PSTN FROM VOIP TRAFFIC THAT IS TRANSPORTED**  
15   **SOLELY OVER THE INTERNET OR A PRIVATE IP NETWORK. IS**  
16   **THE DISTINCTION RELEVANT TO THE DISCUSSION OF VOIP IN AN**  
17   **INTERCONNECTION AGREEMENT?**

18   **A.**   Absolutely. The FCC has been careful to distinguish VoIP traffic that connects to  
19          the PSTN from VoIP traffic that is handled entirely by the Internet, specifically  
20          using the term “interconnected VoIP services” to describe “those VoIP services

1 that can be used to receive telephone calls that originate on the PSTN and can be  
2 used to terminate calls to the PSTN.”<sup>3</sup> The FCC singled out Interconnected VoIP  
3 services because “consumers expect that VoIP services that are interconnected  
4 with the PSTN will function in some ways like a “regular telephone” service.”<sup>4</sup>  
5 Interconnected VoIP service was defined “as bearing the following characteristics:  
6 (1) the service enables real-time, two-way voice communications; (2) the service  
7 requires a broadband connection from the end user customer’s location; (3) the  
8 service requires IP-compatible CPE; and (4) the service offering permits users  
9 generally to receive calls that originate on the PSTN and to terminate calls to the  
10 PSTN.”<sup>5</sup> The issues between Qwest and Level 3 with regard to VoIP relate  
11 specifically to Interconnected VoIP traffic that is terminated or transmitted to the  
12 Qwest network (i.e., to the PSTN).

13 **Q. WHAT IS THE DIFFERENCE BETWEEN QWEST’S AND LEVEL 3’S**  
14 **PROPOSED DEFINITIONS OF VOIP?**

15 A. It is easy to see the distinction between the two company’s positions by looking at  
16 the language in dispute. Qwest’s proposed definition of VoIP traffic for the  
17 interconnection agreement with Level 3 is shown in the paragraph below. All of

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<sup>3</sup> *FCC VoIP 911 Order* ¶ 23.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* ¶ 24.

1 Level 3's proposed changes are in bold face type and the language Level 3  
2 proposes to be deleted is shown as a strikethrough. Where Level 3 seeks to add  
3 additional language to the paragraph, the proposal is shown in a bold underlined  
4 format.

5 "VoIP" (Voice over Internet Protocol) traffic is traffic that originates in  
6 Internet Protocol using IP-Telephone handsets, Internet Protocol (IP) adapters,  
7 CPE-based Internet Protocol Telephone (IPT) Management "plug and play"  
8 hardware, IPT application management and monitoring hardware or such  
9 similar equipment and is transmitted over a broadband connection to **or from**  
10 the VoIP provider.

11 Qwest's definition is pictorially illustrated in Qwest Exhibit No. 302 attached to  
12 this document.

13 **Q. WHAT IS THE EFFECT OF LEVEL 3'S DELETIONS FROM QWEST'S**  
14 **PROPOSED LANGUAGE?**

15 A. By making these deletions, Level 3 is asking the Idaho Commission to  
16 dramatically modify the FCC prescribed method of treating ESPs. The FCC made  
17 its position very clear in the ESP Exemption order:

18 "Under our present rules, enhanced service providers are treated as end users  
19 for purposes of applying access charges. See 47 C.F.R. § 69.2(m);  
20 *Northwestern Bell Telephone Company Petition for a Declaratory Ruling,*  
21 *Memorandum Opinion and Order, 2 FCC Rcd 5986, 5988 at para. 20 (1987),*  
22 *appeal docketed, No. 87-1745 (D.C.Cir. Dec. 4, 1987).* Therefore, enhanced  
23 service providers generally pay local business rates and interstate subscriber  
24 line charges for their switched access connections to local exchange company  
25 central offices."<sup>6</sup>

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<sup>6</sup> Order, *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, ¶ 2, n.8 (1988) ("ESP Exemption

1  
2 The FCC was clear on how an ESP would be treated. Level 3's language is a  
3 direct attempt to avoid the FCC's ruling. Level 3 seeks to delete Qwest's  
4 language in an explicit attempt to avoid access charges when a call is between two  
5 LCAs (i.e., avoid access charges on calls that are clearly interexchange in nature).  
6 The Qwest language that states that the VoIP Provider's POP will be treated as an  
7 end user customer must be incorporated into the agreement because that is  
8 precisely the manner in which the ESP exemption operates (under the exemption,  
9 the ESP is treated as an end user customer). Thus, Qwest's language that the  
10 VoIP Provider's POP will be considered as an end user customer for purposes of  
11 determining the end points of the call is essential in order to resolve any doubt  
12 that if the call is transported to another LCA in the LATA, to another LATA, to  
13 another state, or to another country, the call must be delivered to an IXC and the  
14 IXC that transports the call will be responsible for access charges. Otherwise, the  
15 interconnection agreement will enable Level 3 to provide a service to ESPs (or to  
16 itself acting as an ESP) that gives it access to Qwest's entire network essentially  
17 free of charge to terminate IXC traffic.

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*Order*”). See also *id.* ¶ 20, n. 53 (“Thus, the current treatment of enhanced service providers for access charge purposes will continue. At present, enhanced service providers are treated as end users and thus may use local business lines for access for which they pay local business rates and subscriber lines charges. To the extent that they purchase special access lines, they also pay the special access surcharge under the same conditions as those applicable to end users.”).

1 As Qwest understands Level 3's proposal (which essentially treats *all* VoIP traffic  
2 as though it were local traffic), Qwest would receive reciprocal compensation for  
3 terminating such traffic. The reciprocal compensation rate, of course, is  
4 dramatically less than FGD rates and was never designed for the termination of  
5 interexchange traffic (reciprocal compensation traditionally applies to the  
6 termination of local traffic only). Thus, Level 3's proposal would result in a  
7 fundamental restructure of intercarrier compensation on traffic that, other than the  
8 manner in which it originates, looks precisely the same to the PSTN as any other  
9 interexchange traffic. As the Commission reviews this matter, Qwest suggests  
10 that it refuse to consider such an elemental change in intercarrier compensation.  
11 To the PSTN, there is no difference between a typical interexchange call that  
12 terminates on the PSTN (and is therefore subject to appropriate access charges)  
13 and a VoIP originated call that, once it is converted into TDM, is placed on the  
14 PSTN for termination. Qwest is unaware of any good reason, let alone a  
15 compelling reason, to treat these calls in a completely different manner for  
16 intercarrier compensation purposes. Level 3's proposal should, therefore, be  
17 rejected.

18 For traffic to meet Qwest's VoIP definition, it must originate in IP; otherwise it is  
19 simply another call originated in TDM that terminates in TDM. Consistent with  
20 the FCC's ruling discussed above and in more detail below, Qwest's definition

1 requires that the call originate in IP using IP CPE and be transmitted over a  
2 broadband connection to the VoIP Provider. Unless it meets these requirements it  
3 will fail to meet the criteria of the FCC in the AT&T case discussed above, where  
4 the FCC rejected AT&T's effort to avoid access charges on calls that originate  
5 and terminate in TDM.

6 Qwest's definition also identifies VoIP as an "information service," a contention  
7 that Level 3 does not appear to challenge. Designating VoIP as an information  
8 service in Qwest's definition makes the PSTN portion of the service subject to  
9 interconnection and compensation based on treating the VoIP Provider's POP as  
10 an end user customer's premises. Therefore, LIS trunks may be used to terminate  
11 VoIP traffic based on rules that apply to other end user customers, including the  
12 requirement that the VoIP Provider's POP (served by Level 3) where the VoIP  
13 traffic is delivered to the public network be physically located in the same LCA as  
14 the called party. Other types of VoIP calls can also be delivered to Qwest for  
15 termination, of course, but since they do not qualify for the ESP exemption, such  
16 traffic should be classified as toll traffic and all existing access rules are  
17 applicable to it.

18 **Q. WHAT IS THE EFFECT OF LEVEL 3'S FIRST TWO CHANGES?**

19 A. Level 3 attempts to remove the requirement that the call must *originate* at the end  
20 user premises and to strike the words "end user premises" when referring to "end

1 user customer's premises IP adapters." Origination *at the end user premises* in IP  
2 is a critical requirement that must remain in the agreement. The rationale for  
3 Level 3's effort to delete this requirement from the definition is far from clear (it  
4 certainly did not make it clear in its Petition), but it is an essential piece of the  
5 definition of VoIP. First, under the ICA, these calls will terminate on the Qwest  
6 local network (the PSTN). As mentioned above, when an end user customer call  
7 is originated on the PSTN, routed over PSTN loops to a PSTN switch, and Level  
8 3 terminates the same call on the PSTN, that call does not qualify as an enhanced  
9 or information service. It is irrelevant that a VoIP provider may have converted it  
10 to IP protocol in the middle for some distance. A call not originating over  
11 broadband in IP does not meet the requirements for the FCC ESP exemption. The  
12 FCC made this perfectly clear in 2004 in its Phone-to-Phone IP exemption  
13 decision (the "*AT&T Declaratory Order*"), where the FCC determined that a  
14 service that begins on the PSTN and ends on the PSTN, even though it may use  
15 the Internet for a portion of the transport of that service, offers no net protocol  
16 conversion, and is therefore a telecommunications service (as opposed to an  
17 information service):

18 "The service at issue in AT&T's petition consists of an interexchange call that  
19 is initiated in the same manner as traditional interexchange calls—by and end  
20 user who dials 1+ the called number from a regular telephone. When the call  
21 reaches AT&T's network, AT&T converts it from its existing format into an  
22 IP format and transports it over AT&T's Internet backbone. AT&T then  
23 converts the call back from the IP format and delivers it to the called party

1 local exchange carrier (LEC) local business lines. We clarify that, under the  
2 current rules, the service that AT&T describes is a telecommunications service  
3 upon which interstate access charges may be assessed. We emphasize that our  
4 decision is limited to the type of service described by AT&T in this  
5 proceeding, i.e. an interexchange service that: (1) uses ordinary customer  
6 premises equipment (CPE) with no enhanced functionality; (2) originates and  
7 terminates over the public switched telephone network (PSTN); and (3)  
8 undergoes no net protocol conversion and provides no enhanced functionality  
9 to end users due to the providers use of IP technology.”<sup>7</sup>

10  
11 Thus, if Level 3 delivers an IP long distance call to Qwest for termination on  
12 Qwest’s PSTN and the call did not originate in IP over a broadband connection,  
13 the FCC has ruled that such a call is not exempt from access charges. If, however,  
14 the call originates in IP (using the appropriate IP equipment) over a broadband  
15 connection, and is then converted into traditional TDM protocol for termination  
16 on the PSTN to a local telephone number, there has been a *net protocol*  
17 *conversion* and the call qualifies as an enhanced or information service. Since the  
18 terminating end, the call being delivered to Qwest for termination is always in  
19 TDM protocol, it *must* originate in IP at the originating end user customer  
20 premises in order to be exempt. Originating in IP can only occur over a  
21 broadband connection. If it both originates and terminates in the PSTN protocol it  
22 is not an enhanced or information service under the FCC’s rules. Qwest’s  
23 definitional language makes it clear that VoIP:

24 “originates in Internet Protocol **at the premises of the party making the call**  
25 using IP-Telephone handsets, **end user premises** Internet Protocol (IP)

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<sup>7</sup> *AT&T Declaratory Order*, ¶ 1.

1 adapters, CPE-based Internet Protocol Telephone (IPT) Management “plug  
2 and play” hardware, IPT application management and monitoring hardware or  
3 such similar equipment and is transmitted over a broadband connection to the  
4 VoIP provider.”  
5

6 Qwest’s language requiring that the call originate at the end user customer’s  
7 premises in broadband is also an absolute necessity if the call is to be treated as an  
8 enhanced or information service and thus entitled to the ESP exemption. Any  
9 attempt by Level 3 to remove this requirement from the contract will, in effect,  
10 modify the ESP exemption and authorize it to do what the FCC said AT&T could  
11 not do: take simple calls that originate on the PSTN, deliver them to Qwest in  
12 another LCA, terminate the call on the PSTN, and claim the call is exempt from  
13 access charges. Thus, Level 3’s first two strikethrough proposals must be  
14 rejected. The call must originate over broadband in IP to be an enhanced or  
15 information services VoIP call.

