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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

REBUTTAL TESTIMONY OF LARRY B. BROTHERSON

ON BEHALF OF

QWEST CORPORATION

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

September 16, 2005

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.

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, 24th Floor, Denver, Colorado, 80202.

Q. ARE YOU THE SAME LARRY B. BROTHERSON WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the Level 3 testimony of Mr. Gates and Mr. Ducloo. Specifically, I will discuss the Level 3 testimony as it relates to the following disputed issues:

- ISSUE 16: DEFINITION OF VoIP
- ISSUE 1A: SECTION 7.1.1.1 OPERATION AUDITS
- ISSUE 1A: SECTION 7.1.1.2 CERTIFICATION
- ISSUE 3: VNXX TRAFFIC
- ISSUE 4: COMPENSATION FOR VOICE AND VoIP TRAFFIC
- ISSUE 19: ISP BOUND 3:1 RATIO, Section 7.3.6.2

- ISSUE 10: DEFINITION OF INTERCONNECTION
- ISSUE 11: DEFINITION OF INTEREXCHANGE CARRIER
- ISSUE 12: DEFINITION OF INTRALATA TOLL TRAFFIC
- ISSUE 14: DEFINITION OF TELEPHONE EXCHANGE SERVICE
- ISSUE 15: DEFINITION OF TELEPHONE TOLL SERVICE

In addition, I will respond to some of the general comments made by Level 3 regarding competition, network efficiencies, and the Internet.

Q. BEFORE ADDRESSING SPECIFIC ISSUES IN THE MATRIX AND SPECIFIC LANGUAGE SECTIONS, DO YOU HAVE ANY GENERAL COMMENTS?

A. Yes. This has been an unusual arbitration in terms of responding to the Petition and responding to the direct testimony. For a case whose sole purpose is to establish contract language in a disputed interconnection agreement ("ICA") pursuant to section 252 of the Act, Level 3 spends little time defending its own language or comparing it to Qwest's language. Its testimony is virtually all high-level policy discussion, whose thrust is that Level 3 should be entitled to special treatment. Furthermore, it should be noted that while Mr. Ducloo filed 1 exhibit with 17 pages, my review of his testimony indicates that he only refers to four of the pages (Exhibit 107 pages 1-3 and page 9) in his testimony. Nonetheless, I have actually responded below to a few of the exhibits that he does not mention, simply because there are serious errors in them. Qwest, of course, reserves the right to move to strike exhibits that are not appropriately presented to the Commission.

I direct my reply testimony to specific issue numbers, but in general all of the Level 3 direct testimony on issues for which I am responsible fall into two issues: (1) the definition of VoIP and (2) the proper means of defining local and interexchange calls for compensation purposes.

In light of the fact that Level 3 has chosen not to provide testimony related to specific ICA language in its direct testimony, and given the possibility that it will raise specific issues related to language for the first time in rebuttal testimony, Qwest reserves the right to seek an opportunity to reply to such testimony in prefiled or live surrebuttal testimony or in some other appropriate manner.

III. DISPUTED ISSUE 16: DEFINITION OF VoIP

Q. WHY IS VoIP AN ISSUE IN THIS ICA?

A. Until now, Level 3's business model has been primarily the offering of originating numbers to ISPs using its status as a CLEC with single point of interconnection to provide statewide free **originating** calling to ISPs. This is the VNXX issue that I address later. However, Level 3 now appears to be expanding its business model. It appears that Level 3 intends to use its status as a CLEC able to assign local telephone numbers in distant towns as the means to provide LATA-wide **termination** to VOIP providers over Qwest's network, and to treat these calls as local as well. Because Qwest's language limits ISP terminations to terminations within the local calling area ("LCA") in which the Enhanced Service Provider

("ESP") purchases local service, Level 3 objects to Qwest's contract language related to VoIP.

Q. PLEASE EXPLAIN THE DISPUTE RELATING TO THE DEFINITION OF VoIP?

A. Level 3 and Qwest disagree on a variety of issues related to the definition of VoIP. These issues include (1) where the special equipment that converts calls to Internet Protocol ("IP") must be located; (2) how the ESP exemption applies to VoIP calls under certain circumstances; and (3) the significance of the location of the ESP point of presence ("POP") as it relates to defining a call as local or toll. My rebuttal testimony addresses Mr. Ducloo's and Mr. Gates' testimony relating to these issues.

Q. DID MR. DUCLOO OR MR. GATES SPECIFICALLY ADDRESS THE ICA LANGUAGE IN DISPUTE RELATING TO THE DEFINITION OF VoIP?

A. No. As I noted, the Level 3 testimony is mostly high-level policy testimony. However, in the course of delivering their high-level testimony, both Mr. Ducloo and Mr. Gates do address some of the issues associated with the language in dispute, though rarely the language itself. Mr. Ducloo discussed his definition of VoIP and provided Exhibit 107 page 6 as an illustration of two types of VoIP connections to the Public Switched Telephone Network ("PSTN").

Q. DO YOU AGREE WITH MR. DUCLOO'S DEPICTION OF A VOIP CALL IN EXHIBIT 107 PAGE 6?

A. Generally yes. Exhibit 107 page 6 is an accurate depiction of two configurations I discuss in my direct testimony. The example at the top of the page represents the type of traffic

addressed in the AT&T case discussed in my initial testimony (TDM-IP-TDM),[1] which the FCC determined starts and ends as a TDM call and therefore has undergone no net protocol conversion. The FCC has ruled that this type of call is not properly characterized as VoIP.

The example at the bottom of that page is an accurate depiction of a second call that does involve a net protocol conversion. Based on this exhibit, Qwest and Level 3 appear to agree that traffic that originates in IP on IP-compatible equipment and then is converted to TDM for delivery to a customer on the PSTN (IP-TDM) is an Interconnected VoIP call (hereafter VoIP), and is thus properly characterized as VoIP traffic under the ICA (in other words, on the lower half of Exhibit page 6, traffic that moves from left (IP) to right (TDM) is VoIP traffic). Although we agree in both the testimony and exhibits, Level 3 nevertheless seeks to strike the defining language in the ICA to that effect.

Q. ARE THERE OTHER PARTS OF MR. DUCLOO'S EXHIBIT 107 PAGE 6 WITH WHICH YOU DISAGEE?

A. Yes. Exhibit 107 page 6 appears to show VoIP calls going both ways. Qwest and Level 3 disagree on whether traffic that is originated in TDM on a PSTN phone and delivered in IP is a VoIP call for purposes of the ICA and the ESP exemption. Calls originating in TDM over PSTN telephones by Level 3 or its customers are not VoIP calls because, by definition, they would fall into the TDM-IP-TDM classification that Mr. Ducloo agrees is

[1] 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 TDM-IP-TDM service was a telecommunications service and is subject to access charges) ("*AT&T Declaratory Ruling*").

not an enhanced service. Mr. Ducloo's exhibit also fails to show the location of a VoIP POP, a critical piece in the exhibit and in this case. Assuming the dashed line labeled "net protocol conversion" is the VoIP POP, under Qwest's language (which is consistent with FCC characterizations) two things are required in order for a call to be categorized as VoIP. First, it must originate in IP on IP-compatible CPE and, second, it must undergo a net protocol conversion (i.e., into TDM) before being delivered to a PSTN customer. Because the second example on Exhibit 107 page 6, moving from right (TDM) to left (IP), does not meet the first criterion, it is not a VoIP call and should not be treated as VoIP under the ICA. It is simply a voice call, a TDM call to a location on the network of the VoIP provider.

Q. IS LEVEL 3'S LANGUAGE CONSISTANT WITH LEVEL 3'S POSITION THAT A PSTN-ORIGINATED CALL IS A VoIP CALL?

A. No. While Level 3 discusses general theories, it makes no comment about Qwest's language. Interestingly, Qwest has no problem with Level 3's actual language in the ICA on this issue. However, in light of the exhibits, there may be a misunderstanding that needs comment for the record. Despite proposing language that states "VoIP" is "traffic that *originates* in Internet Protocol using IP-Telephone handsets . . . ," Level 3's response to Qwest Data Request No. 29 (attached hereto as Qwest Exhibit 306) states that Level 3 takes the position that calls that originate in TDM, but which terminate in IP, are also VoIP calls. Level 3's response to the data request is inconsistent with its own proposed ICA language. But more importantly, calls that terminate in IP over broadband would not be

delivered to Qwest under this ICA; they would route directly to the end-user customer without ever being converted to TDM and without passing through the PSTN. Qwest would never see the terminating end of such calls. As such, there is no need to address them in the ICA.

Q. WHY DOES QWEST'S ICA LANGUAGE (SECTION 7.2.2.12) MAKE THE VoIP PROVIDER'S POP THE RELEVANT LOCATION FOR DETERMINING HOW TO PROPERLY CATEGORIZE A VoIP CALL AS LOCAL OR INTEREXCHANGE?

A. Mr. Ducloo discusses how, through the use of IP equipment connected to the Internet via a broadband connection, a customer can connect anywhere there is a broadband Internet connection to make a VoIP call. (See Ducloo Direct, p.64.) Qwest does not dispute this statement. Broadband IP calls originate, connect to the Internet backbone, and crisscross the country without ever touching the PSTN. That is one of the reasons the physical location of the VoIP provider's POP, the point at which the call is converted to TDM and enters the PSTN, is so important. For purposes of application of the ESP exemption, the ESP (in this case, the VoIP provider) is treated as a retail end-user customer. Given the fact that the ESP exemption allows the ESP to connect to the network by purchasing local services as an end-user customer, it is essential to know which LCA the VoIP POP is located in (i.e., where it is buying local service). Thus, given the nature of the traffic (assuming it is properly categorized as VoIP), and given the fact that VoIP providers desire to take advantage of the benefits of the ESP exemption, it is essential that the physical

location of the VoIP provider's POP be one of the relevant points for properly characterizing the traffic (the other relevant point is the physical location of the PSTN customer to whom the call is being terminated). The language that makes the VoIP provider's POP one of the relevant points of measurement is contained in Qwest's updated VoIP definition and shown on page 21 of my direct testimony Qwest's VoIP definition is critical to the proper application of the ICA and should be adopted by the Commission. Level 3's attempt to strike terms central to the definition of VoIP should be disregarded.

Q. MR. DUCLOO ALSO DISCUSSES IP-COMPATIBLE CPE. IS MR DUCLOO'S DISCUSSION CONSISTENT WITH LEVEL 3'S POSITION ON WHAT DEFINES VoIP?

A. Mr. Ducloo describes the specialized CPE required by VoIP: "Special phones, called "SIP" phones ("SIP" stands for "Session Initiation Protocol" . . .) can be used for VoIP. These phones have small computers built into them that packetize the voice data and generate SIP messages." (Ducloo Direct, p.49.) I agree with that statement. Converting the call to IP protocol at the customer's premises (wherever that may be) with special equipment de facto makes the call an IP-originated call that must travel over a broadband connection. This is why Level 3's attempt to strike the language that requires that the call originate in this type of equipment on the customer's premises is surprising. If the end-user customer does not have this equipment on the customer's premises to convert the call to IP, the call must be originated as a traditional PSTN call in TDM and thus, when delivered to Qwest in TDM, cannot have undergone a net protocol conversion. Qwest's proposed ICA language for the definition of VoIP "traffic that originates in Internet Protocol *at the premises of the*

party making the call using IP-Telephone handsets, *end user premises...*" (emphasis added) requiring the specialized equipment that Mr. Ducloo describes is critical. The language requiring that the IP equipment is at the customer's premises is an absolutely necessary piece to the definition to assure that the call is an IP-originated call. Therefore, Qwest's language should be adopted.

Q. DO MR. DUCLOO AND MR. GATES DISCUSS THE COSTS OF TERMINATING CALLS IN THEIR TESTIMONY?

A. Yes. Mr. Ducloo and Mr. Gates discuss whether the costs of terminating various types of calls (including VoIP, local calls, intrastate toll calls, and interstate toll calls) differ. My general comments to those discussions are that through extensive cost docket proceedings, the Commission has approved rates that Qwest can charge for various types of calls. An arbitration of contract terms for one CLEC is not the appropriate forum for changing Commission-approved rates that apply to all IXCs, CLECs, or other carriers that use the Qwest network. The isolated approach that Level 3 proposes would unduly distort the market and could create unanticipated consequences or opportunities for regulatory arbitrage.

Q. MR. DUCLOO STATES THAT "QWEST TERMINATES VoIP CALLS TO ITS END-USER CUSTOMERS IN THE SAME MANNER [IT] WOULD USE TO TERMINATE REGULAR PSTN BASED LOCAL CALLS TO [ITS] END-USER CUSTOMERS. THERE ARE NO EXTRA PROCESSES, NO ADDITIONAL

TRANSPORT, AND NO ADDITIONAL SWITCHING." IS HIS STATEMENT ACCURATE?