16 Next, Level 3 proposes some perplexing language to the VoIP definition regarding  
17 traffic direction, wanting it to read that VoIP may be “transmitted over a  
18 broadband connection to or from the VoIP provider”. What these additional terms  
19 mean is not clear. For example, calls delivered to Qwest from a VoIP provider for  
20 termination will go through a Qwest switch and over a loop connected to that  
21 switch for termination on the PSTN to a traditional telephone. However, a call  
22 from the VoIP provider that transits directly to a VoIP end user customer over  
23 broadband will not go through a public network switch and thus, the PSTN is not

1 used to complete the call.<sup>8</sup> As such, Qwest would not be involved in switching  
2 the call on the PSTN and Level 3's proposed language is inappropriate. I am  
3 unaware of any other situation or scenario in which a call would come *from* the  
4 VoIP provider in broadband that would involve Qwest or the PSTN. These first  
5 two changes go to the heart of what is a VoIP call. They make clear what type of  
6 calls an ESP is entitled to purchase access to the public network from the Qwest  
7 (or Level 3) local exchange services catalog as an enhanced service and not  
8 through FGD, as prescribed by the FCC. Qwest's language is critical to the  
9 definition and accurately limits the ESP exemption to only qualified situations. It  
10 must be adopted.

11 **Q. WHAT IS THE THIRD CHANGE THAT LEVEL 3 PROPOSES TO THE**  
12 **QWEST DEFINITION OF VOIP?**

13 A. Level 3 proposes to strike the entire remaining language from the definition. This  
14 language describes how VoIP traffic will be treated under the interconnection  
15 agreement as well as establishing the interconnection compensation rules that  
16 apply to VoIP traffic. However, while Qwest believes this language is critical and  
17 must be incorporated into the interconnection agreement, Qwest is amenable to  
18 placing the language in the main section of the agreement. Regardless of where it

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<sup>8</sup> The call may use Qwest facilities, but not for termination; for example, if the end user leases a direct broadband connection to the VoIP provider.

1 is placed, Qwest strongly believes language for the treatment of VoIP traffic is  
2 necessary to avoid future disputes.

3 **Q. HOW DO YOU PROPOSE TO INCLUDE THIS LANGUAGE IN THE**  
4 **AGREEMENT?**

5 A. Section 7.2 of the Interconnection Agreement addresses exchange of traffic. A  
6 subset of that section, 7.2.2, discusses the terms and conditions for the exchange  
7 of traffic. The terms and conditions describing the exchange of VoIP traffic  
8 should be located in the next available subsection, 7.2.2.12. I propose the  
9 remaining language from the definition of VoIP above be inserted under Section  
10 7.2 as follows:

11 7.2.2.12 VoIP Traffic. VoIP traffic as defined in this agreement  
12 shall be treated as an Information Service, and is subject to interconnection  
13 and compensation rules and treatment accordingly under this Agreement based  
14 on treating the VoIP Provider Point of Presence ("POP") is an end user  
15 premise for purposes of determining the end points for a specific call.  
16

17 7.2.2.12.1 CLEC is permitted to utilize LIS trunks to terminate  
18 VoIP traffic under this Agreement only pursuant to the same rules that apply  
19 to traffic from all other end users, including the requirement that the VoIP  
20 Provider POP must be in the same Local Calling Area as the called party.  
21

1   **Q.    LEVEL 3 OBJECTS TO THE REQUIREMENT THAT THE VOIP**  
2       **PROVIDER POINT OF PRESENCE (POP) BE CONSIDERED AN END**  
3       **USER CUSTOMER FOR PURPOSES OF DETERMINING THE END**  
4       **POINTS OF A CALL. CAN YOU COMMENT?**

5    A.    The language requiring that the VoIP POP be considered an end user customer  
6        was a portion of the definitions moved into the body of the agreement at 7.2.2.12.  
7        Level 3's definition deletes that language. The language is critically important  
8        due to the ESP Exemption, and must be included somewhere in the agreement.  
9        Since both Level 3 and Qwest agree that the traffic that is handed off to the public  
10       network from the VoIP POP arrived over the Internet and is an alternative to  
11       traditional IXC traffic, the only real question is whether or not the VoIP provider  
12       must purchase FGD to terminate its calls. In answer to that question, the FCC has  
13       said no. *If the VoIP provider is acting as an ESP, it is entitled to purchase its*  
14       *connection out of the local exchange service catalog and obtain local service*  
15       *within the LCA where it is physically located.* In this respect, the ESP is treated as  
16       any other end user customer.

17   **Q.    BASED UPON THESE FACTS WHAT SHOULD THE COMMISSION DO**  
18       **WITH RESPECT TO ISSUE 16, DEFINITION OF VOIP?**

19    A.    For all the reasons stated above, the Commission should adopt Qwest's proposed  
20        definition of VoIP that includes the requirement that the call must originate at the

1 premises of the party making the call, through the use of IP-compatible CPE, over  
2 a broadband circuit in IP to avoid the scenario of calls the both originate and  
3 terminate as PSTN calls. Further, consistent with the proper criteria for VoIP and  
4 with the FCC's ESP Exemption, neither PSTN to PSTN calls are VoIP and are not  
5 entitled to the ESP exemption under FCC decisions. Qwest's proposed language  
6 for Sections 7.2.2.12 and 7.2.2.12.1, make clear that VoIP traffic *as defined in*  
7 *this agreement* will be treated as an information service, will be entitled to the  
8 ESP exemption, and the VoIP providers POP will be treated as an end user  
9 customer's premises for purpose of determining the end points of a call. This will  
10 ensure that the intrastate access regime as currently approved by this Commission  
11 is not changed at this time. The Commission, therefore, should adopt Qwest's  
12 proposed language.

13 **Q. PLEASE SUMMARIZE QWEST'S BASIC POSITIONS ON VOIP.**

14 A. The first issue is the proper definition of VoIP. Consistent with FCC decisions,  
15 there are two key essential features that must be present for a VoIP call: (1) the  
16 call must originate on IP-compatible CPE (both Qwest's and Level 3's language  
17 provides greater detail on the proper description of such CPE) and (2) it must also  
18 originate on a broadband connection, such as DSL, cable modem, or other  
19 equivalent high-speed connection to the Internet. If these two criteria are not met,  
20 then the call cannot be deemed to be VoIP.

1 In the context of that definition, three types of calls must be considered: (1) calls  
2 that meet the criteria for VoIP traffic that are terminated to another VoIP customer  
3 who likewise has IP-compatible CPE and served over a broadband connection  
4 (commonly referred to as IP-IP traffic); (2) calls that meet the criteria for VoIP  
5 traffic, but which are terminated to a customer served on the PSTN on a telephone  
6 line to a customer that uses traditional telephone CPE (commonly known as  
7 IP-TDM traffic); and (3) traffic that originates in TDM but which is converted to  
8 IP at some point and then converted back to TDM for delivery to the called party  
9 (commonly known as "TDM-IP-TDM" or "IP in the middle" traffic).

10 **Q. PLEASE ADDRESS EACH TYPE OF TRAFFIC AND DESCRIBE**  
11 **QWEST'S POSITION AS TO THE PROPER TREATMENT OF EACH**  
12 **UNDER THE INTERCONNECTION AGREEMENT.**

13 A. I will first address IP-IP traffic. This type of traffic clearly meets the criteria for  
14 VoIP. However, because both the calling and called parties are VoIP customers  
15 served by broadband connections, the call remains in IP, is transported entirely  
16 over the Internet, and never enters the PSTN. Thus, it is not relevant to the  
17 interconnection agreement at issue in this docket.

1 Q. PLEASE DISCUSS IP-TDM TRAFFIC.

2 A. From Qwest's perspective, this is the only VoIP traffic at issue in this docket. IP-  
3 TDM traffic meets the criteria for VoIP traffic because it is originated with IP-  
4 compatible CPE over a broadband connection.

5 There is really only one specific implication of the status of IP-TDM traffic as  
6 VoIP traffic that distinguishes it from the rules that apply to other traffic. That is  
7 the application of the so-called ESP exemption. Both parties agree that, until the  
8 FCC definitively rules on the issue, VoIP will be treated as an "information  
9 service" under the Act. Thus, under certain circumstances, the provider of true  
10 VoIP service is classified as an ESP and, where applicable, qualifies for the  
11 exemption. While it is unclear from the Level 3 Petition, Level 3 appears to  
12 believe the exemption applies much more broadly than Qwest believes it does.  
13 Under the proper application of the exemption, a VoIP provider is treated as an  
14 end user customer for purposes of access to a LCA in which the VoIP provider  
15 maintains a point of presence ("POP"). Level 3, however, appears to believe that,  
16 either through the application of the ESP exemption or for some other undisclosed  
17 reason, VoIP providers are entitled to LATA-wide exemption from access  
18 charges. Qwest adamantly opposes that position on both legal and policy grounds.  
19 Thus, for purposes of termination of IP-TDM traffic in the LCA in which the  
20 VoIP provider POP is located, the VoIP provider is allowed to terminate that

1 traffic with Qwest through the same types of retail services available to other  
2 business end user customers as opposed to being required to originate and  
3 terminate traffic through access charges. But that is the full extent of application  
4 of the exemption.

5 Thus, for all other applications of intercarrier compensation, the same rules that  
6 apply to all other traffic apply to IP-TDM traffic. Rather than determining the  
7 application of these rules from the physical location of the VoIP end user  
8 customer that actually originates the call, the VoIP provider POP is treated as the  
9 end user location. Thus, as explained in the next section, if the VoIP provider  
10 POP is physically located in the same LCA as the called party, the call is treated  
11 as local, and reciprocal compensation would apply. Likewise, if the VoIP  
12 provider POP is in a different LCA from the called party, the call is an  
13 interexchange call that should be handed off to the IXC selected by the end user  
14 customer, which transports the call to the LCA of the called party, where Qwest  
15 terminates it to its end user customer. The IXC would pay the appropriate access  
16 charges to terminate the traffic.

17 In summary, under Qwest's proposed language, other than for the application of  
18 the ESP exemption, IP-TDM traffic should be treated in the same manner as other  
19 similar traffic. Level 3 appears to propose that these traditional means of  
20 intercarrier compensation be completely scrapped in favor of treating all VoIP as

1           though it were local traffic. Thus far, Level 3 has not offered any compelling  
2           legal reason why VoIP should be given special treatment. There is certainly no  
3           good policy reason. It is easy to see why Level 3 wants to change the  
4           compensation scheme in such a radical manner; it would allow Level 3 or its VoIP  
5           provider customers to avoid charges that other identically-situated carriers must  
6           pay. Qwest strongly opposes such an approach.

7   **Q.   PLEASE DISCUSS TDM-IP-TDM (IP IN THE MIDDLE) TRAFFIC.**

8   **A.**   While Level 3 also appears to seek special treatment for this traffic, it should not  
9           receive it. Because this traffic originates in TDM, it does not meet the criteria for  
10          VoIP traffic. Therefore, as the FCC clearly ruled in the AT&T decision, this  
11          traffic is not VoIP, is not an information service (and thus does not qualify for the  
12          ESP exemption), and therefore is not exempt from access charges that apply to  
13          other carriers in identical circumstances. Thus, Qwest's language treats this type  
14          of traffic no different than any other TDM originated traffic for intercarrier  
15          compensation purposes. The Commission should reject Level 3's efforts to  
16          remove this traffic from existing intercarrier compensation rules and should adopt  
17          Qwest's language.

1           **V.      DISPUTED ISSUE 1A: SECTION 7.1.1.1 OPERATION AUDITS**  
2   **Q.      PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE**  
3           **1A.**

4   A.      This dispute first highlights the reason that I am addressing the issues in a  
5           different order than that presented by Level 3. In its petition and matrix, Level 3  
6           lists issue 1A as the first of its Tier 1 issues. This single issue number, 1A, has  
7           three Qwest proposed paragraphs, and six Level 3 proposed paragraphs even  
8           though in some instances, they have the same number; for example 7.1.1.1, the  
9           two paragraphs are totally unrelated and deal with totally different issues. My  
10          testimony in this section will deal with two of the Qwest proposed paragraphs,  
11          7.1.1.1 Verification audits, and 7.1.1.2 VoIP certification. Although this is listed  
12          as the first issue on Level 3's matrix, an understanding of the parties disagreement  
13          over what VoIP is, which I discussed above in issue 16, is necessary to understand  
14          the dispute about the language of 7.1.1.1. The third Qwest proposed paragraph in  
15          issue 1A is 7.1.1, which deals with points of interconnection. Mr. Easton's and  
16          Mr. Linse's will address that in their testimony along with the six Level 3  
17          proposed paragraphs in issue 1A.

18   **Q.      WHAT IS QWEST'S PROPOSED LANGUAGE FOR 7.1.1.1?**

19   A.      Qwest's proposal for section 7.1.1.1 of the interconnection agreement states:

20                   7.1.1.1    CLEC agrees to allow Qwest to conduct operational verification  
21                   audits of those network elements controlled by CLEC and to work

1 cooperatively with Qwest to conduct an operational verification audit of any  
2 other provider that CLEC used to originate, route and transport VoIP traffic  
3 that is delivered to Qwest, as well as to make available any supporting  
4 documentation and records in order to ensure CLEC's compliance with the  
5 obligations set forth in the VoIP definition and elsewhere in this Agreement.  
6 Qwest shall have the right to redefine this traffic as Switched Access in the  
7 event of an "operational verification audit failure". An "operational  
8 verification audit failure" is defined as: (a) Qwest's inability to conduct a  
9 post-provisioning operational verification audit due to insufficient cooperation  
10 by CLEC or CLEC's other providers, or (b) a determination by Qwest in a  
11 post-provisioning operational verification audit that the CLEC or CLEC's end  
12 users are not originating in a manner consistent with the obligations set forth  
13 in the VoIP definition and elsewhere in this Agreement.  
14

15 **Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.1.1.1?**

16 **A.** This is somewhat confusing. Apparently because Level 3 does not believe there  
17 should be any provision in the contract for audits to assure the traffic is VoIP,  
18 Level 3 offers no changes to Qwest's proposed language and simply wants it  
19 stricken. Since Level 3 presumably believes the Qwest language will be stricken,  
20 Level 3 went ahead and used the 'available' number 7.1.1.1 to introduce an  
21 unrelated issue dealing with single point of interconnection (SPOI). My testimony  
22 will address the Qwest proposed 7.1.1.1 dealing with verification audits of VoIP  
23 traffic and which will require Commission resolution and a decision on the  
24 situations in which Qwest's 7.1.1.1 is acceptable. Mr. Easton's testimony will  
25 address the SPOI issue. In addressing the dispute with Level 3 over the SPOI, he  
26 will address the second proposed paragraph numbered 7.1.1.1 (Level 3's SPOI  
27 language).

1 Q. WHAT IS THE DISPUTE WITH REGARD TO QWEST'S PROPOSED  
2 PARAGRAPH 7.1.1.1?

3 A. Level 3 seeks to strike Qwest language which is necessary so that Qwest can  
4 verify that the traffic that Level 3 identifies as VoIP traffic is valid VoIP traffic  
5 entitled to the ESP exemption. Determining whether the traffic is proper VoIP  
6 traffic has implications for a determination of whether it is local or interexchange  
7 for the application of the appropriate intercarrier compensation regime. Thus, the  
8 proper classification of traffic impacts the compensation obligations of both  
9 Qwest and Level 3. Only traffic that qualifies as an Enhanced or Information  
10 Service is entitled to the FCC's ESP exemption. Only VoIP traffic that originates  
11 on broadband in IP can be terminated on the PSTN in TDM protocol under the  
12 ESP Exemption. Thus, verification is critical.

13 First, the Qwest proposed language gives Qwest the right to do a verification audit  
14 to assure that the VoIP traffic being delivered to Qwest for termination complies  
15 with the definition and obligations of VoIP in this agreement. As discussed  
16 above, the definition of VoIP is strongly disputed. Second, the contract makes  
17 clear that when traffic does not qualify for the ESP exemption, an exemption that  
18 alleviates the requirement to purchase switched access connections to the local  
19 network, that Qwest has the right to redefine the non-qualifying traffic as  
20 Switched Access. If the traffic does not qualify for the ESP exemption, then the

1           only other connection to the PSTN available is a Feature Group connection such  
2           as FGD.

3           **Q.   WHAT IS THE FUNDAMENTAL DISPUTE RELATED TO THIS**  
4           **LANGUAGE?**

5           A.   Qwest and Level 3 are not in agreement regarding intercarrier compensation for  
6           VoIP traffic that does not originate and terminate at physical locations within the  
7           same LCAs. The VoIP compensation issue will be discussed in more detail in  
8           Issue 3B of my testimony regarding compensation for ISP Traffic. Level 3  
9           apparently does not agree that Qwest has the right to recognize VoIP traffic as  
10          Switched Access in the event of an “operational verification audit failure,”  
11          because Level 3 takes the position that Switched Access rates should never apply  
12          to VoIP traffic, no matter where it originates or terminates.

13          **Q.   DOES QWEST BELIEVE THAT OPERATIONAL AUDITS ARE**  
14          **NECESSARY?**

15          A.   Absolutely. Qwest believes that audits are necessary to verify the jurisdiction of a  
16          call by ensuring that a VoIP call is properly classified for billing purposes  
17          according to the location of the originating and terminating points of the PSTN  
18          portions of the call. Qwest also believes that audits are necessary to ensure that  
19          calls that are classified as VoIP are properly identified as VoIP calls in compliance  
20          with the FCC’s definition of VoIP, which is the basis of Qwest’s proposed

1 definition of VoIP. Again, as discussed above, Level 3's definition of VoIP does  
2 not conform to the definition provided by the FCC.

3 **Q. DOES LEVEL 3 OFFER ANY OTHER SOLUTION THAT WOULD**  
4 **ENABLE QWEST TO IDENTIFY VOIP TRAFFIC?**

5 A. No. While Level 3 does not address audits for VoIP traffic, it does state in its  
6 Petition that approval of Level 3's proposed definition of "call record" would  
7 allow the Parties to identify and account for the exchange of such traffic in a  
8 relatively easy process. I can only assume that Level 3 believes such call records  
9 are sufficient verification. As Mr. Linse addresses in his testimony, there is no  
10 technical way to identify VoIP today, and reliance on an optional parameter input  
11 by Level 3 is not a solution. Qwest has also found with CLECs in the past,  
12 through sampling, that even though some call records indicate a local call, the call  
13 in fact has been a toll call, and the records did not indicate that access charges  
14 were applicable.

15 **Q. HAVE THE PARTIES AGREED TO AUDIT PROVISIONS ELSEWHERE**  
16 **IN THIS CONTRACT?**

17 A. Yes. As a matter of fact, an entire section, Section 18, of the agreement is  
18 devoted to the procedures for auditing "books, records, and other documents used  
19 in providing services under this Agreement." In addition to the provisions of

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<sup>9</sup> See Section 18.1.1 of the agreed to language in the proposed contract.

1 Section 18, the parties have agreed to audit provisions for safety audits,<sup>10</sup> service  
2 eligibility audits for high capacity combination or commingled facilities,<sup>11</sup>  
3 Qwest's loop information,<sup>12</sup> and a comprehensive audit of Qwest's use of CLEC's  
4 Directory Assistance Listings.<sup>13</sup>

5 **Q. HAS LEVEL 3 PROPOSED OTHER AUDIT PROVISIONS?**

6 A. Yes. In Level 3's proposed Section 7.3.9, which is covered under Disputed Issue  
7 18, Level 3 includes proposed section 7.3.9.5.1 for auditing of company factors.  
8 As a matter of principle, and as evidenced by the provisions the parties have  
9 agreed to, Qwest does not oppose the inclusion of audit provisions, and the audit  
10 provision included in disputed issue 18 is not the reason that Qwest opposes Level  
11 3's proposed language, as Mr. Easton will explain. It is apparent from Level 3's  
12 proposal and from the agreed upon language elsewhere in this contract Level 3  
13 does not oppose audits in general. But for reasons yet to be explained, Level 3  
14 opposes the audit provision proposed by Qwest in section 7.1.1.1 dealing with the  
15 origination and routing of VoIP calls.

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<sup>10</sup> See Section 8.2.3.10 of the agreed to language in the proposed contract.

<sup>11</sup> See Section 9.1.1.10.5 et seq. of the agreed to language in the proposed contract.

<sup>12</sup> See Section 9.2.2.8 of the agreed to language in the proposed contract.

<sup>13</sup> See Section 10.5.2.10.1 of the agreed to language in the proposed contract.

1 **Q. SHOULD THE COMMISSION ADOPT QWEST'S LANGUAGE FOR**  
2 **SECTION 7.1.1.1?**

3 A. Yes. To ensure fair and accurate billing for VoIP traffic, the commission should  
4 approve Qwest's proposed language for Section 7.1.1.1.

5 **VI. DISPUTED ISSUE 1A: SECTION 7.1.1.2 CERTIFICATION**

6 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO 7.1.1.2**  
7 **VOIP CERTIFICATION.**

8 A. The disagreement identified in section 7.1.1.2 is similar to 7.1.1.1. Level 3's  
9 Petition is silent on Level 3's opposition to proposed section 7.1.1.2. Qwest's  
10 proposed 7.1.1.2 addresses VoIP certification consistent with the VoIP  
11 configurations as defined in the agreement. Instead of addressing Qwest's  
12 proposed language, Level 3 remains silent on the VoIP certification process and  
13 proposes an entirely new section 7.1.1.2 relating to SPOI.

14 **Q. WHAT IS QWEST'S LANGUAGE PROPOSAL THAT RELATES TO**  
15 **THIS ISSUE?**

16 A. Qwest's proposal for section 7.1.1.2 of the interconnection agreement states:

17 7.1.1.2 Prior to using Local Interconnection Service trunks to terminate  
18 VoIP traffic, CLEC certifies that the (a) types of equipment VoIP end users  
19 will use are consistent with the origination of VoIP as defined in this  
20 Agreement; and (b) types of configurations that VoIP end users will use to  
21 originate calls using IP technology are consistent with the VoIP configuration  
22 as defined in this Agreement

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**Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.1.1.2?**

A. As was the case with section 7.1.1.1, this gets a bit confusing. Apparently Level 3 opposes any provision in the contract for certification of VoIP traffic. Therefore, Level 3 offers no changes to Qwest's proposed language and instead seeks to eliminate it completely. Since Level 3 presumably assumes the Qwest language will be stricken, Level 3 has used the 'available' number 7.1.1.2 to introduce additional language dealing with single point of interconnection (SPOI). My testimony will address the Qwest proposed 7.1.1.2 dealing with certification of VoIP traffic and which will require Commission resolution one way or the other. Mr. Easton will address the SPOI issue in his testimony.

**Q. DOES QWEST BELIEVE THAT CERTIFICATION IS NECESSARY?**

A. Yes. As discussed above, Qwest and Level 3 have a fundamental disagreement regarding what qualifies as a VoIP call. Level 3 should be willing (and the Commission should require Level 3) to certify that VoIP traffic that it sends to Qwest meets the definition established by the FCC.

**Q. HAVE THE PARTIES AGREED TO CERTIFICATION LANGUAGE ELSEWHERE IN THIS CONTRACT?**

A. Yes. There are many certification provisions included in the agreed upon language in this contract. For example, numerous provisions are included in Section 12 requiring Level 3 to certify that its OSS can properly communicate

1 with and submit orders to Qwest's OSS. In addition, Level 3 must certify that it is  
2 entitled to certain high capacity loops or transport UNEs per the Triennial Review  
3 Remand Order;<sup>14</sup> Level 3 must certify that it meets service eligibility criteria for  
4 high capacity EELs;<sup>15</sup> both parties must certify their service management  
5 systems;<sup>16</sup> and Qwest must certify Right of Way ("ROW") agreements to Level  
6 3.<sup>17</sup> Clearly, both parties have agreed to certification obligations elsewhere in this  
7 agreement.

8 **Q. SHOULD THE COMMISSION ADOPT QWEST'S PROPOSED**  
9 **LANGUAGE FOR SECTION 7.1.1.2?**

10 A. Yes. The Commission should adopt Qwest's proposed language for section  
11 7.1.1.2.

12 **VII. DISPUTED ISSUE 3 VNXX TRAFFIC**

13 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 3.**

14 A. Level 3 listed three separate issues under Issue 3 denominated as Issues 3a, 3b,  
15 and 3c. Issue 3a concerns section 7.3.6.2 of the agreement and involves  
16 intercarrier compensation for calls not physically originating and terminating

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<sup>14</sup> See Section 9.1.1.4 of the agreed to language in the proposed contract.

<sup>15</sup> See Section 9.1.1.10 et. seq. of the agreed to language in the proposed contract.

<sup>16</sup> See Section 10.2.3 et. seq. of the agreed to language in the proposed contract.

<sup>17</sup> See Section 10.8.2.26 et. seq. of the agreed to language in the proposed contract.

1 within the same LCA. Issue 3b relates to section IV of the agreement's definition  
2 of Virtual NXX or "VNXX traffic." Finally, Issue 3c addresses whether  
3 intercarrier compensation is required on VNXX traffic in section 7.3.6.1.