A. This statement is accurate only for the termination of "regular PSTN based *local calls"* (Ducloo Direct, p.54), which is the only type of calls his answer relates to. But that misses the point. Both parties are in agreement that terminating access charges do not apply to local calls (whether it is a PSTN-originated local call or a local call handed off by the VoIP POP in the LCA). However, Mr. Ducloo's testimony is conspicuously silent about how, for example, VoIP calls from an ESP in Boise with Boise local exchange service will be delivered to a Qwest PSTN customer in Twin Falls. Yet that is the central issue in dispute with regard to VoIP in this docket. The Qwest language in section 7.2.2.12 is intended to make clear that when a Boise Level 3 VoIP provider with a Boise local POP terminates a call to a Boise PSTN customer, it is a local call, and will be treated that way under the ICA. The call is measured from the VoIP POP to the Qwest PSTN customer. The contract language should make clear that a VoIP call from the Boise-based VoIP customer to a Qwest PSTN customer in Twin Falls is not a local call under the ICA, nor should it be.

Q. DO YOU HAVE COMMENTS REGARDING MR. GATES' COST STATEMENTS ON PAGE 46 OF HIS DIRECT TESTIMONY?

A. Yes. Level 3 moves the discussion away from Commission rules and onto costs. Mr. Gates states that it would not be appropriate for VoIP to be subject to access charges in any event. An example illustrates the special treatment that Level 3 seeks. First, assume that Level 3's VoIP provider customer and an IXC each have POPs located in Boise in

adjoining rooms in the same building. Second, assume that a VoIP call from Level 3 destined for a Qwest customer in Twin Falls is delivered to Qwest, and that Qwest transports the call to Twin Falls and delivers it to the PSTN customer. Third, assume that a customer of the IXC does exactly the same thing: delivers a call to Qwest at the Boise POP, and that Qwest transports the call to Twin Falls and delivers it to the customer. It is a fact, as Mr. Gates states, that precisely the same Qwest processes, transport, and switching are necessary to deliver both calls, yet under Level 3's proposal, Level 3 would pay Qwest $.0007 per minute to terminate the VoIP call, while the IXC would pay terminating exchange access charges to deliver the call to the same customer. For both calls, the same processes, transport and switching are necessary, but Level 3 seeks to exempt itself from the rules that apply to other carriers. Comparing costs does not resolve the consequences of disparate regulatory treatment being applied to certain traffic. In the example above, there is absolutely no difference to the PSTN between the two calls: both are delivered to Qwest in TDM, both are voice calls, and both use precisely the same processes and facilities to terminate, and yet Level 3 proposes that completely different regulatory treatment be given to the Level 3 VoIP call. One of the goals of the 1996 Act is to create a competitively-neutral environment—Level 3's proposal is a major step in the wrong direction.

Q. MR. GATES MAKES THE COMMENT THAT; "BROADBAND VoIP SERVICES DO NOT IMPOSE ANY ADDITIONAL COSTS ON THE ILECs OR THEIR NETWORK EITHER." (GATES DIRECT, PAGE 48.) HE ALSO IMPLIES THAT

VoIP SHOULD BE ALLOWED TO USE THE PSTN AT RATES LOWER THAN THE ACCESS CHARGES THAT APPLY TO OTHER CARRIERS. (GATES DIRECT, PAGE 48.) PLEASE COMMENT.

A. Again, Mr. Gates is really arguing that Level 3 should be exempt from the current rules and regulations that govern the rest of the industry. Mr. Ducloo, at page 10 of his direct testimony, says that "Level 3 is not a traditional competitive local exchange carrier ("CLEC")." I agree that Level 3 does not appear to be a typical CLEC. In fact, Level 3 is much more like an ESP seeking inter-LEC compensation. The VoIP call that is converted to TDM, and that uses the PSTN just like other types of PSTN calls, should not be treated in a special, discriminatory manner by virtue of the fact that the VoIP call was once in IP protocol or that Level 3 characterizes itself as atypical.

Yet, despite these facts, Mr. Gates seeks a decision from the Commission that would constitute a major policy shift, by permitting either a lower charge or no access charge, on calls bound from Boise to LCAs at the other end of the state, simply because those calls just happened to have once been VoIP calls before being converted into TDM. I can certainly understand Level 3's desire to reduce or eliminate intrastate access charges—it would certainly be in Level 3's business interests, particularly if Level 3's competitors operated under a vastly different set of rules. But such a radical step, if undertaken at all, should be done only after the Commission has considered a broader range of interests than are represented in a language dispute in an arbitration between two companies. Before enacting fundamental reform as proposed by Level 3, other local exchange carriers,

independent telephone companies, IXCs, wireless providers, and consumers who benefit from what Level 3 refers to as "subsidy-laden" charges, should all have a place at the table so that a reasoned decision, one that takes into account the full consequences, can be reached. An industry forum, for example, would be a reasonable way of addressing these issues. Such an important policy change should not be made in an arbitration proceeding for one specialized CLEC in one agreement.

Q. HAS THE FCC ALSO ADDRESSED THE ISSUE OF DIFFERENT CHARGES FOR SIMILAR NETWORK FUNCTIONS?

A. Yes. In the FCC's Local Competition *First Report and Order*, the FCC noted and rejected the same points that Mr. Gates and Mr. Ducloo raise:

> We recognize that transport and termination of traffic, whether it originates locally or from a distant exchange, involves the same network functions. Ultimately, we believe that the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge. We conclude, however, as a legal matter, that transport and termination of local traffic are different services than access service for long distance telecommunications. Transport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic.[2]

Q. SHOULD ALL TDM CALLS USING THE PSTN BE TREATED THE SAME, EVEN IF SOME WERE ORIGINALLY VoIP CALLS?

[2] First Report and Order and Notice of Proposed Rulemaking, *In the Matters of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-325, ¶ 48 (August 8, 1996).

A. Yes. On page 48 of his direct testimony, Mr. Gates correctly quotes the FCC: "Dial-up, or narrowband, Internet access utilizes the same PSTN infrastructure that telephone subscribers use to place traditional circuit-switched voice calls." Qwest agrees with the FCC. Mr. Gates' ultimate proposals, however, are completely contrary to the substance of the quoted language. Mr. Gates ends his particular answer by saying, in an incongruous way, that "[t]here is simply no economic justification for treating IP-Enabled services as if they were traditional services." (Gates Direct, page 48.) To the extent that Mr. Gates believes a call to an ESP in TDM protocol is "IP-enabled," then his conclusion makes no sense. If dial-up access (i.e., in TDM format) to an ESP to make a VoIP call is identical to a traditional voice call (and it is), then there is no rational reason that a dial-up toll call to make a VoIP call (which is precisely what VNXX is) should not be treated like a traditional voice toll call. A dial-up call in TDM over a modem to a VoIP ESP is indistinguishable from the PSTN to a voice call placed over the PSTN. Thus, the reality reflected in the quote from the FCC is that voice calls and dial-up calls to a VoIP POP are the same, and should be treated the same.

Q. MR. GATES STATES ON PAGE 4 OF HIS TESTIMONY THAT NEITHER PARTY SHOULD BE ABLE TO INSIST ON INTERCONNECTION ARRANGEMENTS THAT ARE COSTLY TO THE OTHER PARTY FOR NO GOOD REASON. DO YOU AGREE WITH HIM?

A. I agree with the general concept that he articulates, but I disagree with the conclusions that Mr. Gates ultimately reaches. The goal of fair and equal imposition of costs is one of the

reasons that the FCC has, over the years, sought and received extensive comments on how network services should be priced, and has made determinations identifying the network elements and services for which it is appropriate to impose charges on other carriers. Likewise, this Commission has conducted cost docket proceedings and has approved what each party could charge for specific services under interconnection agreements. The rates set forth in Exhibit A to the ICAs were reached only after careful consideration by the Commission. The language that typically appears in interconnection agreements that imposes inter-carrier charges did not simply come into being for "no good reason." This language is the product of lengthy and often contentious proceedings. In the end, while Qwest and other parties undoubtedly disagree with specific decisions that have been reached, the result is an effort by the Commission to balance the interests of the parties, to impose reasonable charges based on benefit to the parties, and to promote results that are as competitively neutral as possible.

Q. WHAT IS THE REAL DISPUTE WITH LEVEL 3 OVER PAYMENT OF QWEST'S CHARGES FOR CALLS FROM THE VoIP POP TO THE QWEST PSTN END-USER CUSTOMER?

A. The fundamental problem with the approach taken by Level 3 is that it operates from the premise that, as the provider of new services on a modern IP network, it is entitled to a free pass from the obligations imposed on other carriers when it uses the PSTN, even when its use of the PSTN is identical to the use of other carriers. I doubt very much that any carrier (whether IXC, ILEC or CLEC) is completely happy with the intercarrier compensation

process that currently exists. Most carriers, Qwest included, hope that the FCC will enact changes that will make intercarrier compensation mechanisms more rational than they are today. But, for the time being, the system is what it is, and the existing intercarrier compensation methods achieve a form of rough justice. Level 3, while disparaging the PSTN, has made no effort to duplicate it, and intends to utilize it in order for Level 3 and its customers to complete calls. Qwest believes that, along with the opportunity for Level 3 to use the PSTN for its own business purposes, Level 3 has an obligation to pay its fair share in a manner similar to the obligations of other carriers, no matter whether Level 3 is providing the latest "state of the art" services or more traditional TD-based services. I agree that costs should not be imposed on one party for "no good reason"—but that does not mean, as Level 3 apparently believes, that one type of carrier is essentially granted a free ride in relation to other carriers or in relation to the network upon which it seeks that free ride.

Q. PLEASE RESPOND TO MR. GATES' COMMENTS ON PAGE 48 OF HIS TESTIMONY REGARDING QWEST COMMUNICATIONS CORPORATION ("QCC") RETAIL VoIP SERVICES. ?

A. QCC does offer VoIP, as do many other providers. The relevant issues for this docket are based on the fact that Level 3, a CLEC, interconnects with Qwest and also offers local connection to its VoIP provider customers. The fundamental issue before the Commission is to decide how that interconnection can be provided on a fair and reasonable basis. Mr. Gates offers no evidence, nor is there any, that Qwest provides preferential treatment to

QCC. In fact, QCC terminates VoIP calls within the LCA using the ESP exemption, and QCC VoIP calls terminating to a PSTN customer outside the LCA are routed to an IXC. Qwest requires QCC VoIP traffic to be routed in the same manner as it is asking Level 3 to route traffic. As the prior response makes clear, Level 3 is seeking a considerably more advantageous interconnection arrangement with Qwest than QCC receives. Qwest's position is that VoIP providers are ESPs and should not be disadvantaged in relation to other carriers, nor should they receive any preferential treatment beyond the advantages already provided to them from the ESP exemption.

Q. PLEASE RESPOND TO MR. GATES' ARGUMENT ON PAGE 52 OF HIS TESTIMONY THAT VOIP SHOULD BE FREE FROM REGULATION.

A. Qwest agrees that VoIP should be free from regulation. Mr. Gates accurately quotes Qwest's position on VoIP regulation on page 55 of his testimony. But again, Mr. Gates misses the point. The issue before the Commission is how Level 3, in its role as a CLEC, interconnects to the PSTN and exchanges traffic with Qwest, including traffic from ESP end users that purchase connection to the local network from Level 3. In accord with Section 251(c)(2) of the Act, the Qwest/Level 3 ICA presumes interconnection between local exchange carriers ("LECs"). In reality, however, the interconnection between Qwest and Level 3 may not be interconnection between two LECs. Level 3 does not appear to be

a LEC, by providing telecommunications service.[3] It remains only an ESP by providing only information services.

To Mr. Gates' point on the unregulation of VoIP, the fact is that VoIP is not subject to the kind of regulation to which traditional telecommunications services are subjected. No one regulates the prices of VoIP providers. Furthermore, an IP-IP VoIP call is not regulated in any manner whatsoever. When a Level 3 customer originates a call in IP format over

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[3] The Act defines "telecommunications service" to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46). In turn, the Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43). A "telecommunications carrier" is any provider of telecommunications service that is not an aggregator of telecommunications services. 47 U.S.C. § 153(44). Finally, "information service" means "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. § 153(20).

> 47 CFR 51.701 Scope of transport and termination pricing rules. (a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers. (b) Telecommunications traffic. For purposes of this subpart, telecommunications traffic means: (1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see FCC 01-131, ¶¶¶ 34, 36, 39, 42-43);
>
> Tel Act Section 251(g) CONTINUED ENFORCEMENT OF EXCHANGE ACCESS AND INTERCONNECTION REQUIREMENTS. On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide **exchange access, information access, and exchange services** for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

broadband, Level 3 hauls it across the country on its backbone fiber network in IP, and terminates the call in IP format over broadband to a residence or business with a broadband connection; there is not a single vestige of regulation for that call. Nor does the call involve the PSTN or an interconnection with a CLEC. But, and this is the point that Mr. Gates ignores, if a CLEC such as Level 3 wishes to interconnect and terminate traffic on the PSTN, then the ICA and this Commission are involved.