4 **Q. WHAT IS THE DISPUTE REGARDING ISSUE 3B AND THE**  
5 **DEFINITION OF VNXX?**

6 A. Issue 3b involves the definition of VNXX traffic. Although not in the order  
7 presented in the Level 3 Petition and matrix, a discussion of the definition of  
8 VNXX traffic is necessary in order to understand the core principles of the  
9 disputed issues. Understanding the VNXX concept and the types of traffic that  
10 should be classified as VNXX is crucial to an understanding of the parties'  
11 differences over VNXX issues. An understanding of the definitional differences  
12 between the parties is a necessary prerequisite to the later discussion of  
13 compensation for local traffic.

14 **Q. WHAT IS VNXX TRAFFIC?**

15 A. In short, VNXX is an arrangement that provides the functionality of toll or 8XX  
16 service, but at no extra charge. An NXX code, commonly referred to as a prefix,  
17 is the second set of three digits of a ten-digit telephone number (NPA-NXX-  
18 XXXX). These three digits (NXX) are assigned to and indicate a specific central  
19 office from which a particular customer is physically served. In other words, in  
20 the number (208) 344-XXXX, the "344" prefix is assigned to a specific central

1 office in the (208) area code and thus identifies the general geographic area in  
2 which the customer is located. A “virtual” NXX, or VNXX undercuts that  
3 concept because it results in a carrier-assigned NXX associated with a particular  
4 central office, but where the carrier has no customers physically located. Instead,  
5 these telephone numbers are assigned to a customer physically located outside the  
6 LCA of the central office associated with the particular NXX. With VNXX, the  
7 physical location of the CLEC customer is in most cases in a LCA that would  
8 require a toll call from the LCA with which the telephone number is associated.  
9 This scheme requires the assignment of a “virtual” NXX. The NXX is labeled  
10 “virtual” because it is an assigned number that tells callers that it is in the *calling*  
11 *party’s* LCA, rather than the *called* party’s LCA. In other words, a call to the  
12 “virtual” NXX does not result in a local call within the LCA that the VNXX  
13 number appears to be assigned; but in reality the call is terminated in a different  
14 LCA, and perhaps even in a different state. Qwest Exhibit No. 303 attached  
15 hereto demonstrates visually how VNXX circumvents the proper numbering plan.

16 VNXX has become an issue because CLECs, like Level 3 in Idaho, obtain local  
17 numbers from the North American Numbering Plan Administrator (“NANPA”) in  
18 various parts of a state that are actually assigned to its customers (*i.e.*, ISPs) with  
19 no physical presence whatsoever in the LCA with which the local numbers are  
20 associated; thus, the traffic directed to those numbers is, instead of being routed to

1 customer in the same LCA as the calling party, routed to one of the points of  
2 interconnection (“POIs”) of the CLEC and is then terminated with the CLEC’s  
3 ISP customer at a physical location in another LCA or even in another state.

4 **Q. IS THE VNXX ISSUE CONNECTED TO THE SINGLE POINT OF**  
5 **INTERCONNECTION (SPOI) ISSUE?**

6 A. Yes. In the early 2000s CLECs argued that they should be entitled to serve a  
7 LATA from a single switch rather than placing switches in numerous LCAs in  
8 order to offer local service. Qwest agreed and has offered such a form of  
9 interconnection (SPOI) for several years. If a CLEC provides local service from a  
10 single switch within a LATA, it is entitled (because it is a CLEC) to be assigned  
11 NXXs for LCAs both near and far from the switch. The manner in which those  
12 NXXs are used is a critical matter. If a CLEC is assigned an NXX and it has  
13 constructed or leases loops to retail subscribers located within the LCA of the  
14 NXX, that is consistent with the intended use of the assigned NXX (i.e., to allow  
15 the CLEC to provide local exchange service to customers located within that  
16 LCA). But if a CLEC is assigned an NXX from a distant LCA and it creates a  
17 primary line of business that creates a deliberate misimpression that, from a  
18 carrier-to-carrier perspective, toll free calling is really conventional local calling,  
19 then that is an unintended and inappropriate use of the assigned NXX.

1 Q. WHAT IS QWEST'S PROPOSAL FOR ISSUE 3B, DEFINITION FOR  
2 VNXX TRAFFIC?

3 A. Qwest proposes the following definition of VNXX Traffic:

4 "VNXX Traffic" is all traffic originated by the Qwest End User Customer that  
5 is not terminated to CLEC's End User Customer physically located within the  
6 same Qwest Local Calling Area as the originating caller, regardless of the  
7 NPA-NXX dialed and, specifically, regardless of whether CLEC's End User  
8 Customer is assigned an NPA-NXX associated with a rate center in which the  
9 Qwest End User Customer is physically located.<sup>18</sup>

10  
11 Q. WHAT IS LEVEL 3'S PROPOSAL FOR ISSUE 3B, DEFINITION FOR  
12 VNXX TRAFFIC?

13 A. Level 3's proposes 3 paragraphs for the definition of VNXX traffic:

14 VNXX Traffic shall include the following:

15

16 **ISP-bound VNXX traffic** is telecommunications over which the FCC has  
17 exercised exclusive jurisdiction under Section 201 of the Act and to which  
18 traffic a compensation rate of \$0.0007 / MOU applies. ISP-bound VNXX  
19 traffic uses geographically independent telephone numbers ("GITN"), and thus  
20 the telephone numbers associated with the calling and called parties may or  
21 may not bear NPA-NXX codes associated with the physical location of either  
22 party. This traffic typically originates on the PSTN and terminates to the  
23 Internet via an Internet Service Provider ("ISP").

24

25 **VoIP VNXX** traffic is telecommunications over which the FCC has exercised  
26 exclusive jurisdiction under Section 201 of the Act and to which traffic a  
27 compensation rate of \$0.0007 / MOU applies. VoIP VNXX traffic uses  
28 geographically independent telephone numbers ("GITN"), and thus the  
29 telephone numbers associated with the calling and called parties may or may

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<sup>18</sup> Because of recently enacted Idaho legislation, Qwest is removing this parenthetical from its proposed language.

1 not bear NPA-NXX codes associated with the physical location of either party.  
2 Because VoIP VNXX traffic originates on the Internet, the physical location  
3 of the calling and called parties can change at any time. For example, VoIP  
4 VNXX traffic presents billing situations where the (i) caller and called parties  
5 are physically located in the same ILEC retail (for purposes of offering circuit  
6 switched “local telephone service”) local calling area and the NPA-NXX  
7 codes associated with each party are associated with different ILEC LCAs; (ii)  
8 caller and called parties are physically located in the same ILEC retail (for  
9 purposes of offering circuit switched “local telephone service”) local calling  
10 area and the NPA-NXX codes associated with each party are associated with  
11 the same ILEC LCAs; (iii) caller and called parties are physically located in  
12 the different ILEC retail (for purposes of offering circuit switched “local  
13 telephone service”) local calling area and the NPA-NXX codes associated  
14 with each party are associated with same ILEC LCAs; and (iv) caller and called  
15 parties are physically located in the different ILEC retail (for purposes of  
16 offering circuit switched “local telephone service”) local calling area and the  
17 NPA-NXX codes associated with each party are associated with different  
18 ILEC LCAs. Examples of VoIP VNXX traffic include the Qwest “One Flex”  
19 service and Level 3’s (3)VoIP Enhanced Local service.  
20

21 **Circuit Switched VNXX traffic** is traditional “telecommunications services”  
22 associated with legacy circuit switched telecommunications providers, most of  
23 which built their networks under monopoly regulatory structures that evolved  
24 around the turn of the last century. Under this scenario, costs are apportioned  
25 according to the belief that bandwidth is scarce and transport expensive. The  
26 ILEC offers to a customer the ability to obtain a “local” service by paying for  
27 dedicated transport between the physical location of the customer and the  
28 physical location of the NPA-NXX. Thus, this term entirely describes a  
29 service offered by ILECs, but which cannot be offered by IP-based  
30 competitors as such networks do not dedicate facilities on an end-to-end basis.  
31

32 **Q. WHAT IS THE BASIC DIFFERENCE BETWEEN THE TWO**  
33 **COMPANIES’ DEFINITIONS OF VNXX?**

34 **A.** Both sides agree that a VNXX call originates in one LCA and terminates in  
35 another. In addition, both Level 3 and Qwest agree that, with VNXX, the physical  
36 location of the end user customer who is being called bears no relationship to the

1 local number that is assigned to the call. For example, Qwest's definition defines  
2 VNXX traffic as "traffic...that is not terminated to CLEC's End User Customer  
3 physically located within the same Qwest LCA .... as the originating caller,  
4 regardless of the NPA-NXX dialed." Level 3's definition states that "VNXX  
5 traffic uses geographically independent telephone numbers ("GITN"), and thus the  
6 telephone numbers associated with the calling and called parties may or may not  
7 bear NPA-NXX codes associated with the physical location of either party."

8 What the parties do not agree on is the means of compensation or appropriate  
9 trunking for VNXX traffic. For instance, Level 3 adds "compensation" language  
10 into the definition on the assumption that reciprocal compensation applies to  
11 VNXX traffic, attempting to set the compensation rate<sup>19</sup> for a call originating in  
12 one LCA and terminating in a different one. Thus, as noted above, under Level  
13 3's proposal, instead of Qwest recovering the cost of delivering the traffic, Qwest  
14 would pay Level 3 a compensation rate to terminate the traffic. In other words,  
15 Level 3 proposes a fundamental change in intercarrier compensation for VNXX  
16 traffic.

17 Level 3's language is improper for several reasons. First, because this section is  
18 for defining *what* VNXX traffic is and not its rates, and second, and of critical

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<sup>19</sup> If the Commission were to adopt Level 3's proposed definition, it would then mandate reciprocal compensation payments at the local ISP rate of \$.0007 and would completely eliminate the concept of a toll call with regard to this traffic.

1 importance, Level 3's proposed definition of VNXX would convert toll calls to  
2 local calls, and change the LCAs. For example, Level 3's language would enable  
3 a customer physically located in the Boise LCA to have a Twin Falls telephone  
4 number, so that calls to and from that person by local subscribers in Twin Falls  
5 would be treated as local calls even though they are routed over the PSTN to  
6 Boise just like other toll calls. This is improper because, among other reasons,  
7 Level 3 wants to shift all of the costs of this arrangement to Qwest.

8 **Q. LEVEL 3'S DEFINITION CONTAINS THREE CATEGORIES OF VNXX**  
9 **TRAFFIC. DO YOU AGREE WITH "CATEGORIES" IN REGARD TO**  
10 **VNXX CALLS?**

11 A. No. The ISP and VoIP paragraphs of Level 3's definition are essentially the same  
12 for both categories. For example, both sections state that "VNXX traffic uses  
13 geographically independent telephone numbers...not associated with the physical  
14 location of either party..." In the VoIP section above, I stated that it appears that  
15 Level 3 wants to treat all VoIP traffic as if it were local and it is through this  
16 definition that it attempts to do so. Both the ISP and VoIP sections attempt to  
17 impose "the compensation rate of \$0.0007/MOU" on this interexchange traffic.  
18 The only actual difference between the paragraphs is the claim that an ISP VNXX  
19 call originates on the PSTN and terminates to an ISP while VoIP VNXX calls  
20 originate on the Internet and terminate to an end customer on the PSTN. These

1           comments, however, do not change the actual definition of what constitutes  
2           VNXX traffic. The categories (ISP or VoIP) are irrelevant to establishing the  
3           VNXX definition which deals with the geographic location of customers and  
4           NXX numbers.

5           Level 3's third category is both unnecessary and out of place in this section.  
6           Labeled "Circuit Switched VNXX traffic," the alleged definition contains only  
7           Level 3's biased legal opinion regarding "traditional 'telecommunications  
8           services.'" The language does not add any substance to the definition of VNXX  
9           traffic and is obviously extraneous to the subject matter of this section of the  
10          contract.

11          On the whole, Level 3 is attempting to create distinctions where none exist in  
12          order to avoid the existing intercarrier compensation mechanisms—in effect to  
13          avoid costs that other carriers pay and replace them with revenues. All three  
14          proposed categories of VNXX are based on the termination of a call being  
15          physically located in a different LCA. The labeled distinctions are irrelevant to  
16          the definition of VNXX and only confuse the language and the underlying issues.

1 Q. IF A VNXX CALL IS PLACED TO AN ISP OR TO A PSTN END USER  
2 CUSTOMER AS A VOIP TERMINATION, DOES THE CALL  
3 CLASSIFICATION CHANGE TO A LOCAL CALL?