There is a fundamental difference between regulating VoIP calls on the Internet, which neither Qwest nor Level 3 support, and the rules governing an ICA between LECs. As a CLEC, the arbitration of this ICA is subject to no more regulation than an agreement between Qwest and any other LEC. But given that Level 3 is operating as a CLEC that wants to use the portion of the PSTN owned by an ILEC, subjecting Level 3 to the rules that govern all other carriers is completely reasonable, and subjects Level 3 to no more regulation than other unregulated providers. If what Mr. Gates is trying to avoid under the guise of freeing VoIP from regulation is that Level 3 not be subject to the same interconnection and compensation requirements as other carriers, Qwest adamantly disagrees.

Q. IS IT THE REGULATION OF IP TRAFFIC ON THE INTERNET OR THE REGULATION OF PSTN TRAFFIC IN TDM THAT LEVEL 3 REALLY OBJECTS TO?

A. It is the rules that govern Level 3's use of PSTN that Level 3 is really objecting to. Mr. Gates misinterprets the issue of service regulation from the necessary demands of appropriate intercarrier compensation when two carriers exchange traffic. In other words, Level 3's concept of "no regulation" is that it should receive preferential treatment for its use of the PSTN. Long distance prices have not been regulated for years, and wireless rates have never been the subject of state service regulation. That has not meant that IXCs and wireless providers are free from intercarrier obligations when they use the local wireline PSTN for call origination and termination. Access charges still apply to these "unregulated" calls. In fact, Level 3's concept of no regulation of VoIP really means that other companies, like IXCs and wireless providers, not to mention CLECs that are attempting to provide wireline competition to ILECs and to other CLECs, should remain subject to intercarrier compensation obligations, while Level 3, which markets to VoIP providers, gets preferential treatment. That result certainly was not, and is not, Qwest's or QCC's position. In effect, Level 3 believes it should be able to have its customers originate calls in IP, and then, simply because Level 3 converts those calls to TDM before sending them to the PSTN, it should have the ability to reach millions of PSTN customers in areas from the most urban to the most rural without the necessity of meeting the same rules that apply to other carriers interconnecting to the PSTN.

Q. ON PAGE 5 OF HIS TESTIMONY, MR. DUCLOO SUGGESTS THAT QWEST ADVOCATES THE IMPOSITION OF SWITCHED ACCESS CHARGES ON ALL VoIP TRAFFIC. PLEASE COMMENT ON HIS CONCLUSION.

A. As Level 3 did in its Petition, Mr. Ducloo mischaracterizes Qwest's position on this issue; his suggestion that Qwest seeks to impose switched access charges on *all* VoIP (Ducloo Direct at 5) is simply not true. Qwest does not seek to impose access charges on any traffic that properly qualifies for the ESP exemption. In fact, Qwest's position affirms the ESP exemption, but does so based on a proper interpretation of the exemption. To the extent that VoIP traffic meets the ESP exemption requirements, no access charges can or should be applied; if the traffic does not meet those requirements, neither the ESP exemption, nor a sound "competitively neutral" policy, suggests that this type of VoIP traffic should receive preferential treatment—it should be subject to the same rules that apply to other similar traffic. It is this Qwest position that the same rules should apply to Level 3's traffic as it does to other interconnectors' traffic that Level 3 objects to.

Q. DOES QWEST'S LANGUAGE AFFIRM THE ESP EXEMPTION, AND WHAT IS LEVEL 3'S RESPONSE TO THAT LANGUAGE?

A. Yes. Qwest language in section 7.2.2.12 affirms the ESP exemption. The Qwest language that Level 3 seeks to remove from the ICA states:

> 7.2.2.12 VoIP Traffic. VoIP traffic as defined in this agreement shall be treated as an Information Service, and is subject to interconnection and compensation rules and treatment accordingly under this Agreement based on treating the VoIP Provider Point of Presence ("POP") is an end user premise for purposes of determining the end points for a specific call.
>
> 7.2.2.12.1 CLEC is permitted to utilize LIS trunks to terminate VoIP traffic under this Agreement only pursuant to the same rules that apply to traffic from all other end users, including the requirement that the VoIP Provider POP must be in the same Local Calling Area as the called party.

Q. DOES LEVEL 3 RECOGNIZE THAT THE ESP EXEMPTION REQUIRES COMPLIANCE WITH CERTAIN REQUIREMENTS?

A. Yes. Mr. Ducloo states: "My understanding is that the status of traffic as ESP traffic depends on certain technical characteristics of the entities that provide it, so that entities that qualify as ESPs are entitled to have their traffic rated on an end-user basis, as opposed to on a carrier basis." (Ducloo Direct at 72.) That is what Qwest states in its proposed VoIP definition and in section 7.2.2.12. Qwest's definition of VoIP traffic incorporates the requirements of the ESP exemption. It treats the VoIP provider as an end-user customer as required by the ESP exemption, and treats the VoIP provider's POP as an originating and terminating location for purposes of rating the call and for applying the appropriate form of intercarrier compensation.

Q. DOES QWEST'S PROPOSED LANGUAGE ACCURATELY CAPTURE THE TECHNICAL CHARACTERISTICS THAT MR. DUCLOO REFERS TO?

A. Yes. Consistent with the ESP exemption, Qwest's interpretation includes both the advantages and limitations that come with end-user customer status. The principal advantage of the exemption is that ESPs may originate and terminate traffic within the LCA in which its POP is located without being required to pay originating and terminating access charges. The limitation, however, is the same limitation imposed on end-user customers. The ESP is permitted to connect to the local network by purchasing out of the local exchange tariffs or catalogs. An ESP cannot interconnect under a section 251 ICA. ESPs are the customers of the ILEC or CLEC. The ESP exemption applies within the

LCAs in which the ESP locates a POP, but (just as the rules apply to business end-user customers) the exemption does not allow for free calling outside of those LCAs (and it certainly does not provide for LATA-wide origination and termination of call, as Level 3 implies).

Q. DOES LEVEL 3 AGREE THAT THE ESP EXEMPTION, AND PURCHASE FROM THE LOCAL EXCHANGE TARIFFS/CATALOG, PERMITS ONLY LOCAL CALLING?

A. Since Level 3 does not address the contract language specifically, it is not entirely clear what is Level 3's position on the ESP exemption. To the extent that Level 3 asserts the ESP exemption requires Qwest to terminate a call from a Level 3 ESP customer's VoIP POP located in Boise to a Qwest Twin Falls end-user PSTN customer, without the VoIP provider handing off the call to a PICed IXC, and the IXC paying access charges, Qwest strongly objects to Level 3's interpretation of the ESP exemption. This would create an inappropriate and competitively preferential result for Level 3 and its VoIP provider customers. Just as any Boise end-user customer would be required to hand off its call to an IXC to deliver that customer's traffic to Twin Falls, so should the ESP. Qwest's language is consistent with this interpretation and application of the ESP exemption.

Q. IS LEVEL 3'S CONTRACT LANGUAGE CONSISTENT WITH THE ESP EXEMPTION?

A. No. The problem with Level 3's position is that it attempts to strike language that states the ESP's POP is an element in determining the jurisdiction of the call. Without this language the distinction between a toll call and a local call disappears. Level 3 misinterprets the ESP exemption, apparently based on the erroneous and self-serving conclusion that unlike end-user customers who receive only a LCA-wide exemption from access charges, Level 3's VoIP providers are somehow entitled to LATA-wide (or perhaps even wider) exemption from access charges because the traffic originated in IP. End-user customers are not entitled to those benefits, and since an ESP is treated as an end-user customer for purposes of the exemption, I am aware of nothing that would suggest that it should be entitled to the broader treatment that Level 3 apparently advocates. In effect, Level 3 desires the exemption, which treats an ESP as an end user, to give it rights those same end users do not have.

Q. PLEASE COMMENT ON MR. DUCLOO'S EXHIBIT 107 PAGE 1 AND PAGE 2.

A. I think Mr. Ducloo's exhibits accurately show Level 3's real business. Exhibit 107 page 1 looks very similar to the networks of several long distance carriers with whom Qwest interconnects. It is an impressive network from Boston to Boise to Los Angeles for long-haul traffic across the nation and the world. But, the ICA being arbitrated here is between LECs. Level 3 seeks to originate and terminate its long-haul IP traffic within Idaho as a CLEC. Exhibit 107 page 2 is similar to Exhibit 107 page 1 in that it also depicts long-haul IP networks. Those links, however, are not particularly useful for a discussion about local interconnection and local service. As a provider of local service in Idaho, what is

important is the map of Level 3's Idaho local network (Level 3/107 page 3). This exhibit depicts Level 3 with Points of Interconnection ("POI") located in Idaho, but the exhibit does not depict that Level 3 has any substantial local network beyond those POIs. For that, it must interconnect with Qwest (and other ILECs) and have specific interconnection language providing for origination and termination of "local" calls. That is what the 1996 Act provides and what the ICA in this case is intended to accomplish.

Q. MR. DUCLOO CHARACTERIZES THE VoIP TRAFFIC ISSUE AS "WHETHER QWEST MAY PROHIBIT LEVEL 3 FROM UTILIZING LOCAL INTERCONNECTION FACILITIES TO TERMINATE INTERNET-ENABLED TRAFFIC, SPECIFICALLY FOR VoIP TRAFFIC." (DUCLOO/43.) IS THIS AN ACCURATE STATEMENT OF THE VoIP ISSUE IN THIS CASE?

A. No. This issue statement again misstates Qwest's position. Qwest has no intention of prohibiting the termination of VoIP traffic on Qwest's network, nor does Qwest take the position that VoIP traffic cannot be terminated on local facilities. Qwest's proposed language clearly provides for interconnection of Qwest's network with Level 3's network to allow for the exchange of traffic with Level 3, the CLEC. Qwest's language also identifies how, and under what different circumstances, the traffic will be terminated. The real issue is not whether traffic will be exchanged and terminated, but whether a VoIP provider customer of Level 3 can obtain LATA-wide calling, or must be bound by the local vs. toll distinctions that other end-user customers abide by.

Q. DOES THE QWEST LANGUAGE PERMIT LEVEL 3 TO TERMINATE VoIP TRAFFIC WITHIN THE SAME LCA?

A. Yes. The VoIP provider may terminate its local traffic (traffic within the same LCA as the VoIP POP) over Local Interconnection Services ("LIS") facilities, and is not required to terminate its local traffic with switched access connections such as Feature Group D. However, for traffic terminated in a LCA different than the LCA where the VoIP POP is located (i.e., interexchange calls), the traffic should not be routed over local trunks (it should be handed off to an IXC, on FGD connections, and the IXC should pay the appropriate terminating access charges). Mr. Ducloo describes this routing on page 25 of his direct testimony.

Q. IS THE ESP EXEMPTION THE SAME WHETHER THE VoIP PROVIDER IS A CUSTOMER OF LEVEL 3 OR QWEST?

A. Yes. Qwest's position on the proper application of the ESP exemption has nothing to do with whether the ESP is directly connected to Qwest's network or to Level 3's network. In both cases, in the FCC's words, the ESP is treated as an end-user customer, and "thus may use *local* business lines for access for which they pay *local* business rates and subscriber line charges."[4] That rule did not change with the passage of the 1996 Act, and Qwest is not proposing a change in this case. In fact, it is Level 3 that is proposing a fundamental change in the application of the ESP exemption. Although Level 3 acknowledges that the historical application of the ESP exemption allowed ESPs to connect their equipment to

[4] Order, *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, ¶ 20, n 53 (1988) ("*ESP Exemption Order*").

Qwest's network "on the same basis as any business end user," it has leapt to the unsupported conclusion that the ESP exemption now gives it rights that business end users do not have today and that are part of the services provided by a "local business line" (i.e., LATA-wide ability to terminate calls without incurring access or toll charges). Nowhere in its Petition or in its testimony does Level 3 provide any support for this proposition, nor does it provide anything more than the cryptic suggestion that ESPs on Level 3's network are somehow invested with greater rights than business end users on the PSTN.[5] Mr. Ducloo points out that the ESP can purchase the local connection from either Level 3 or Qwest, a proposition with which Qwest agrees, but that does nothing to change the proper application of the ESP exemption.