4 A. The type of business of an end user customer does not affect whether a call is  
5 local or not. If an end user customer is located in Twin Falls (whose ISP's  
6 modems and routers are physically located in Boise, but whose number is a Twin  
7 Falls NPA NXX) logs onto the Internet, the call to the ISP telephone number is  
8 not a local call because it originates in Twin Falls and terminates in Phoenix.<sup>20</sup> It  
9 makes no difference if the call is to an ISP, a hardware store, or a restaurant in  
10 Boise, because it is a call that originates in Twin Falls and terminates in Boise.  
11 The location of the calling and called parties determines the nature of the call, not  
12 the business type. A toll call is a toll call. Level 3's avoidance of that fact is  
13 demonstrated by its creation of VNXX categories. ISP, VoIP or circuit based  
14 VNXX calls do not change a toll call into a local call. This language does not  
15 belong in the contract anywhere, including in the definition of VNXX.

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<sup>20</sup> Twin Falls is in a different LCA than Boise.

1 Q. IF ISP TRAFFIC AND VOICE TRAFFIC ARE TREATED THE SAME  
2 FOR THE VNXX DEFINITION, HOW IS A CALL DETERMINED TO BE  
3 LOCAL OR TOLL?

4 A. In regard to defining VNXX traffic, ISP traffic should be treated no differently  
5 than voice traffic. In determining if a call is local or toll, the location of the  
6 origination and termination is the decisive factor: calls that physically originate  
7 and terminate within the same LCA are rated as local calls. The ESP POP is the  
8 point of termination (for an ISP) and origination (for terminating VoIP). Calls  
9 routed to a point of interface for termination **outside** of the originating LCA are  
10 interexchange calls. VNXX services that terminate traffic to an ISP whose  
11 Internet equipment (e.g., modems, servers, and routers) is not located within the  
12 same LCA as the originating LCA are simply interexchange toll calls and must  
13 remain subject to the access charge provisions that govern interexchange toll  
14 traffic. In the case of VoIP calls, where a VoIP Provider's point of presence is in  
15 one LCA, say Boise, and the VoIP Provider's CLEC, for example Level 3, wants  
16 to deliver a call on behalf of its end user customer (the VoIP Provider) to an end  
17 user customer in Twin Falls, Level 3 should hand that call to an "intraLATA" toll  
18 provider for termination. Level 3's definitional language attempts to say this is a  
19 toll call or not depending on to whom the call is placed. Again, a toll call is a toll  
20 call. Qwest's definition of VNXX traffic is clear, concise, and accurate, while

1 Level 3's definition unnecessarily complicates the issue. Qwest's language  
2 should be adopted.

3 **Q. IN ITS PETITION LEVEL 3 REFERS TO ITS VNXX PRODUCT AS AN**  
4 **"FX LIKE" PRODUCT. IS VNXX LIKE FOREIGN EXCHANGE (FX)**  
5 **SERVICE?**

6 A. No. Level 3's VNXX product uses the PSTN to route and terminate calls to end  
7 user customers connected to the PSTN in another LCA. In all respects, except the  
8 number assignment, the call is routed and terminated as any other toll call.  
9 Qwest's FX product, on the other hand, delivers the FX calls within the LCA  
10 where the number is actually associated. In other words, a Qwest FX customer  
11 actually purchases a local service connection in the LCA associated with the  
12 telephone number. That local service connection is purchased by the FX customer  
13 out of the local exchange services catalog that apply to that LCA. The calls are  
14 then transported on what is, in effect, the end user customer's private network  
15 (private line) to another location. In other words, after purchasing the local  
16 connection in the LCA, the FX customer bears full financial responsibility to  
17 transport it to the location where the call is actually answered. Qwest, and other  
18 telephone companies, have been selling such private line services to PBX owners  
19 and other customers for decades. Calls are delivered to the customer's PBX and  
20 any call delivery behind the PBX is, for purposes of transport to the customer's

1 actual location, carried on the owner's private network. Qwest and other  
2 telephone companies delivered the call to the PBX location. Private transport  
3 beyond that is the business of and financial responsibility of the PBX owner.

4 Level 3's approach is fundamentally distinct from FX service. Under FX, the  
5 customer who desires a presence in another LCA is fully responsible to transport  
6 the traffic to the location where it wants the call answered. Under level 3's  
7 proposal, Level 3 wants the call routed over the PSTN, but feels no responsibility  
8 for providing the transport to the distant location. In calling its product an FX-  
9 like product, Level 3 attempts to confuse this critical distinction. Calls over the  
10 public switched network between communities that use the toll network are toll  
11 calls no matter how the numbers are assigned. Calls delivered to end user  
12 customers within a LCA and transported over private networks are more than a  
13 mere technical distinction. It is consistent with the way Commissions have been  
14 distinguishing between toll and local calls since access charges were established.

15 **ISSUE 3A RECIPROCAL COMPENSATION FOR VNXX**

16 **Q. PLEASE DESCRIBE ISSUE 3A AND WHAT THE PARTIES DISPUTE IN**  
17 **THIS ISSUE.**

18 A. Now that the distinction between a local call and VNXX has been established,  
19 Issue 3a can be addressed. Qwest's position is clear. VNXX calls are not local  
20 calls subject to reciprocal compensation payments under section 251(b)(5).

1 Qwest's proposed language makes clear that Qwest will not treat VNXX calls as  
2 local and will not pay local reciprocal compensation on such VNXX traffic. Level  
3 3 attempts to cast this issue as to whether Qwest may exclude ISP traffic from  
4 compensation due under the FCC's *ISP Remand Order* through contract terms  
5 that identify geographic designations based on LCAs. A call from a customer in  
6 Boise to a customer located in Miami, Florida is a toll call, irregardless of the  
7 telephone number dialed. The fact that the customer at the other end of that toll  
8 call is an ISP does not magically change the call into a local call. And a VNXX  
9 call to an ISP physically located in Boise, but with a Twin Falls NPA NXX,  
10 placed by an end user customer in Twin Falls is not a local call either. However,  
11 Qwest also makes clear that Qwest *will* pay reciprocal compensation, a charge for  
12 terminating local traffic, on traffic that actually originates and terminates at  
13 physical locations within the same LCA. Qwest also makes clear that calls that  
14 originate and terminate at locations in different LCAs are not local calls and not  
15 entitled to reciprocal compensation. The "VNXX" number is not and should not  
16 be determinative. And, of course, as stated earlier, if the VNXX call is an ISP  
17 call, no reciprocal compensation is due, just as it would not be due on a typical  
18 voice call. The fact that the call is ISP grants it no special status, legal or  
19 otherwise.

1 Q. WHAT IS QWEST'S LANGUAGE PROPOSAL FOR ISSUE 3A, SECTION

2 7.3.6.3?

3 A. Qwest's proposal for Section 7.3.6.3 of the interconnection agreement states:

4 7.3.6.3 Qwest will not pay reciprocal compensation on VNXX traffic.

5

6 Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.3.6.3?

7 A. Level 3's counter-proposal for Section 7.3.6.3 is set forth:

8 7.3.6.3 If CLEC designates different rating and routing points such that  
9 traffic that originates in one rate center terminates to a routing point  
10 designated by CLEC in a rate center that is not local to the calling party even  
11 though the called NXX is local to the calling party, such traffic ("Virtual  
12 Foreign Exchange" traffic) shall be rated in reference to the rate centers  
13 associated with the NXX prefixes of the calling and called parties' numbers,  
14 and treated as 251(b)(5) traffic for purposes of compensation.

15

16 Q. LEVEL 3 STATES THAT QWEST IS PROPOSING TO EXCLUDE ISP  
17 TRAFFIC FROM COMPENSATION DUE IT UNDER THE FCC'S ISP  
18 REMAND ORDER. DO YOU AGREE?

19 A. No. First, Qwest agrees that, under the *ISP Remand Order* and until addressed  
20 more definitively by the FCC, reciprocal compensation is due on ISP calls that  
21 originate and terminate to locations within a LCA. However, the FCC has not  
22 ruled that all ISP traffic is subject to intercarrier compensation. Level 3's  
23 fundamental argument is that the *ISP Remand Order*, read in combination with

1 the *Core Forbearance Order*,<sup>21</sup> requires that intercarrier compensation must be  
2 paid on *all* ISP traffic, including VNXX ISP traffic.<sup>22</sup> Level 3 argues that traffic  
3 bound for an ISP located in Boise is subject to intercarrier compensation,  
4 regardless of whether it originated across town in the LCA, from the other end of  
5 the state, or from across the country. However, there is nothing in the *ISP*  
6 *Remand Order* or *Core Forbearance Order* that requires that state commissions  
7 adopt ICA language that allows intercarrier compensation for VNXX ISP traffic.  
8 These orders relate only to local ISP traffic, where the ISP is physically located in  
9 the same LCA as the customer placing the call. Qwest addresses its legal position  
10 on this issue in its Response to Level 3's Petition and will do in more detail in its  
11 briefs in this case.

12 **Q. DOES LEVEL 3 ALSO CONFUSE THE ISSUE OF ISP TRAFFIC WITH**  
13 **VNXX ISSUES?**

14 A. Yes. VNXX is not just a phenomenon associated with ISP calls, although it is in  
15 that context that VNXX issues often arise. A VNXX call can be to an ISP such as  
16 AOL located in another town or to a voice customer such as the local hardware  
17 store in that other town. VNXX arrangements can exist for both ISP and voice

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<sup>21</sup> Order, *Petition of Core Communications for Forbearance Under 47 USC § 160(c) from the Application of the ISP Remand Order*, Order FCC 04-241 WC Docket No. 03-171 (rel. October 18, 2004) ("*Core Forbearance Order*").

<sup>22</sup> Level 3 Petition ¶¶ 56-66.

1 traffic. The issue of VNXX traffic (whether ISP or other types of traffic) has been  
2 addressed to some degree by the FCC and has been extensively litigated before  
3 many state commissions. The majority of state commissions have ruled that  
4 traffic, whether voice traffic or ISP that does not physically originate and  
5 terminate in the same LCA is not subject to reciprocal compensation under  
6 existing interconnection agreements. Here, however, the issue is not the  
7 interpretation of an existing interconnection agreement, but what the language of a  
8 new agreement should provide. In this case, Level 3 is asking the Commission to  
9 require local reciprocal compensation for non-local calls, deviating from the  
10 policy that reciprocal compensation is recoverable only for the termination of  
11 “local” traffic (as defined by Idaho statute). In that regard, language from the *ISP*  
12 *Remand Order* is instructive:

13 Congress preserved the pre-Act regulatory treatment of all the access services  
14 enumerated under Section 251(g). These services thus remain subject to  
15 Commission jurisdiction under Section 201 (or, to the extent they are  
16 *intrastate* services, they remain subject to the jurisdiction of state  
17 commissions), whether those obligations implicate pricing policies as in  
18 *Comptel* or reciprocal compensation. *This analysis properly applies to the*  
19 *access services that incumbent LECs provide (either individually or jointly*  
20 *with other local carriers) to connect subscribers with ISPs for Internet-bound*  
21 *traffic.*<sup>23</sup>

22  
23 The FCC was focused upon problems unique to the compensation mechanism that  
24 applied to traffic where the ISP was located in the same LCA. Level 3 attempts to

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<sup>23</sup> *ISP Remand Order* ¶ 39 (emphasis added, footnote omitted).

1 inject language that “ISP-bound” VNXX traffic is subject to ISP compensation,  
2 and argues that the FCC changed the access charge structure and issued an  
3 exemption for “all” calls sent to the Internet, regardless of where the call  
4 originates and terminates. While the FCC has opened a docket to scrutinize these  
5 issues as a part of an overall examination of intercarrier compensation,<sup>24</sup> the  
6 applicable law has not changed. Until the FCC takes further action in its  
7 intercarrier compensation docket, expanding reciprocal compensation to include  
8 calls from across the state or country must not be permitted.

9 **Q. LEVEL 3 ARGUES THAT THERE IS NOT A COST DIFFERENCE IN**  
10 **TERMINATING ISP AND NON ISP CALLS. PLEASE RESPOND.**

11 A. Level 3 argues that its cost to terminate an ISP call is not different than the cost to  
12 terminate a non ISP call. Qwest has never suggested that there is a cost difference  
13 to Level 3 and, whether there is or is not a difference, the question is completely  
14 irrelevant. The question before the Commission is not the cost of termination, but  
15 whether a CLEC, by serving ISPs, may gather traffic from multiple LCAs at no  
16 cost to itself (remember that Level 3 also claims it should pay no costs on Qwest’s  
17 side of the POI) and then be able to charge Qwest for terminating *all* of that  
18 traffic, whether it is local or not. As many other state commissions that have  
19 addressed the issue have concluded and as the FCC clearly concluded in the *ISP*

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<sup>24</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610 (2001) (“*Intercarrier Compensation NPRM*”).

1           *Remand Order*, requiring reciprocal compensation on ISP traffic leads to  
2           uneconomic arbitrage and windfall revenues.

3   **Q.   WHY SHOULD QWEST'S LANGUAGE BE ADOPTED?**

4   A.   Reciprocal compensation as used in the Act is the charge to terminate "local"  
5       traffic. Under Qwest's definition, VNXX traffic (the issue discussed in 3b above)  
6       is traffic that originates and terminates at physical locations that *are not* within the  
7       same LCA. Even Level 3's definition of VNXX recognized that the call would  
8       originate in one LCA and terminate in another LCA. While acknowledging the  
9       true nature of VNXX calls, Level 3's proposal attempts to produce a major change  
10      in compensation policy by requesting that the Commission nevertheless eliminate  
11      access charges on such traffic and require the payment of compensation for  
12      terminating the traffic. Such a dramatic change in policy should not be approved  
13      by the Commission.

14   **Q.   WHY DOES QWEST BELIEVE ITS LANGUAGE SHOULD BE**  
15       **ADOPTED?**

16   A.   Carriers seeking to receive reciprocal compensation on VNXX services are  
17       attempting to redefine existing toll services and local boundaries and categorize  
18       them in a unique way in an attempt to collect reciprocal compensation and avoid  
19       access charges. These VNXX numbers, and the facilities that would be used to  
20       connect to locations where such calls would be terminated, are interexchange in

1 nature and are therefore not subject to reciprocal compensation. By attempting to  
2 fool the systems with a local number, the call detail itself would not indicate that  
3 any compensation associated with this interexchange or toll call should be made.  
4 The assignment of telephone numbers in the VNXX manner should not result in  
5 inter-exchange calls between two communities not in the same LCA to  
6 masquerade as local calls.

7 **Q. WHAT IS THE APPROPRIATE COMPENSATION MECHANISM FOR**  
8 **THESE TYPES OF CALLS?**

9 A. The costs of carrying VNXX calls between different LCAs should not be borne by  
10 end user customers of the local exchange where the call originated. The VNXX  
11 service providers, and the ultimate cost-causer, the ISP whose customers generate  
12 the traffic via dial-up Internet connections, should bear the financial responsibility  
13 for such traffic. After all, it is the CLEC and its ISP customers who generate the  
14 traffic. The telecommunications carrier who wishes to deliver this interexchange  
15 traffic elsewhere must bear the financial responsibility of the interexchange  
16 transport to the ISP. The appropriate compensation mechanism for VNXX  
17 services is that the VNXX service provider that is transporting traffic between  
18 LCAs should pay the appropriate charges to transport calls between the LCAs.  
19 Such calls should not be considered local calls.

1 **ISSUE 3C: RECIPROCAL COMPENSATION FOR ISP TRAFFIC**

2 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES IN ISSUE 3C?**

3 A. In Issue 3b the definition of VNXX traffic was discussed. Issue 3a dealt with  
4 Level 3's claim that VNXX traffic should be subject to reciprocal compensation.  
5 There was no distinction made by Level 3 between a voice call and an ISP call;  
6 Level 3's language tries to include VNXX in the category of calls entitled to  
7 reciprocal compensation. Qwest's proposed language made clear that VNXX  
8 traffic was not local traffic subject to reciprocal compensation. Now in Issue 3c  
9 the language addresses the payment of reciprocal compensation for ISP traffic  
10 generally.

11 **Q. WHAT IS QWEST'S LANGUAGE PROPOSAL FOR ISSUE 3C, SECTION**  
12 **7.3.6.1, INTERCARRIER COMPENSATION FOR ISP BOUND TRAFFIC?**

13 A. Qwest proposal for the definition of Section 7.3.6.1 is as follows:

14 7.3.6.1 Subject to the terms of this Section, intercarrier compensation for  
15 ISP-bound traffic exchanged between Qwest and CLEC (where the end users  
16 are physically located within the same Local Calling Area) will be billed as  
17 follows, without limitation as to the number of MOU ("minutes of use") or  
18 whether the MOU are generated in "new markets" as that term has been  
19 defined by the FCC:

20 \$.0007 per MOU or the state ordered rate, whichever is lower.

21

1 **Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR ISSUE 3C,**  
2 **SECTION 7.3.6.1, INTERCARRIER COMPENSATION FOR VNXX**  
3 **TRAFFIC?**

4 A. Level 3's counter-proposal for the definition of Section 7.3.6.1 is as follows:

5 7.3.6.1 Intercarrier compensation for ISP-bound traffic Section 251(b)(5)  
6 traffic, and VoIP traffic exchanged between Qwest and CLEC will be billed  
7 and paid without limitation as to the number of MOU ("minutes of use") or  
8 whether the MOU are generated in "new markets" as that term has been  
9 defined by the FCC in the ISP Remand Order at a rate of \$.0007 per MOU.

10  
11 **Q WHY DOES QUEST OBJECT TO LEVEL 3'S PROPOSED LANGUAGE**  
12 **IN 7.3.6.1?**

13 A. Qwest's major objection to Level 3's language stems from the fact that Level 3  
14 has inserted additional types of traffic into the paragraph for which it wants to  
15 receive reciprocal compensation at the rate of \$.0007. The two additional types of  
16 traffic are the imprecise reference to "section 251(b)(5) traffic" as well as "VoIP  
17 traffic." As I explain below, by proposing this definition, Level 3 is attempting, in  
18 effect, to obtain a decision from the Idaho Commission that access rates do not  
19 apply to any Level 3 traffic in Idaho.

20 **Q. HOW IS LEVEL 3 ATTEMPTING TO ELIMINATE ACCESS CHARGES**  
21 **IN IDAHO?**

22 A. In a very roundabout, but very clever way. Level 3 proposes language saying the  
23 rate of \$.0007 shall apply to "251(b)(5) traffic." To find out what this means, one

1 must go to the definitions section of Level 3's proposed agreement to see how it  
2 defines "251(b)(5) traffic." It does this in its definition of the term  
3 "telecommunications," which, under Level 3's definition, "includes, but is not  
4 limited to *Section 251(b)(5) Traffic, which is defined as Telephone Exchange*  
5 *Service, Exchange Access Service, Information Service, and Telephone Toll*  
6 *Service (including but not limited to IntraLATA and InterLATA Toll) traffic and is*  
7 *also defined to include ISP-Bound traffic, VoIP traffic."* Thus, while including  
8 "ISP-bound traffic and VoIP," Level 3 also includes toll traffic in section  
9 251(b)(5) traffic. As far as I know, it is unprecedented for a CLEC to claim that  
10 toll traffic is subject to reciprocal compensation. The effect of all of this is that,  
11 under Level 3's language, toll would be subject to reciprocal compensation and no  
12 longer subject to terminating access charges. I address this in more detail in  
13 'Issue X Definition of Interconnection.' Level 3 apparently believes that access  
14 charges should not apply to its traffic, even for calls outside the LCA. Thus it has  
15 attempted in several places to insert language into the agreement that would  
16 completely exempt Level 3 from those charges. These are not just minor tweaks  
17 to contract language that are of little consequence; rather, it represents a dramatic  
18 change in intercarrier compensation from the mechanisms that govern the  
19 relationships between carriers.



1           7.3.4.2     The Parties will not pay reciprocal compensation on traffic,  
2 including traffic that a Party may claim is ISP-Bound Traffic, when the traffic  
3 does not originate and terminate within the same Qwest local calling area (as  
4 approved by the state Commission), regardless of the calling and called NPA-  
5 NXXs and, specifically regardless of whether an End User Customer is  
6 assigned an NPA-NXX associated with a rate center different from the rate  
7 center where the customer is physically located (a/k/a "VNXX Traffic").  
8 Qwest's agreement to the terms in this paragraph is without waiver or  
9 prejudice to Qwest's position that it has never agreed to exchange VNXX  
10 Traffic with CLEC.

11  
12 **Q.     WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR SECTION 7.3.4.1?**

13 **A.     Level 3's proposal for Section 7.3.4.1 is set forth:**

14           7.3.4.1     Subject to the terms of this Section, intercarrier compensation for  
15 Section 251(b)(5) Traffic where originating and terminating NPA-NXX codes  
16 correspond to rate centers located within Qwest defined local calling areas  
17 (including ISP-bound and VoIP Traffic) exchanged between Qwest and CLEC  
18 will be billed as follows, without limitation as to the number of MOU  
19 ("minutes of use") or whether the MOU are generated in "new markets" as  
20 that term has been defined by the FCC: \$.0007 per MOU.

21  
22 **Q.     IS THERE ALSO A DISPUTE ABOUT THE RATE THAT IS PAID?**

23 **A.     Yes. The Qwest proposed rate in my testimony reflects the rate of \$.001343 per**  
24 **MOU established by the Commission for voice traffic. The FCC did nothing to**  
25 **take away the state commissions' right to set the voice rate for reciprocal**  
26 **compensation. Level 3 thinks a different rate, \$.0007, should apply and not the**  
27 **rate established by the Idaho Commission. In addition, Level 3 again tries to**  
28 **insert 251(b)(5) language, which, based on the discussion above, includes toll, and**  
29 **would eliminate access charges on toll calls. Level 3 also attempts to include any**

1 VNXX calls by tying the traffic to the NPA-NXX, and not to the towns where the  
2 customers reside.

3 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE**  
4 **OVER THE LEVEL 3 LANGUAGE?**

5 A. I will not repeat the arguments on this issue. I addressed them in the VNXX  
6 definition section, as well as the compensation for ISP issue. In both instances,  
7 Level 3 sought to expand the definition of 251(b)(5) traffic to include calls from  
8 outside the LCA if the terminating party had an assigned NXX associated with the  
9 local exchange of the calling party. Level 3 is attempting through its language in  
10 7.3.4.1 to do the same thing for voice and VoIP calls. Qwest's language makes  
11 clear that VNXX traffic, including voice and VoIP VNXX traffic, is not local and  
12 is not subject to reciprocal compensation rules for local traffic. Level 3's attempt  
13 to change the FCC's orders and redefine 251(b)(5) to include toll calls is also  
14 addressed in Issues 10 and 19.

15 **IX. DISPUTED ISSUE 19: ISP BOUND 3:1 RATIO, SECTION 7.3.6.2**

16 **Q. WHAT IS THE DISPUTED LANGUAGE FOR SECTION 7.3.6.2?**

17 A. The portions of Section 7.3.6.2 that are in dispute are depicted as follows:

18 7.3.6.2 Identification of ISP-Bound Traffic –Qwest will presume traffic  
19 delivered to CLEC that exceeds a 3:1 ratio of terminating (Qwest to CLEC)  
20 to originating (CLEC to Qwest) traffic is ISP- Bound traffic. Either party  
21 may rebut this presumption by demonstrating the factual ratio to the state

1 Commission. Traffic exchanged that is not ISP-Bound Traffic will be  
2 considered to be Section 251(b) (5) traffic.  
3

4 Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO THE  
5 LANGUAGE IN SECTION 7.3.6.2.

6 A. There are two issues in regard to Section 7.3.6.2. In the first instance Level 3  
7 seeks to strike language dealing with the situation where a State Commission has  
8 previously ruled on what is an appropriate method of tracking ISP-bound Traffic.  
9 I show this disputed language in. The second issue deals with Level 3's attempt  
10 to insert additional language in the section dealing with 3:1 that will presume all  
11 traffic exchanged between Qwest and Level 3 that is not ISP-bound traffic is  
12 section 251(b)(5) traffic. I show this proposed Level 3 change in underlined text.

13 I will address each of these issues separately.

14 Q. WHY DID QWEST INCLUDE THE LANGUAGE IN THE FIRST PART  
15 OF SECTION 7.3.6.2 THAT LEVEL 3 WANTS STRICKEN?

16 A. The language at issue, "*unless the Commission has previously ruled that Qwest's*  
17 *method for tracking ISP-Bound Traffic is sufficient*" is language proposed by  
18 Qwest for all states. Qwest's proposed language simply provides that *if* a  
19 commission has previously ruled that Qwest's method of identifying actual ISP-  
20 bound traffic is sufficient, then that method of identifying actual local and ISP  
21 minutes should be employed instead of the presumption formula. The FCC gave

1 this right to both parties as part of the decision in the ISP Remand Order  
2 establishing the 3:1 ratio.