Q. DO MR. DUCLOO'S EXHIBIT 107 PAGE 7 AND PAGE 8 ALSO RAISE AN ISSUE OF HOW LEVEL 3 VIEWS THE ESP EXEMPTION?

A. Yes. Although Mr. Ducloo's testimony did not address specific disputed language sections, I have attempted to respond to the statements that Level 3 did file. Exhibit 107 page 7 and page 8 depict how an ESP could purchase local connections from either Level 3 or Qwest. While these exhibits show the connections to end offices, neither of Mr. Ducloo's exhibits make any reference to the LCAs within which those end offices are located. As discussed in prior responses, LCAs (which Level 3 euphemistically

[5] Another example of the vagueness of Mr. Ducloo's testimony on this point is his statement that ESPs are "not subject to access charges though the underlying communication may well involve transport over significant distances." (Ducloo Direct, p.47.) It is unclear whether a "significant distance" is from the north end to the south end of the Boise EAS area, or whether he means from Boise to Twin Falls. If it is the latter, his statement is inaccurate.

characterized as "artificial geographic designations" in its Petition) go to the very heart of the application of the ESP exemption. The ESP connects to the PSTN as an end-user customer; this does not entitle the ESP to LATA-wide termination at local calling "end user rates," as the Level 3 testimony implies. Adding LCAs to the picture in Exhibit 107 page 8 would more accurately depict how the ESP exemption really works and would make clear what Level 3 is advocating. For example, in the lower right hand corner of that exhibit, Mr. Ducloo shows an ESP connected to the Qwest network. If that ESP's POP is located in Boise, the ESP would be able to purchase Boise local service out of Qwest's Exchange and Network Services Catalog. If the other end offices depicted in Mr. Ducloo's exhibit are also connected to Qwest end offices in the Boise LCA, then the ESP could terminate traffic to each of the phones shown in the exhibit without incurring terminating access charges. However, if the three end offices with telephones depicted on Exhibit 107 page 8 were in Twin Falls, Ketchum, and Idaho Falls, the ESP exemption would not allow the Qwest end user ESP to terminate traffic to those other LCAs (just as a typical business end-user customer would not be able to do). Under this example, the ESP customer of Qwest would be required to hand off any call bound for those exchanges to an IXC. The call is measured, for jurisdictional purposes, between the ESP's POP and the party called. It is that simple; that is what the ESP exemption requires. By not depicting the LCA boundaries, Level 3 is masking the real issue before the Commission.

Q. WOULD YOU PLEASE SUMMARIZE YOUR REBUTTAL COMMENTS REGARDING VoIP TRAFFIC?

A. Yes. VoIP is traffic that originates in IP and terminates on the PSTN using TDM protocol. It originates in one protocol and is converted to TDM, thus resulting in a net protocol conversion; this, in turn, makes it an enhanced service call entitled to the ESP exemption. All other types of calls that Level 3 discuses, such as IP to IP, or TDM to IP, do not terminate over the PSTN, and thus do not involve Level 3's ICA with Qwest. Dial-up calls to a VoIP provider are TDM to a VoIP provider and thus are treated as PSTN calls; the fact that they may later be converted to IP is of no consequence. Qwest's definition and section 7.2.2.12 capture these necessary requirements, and Level 3's attempts to strike them should be rejected. Level 3's arguments that VoIP calls are somehow unique and thus entitled to different treatment when terminating to distant towns should also be rejected. These calls are subject to the same local and long distance classifications as other PSTN calls on the network. If an ESP, in this case a VoIP provider, purchases a local connection out of the local tariffs or catalogs, then calls from the ESP bound for other LCAs in the state must be routed through an IXC.

IV. DISPUTED ISSUE 1A: SECTION 7.1.1.1, OPERATION AUDITS

Q. DOES LEVEL 3 ADDRESS SECTION 7.1.1.1, OPERATION AUDITS, IN ITS TESTIMONY?

A. No. Level 3 provided no testimony regarding its dispute with the language contained in Section 7.1.1.1, identified on Level 3's Issue List as Issue 1a. Thus, the Commission should adopt Qwest's proposed language on this issue.

V. DISPUTED ISSUE 1A: SECTION 7.1.1.2, CERTIFICATION

Q. DOES LEVEL 3 ADDRESS SECTION 7.1.1.2, CERTIFICATION, IN ITS TESTIMONY?

A. No. Level 3 provided no testimony regarding its dispute with the language contained in Section 7.1.1.2, identified on Level 3's Issue List as Issue 1a. Qwest's proposed language requests that Level 3 certify that the connections it sells to its customers will comply with the ESP exemption, and comply with the terms of the ICA. Level 3, however, wants to remove any obligation from the ICA.

Q. DOES QWEST'S LANGUAGE IN ANY WAY PROHIBIT LEVEL 3 FROM PERMITTING ESPs TO CONNECT TO LEVEL 3'S NETWORK?

A. Absolutely not. Qwest is not attempting to prevent VoIP providers from obtaining connection to the PSTN through local service from Level 3, or to prevent them from receiving the benefit of the ESP exemption. But, as we have seen, and as Level 3 seems to agree, not every call that once was in IP is entitled to the ESP exemption. And it is for this reason that Qwest is requesting that Level 3 certify that the connections it sells to its customers will comply with the ESP exemption, and comply with the terms of the ICA. Level 3, however, wants to remove any obligation from the ICA by striking the certification language. Qwest simply is requesting assurance that Level 3 will enforce the ESP exemption for its customers on the same basis that other LECs, like Qwest, apply the exemption to its ESP customers. The Commission should adopt Qwest's proposed certification language.

VI. DISPUTED ISSUE 3: VNXX TRAFFIC

Q. PLEASE EXPLAIN THE DISPUTE RELATING TO VNXX TRAFFIC?

A. Level 3 and Qwest disagree on the definition of VNXX and the treatment of, and compensation for VNXX traffic. Just as Level 3's testimony on VoIP essentially ignored the contract language, neither Mr. Ducloo's nor Mr. Gates' testimony specifically addresses the VNXX contract language in dispute. All they do is discuss in very broad and general terms the issues related to VNXX traffic. Since I addressed issues related to the specific language in my direct testimony, I will respond to those broad comments in this testimony.

Q. MR. DUCLOO STATES THAT THE ONLY THING THE PSTN "KNOWS" ABOUT A CALL IS THE ORIGINATING AND TERMINATING TELEPHONE NUMBER. (DUCLOO DIRECT PAGE 62.) PLEASE COMMENT ON HIS STATEMENT.

A. I discuss this issue in more detail later in connection with my testimony on Idaho and federal law as it applies to the local/toll distinction. The fact is that historically, telephone companies have routinely assigned telephone numbers based upon the geographic location of the switch to which that number is connected. Thus, to imply that the PSTN knows nothing about the physical location of the called and calling parties is simply untrue. It was not until certain CLECs began obtaining numbers associated with LCAs that were assigned to customers with absolutely no physical presence in that LCA that geographical information related to calls became suspect. That is not the fault of the network, nor does it

represent an effort by carriers or regulatory commissions to redefine local calls. It is Level 3, and certain other CLECs like it, that disregard the geographical nature of calls mandated by state law and which has been inherent in federal law for decades. As Mr. Linse points out in his testimony, the telephone numbers that Level 3 uses in Idaho are all Geographic NPA numbers. In other words, they are telephone numbers that should, according to the Central Office Code Administration Guidelines ("COCAG"), correspond to discrete geographic areas. Level 3's numbers do not correspond to discrete geographic areas, and Level 3 proposes that the Commission sanction this misuse of numbering resources. The Commission should reject Level 3's practice.

Q. MR. DUCLOO PROVIDES AN ARGUMENT WHY, WITH NEWER TECHNOLOGIES, THE GEOGRAPHIC LOCATION OF CUSTOMERS IS NO LONGER RELEVANT. (DUCLOO DIRECT PAGE 64.) DO YOU AGREE WITH HIS CONCLUSIONS?

A, No. Perhaps technically it is possible for Level 3 to declare several states to be one LCA, but the issue here relates to the PSTN and Level 3's use of it. There are two major problems with Mr. Ducloo's argument. The first, of course, is that the entire PSTN and the regulatory structure related to retail service pricing and intercarrier compensation are based on the geographic location of the parties to a call. FCC jurisdiction over interstate calls is determined by the NPA/NXX of the calling and called parties because those NPA/NXXs have traditionally related to geographic areas. State telephone rates are established recognizing both local and intrastate toll calls based on this numbering scheme. Intrastate

access and exchanges of traffic between independent companies is based on this 100-year-old convention. Thus, this issue has a rational historical basis and is not, as Mr. Ducloo describes it, an "essentially arbitrary decision." (Ducloo Direct, p.65.) His so-called "arbitrary decision" has, for good reasons that still exist today, governed the industry for more than 100 years.

The second problem with Mr. Ducloo's testimony on this point is that, while he talks about VoIP and soft switches, and of backbone fiber transporting IP packets around the world, the telephone numbers at issue in this case are numbers assigned on the *PSTN* that relate to specific *circuit-based switches*. The technologies that Mr. Ducloo discusses are on the Internet side of the POI, and thus are irrelevant to this issue. PSTN numbers must relate to the geographic locations of the end-user customers to maintain the current structure of the PSTN, or call rating will break down entirely. Level 3, of course, can manage its own network in any manner it chooses. For example, Level 3 may use IP addresses, instead of telephone numbers, to exchange traffic within its own network. But when Level 3 connects to the PSTN, and assigns NANPA-assigned telephone numbers to its end-user customers, or delivers VoIP calls to PSTN customers, Level 3 must comply with the same rules that apply to the hundreds of companies whose networks comprise the PSTN.

Q. CAN YOU PROVIDE AN EXAMPLE THAT ILLUSTRATES AN UNINTENDED CONSEQUENCE THAT COULD RESULT FROM ABANDONING CUSTOMER LOCATION AS A RELEVANT FACTOR IN ASSIGNING NUMBERS?

A. Yes. On page 64 and 65 of his testimony (Ducloo Direct, pages 64-65), Mr. Ducloo discusses the Local Exchange Routing Guide (LERG), and in particular, the routing and delivery of interexchange calls. The LERG is a database that identifies switches and telephone numbers associated with those switches, based on the NPA/NXX codes assigned by NANPA. Of course, the entire basis for whether to assess toll charges to a call relate to the specific physical locations at which traffic bound for particular switches may be delivered. To the extent that telephone numbers lose any geographic significance, then next-door neighbors calling each other could each have telephone numbers assigned to different LCAs, and parties on opposite ends of the state could in theory be in the same LCA (in both circumstances, of course, the concept of a LCA becomes meaningless). The point is that there are compelling policy reasons (completely aside from legal mandates, telephone numbering rules, or technical capabilities) to maintain the system of rating calls based on physical location; telephone numbers must retain their geographic associations. Finally, if a LATA boundary becomes essentially an LCA boundary, LEC rates must change dramatically.

Q. MR. DUCLOO TESTIFIES THAT A SWITCH REALLY CANNOT KNOW THE GEOGRAPHIC LOCATION OF THE CUSTOMER, THAT THE SWITCH CANNOT STORE THE ADDRESSES ASSOCIATED WITH NUMBERS, AND THAT IN ORDER TO DEVELOP A PERIPHERAL DEVICE TO TRACK ADDRESSES, IT WOULD BE EXPENSIVE. (DUCLOO DIRECT PAGE 67.) IS THE DEVELOPMENT OF SUCH A SYSTEM NECESSARY?

A. Absolutely not. This argument is a red herring. The solution to this issue is simple, which is to require that companies obtaining telephone numbers on the PSTN assign the numbers to customers in the actual LCAs where the customer is located. If that were done, as it has been done for years, none of the tracking discussed by Mr. Ducloo of identifying the actual physical location of the virtual numbers would be necessary. The problem is not the existing system, but rather, the problem is companies like Level 3 that adopt a policy of assigning telephone numbers that have no relationship to the LCAs where the numbers are assigned. Neither Qwest, nor Level 3, should build databases to further track geographic locations beyond the LCA.

Q. ON PAGE 63 OF HIS TESTIMONY, MR. DUCLOO SUGGESTS THAT QWEST IS TRYING TO "CHANGE" THE METHOD OF DETERMINING LOCAL AND TOLL FROM TELEPHONE NUMBERS TO THE PHYSICAL LOCATIONS OF THE PARTIES TO THE CALL. HAS HE CORRECTLY CHARACTERIZED THE MEANS BY WHICH LOCAL AND TOLL CALLS HAVE BEEN DETERMINED IN IDAHO?

A. No. Mr. Ducloo's testimony is unsound on its face and is directly contrary to Idaho statutes, Commission rules and catalog provisions, prior Commission decisions, federal statutes, and FCC rules.

Q. BEFORE ADDRESSING THOSE ISSUES, PLEASE ADDRESS THE ISSUE FROM A COMMON SENSE PERSPECTIVE.

A. From a purely common sense perspective, the Level 3 argument does not make sense and ignores a fundamental building block of telecommunications in Idaho and in every other state (i.e., the concept of LCA). As I understand it, the Idaho Commission has consistently taken an active role in the definition of LCAs, based primarily on the existence or non-existence of a community of interest among the residents and businesses of specific geographical locations. A good example of this was the Commission's decision in Qwest's (then U S WEST's) 1996 case concerning the joint proposal of the company and the Commission staff to create four extended area service (EAS) regions in Idaho.[6] In that case the Commission ordered broad expansions of EAS in many areas of the state.[7] The basis for the expansion decisions was the Commission's conclusions that community of interest factors made such changes in the public interest. As part of that order, the Commission cited its specific criteria for determining whether a community of interest exists:

> (1) Geographic proximity (distance between exchanges); (2) the presence of geographic or other physical barriers (mountains, rivers, valleys) between exchanges; (3) county seat relationship (are both exchanges in the same county); (4) the relationship to school district (do both exchanges share the same school district); (5) proximity to medical facilities and services; and (6) the willingness of customers to pay increased rates.[8]

Under the Commission's standards, areas that may have been separate LCAs could be combined into a single LCA if the Commission concluded that a community of interest

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[6] *In the Matter of the Joint Proposal to Implement Extended Area Service (EAS) Regions in U S WEST Communications' Southern Idaho Service Area,* Case No. USW-S-96-4.

[7] *Id.* Order No. 26672

exists that justifies classifying all calling within the geographical area as "local" and not as "long distance." Thus, geography (e.g., contiguity) and the location of called and calling parties in relation to each other have been concepts inherent in the determination of LCAs in Idaho.

The language used to distinguish among different types of calls likewise is focused on geography. For example, the use by telephone companies and state commissions of the word "local" is not an accident: the concept of calling *within* a certain specified geographical area where the residents and businesses share a geographically-based community of interest has been plainly distinguished from calls *between* geographical areas, often hundreds of miles apart, where no such community of interest exists. Historically, the Idaho Commission has treated local calls (i.e., where the parties to the call are in the same geographical area) different from toll calls. State commissions have recognized the community of interest within certain defined rural areas or even within large metropolitan areas, and have therefore required that telephone companies provide service *within* these defined geographical areas on a flat-rated basis. These requirements have been based on the idea that calls to and from neighbors and local businesses within an area of community of interest should not be constrained by per-minute charges. Thus, prices for local service in those areas have traditionally been flat-rated so that no extra charges apply, no matter how much time a customer spends on the telephone calling others located in the same LCA. To suggest, as Mr. Ducloo and Mr. Gates do, that the concept of local service

[8] *Id.*

and local calls is based purely on telephone numbers and not on geographical proximity is incorrect and historically inaccurate.

Q. DO THE RECOGNIZED DISTINCTIONS BETWEEN LOCAL AND TOLL HAVE PRICING DIFFERENCES AS WELL?

A. Consistent with the underlying logic of creating geographically-based local calling areas, state commissions and telephone companies have also historically based the pricing of toll calls on the relative lack of geographical proximity. Thus, telephone companies, regulatory commissions, and the public refer to such calls as "long distance" calls. The phrase "long distance" (like the word "local") has a direct geographical component inherent in its name. Likewise, another synonym for long distance calls—interexchange calls—suggests that the calls originate in one exchange and terminate in another distant exchange. In Idaho, the statutes have adopted the term "message telecommunications service" or "MTS," which is defined as communications service between local exchange calling areas for which charges are made on a per-unit basis. Given the lack of a general community of interest that justifies flat rate pricing, MTS or long distance calls have traditionally been priced on a per-minute basis.

Thus, a simple analysis of the language used to describe the two types of service ("local calls" versus "long distance calls") demonstrates the underlying error of Level 3's testimony. The defining and distinguishing factor for local and toll calling has been geographical proximity (or the lack thereof).

Q. IS LEVEL 3'S PROPOSAL TO DEFINE LOCAL AND TOLL BASED ON TELEPHONE NUMBERS INSTEAD OF PHYSICAL LOCATION OF THE PARTIES TO THE CALL CONSISTENT WITH IDAHO STATUTES?

A. No. For example, Idaho Code § 62-603(7) (a statute that preceded the 1996 Act by several years) defines a "local exchange calling area" as "a geographic area encompassing one (1) or more local communities as described in maps, tariffs, rate schedules, price lists, or other descriptive material filed with the commission by a telephone corporation, within which area basic local exchange rates rather than message telecommunication service rates apply." The importance of this statute is that it defines local calling in terms of geographical proximity of the parties to the call. Idaho Code § 62-603(1) defines "basic local exchange service" in terms of the provision of two-way interactive communication "within a local exchange calling area." Many of the requirements of Title 62, Idaho Code distinguish between those telephone corporations that provide "basic local exchange service" and those that provide toll. *See e.g.*, Idaho Code §§ 62-604, 62-608 (pertaining to companies providing basic local exchange service) and Idaho Code §§ 62-606 and 62-607 (pertaining to companies providing message telecommunications service, i.e. toll).

Q. IS QWEST'S CHARACTERIZATION OF CALLS BASED ON LOCATION CONSISTENT WITH COMMISSION RULES?

A. Yes. The Commission's "Title 62 Telephone Corporation Rules" adopt definitions of the terms "local exchange area," "local exchange service," "basic local exchange service," and

"message telecommunications service" that are consistent with the Idaho statutes cited above and that preserve the concept of a local exchange area as a geographic area encompassing local communities. IDAPA 31.42.01.005.

Q. ARE QWEST'S IDAHO CATALOGS CONSISTENT WITH IDAHO STATUTES AND COMMISSION RULES?

A. Yes. Section 2.1[9] of Qwest's Exchange and Network Services Catalog No. 1 defines an "exchange" as a "geographical unit, established by the Company, for the administration of telecommunication services in a specified area." This Catalog section defines "exchange service" as "[t]he service of furnishing equipment and facilities for telephone communications *within* a designated area." In turn, "exchange service area" is defined as "[t]he *territory* served by an exchange." This same section defines "local exchange service" as "[t]he furnishing of telecommunications services to the Company's customers *within an exchange for local calling.* This service also provides access to and from the telecommunication network for long distance calling." Further, this section defines "local service area or extended local service area" as "[t]hat area throughout which an exchange service customer, at a given rate, may make calls without the payment of a toll charge. A local service area may be made up of one or more exchange areas."

Section 5.1 of Qwest's Catalog No. 1 under the heading "Exchange Areas", states that "[t]he Company develops exchange service areas to establish service *within a defined*

[9] Italics are used for emphasis in the selections from the Catalog section cited in this paragraph.

geographical area." (Emphasis added.) Section 5.1.1 lists Qwest's local calling areas by describing the communications incorporated in them. Finally, Section 5.2 states that the rates and charges quoted for "local exchange service" ... "entitle the customer to *local calls*, without toll charges, *to all local exchange access lines connected to a CO of the exchange*, or to all exchange access lines served by COs of the extended local service area where comprised of more than one exchange." (Emphasis added.)

As with Idaho statutes and rules, there is nothing at all to suggest that the toll/local distinction is governed by the telephone numbers assigned; rather, every statute, rule, and catalog provision define local and interexchange calling strictly in terms of the geographical location of the parties to the call.

Q. IS QWEST'S POSITION CONSISTENT WITH PREVIOUS COMMISSION DECISIONS?

A. Yes. The Idaho Commission has consistently upheld the integrity of local calling areas and has rejected schemes that attempt to avoid the payment of appropriate access charges by telecommunications service providers who are offering long distance service or its equivalent. For example, in the Upper Valley EAS bridging case[10] the Idaho Commission found that EAS bridging (the practice of linking distant exchanges in different local calling areas by terminating the calls to an exchange that has EAS with both distant exchanges, then automatically forwarding calls through that exchange to the distant calling area

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[10] *In the Matter of the Petition of the Idaho Local Exchange Telephone Companies for a Declaratory Order Determining that EAS Arbitrage, as Currently Offered, is Illegal*, Case No. GNR-T-94-1.

thereby avoiding long distance charges) was unlawful. In its decision, the Commission outlined the history of the local/long distance company distinction:

> The divestiture of the Bell system in 1984 divided the telecommunications industry into companies that provide local service and those that provide long-distance service. Since divestiture, LECs (e.g., GTE and U S WEST) have charged "access charges" to long-distance telephone companies (e.g., AT&T or MCI) for connection to and use of LEC facilities. Long-distance companies pay originating access charges to compensate LECs for the cost of transporting a call from the customer's location to the long-distance company's network. Similarly, long-distance companies (interexchange carriers) pay terminating access charges to LECs as payment for the cost of delivering a call to the called party over the LEC's local exchange network. *See* Order No. 28656 in Case No. U-1142-2 and Order No. 18205 in Case No. U-1500-148. Accordingly, for each long-distance call between local exchanges, the long-distance company pays originating and terminating access charges to the respective LEC. For those toll calls carried by the LEC itself, the law requires that access charges be imputed into the LEC's long-distance rates.[11]

The Commission's conclusion upheld the concept of the local exchange calling area and the importance of equal treatment for all companies that provide interexchange services:

> In summary, we conclude that Upper Valley's EAS bridging service is either MTS or the functional equivalent of MTS. We further find that Upper Valley's use of the EAS routes is unfair because Upper Valley is using a LEC's EAS plant and facilities without justly compensating the LEC for such use. Transporting what would otherwise be an MTS call over EAS routes also unfairly disadvantages all other interexchange carriers. Upper Valley is not purchasing the appropriate wholesale service for resale to its customers. Failure to compensate U S WEST for its originating and terminating access charges and use of its EAS trunks is inappropriate; it is discriminatory to other long-distance

[11] *Id.*, Order No. 25885 (1995).

companies that purchase and impute the correct access charges; and it is not in the public interest.[12]

Although this Order predated the deregulation of basic local exchange services in Idaho, the laws and policies upon which the Commission relied to reject EAS bridging have, for the most part remained unchanged in the period since this Order was issued.

Q. IS QWEST'S LANGUAGE CONSISTENT WITH THE DEFINITIONS IN THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE 1996 ACT?

A. Yes. The Act defines "exchange access," "telephone exchange service," and "telephone toll service" as follows:

> The term "exchange access" means the offering of access to *telephone exchange services* or facilities for the purpose of the origination or termination of telephone toll services.[13]
>
> * * *
>
> The term "telephone exchange service" means (A) service *within a telephone exchange,* or within a connected system of telephone exchanges *within the same exchange area* operated to furnish to subscribers intercommunicating service of the character *ordinarily furnished by a single exchange,* or (B) *comparable service* provided through a system of switches, transmission equipment, or other facilities (or a combination thereof) by which a subscriber can originate and terminate a telecommunications service.[14]
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> * * *

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[12] *Id.*

[13] 47 U.S.C. § 153(16) (emphasis added).

[14] 47 U.S.C. § 153(47) (emphasis added).

> The term "telephone toll service" means telephone service *between stations in different exchange areas* for which there is made *a separate charge* not included in contracts with subscribers for exchange services.[15]

Under the Act, therefore, telephone exchange service is a service provided to subscribers that enables a particular subscriber to originate and terminate calls within a single exchange, or within an area ordinarily served by a single exchange, or comparable service. Telephone toll service, in contrast, applies when a customer places a call to end users located beyond the calling area covered by Qwest's local exchange service catalog. Such calls are normally subject to additional charges designed to compensate the toll provider or exchange access provider for carrying calls over what could be considerable distances.[16]

Q. IS QWEST'S PROPOSED LANGUAGE CONSISTENT WITH FCC RULES?

A. Yes. The FCC recognizes and has preserved the state's role in defining LCAs. For example, in the *Local Competition Order*, the FCC held that except for traffic to or from a CMRS network, "state commissions have the authority to determine what geographic areas should be considered 'local areas' for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate

[15] 47 U.S.C. § 153(48) (emphasis added).

[16] Of course, as noted in my prior testimony, and in Qwest's response to Level 3's Petition, Level 3 wants to engraft the federal Act's "telephone toll service" definition into the interconnection agreement, then claim that because Qwest does not impose "separate charges" for such traffic, it cannot, by definition, be toll. This, of course, ignores the fact that, as a CLEC, Level 3 has no obligation to tell Qwest in advance where calls directed to it will terminate, thus rendering it impossible for Qwest to bill the calls as toll charges.

access charges."[17] The FCC further recognized that as a legal matter, transport and termination of local traffic is different from exchange access service. The FCC stated that "[t]he Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic."[18]

Q. LEVEL 3 CLAIMS THAT THE FCC'S *ISP REMAND ORDER* CHANGED THIS BODY OF LAW. DO YOU AGREE?

A. No. The *ISP Remand Order* made no change in this regime. The *ISP Remand Order* addressed the proper rate and treatment of traffic bound for ISPs located in the same local calling area as the calling party.[19] The FCC did not convert intraLATA toll traffic into traffic subject to reciprocal compensation, as Level 3 contends. Had the FCC intended to take away the states' ability to define LCAs and what constitutes an intraLATA toll call, it would have done so explicitly. In fact, the FCC recognized that section 251(b)(5) does not apply to intraLATA toll calls.[20] Thus, this Commission's definitions of LCAs and local exchange service continue to govern the proper definition for the parties' agreement.

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[17] *Local Competition Order,* ¶ 1035 (emphasis added).

[18] *Id.*, ¶ 1033.

[19] This was later confirmed by the federal courts in *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000) and *WorldCom Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

[20] *ISP Remand Order,* at fn. 66 ("In this regard, we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations, because "it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms") (citing *Local Competition Order*).