3 “A carrier may rebut the presumption, for example, by demonstrating to the  
4 appropriate state commission that traffic above the 3:1 ratio is in fact local  
5 traffic delivered to non-ISP customers. In that case, the state commission will  
6 order payment of the state-approved or state-arbitrated reciprocal compensation  
7 rates for that traffic. Conversely, if a carrier can demonstrate to the state  
8 commission that traffic it delivers to another carrier is ISP-bound traffic, even  
9 though it does not exceed the 3:1 ratio, the state commission will relieve the  
10 originating carrier of reciprocal compensation payments for that traffic, which  
11 is subject instead to the compensation regime set forth in this Order”.<sup>25</sup>

12  
13 Qwest has brought this issue up elsewhere and has successfully rebutted the 3:1  
14 presumption. Because Level 3 does not object to the language “Either party may  
15 rebut this presumption by demonstrating the factual ratio to the state  
16 Commission”, Qwest has no objection to the language ‘being struck.

17 **Q. WHY DOES QWEST OBJECT TO LEVEL 3’S INSERTION OF**  
18 **LANGUAGE AT THE END OF SECTION 7.3.6.2?**

19 A. This is simply another manifestation of Level 3’s roundabout effort to reclassify  
20 all of its traffic and eliminate access charges. By making what at first blush is a  
21 seemingly harmless insertion (“Traffic exchanged that is not ISP-Bound  
22 Traffic will be considered to be Section 251(b) (5) traffic,”), Level 3 is in fact  
23 attempting to classify *all* traffic exchanged between the two companies as local  
24 traffic subject to reciprocal compensation. As I discussed previously, this

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<sup>25</sup> *ISP Remand Order*, ¶ 79.

1 sentence must be read side by side with Level 3's definition of section 251(b)(5)  
2 traffic, in which Level 3 attempts to even include toll traffic. Level 3's language  
3 would have the effect of eliminating the interstate and intrastate access structures  
4 established by the FCC and Idaho Commission and should be rejected as  
5 inconsistent with both the law and good policy. The FCC made clear that all  
6 traffic is not subject to 251(b)(5):

7 "We conclude that a reasonable reading of the statute is that Congress  
8 intended to exclude the traffic listed in subsection (g) from the reciprocal  
9 compensation requirements of subsection (b)(5). Thus, the statute does not  
10 mandate reciprocal compensation for "exchange access, information access,  
11 and exchange services for such access" provided to IXCs and information  
12 service providers."<sup>26</sup>  
13

14 **Q. HOW SHOULD THE COMMISSION RULE ON ISSUE 19?**

15 A. The Commission should rule that Level 3's attempt to change existing law on  
16 what is included in section 251(b)(5) traffic should be denied. Thus, the Level 3  
17 proposed language at the end of 7.3.6.2 should be rejected.

18 **X. DISPUTED ISSUE 10: DEFINITION OF INTERCONNECTION**

19 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE**  
20 **10.**

21 A. Level 3 mischaracterizes this issue as Qwest's attempt to exclude traffic from  
22 being exchanged. That is not the issue at all. In fact, this is simply another

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<sup>26</sup> ISP Remand Order ¶ 34.

1 version of Level 3's inappropriate effort to reclassify all traffic to its benefit.  
2 Level 3 purports to be offering a definition of interconnection, but it is really  
3 attempting to insert into the agreement an incredibly broad definition of section  
4 251(b)(5) traffic: ***“Telecommunications includes, but is not limited to Section***  
5 ***251(b)(5) Traffic, which is defined as Telephone Exchange Service, Exchange***  
6 ***Access Service, Information Service, and Telephone Toll Service (including but***  
7 ***not limited to IntraLATA and InterLATA Toll) traffic and is also defined to***  
8 ***include ISP-Bound traffic, VoIP traffic.”*** This language is a clear misstatement  
9 of the FCC's position. Level 3 is seeking to expand the definition of section  
10 251(b)(5) traffic to include, among other things, intraLATA and interLATA toll  
11 calls. In fact, the FCC has clearly and unequivocally stated that section 251(b)(5)  
12 does NOT include the services Level 3 is attempting to add in its definition of  
13 “interconnection”:

14 “We conclude that a reasonable reading of the statute is that Congress  
15 intended to exclude the traffic listed in subsection (g) from the reciprocal  
16 compensation requirements of subsection (b)(5). Thus, the statute does not  
17 mandate reciprocal compensation for “exchange access, information access,  
18 and exchange services for such access” provided to IXCs and information  
19 service providers. Because we interpret subsection (g) as a carve-out  
20 provision, the focus of our inquiry is on the universe of traffic that falls within  
21 subsection (g) and not the universe of traffic that falls within subsection  
22 (b)(5).”<sup>27</sup>  
23

---

<sup>27</sup> *Id.*

1 Level 3 is attempting, through a definitional sleight of hand, to convince the Idaho  
2 Commission to overturn this portion of the FCC's decision in the *ISP Remand*  
3 *Order* and to fundamentally change the intercarrier compensation mechanisms  
4 that have governed carrier-to-carrier relationships for years. The Commission  
5 should reject Level 3's definition of "interconnection" and its attempt to obtain an  
6 interconnection definition that would include toll, access, and information  
7 services in section 251(b)(5) traffic.

8 **XI. DISPUTED ISSUE 11: DEFINITION OF INTEREXCHANGE CARRIER**

9 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE**  
10 **11.**

11 A. This issue relates to whether the Interconnection Agreement should contain the  
12 definition of "Interexchange Carrier" as proposed by Qwest or use Level 3's  
13 definition.

14 **Q. WHAT IS QWEST'S LANGUAGE PROPOSAL FOR THIS DEFINITION?**

15 A. Qwest's definition for "Interexchange Carrier" is as follows:

16 "Interexchange Carrier" or "IXC" means a Carrier that provides *InterLATA or*  
17 *IntraLATA Toll services.*

18  
19 **Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR THE DEFINITION**  
20 **OF AN INTEREXCHANGE CARRIER?**

21 A. Level 3's proposal for the definition of "Interexchange Carrier" is set forth:

1                   “Interexchange Carrier” or “IXC” means a Carrier that provides *Telephone*  
2                   *Toll Service*.  
3

4   **Q.    WHY DOES QWEST BELIEVE THAT ITS DEFINITION IS ACCURATE?**

5    A.    I will state first that this is not an area of disagreement that is significant or will  
6           have a profound effect on the implementation of the interconnection agreement,  
7           except as discussed below. Qwest’s proposed definition of “Interexchange  
8           Carrier” is the current, standard language included in interconnection agreements  
9           with CLECs and has been approved by every Commission in Qwest’s region. An  
10          interexchange carrier is an access customer that typically purchases Feature Group  
11          D access trunks from Qwest to originate and terminate “interLATA and  
12          intraLATA” toll calls. The terms “InterLATA and IntraLATA” have been widely  
13          used and understood within the telecommunications industry. The  
14          Communications Act of 1934 (as amended) contains a definition for ““interLATA  
15          service””<sup>28</sup> and references the term “interLATA” throughout the Act. State  
16          commissions also reference intraLATA and interLATA services and refer to “toll”  
17          services ordered by an IXC.

---

<sup>28</sup> 47 U.S.C. § 153(21). (InterLATA service “means telecommunications between a point located in a local access and transport area and a point located outside such area”).

1 Q. WHY WOULD LEVEL 3 OBJECT TO THE USE OF ‘INTERLATA AND  
2 “INTRALATA” IN RELATIONSHIP TO AN IXC?

3 A. During negotiations, Level 3 implied that in order for a toll call to be a toll call, a  
4 discrete charge must be imposed on end users. Thus, under this logic, if Level 3  
5 did not charge its customers for VNXX calls, the VNXX calls could not be  
6 categorized as toll calls, could not be subject to access charges, and should be  
7 subject to reciprocal compensation. Level 3’s effort to inject the “Telephone Toll  
8 Service” definition appears to be a back door attempt to inject this issue into the  
9 agreement. Although Qwest has little dispute between the two definitions, Qwest  
10 takes strong issue with a Level 3 assertion that the “telephone toll service”  
11 definition means that VNXX is not toll and has been validated by the agreement,  
12 with all of its attendant implication for access charges and reciprocal  
13 compensation. Under what appears to be Level 3’s theory, a carrier that offers toll  
14 but does not charge its customers for any reason would thereby exempt itself from  
15 FCC or state prescribed access charges. Furthermore, Level 3’s ability as a CLEC  
16 to obtain local numbers carries with it the assumption (apparently false in its case)  
17 that these numbers will be used to originate and/or terminate local calls. Thus,  
18 Qwest has no way to determine in advance whether any particular call is really a  
19 toll call that it should be billed as such. Thus, a CLEC like Level 3 that wants to  
20 rely on a definition that a toll call can only be a toll call if there is a charge is  
21 enabled to create its own self-fulfilling prophecy. The reference to charges is

1 addressed to the end user customers. Toll is a retail product sold to end user  
2 customers. The term toll does not address the charges between carriers, exchange  
3 access. Whether or not there is a charge to a retail end user customer for the toll  
4 call will not impact the obligation to pay access charges.

5 **XII. DISPUTED ISSUE 12: DEFINITION OF "INTRALATA TOLL TRAFFIC"**

6 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE**  
7 **12.**

8 A. This issue relates to whether the Interconnection Agreement should contain the  
9 definition of "IntraLATA Toll" as proposed by Qwest or use Level 3's definition.

10 **Q. WHAT IS QWEST'S PROPOSAL FOR "INTRALATA TOLL"?**

11 A. Qwest's proposal for "IntraLATA toll" is as follows:

12 "IntraLATA Toll Traffic" describes IntraLATA Traffic outside the Local  
13 Calling Area.

14  
15 **Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL?**

16 A. Level 3's proposal for "IntraLATA toll" is as follows:

17 "IntraLATA Toll Traffic" describes IntraLATA Traffic that constitutes  
18 Telephone Toll Service.

19  
20 Again, the Commission will note that there is little in the way of a substantive  
21 difference here. Both definitions accurately describe a type of IntraLATA toll call  
22 in different ways. Neither definition will change the impact of the Agreement.

1           However, Level 3's injection of the "Telephone Toll Service" definition again  
2           raises the issue of whether Level 3 believes that the inclusion of that definition  
3           means that traffic between two exchanges (i.e., interexchange traffic) is exempt  
4           from access charges. If so, the companies have a major dispute. The dispute can  
5           be avoided by simply adopting Qwest's language, which is clear and has been  
6           widely accepted in SGATs and interconnection agreements.

7           **XIII. DISPUTED ISSUE 9: DEFINITION OF EXCHANGE ACCESS**

8           **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 9.**

9           A. This dispute related to Qwest's proposed definition for "Exchange Access".  
10          Qwest agrees with Level 3's proposed definition that "Exchange Access" will  
11          have the meaning as set forth in the Act. Where Qwest used the word "Exchange  
12          Access" uniquely in Section 7 of the agreement, Qwest simply deleted the words  
13          "Exchange Access" and left the remainder of the language "Intralata toll carried  
14          solely by Local Exchange Carriers, (LEC IntraLATA toll)". The description of  
15          LEC IntraLATA toll was not disputed by Level 3 in Section 7, thus we believe  
16          this issue is closed.

1           **XIV. DISPUTED ISSUE 14: DEFINITION OF EXCHANGE SERVICE**

2   **Q.    PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE**  
3           **14.**

4    A.    This dispute relates to Level 3's deletion of the term "Exchange Service" as part  
5           of its request to include "Telephone Exchange Service" in the agreement.  
6           Qwest's definition for "Exchange Service" or "Extended Area Service  
7           (EAS)/Local Traffic" means traffic that is originated and terminated within a  
8           LCA. Qwest cannot nor should the Commission agree to strike "Exchange  
9           Service" from the definitions. Exchange Service is used in paragraphs throughout  
10          the agreement (most of which Level has not disputed). Qwest objects to the  
11          removal of Qwest's definition for "Exchange Service" as it is used repeatedly  
12          throughout the agreement and is therefore necessary.

13       **XV. DISPUTED ISSUE 15: DEFINITION OF 'TELEPHONE TOLL SERVICE'**

14   **Q.    PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE**  
15           **15.**

16    A.    This issue relates to Level 3's inclusion of a definition for "telephone toll service"  
17          and Qwest's position that it is not necessary to include a separate definition for  
18          "telephone toll service."