Q. AS PREVIOUSLY DISCUSSED, THE LEVEL 3 WITNESSES CLAIM THAT THE MEANS OF DETERMINING LOCAL CALLS HAS ALWAYS BEEN BASED, NOT ON GEOGRAPHY, BUT ON THE TELEPHONE NUMBERS ASSIGNED TO THE CALLED AND CALLING PARTIES. PLEASE COMMENT ON THEIR TESTIMONY.

A. The foregoing discussion of Idaho statutes, rules, and catalog provisions, as well as federal statutes and FCC rules, demonstrates that Level 3's contention is false.

These witnesses' testimony is a typical example of getting the cause and effect relationship between two concepts backwards. The Level 3 witnesses suggest that, because telephone numbers have been the means of rating calls as local or toll, this necessarily means that telephone companies and state commissions had made a conscious conclusion that physical location is not relevant to call classification, and that the assigned telephone numbers are the only criterion. In other words, they suggest that community of interest, distance, and the geographical location of called and calling parties are never relevant factors, and that the only relevant factor is the relationship between the assigned telephone numbers.

As demonstrated above, this argument has no basis in law or fact in Idaho. Geographical locations of the parties to the call have always been the prime criterion under both Idaho and federal law.

Q. PLEASE PROVIDE EXAMPLES TO ILLUSTRATE THE FOREGOING POINT.

A. It is true that historically the means by which telephone companies have been able to make the determination of the geographical location of customers has been the telephone number assigned to them. For example, assume I am an Idaho customer of Qwest and have been assigned the telephone number 208-321-XXXX. Customers with a 208 area code and an NXX of 321 are associated with the Boise LCA, which means that I am physically located in the Boise LCA,[21] and thus can call other residents of Boise (and indeed the entire Boise LCA) on a flat-rated basis. If I decide to make a call to a friend in Twin Falls (who has a 208-734-XXXX telephone number associated with the Twin Falls exchange), I would first need to dial 1 and then the Twin Falls number. Qwest's equipment would recognize this as an interexchange call, route it to my toll carrier, and then deliver the call to that carrier. At the Twin Falls end, Qwest would terminate the call (if the Twin Falls customer received local service from Qwest), or it would be terminated by the local provider for that customer.

In this example, the geographical location of the two parties to the call was disclosed by their telephone numbers. However, that does not mean that Qwest or the Commission ever concluded that telephone numbers were the end of the analysis. To the contrary, the telephone numbers and their geographical association with specific exchanges are simply the means to the end of rating calls based on the geographical location of the parties to the call. For decades, this system has worked very well because telephone numbers was a

[21] FX service, of course, is one exception; however, with that service, the customer pays the full private line rate to transport the traffic to a distant LCA.

reliable and consistent means of determining the geographical location the parties to a call. Thus, the Level 3 witnesses have it backwards. For purposes of distinguishing local from toll calls, the end purpose has been to determine whether calls are within or between LCAs, and not (as Level 3 contends) to determine whether the telephone numbers of the parties to the call are assigned to the same LCA.

Q. GIVEN THE HISTORY AND EXAMPLES YOU HAVE DESCRIBED, WHAT HAS CAUSED THIS TO BECOME AN ISSUE NOW?

A. There are two significant factors: (1) the ability of CLECs like Level 3 to obtain local telephone numbers from NANPA (something end users like ISPs are unable to do) and (2) the regulatory requirement that CLECs are able to interconnect, not in each LCA, but at a single point within each LATA in an arrangement known as Single Point of Interconnection ("SPOI"), or Single Point of Presence ("SPOP"). Thus, a company like Level 3 is able to obtain local telephone numbers in LCAs throughout a LATA, but instead of assigning them to customers that are physically located in the exchange associated with the telephone numbers, they assign them to customers actually physically located elsewhere, something that CLECs had not been doing until recently.

To illustrate this point, let me contrast two methods of operation by CLECs. Many CLECs, unlike Level 3, actually provide local exchange service to customers in the exchanges in which they obtain telephone numbers. Thus, for example, while such a CLEC may have a SPOI in Boise, it may also serve local exchange customers in Twin Falls. In that case, the

CLEC would obtain local Twin Falls numbers and assign them to real customers located in Twin Falls. Thus, a call from a Qwest customer located in Twin Falls to a CLEC Twin Falls customer will be routed to the CLEC POI in Boise, and the CLEC would then route it back to its customer in Twin Falls. In that case, consistent with the traditional association of telephone numbers with geographical location, the call would be truly local in nature because the parties to the call would be physically located within the same LCA.

The second example—which describes Level 3's business—illustrates the problem. In Level 3's case, because it is a CLEC, it may also obtain local telephone numbers in Twin Falls, but Level 3 does not (and never has purported to) provide local exchange service to end-user customers in Twin Falls. Level 3 candidly admits that it is in the business of serving ISPs. Thus, Level 3 will obtain local numbers associated with the Twin Falls exchange, but will assign them to ISPs whose modems, routers, and servers are located in Boise (or perhaps in another state altogether.) Those ISPs will market their dial-up services to Twin Falls customers, and will provide the local numbers provided to them by Level 3 as the local access number for the end-user customers to access the ISP, and thus the Internet. Other than the telephone numbers, there is nothing remotely "local" about the call to the ISP. It originates in Twin Falls, but it is answered by the ISP's modems in Boise or elsewhere; from there, the call is then sent to websites throughout the country, or even the world.

Level 3's claims are: (1) despite the fact that such calls are interexchange in nature (as defined by the physical end points of the call), they are really "local" because the telephone numbers associated with the calls appear to be local to each other, and (2) such treatment is sanctioned by the historical means by which Qwest has determined whether a call is local or long distance.

The error in Level 3's logic is its contention that telephone companies and state Commissions really intended that these calls be treated as local because the telephone companies' traditional means of categorizing a call was based on the telephone numbers. This argument stands logic on its head. In fact, what has happened is that, by virtue of rights given to it as a CLEC, Level 3 is able to obtain what appear to be local telephone numbers for the purpose of making interexchange calls. Qwest certainly did not intend that CLECs use "local telephone numbers" in a way that essentially "fools" the system into believing that long distance calls are really local calls. Furthermore, Idaho statutes, Commission rules, and Commission and federal court decisions certainly disclose no intent by the Commission or courts to abandon the concept of geography and the physical end points for the proper classification of calls.

Q. HAS A FEDERAL COURT IN QWEST'S TERRITORY RECENTLY ADDRESSED THIS ISSUE?

A. Yes. The VNXX issue with regard to ISP-bound calls was recently addressed by a federal district court in Oregon, which ruled that, under the ICA at issue, Qwest was not

responsible to pay a CLEC reciprocal compensation for ISP traffic that did not physically originate and terminate in the same LCA. In that case, *Qwest Corporation v. Universal Telecom,*[22] the CLEC ("Universal") adopted a business plan essentially identical to that of the CLEC Level 3. It served only ISPs and, like Level 3, it obtained local telephone numbers that it gave to its ISP customers for local access, but which numbers were actually routed to a Universal POI in another part of the state. The court noted that:

> VNXX traffic involves a call that is originated in one local calling area "LCA") and is terminated in a different "LCA" without incurring the toll charges which would normally apply. The essence of VNXX traffic is that a LEC who does not have a physical presence in a particular calling area *may appear to be local.* The LEC gains this local appearance by holding a block of local numbers which the end user, who is located in that LCA, may call. Upon making what *appears to be a local call*, the call is relayed over the lines of the local LEC [Qwest], passed of to the distant LEC [Universal], and terminated by that distant LEC.[23]

Applying the terms of the ICA, which required that calls be categorized by Qwest's local tariffs (which defined local service as service "furnished between customer's premises located within the same local calling area"), the court found that the calls were not local in nature and that, therefore, Qwest did not owe reciprocal compensation on non-local ISP traffic.[24]

Thus, Idaho statutes and rules, like the Idaho Qwest catalog provisions, and Commission decisions, as well as the above-cited court decision, define local and toll calling based on

[22] 2004 WL 2958421 (D. Ore. 2004).

[23] *Id.* at *9 (emphasis added).

geographical proximity of the parties to the call (i.e., whether they are physically located in the same LCA). Accordingly, the language of the ICA should reflect those requirements. Because Qwest's proposed language is consistent with the requirements of Idaho and federal law, it should be adopted.

Q. MR. GATES STATES THAT BOTH CLECs AND ILECs PROVIDE LOCAL NUMBERS TO ISPs. HE THEN SAYS ON PAGE 28 THAT THE VNXX SERVICE OF THE CLEC SERVICE IS IDENTICAL TO FX SERVICE OFFERED BY QWEST, "AT LEAST FROM AN END-USER CUSTOMER PERSPECTIVE." DO YOU AGREE WITH HIS CLAIM?

A. No. In fact, the FX service that Qwest offers in Idaho and the VNXX service that Level 3 offers are very different. This is true from the perspective of the carriers, which Mr. Gates appears to implicitly acknowledge and from the end-user customers' perspective as well. From the end-user customers' perspective, the two services are completely different. If a customer had purchased FX service from Qwest, the customer actually purchased a connection in the geographic LCA associated with the telephone number (for which it paid the appropriate local exchange rate), and it would have also paid for private line transport. See Qwest Exhibit 307. When Qwest provides services to ISPs, it requires the ISPs to pick up the calls in the LCAs where they want telephone numbers by purchasing a local connection in that LCA, and by paying to haul it to the distant location through a dedicated private line to their premises. The party that wants the call transported to the distant

[24] *Id.* at *9-*11.

exchange pays the transport. With Level 3's VNXX service, however, there is no need for Level 3 to ask the ISP to pay for any transport from a distant exchange. This is so because, by single point of interconnection and number assignments, Level 3 represents to Qwest that the call is a "local" call that Qwest should deliver to Level 3's Boise POP for free. Neither Level 3, nor the ISP, nor the end-user customer, is required to pay Qwest for gathering and transporting the traffic. Instead, because Level 3 uses local telephone numbers, such calls are routed on local single-point-per LATA interconnection trunks as if the calls were local calls terminating to a customer located in the originating LCA. In fact, not only does Level 3 want the transport for free, but Level 3 also proposes charging Qwest a local termination rate once the call arrives at its switch as if it were a local call. Most Level 3 VNXX traffic today is ISP calling. Despite Level 3's request in its Petition for $.0007/minute for such traffic, those calls are currently rated at $.001343 per MOU under Idaho rules. But, if the VNXX issue is expanded to terminating calls from VoIP providers or other originating traffic, the issue of seeking local termination of VNXX calls remains and must be resolved in the contract language. Thus, Qwest's language in section 7.3.6.3 stating that reciprocal compensation will not be paid on VNXX traffic should be adopted.

Q. ON EXHIBIT 107 PAGE 10, 11 AND 15, MR. DUCLOO DEPICTS LEVEL 3'S VIEW OF QWEST FX SERVICE AND LEVEL 3'S VNXX SERVICE. (SEE ALSO GATES DIRECT PAGE 34.) ARE THESE EXHIBITS ACCURATE?

A. No. Exhibit 107 pages 10 and 11 inaccurately depict a Qwest FX call. These exhibits show the call path using common PSTN trunk groups and being switched by multiple end

offices and tandem offices, in essence using the toll network. In fact, that is completely wrong. FX service in Idaho is a simple configuration where the customer has purchased an actual connection in the LCA where the number was assigned, like other end users in that LCA. The traffic was then transported from that LCA, not over common trunks and switches, but over what is essentially a private line-rated long loop. The FX customer was connected from the actual LCA where the number was assigned directly to the distant customer premises in the "foreign" exchange over a private line service at full retail rates. Level 3's Exhibit 107 page 10 depiction does not reflect that configuration. The routing on that exhibit is the routing that would apply to a typical toll call, using the trunks connecting the two switches following the same path as a toll call.

This point is illustrated by Exhibit 107 page 15, Mr. Ducloo's diagram of a Level 3 VNXX call. From this exhibit, it is clear that, unlike Qwest's FX service, Level 3 does not pick up the call in the originating LCA, does not take it off the common trunks of the PSTN network, and does not provide the private line circuit carrying the call to the customer premises. Rather than the Level 3 VNXX customer paying for transport to its distant premises, Level 3 puts the call on LIS trunks, whose purpose is to deliver *local* calls from local customers to the Level 3 switch. And, while the diagram suggests that Level 3 pays Qwest TELRIC rates to transport this call to the Level 3 POP, Level 3's position in its Petition is that Qwest is financially responsible for *all costs* on its side of the POI, and that neither Level 3 nor its customers should pay anything for the delivery. Setting that point aside (Mr. Easton addresses this in his testimony), the point that these exhibits make clear

is that the Qwest FX customer bears the full retail cost of transporting the call to the distant location on its private network (i.e., the private line circuit that it leases from Qwest). In Level 3's model, however, Level 3 seeks statewide free transport, and further, wants the call treated as local, including the billing of local termination charges, without any nexus whatsoever to the originating LCA.