1 Q. WHAT IS LEVEL 3'S LANGUAGE PROPOSAL FOR THE DEFINITION  
2 OF TELEPHONE TOLL SERVICE?

3 A. Level 3's proposal is as follows:

4 Telephone toll service - the term "telephone toll service" means telephone  
5 service between stations in different exchange areas for which there is made a  
6 separate charge not included in contracts with subscribers for exchange  
7 service.  
8

9 Q. WHAT IS THE EXISTING DEFINITION FOR SWITCHED ACCESS  
10 SERVICE THAT INCLUDES TELEPHONE TOLL SERVICE?

11 A. The definition that has been agreed upon by both parties for "Switched Access  
12 Service" states that Switched Access is the service that an IXC orders for  
13 originating and terminating 'telephone toll service.' Switched Access enables  
14 access customers (IXCs) to complete end user customer requests for intrastate or  
15 interstate long-distance calls. The terms and conditions for access services are in  
16 compliance with the rules and regulations for telephone toll service. The  
17 definition reads as follows:

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

1 Q. DOES QWEST HAVE A PROBLEM WITH THE DEFINITION OF TOLL  
2 SERVICE ITSELF?

3 A. No. The definition is from the FCC and is not controversial. What is  
4 controversial is Level 3's attempt to avoid access charges on telephone toll  
5 elsewhere in the agreement. The real issue regarding this definition is Level 3's  
6 attempt to exempt "telephone toll service" from access charges and instead treat  
7 this traffic as local, and therefore subject to reciprocal compensation. Level 3  
8 proposes that telephone toll service be included in section 251(b)(5) traffic, traffic  
9 that is treated as local, that is subject to reciprocal compensation, and not subject  
10 to access charges. As an example, in the definition for "Interconnection" Level  
11 3's language states: "Section 251(b)(5) traffic, which is defined as Telephone  
12 Exchange Service, Exchange Access Service, Information Service, and *Telephone*  
13 *Toll Service (including but not limited to intraLATA and interLATA Toll).*"  
14 While this is one of the few places where Level 3 spells out that it is making a  
15 definitional attempt to include toll with section 251(b)(5), Level 3 then uses the  
16 term 251(b)(5) traffic throughout the agreement without mentioning the fact that it  
17 has defined it to include toll. This is an inappropriate attempt to redefine  
18 categories of traffic in ways that will dramatically change methods of  
19 compensation. It should not be accepted by the Commission.

1 **Q. DOES QWEST HAVE A PROBLEM WITH THE DEFINITION ITSELF?**

2 A. No. As long as the Commission remains mindful of Level 3's improper use of the  
3 term in other paragraphs involved in this arbitration.

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

5 A. Yes, it does.

6

INDEX TO EXHIBITS

|   |                    |                       |
|---|--------------------|-----------------------|
| 1 |                    |                       |
| 2 |                    |                       |
| 3 | <b>DESCRIPTION</b> | <b><u>Exhibit</u></b> |
| 4 | ESP Connection     | Qwest No. 301         |
| 5 |                    |                       |
| 6 | VoIP Routing       | Qwest No. 302         |
| 7 |                    |                       |
| 8 | Virtual NXX        | Qwest No. 303         |

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing **DIRECT TESTIMONY OF LARRY B. BROTHERSON** was served on the 12<sup>th</sup> day of August, 2005 by first class mail, postage prepaid on the following individuals:

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 Overnight Delivery  
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Legal Assistant  
Stoel Rives LLP

## Proper Routing of Valid VoIP Calls

.....  
 -----  
 Proper Routing when the VoIP Provider and End User are in the same Local Calling Areas.  
 Proper Routing when the VoIP Provider and End User are in different Local Calling Areas.

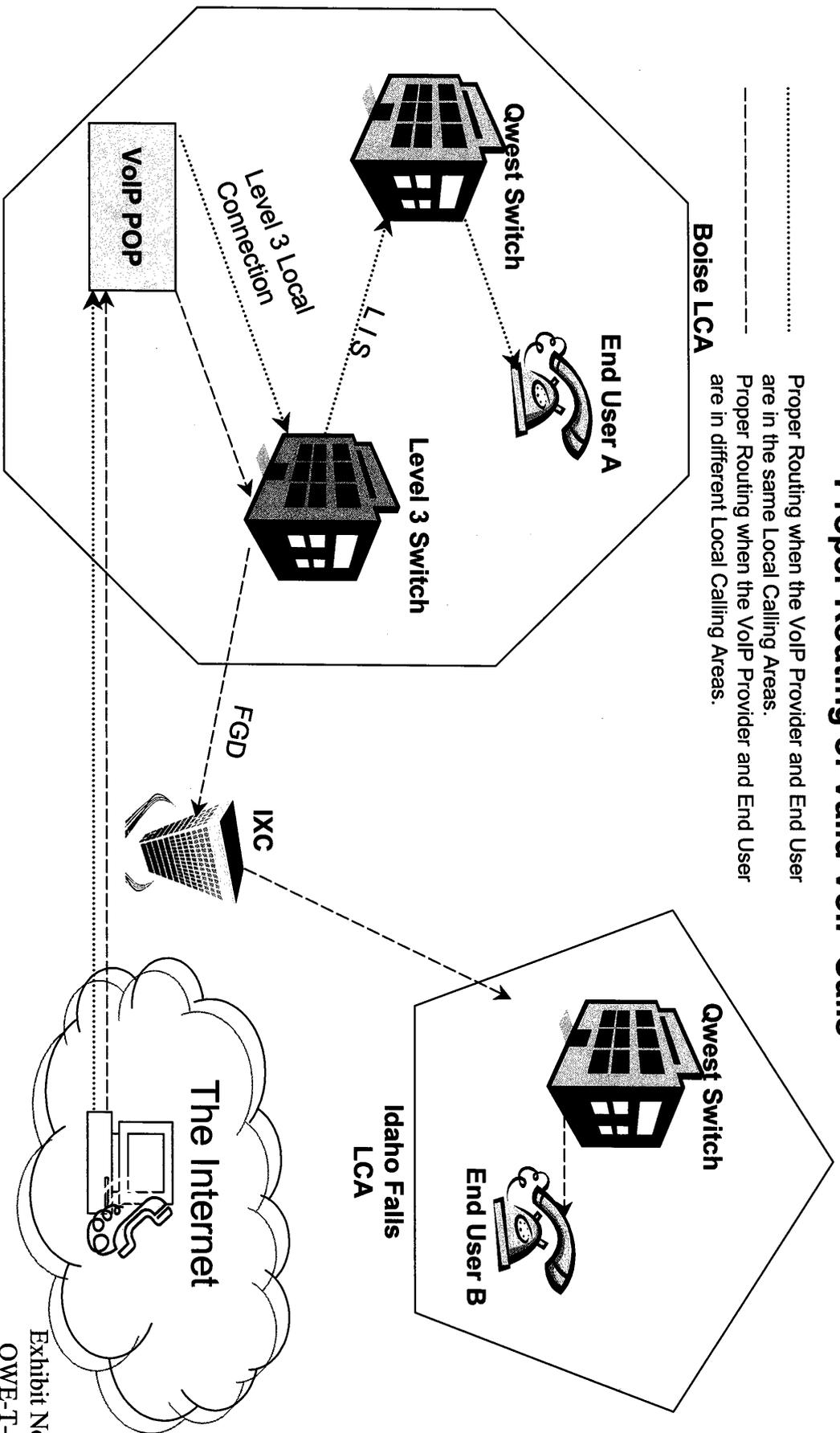
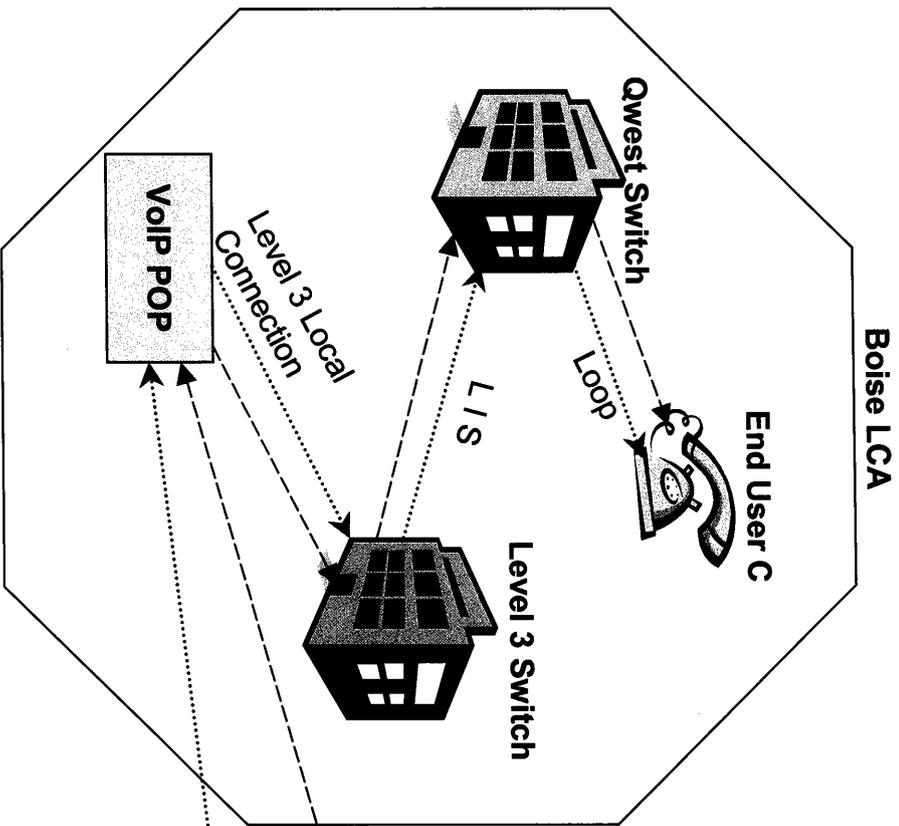


Exhibit No. 301  
 QWE-T-05-11  
 L, Brotherson, Qwest  
 Proper Routing of Valid VoIP Calls

## Examples of VoIP Calls

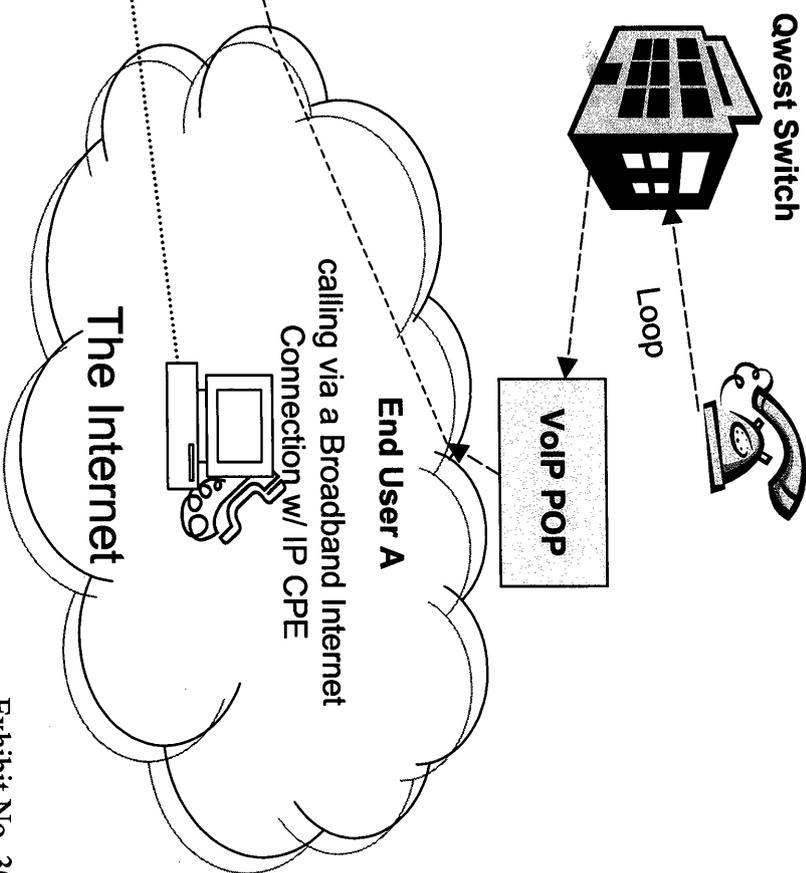
Valid VoIP Call

NOT a valid VoIP Call



End User B

Calling from the PSTN or a Dial Up Internet Connection Outside the Local Calling Area



# VNXX Routing

..... Local Call to ISP – Reciprocal Compensation Applies

----- VNXX Call to ISP – Calls not local and Reciprocal Compensation does not apply