Q. WHAT DO YOU MEAN BY NO NEXUS TO THE LCA?

A. Let me give a real example. According to the LERG, Level 3 has requested and obtained from NANPA 10,000 telephone numbers for the NXX of 806 in area code 208. These numbers are associated with the LCA for Ketchum, whose population is approximately 3,003 people. Based on Level 3's own descriptions of its business model, it is highly unlikely that Level 3 serves any actual customers who live in Ketchum. I doubt that a Level 3 employee has ever been in Ketchum, at least on a work-related matter. Level 3's sole purpose in obtaining those numbers is clearly to assign Ketchum numbers to an ISP customer (such as Earthlink or MSN) actually located in Boise (or even in another state). Level 3 claims that the Qwest Ketchum customer has made a local call if the customer calls an ISP when the call actually is delivered to the Boise POP of Level 3, and then delivered to Level 3's Boise ISP customer. Furthermore, Level 3 not only wants Qwest to deliver the traffic to the POP for free, Level 3 also intends to bill reciprocal compensation to Qwest for terminating that local call to its local "Ketchum" ISP customer. If Level 3 can pull that off, it would have a bullet-proof business plan. Qwest would gather and deliver traffic to it for free from throughout Idaho, Level 3 would charge the ISPs for that service, and then, Level

3 would want Qwest to actually pay it local call termination rate for the privilege of doing all of these things for Level 3 for free. Beyond charging Qwest to deliver it traffic, as a CLEC certified to provide local service, Level 3 has no relationship with any customer in Ketchum, and no nexus to the Ketchum LCA.

Q. IS THE EXISTENCE OF ILEC FX SERVICE A LEGITIMATE REASON TO APPROVED VNXX?

A. No. I have already discussed why FX service is significantly different from the VNXX arrangement that Level 3 seeks to sanction through the ICA. Even when a Boise company wants a Ketchum number, the customer obtains dial tone in Ketchum, even though the traffic is then transported to the Boise customer over a retail private line service (which the customer pays for). NANPA expects that every carrier that elects to interconnect with and become part of the network that comprises the PSTN assign telephone numbers associated with specific geographic locations. In Idaho, Qwest has 140 FX lines assigned, all in northern Idaho, since FX was grandfathered in southern Idaho in 1979. Level 3 seeks to use FX (which is actually very different from VNXX), as the justification to establish an entire network based on assigning virtually all telephone numbers to customers located outside the LCA associated with the assigned numbers. Thus, the vast majority of its telephone numbers would bear no relationship to the actual physical location of the customer to whom they are assigned. Other than those Level 3 ISP customers who happen to be located within the same LCA as the Level 3 POI, 100% of Level 3's traffic would bear no relation to the LCAs with which its numbers are associated. In fact, Level 3 does

not even deny that is has no customers physically located in those communities. Level 3 is simply using the assigned telephone numbers to disguise calls that would otherwise be toll calls, a fact recognized by the Oregon federal court in the *Universal* case, which noted that Universal's VNXX arrangement allowed "the person making the call [to] be billed at the local rate for a call that was *really long distance*."[25]

Q. MR. GATES ALSO REFERS TO A SERVICE OFFERED BY QCC KNOWN AS "WHOLESALE DIAL" SERVICE. (GATES DIRECT AT /34.) IS THAT RELEVANT TO THE VNXX ISSUES IN THIS CASE?

A. No. Again, Level 3 first inaccurately describes the Qwest product, and then states that Level 3 does the same thing. Mr. Gates states that Wholesale Dial provides many of the same "benefits" as Level 3's VNXX service. Wholesale Dial is a product that Qwest's unregulated affiliate company, QCC, offers to ISPs. QCC is able to offer the product in Qwest's territory because it purchases retail services from Qwest (the ILEC), and then packages those retail services for ISPs. In particular, QCC purchases Primary Rate ISDN ("PRI") services from the Qwest Catalog. This means that Wholesale Dial customers pay standard private line transport rates to haul calls from the LCA where the dial tone is provided to the location of the ISP. The calls are handed off within the LCA where the local service is purchased. In other words, it bears no resemblance to VNXX.

Q. WHAT IS WHOLESALE DIAL?

[25] 2004 WL 2958421, at * 9 (emphasis added).

A. QCC, through its Wholesale Dial product offering, is simply aggregating traffic and providing a service as a bundled product to ISPs. Another way of describing this product is that a single ISP can buy PRI services out of Qwest's retail tariffs or catalogs today as any other end-user customer can. But, if a single ISP does not have enough customers or volume to warrant such a purchase, then a company like QCC (or any other carrier, including Level 3) can buy the same retail services and create a product that can aggregate traffic for multiple ISPs (just like QCC's Wholesale Dial) and market it to ISPs. The point is that Wholesale Dial is a bundling of retail products, and it does not do what Level 3 does, as Mr. Gates suggests. It is simply built upon existing finished retail products, and thus is not what Level 3 is doing with its VNXX service. Wholesale Dial bears no resemblance to VNXX, and QCC is not a CLEC in Boise assigning VNXX codes to itself so that it may have all traffic in the state delivered to it for free. This is yet another red herring that should be ignored in addressing the real issue.

Q. LEVEL 3 SEEMS TO IMPLY THAT ONEFLEX™, OFFERED BY QWEST'S INTERNET COMPANY, IS ALSO A VNXX-TYPE PRODUCT. DO YOU AGREE?

A. No. Level 3's only argument for ignoring telephone numbering conventions is to claim that everybody else does it. I have already shown that this is not the case. Level 3 inaccurately describes a Qwest product and then says "they do it, so we can do it." Qwest admitted in response to Level 3's Request No. 1-063SI, that Qwest Communications Corporation ("QCC") does offer OneFlex™ with virtual numbers. (See Gates Dir., at /48.) These numbers, however, honor the LCA guidelines, and calls to or from these numbers

from outside the LCA where the VoIP POP is located are not local calls, as Level 3 advocates. In terms of the ESP exemption, all traffic is measured to and from the VoIP POP, just as Qwest's language requires of Level 3, and all calls comply with the exemption. No VNXX calls are permitted with OneFlex™ because calls are exchanged between the POP and the caller within the same LCA. If Level 3 assigns a Boise number to its ESP customer in Boise, then calls from Qwest Boise customers will be delivered to it as local. OneFlex™ does not, nor should Level 3 be permitted to assign a Twin Falls VNXX number to a Boise ESP customer. (See Qwest exhibit/308 for a diagram of Qwest OneFlex).

Q. IN HIS TESTIMONY, MR. GATES STATES AT PAGE 27 THAT "ISP-BOUND TRAFFIC AND VIRTUAL NXX ISSUES ARE VERY MUCH INTERTWINED." DO YOU AGREE?

A. Yes, but that is only because certain CLECs, including Level 3, choose to intertwine them. It is my understanding that currently all of Level 3's assigned VNXX numbers are assigned to ISPs. That does not necessarily mean they must be intertwined. As I stated in my direct testimony, a VNXX call is a VNXX call, whether it is to an ISP, an airline, or to a hardware store. VNXX can be analyzed and evaluated in its own right, and the fact that an ISP has been assigned a number is of no particular impact on the analysis, except from the perspective that the longer holding times associated with dial-up Internet calls add greater costs to Qwest than calls to an airline or hardware store would, and that other commissions have excluded VNXX calls from reciprocal compensation. From a legal and policy

perspective, however, the issues are the same. A call originating in Twin Falls and terminating to an end user with a Twin Falls number in Boise is a VNXX call, and the type of business of the called party does not change that fact.

Q. MR. GATES STATES ON PAGE 30 OF HIS TESTIMONY THAT THE LOCATION OF THE ISP EQUIPMENT HAS NO IMPACT ON THE PROPER JURISDICTION OF THE CALL. IS HE CORRECT?

A. No. Remember, the ISP is the customer. To say, as Mr. Gates does, that the location of the customer receiving the call has no impact on the jurisdictional categorization of the call simply highlights the extreme position that Level 3 is taking in this docket. The local/toll distinction, the intrastate/interstate distinction, and the end-user customer/carrier distinction, among other things, are all premised on a historical approach that treats the location of customers as one of the paramount factors. The regulatory structure related to the PSTN is based on these kinds of facts, as is the intercarrier financing structure. While the Level 3 witnesses attempt to camouflage Level 3's approach in overheated rhetoric, the fact of the matter is that its intent is simply to be able to use the PSTN for free (and, incidentally, to receive reciprocal compensation at the same time).

Q. BEGINNING ON PAGE 32 OF HIS TESTIMONY, MR. GATES LISTS WHAT HE CONSIDERS NEGATIVE CONSEQUENCES OF TREATING VNXX CALLS AS ANYTHING OTHER THAN LOCAL CALLS. PLEASE ADDRESS THE CONSEQUENCES HE DESCRIBES.

A. First, let me state that treating a call according to its actual classification is not a negative consequence. If that were so, then every toll carrier could claim that treating its toll calls as toll is a negative consequence as compared to the treatment accorded local calls. Treating a call according to its actual jurisdiction is not a value judgment; it is a jurisdictional assignment that is neither negative nor positive. It is true that different charges apply to different classifications. Level 3's costs will undoubtedly increase if it cannot treat a call from Twin Falls to Boise as a free local call. But that is not the issue. The real question for the Commission is what is the proper treatment and classification of calls under existing compensation methods.

It is also true that ISPs' costs will likely increase if a call from Twin Falls to Boise is no longer treated as a local call. But ISPs were paying someone to transport calls from Twin Falls to Boise long before Level 3. They typically bought a local connection in a distant town, and then bought transport back to their equipment from Qwest, an IXC, or a Competitive Access Provider ("CAP") that would sell transport, or the ISP would use its own fiber network. It was only after Level 3 began leveraging its status as a CLEC, and began obtaining local numbers throughout the state, and began claiming that these were local calls, that ISPs began receiving free transport. Any expense savings or efficiencies that exist for ISPs exist only because Level 3 has inappropriately classified these calls. Whether ISPs would need to raise their rates if forced to buy transport from Level 3, Qwest, an IXC, or a CAP from these distant towns, as Mr. Gates claims, depends on their margins (which are unknown to Qwest). Unlike Mr. Gates, however, if that were to

happen, it would not be an unfair negative impact, but would simply require the cost causer (the ISP) to pay the costs, rather than impose those costs on others.

Q. MR. GATES CLAIMS AT PAGE 33 THAT QWEST'S PROPOSAL IMPROPERLY BENEFITS ITS OWN AFFILIATE AND REDUCES COMPETITION FOR ISP DIAL-UP SERVICES. IS THAT TRUE?

A. No. Once again, the exact opposite is true. As I explained in my direct testimony, Qwest requires that its ISP customers pay to transport from distant LCAs to their Internet equipment through retail private line charges. Furthermore, Qwest's offerings require the ISP to actually pick up the traffic in the LCA that the local number is associated with. The reality, however, is that there is no significant competition for ISP dial-up customers today because, given a choice, an ISP would prefer free transport from companies like Level 3, rather than to pay for the costs of transporting these calls. It does not take an extremely sophisticated analyst to figure out that free services (even though unfair to Qwest and other customers) are more beneficial than to actually pay for services received.

Q. ON PAGE 33 OF HIS TESTIMONY, MR. GATES ASKS THE QUESTION "ARE THERE ANY ADDITIONAL NEGATIVE CONSEQUENCES?" WHAT ARE THEY, AND WHAT IS YOUR RESPONSE?

A. Mr. Gates' fundamental argument is that Level 3 has built a multi-billion dollar, highly efficient network, and that the efficiencies of this network would be of no use if Level 3 were burdened by the arbitrary and unwarranted requirements of interconnection rules, and the local/toll distinction mandated by state and federal law when it uses the PSTN. This

argument, of course, ignores the significant capital dollars that Qwest has spent in Idaho alone to build a network to places like Ketchum and Twin Falls. It is not unreasonable for Qwest to request compensation for the use of its network. Level 3's argument also ignores the billions of dollars spent by IXCs and wireless carriers, all of whom play by the same rules that Level 3 is asking the Commission to exempt it from. Mr. Gates also states that Level 3's network can serve large regions of the country on an integrated basis. "It is indifferent to ILEC legacy central office boundaries." (Gates Direct, page 33.) The local boundaries in Idaho, however, were established for very good reasons by this Commission. And whether it likes it or not, Level 3, if it goes beyond those local boundaries and into the toll business, cannot be indifferent to these boundaries simply because it happens to have built simply an IP-based network.

Q. MR. DUCLOO MAKES THE POINT ON PAGE 69 THAT QWEST'S TRUNKNG TO LEVEL 3 IS THE SAME NO MATTER WHERE THE END-USER CUSTOMER IS LOCATED. MR. GATES MAKES A SIMILAR POINT. IS THIS TRUE?

A. Yes, they made similar points when discussing why Level 3's VoIP calls should receive special treatment. But Mr. Ducloo misses the critical point. Consistent with regulatory requirements, Qwest's ICAs permit CLECs to serve end-user customers in various LCAs in the LATA from a single switch under the SPOI or SPOP arrangement. Assume that Level 3 places its POP for the Boise LATA in Boise. Under SPOP, if a Qwest customer in Twin Falls calls a Boise number of a customer served by Level 3, and located in Boise, Qwest

would deliver the call to the Level 3 POP in Boise. If a Twin Falls Qwest customer calls the Twin Falls number of a customer served by Level 3 and who is physically located in Twin Falls (which, of course, is purely hypothetical since Level 3 provides no local exchange service), Qwest will deliver the call to the Level 3 switch in Boise. Level 3 then would have the responsibility to deliver the call back to its Twin Falls customer. In both instances, Qwest must transport the call to the Level 3 POP in Boise. The cost to Qwest is the same in both situations, but the point is that the regulatory treatment of the two calls is very different. A Twin Falls to Boise call is a toll call, and access charges apply to the IXC responsible for the traffic (and the IXC recovers toll revenue from the caller). However, the Twin Falls end-user customer to Twin Falls end-user customer call is a local call, and thus is treated differently under Idaho regulatory rules and ICAs. Level 3, however, wants to ignore these rules, and thus argues that since both calls were delivered to the same POP, they are the same type of call. The issue here, however, is not call routing on one side of the POI—the issue here is the proper categorization of the call, and the application of the appropriate intercarrier compensation mechanism.

Q. DOES YOUR PREVIOUS RESPONSE REFLECT LEVEL 3'S ACTUAL METHOD OF OPERATION?

A. No. In the previous question, I used the example of a Level 3 Twin Falls customer whose telephone number accurately reflected its physical location. In reality, however, Level 3 is assigning local numbers from LCAs throughout Idaho to customers with no physical presence in those LCAs. These calls all appear as local calls because the switch operates

on the premise that Level 3 has followed industry rules and actually have customers located in those towns; nothing could be further from the truth, however. The calls at issue in this case are, for example, where a Qwest customer in Twin Falls calls a Twin Falls number of an ISP customer served by Level 3, but the customer is actually located in Boise. Under those circumstances, Qwest delivers the call to the Level 3 POP in Boise. But, unlike the prior example, Level 3 wants to treat the call as local when it is really interexchange in nature.

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS ON VNXX.

A. My summary is very simple. Qwest's language is consistent with Idaho statutes, rules, catalog provisions and Commission decisions. It is also consistent with NANPA rules and court decisions in other jurisdictions. It is likewise consistent with federal statutes and rules. Qwest's language bases the categorization of calls on the location of the calling and called parties, an approach that is mandated by Idaho law.

Level 3, on the other hand, proposes a sweeping change in categorizing calls, all for the purpose of avoiding inter-carrier compensation mechanisms that govern others in the industry. Its purpose is quite obvious. By pretending that interexchange traffic is local (which is the essence of VNXX), Level 3 wants to be able to originate traffic for its ISPs, and terminate traffic for its VoIP customers throughout Idaho, and force Qwest to transport this traffic for free. In an effort to justify its proposals, Level 3 uses red herrings like FX service (which is not the same as VNXX), and its claim that, because it has built a modern IP-based network, it should not be required to play by the same rules that govern the

industry. The latter argument misses a critical point: the special rules that Level 3 seeks relate to its use of the PSTN, not its IP network.

Qwest, like most others in the industry, has suggested that the FCC reform intercarrier compensation. But it must be done on a comprehensive and rational basis that takes into account the consequences on the public interest and individual participants in telecommunications markets. Level 3's approach, which in effect would reform compensation methods to its benefit, but which would require the rest of the industry to play by existing rules, would not only benefit Level 3 financially, but it would also create a result that is directly contrary to the goal of competitive neutrality. Level 3's self-serving approach should be rejected by the Commission.

VII. DISPUTED ISSUE 4: COMPENSATION FOR VOICE AND VOIP TRAFFIC

Q. DID LEVEL 3 ADDRESS THE CONTRACT LANGUAGE FOR COMPENSATION FOR VOICE AND VOIP TRAFFIC IN ITS TESTIMONY?

A. No. Level 3 provided no testimony regarding the specific contract language in dispute for the compensation for voice and VoIP traffic. Level 3 did provide general testimony relating to these issues, which I have addressed in the VoIP and VNXX sections of my rebuttal testimony.

VIII. DISPUTED ISSUE 19: ISP-BOUND 3:1 RATIO, SECTION 7.3.6.2

Q. DID LEVEL 3 ADDRESS THE CONTRACT LANGUAGE FOR ISSUE 19?

A. No. Level 3 provided no testimony regarding the language in dispute for Issue 19. As discussed in my direct testimony, Qwest has not yet brought this matter before the Commission, and the Commission has not yet ruled on Qwest's method of identifying ISP traffic.

IX. DISPUTED ISSUE 10: DEFINITION OF INTERCONNECTION

Q. DID LEVEL 3 ADDRESS THE DEFINITION OF INTERCONNECTION IN ITS TESTIMONY?

A. No. Level 3 provided no testimony regarding the language in dispute for the definition of interconnection. Mr. Gates did mention interconnection on page 11 of his testimony, but he simply said that the FCC rules refer to "interconnection" as the linking of two networks. There is no testimony explaining why Qwest's definition should not be accepted. Thus, Qwest's language should be adopted.

X. DISPUTED ISSUE 11: DEFINITION OF INTEREXCHANGE CARRIER

Q. DID LEVEL 3 ADDRESS THE DEFINITION OF INTEREXCHANGE CARRIER IN ITS TESTIMONY?

A. No. Level 3 provided no testimony to support its position regarding the definition of interexchange carrier in its testimony. Thus, Qwest's language should be adopted.

XI. DISPUTED ISSUE 12: DEFINITION OF INTRALATA TOLL TRAFFIC

Q. DID LEVEL 3 ADDRESS THE DEFINITION OF INTRALATA TOLL TRAFFIC IN ITS TESTIMONY?

A. No. Level 3 provided no testimony to support its position regarding the definition of intraLATA toll traffic. Thus, Qwest's language should be adopted.

XII. DISPUTED ISSUE 9 AND 14: DEFINITION OF TELEPHONE EXCHANGE SERVICE

Q. DOES LEVEL 3 ADDRESS THE DEFINITION OF TELEPHONE EXCHANGE SERVICE IN ITS TESTIMONY?

A. No. Level 3 provided no testimony to support its position regarding the definition of telephone exchange service. As previously discussed, several definitions and other provisions of Qwest's Idaho catalogs demonstrate that the Commission views the local/long distance distinction from a geographical perspective, and among the relevant definitions are " local exchange calling area" and "basic local exchange service." Qwest's definition of telephone exchange service should be adopted.

XIII. DISPUTED ISSUE 15: DEFINITION OF TELEPHONE TOLL SERVICE

Q. DID LEVEL 3 ADDRESS THE DEFINITION OF TELEPHONE TOLL SERVICE IN ITS TESTIMONY?

A. No. Level 3 provided no testimony to support its position regarding the definition of telephone toll service. Thus, Qwest's language should be adopted.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes it does.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2005, I served the foregoing **REBUTTAL TESTIMONY OF LARRY B. BROTHERSON** upon all parties of record in this matter as follows:

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INDEX TO EXHIBITS

DATA REQUEST NO. 29:

Does Level 3 consider a call that originates in TDM and terminates with a VoIP called party in Internet Protocol (commonly referred to as a TDM-IP call) a VoIP call for purposes of the interconnection agreement in this case?

OBJECTION TO DATA REQUEST NO. 29:

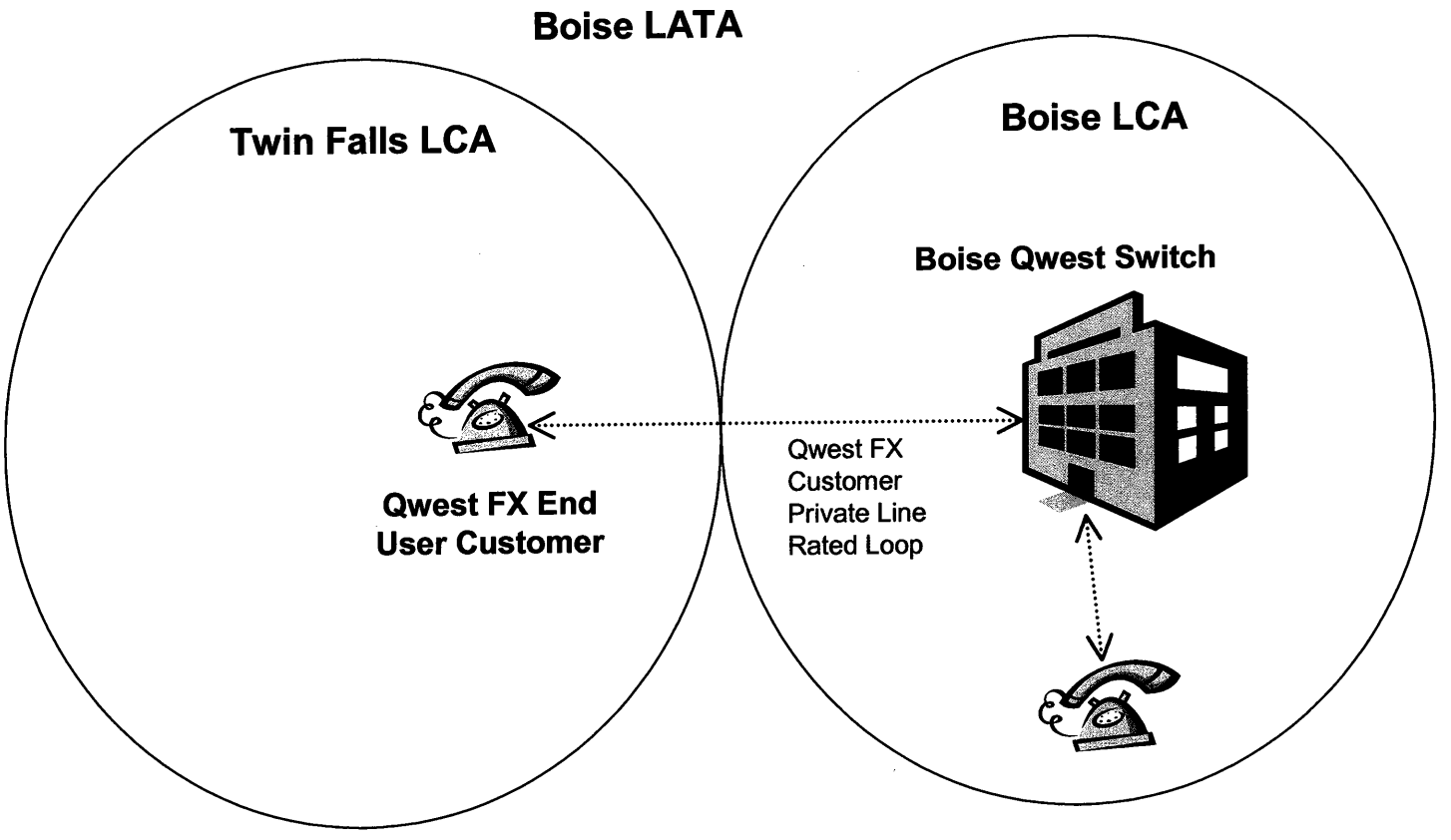
Level 3 objects to this request on the basis that it is vague, ambiguous, overly broad, unduly burdensome, and imprecise, and utilizes terms that are subject to multiple interpretations but are not properly defined or explained. Level 3 further objects to this data request in so far as the request lacks certain information required in order for Level 3 to provide an adequate response. Level 3 further objects to the request in so far as it does not seek facts and instead calls for a legal conclusion or Level 3's opinion, and is therefore not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action. Subject to and without waiving these objections, Level 3 will respond to this request.

LEVEL 3'S RESPONSE TO REQUEST QWEST 29.

Yes.

Exhibit No. 307
QWE-T-05-11
L, Brotherson, Qwest

Foreign Exchange "FX" Routing Between Qwest End Users



OneFlex Routing

Exhibit No.308
QWE-T-05-11
L, Brotherson, Qwest

..... PSTN Network. End User A calls a OneFlex Customer that has a telephone number assigned in the Boise LCA. QCC establishes a VoIP POP in the Boise LCA. Call routes from the QC PSTN network to the QCC VoIP POP in Boise Local Calling Area.

_____ IP Network. Call is routed over the QCC VoIP Infrastructure IP network to End User B (Qwest OneFlex Customer) in Twin Falls. The traffic is delivered via the Internet. Customer Internet Connection. Call is routed from QCC VoIP Infrastructure over the Internet to customers Broadband connection and terminates on Customer VoIP capable equipment (CPE). The internet connection can be provided by any provider (e.g. Qwest DSL, Media Com, Cox cable, or wireless)