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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 COMMUNICATIONS 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
WILLIAM R. EASTON**

QWEST CORPORATION

September 16, 2005

(Disputed Issue Nos. 1, 2, 5, 13, 17, 18, 21 and 22)

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1

I. IDENTIFICATION OF WITNESS

2

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

3

4

A. My name is William R. Easton. My business address is 1600 7th Avenue, Seattle Washington. I am employed as Director – Wholesale Advocacy. I am testifying on behalf of Qwest Corporation (“Qwest”).

6

7

8

Q. ARE YOU THE SAME WILLIAM EASTON WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

9

10

A. Yes.

11

II. PURPOSE OF TESTIMONY

12

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

13

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

14

15

16

- Issue 1: Costs of Interconnection

17

- Issue 2: Combining Traffic on Interconnection Trunks

- 1 ▪ Issue 5: Should Interconnection Terms be Incorporated by
- 2 Reference?

- 3 ▪ Issue 13: Local Interconnection Service Definition

- 4 ▪ Issue 17: Trunk Forecasting

- 5 ▪ Issue 18: Jurisdictional Allocation Factors

- 6 ▪ Issue 21: Ordering of Interconnection Trunks

- 7 ▪ Issue 22: Compensation for Construction

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III. DISPUTED ISSUE NO. 1: COSTS OF INTERCONNECTION

Q. IN DISCUSSING THE COSTS OF INTERCONNECTION AT PAGE 5 OF HIS TESTIMONY, MR. GATES CLAIMS THAT QWEST’S NETWORK ARCHITECTURE “DOES NOT REMOTELY REFLECT WHAT AN EFFICIENT FIRM WOULD CONSTRUCT TODAY.” PLEASE COMMENT.

A. Mr. Linse addresses Mr. Gates’ allegations from a network perspective. From a policy perspective, and from the perspective of the issues that this Commission must resolve, it is irrelevant which company has the more or less efficient network. Issue 1 raises the question of which party is responsible for the costs of interconnection. Embedded in this question is the assumption that interconnection to Qwest’s network, regardless of its alleged state of technological obsolescence, is valuable to Level 3. My direct testimony and the direct testimony of Mr. Linse explain that Qwest offers Level 3 a number of different options for interconnection and allows Level 3 to select the option that best meets its needs given its business strategy, its own network configuration, and its desire to interconnect with the Qwest network. The costs related to each of these options have been identified, discussed and approved by this Commission in its cost docket proceedings. There is no question that, under the Act, Qwest is allowed to recover costs that are just and reasonable and based on the cost of providing service.

1 **Q. ON PAGE 12 OF HIS TESTIMONY, MR. GATES STATES THAT THE**
2 **POINT OF INTERCONNECTION (POI) IS NORMALLY VIEWED AS THE**
3 **FINANCIAL AND PHYSICAL DEMARCATION POINT THAT DEFINES**
4 **WHERE ONE PARTY'S FINANCIAL AND OPERATIONAL**
5 **OBLIGATIONS END AND WHERE THE OTHER PARTY'S**
6 **OBLIGATIONS BEGIN. DO YOU AGREE?**

7 A. No. The POI is clearly the physical demarcation point between the parties'
8 networks, but it is not necessarily the demarcation point from a financial
9 perspective. Whether Level 3 will incur expense on Qwest's side of the POI will
10 depend on the form of interconnection that Level 3 chooses. As Mr. Linse
11 explained in his testimony, the POI is merely the point at which the two networks
12 meet, but by itself it does not establish interconnection. If, for example, Level 3
13 requires an entrance facility to bring its traffic from the POI to the Qwest switch,
14 Level 3 will be required to pay for its use of that facility as provided in the FCC's
15 rule 51.709(b), which states:

16 The rate of a carrier providing transmission facilities dedicated to
17 the transmission of traffic between two carriers' networks shall
18 recover only the costs of the proportion of that trunk capacity used
19 by an interconnecting carrier to send traffic that will terminate on
20 the providing carrier's network. Such proportions may be
21 measured during peak periods.
22

23 Clearly, the FCC rules allow for Qwest to be compensated for the use of facilities
24 on its side of the POI.

1 Q. AT PAGE 12 OF HIS TESTIMONY, MR. GATES STATES THAT FCC
2 RULE 51.703(b) REQUIRES THAT EACH CARRIER BE RESPONSIBLE
3 FOR THE COSTS OF ITS OWN NETWORK ON ITS SIDE OF THE POI.
4 IS THAT A CORRECT INTERPRETATION OF 51.703(b)?

5 A. No. Rule 51.703(b) states that “A LEC may not assess charges on any other
6 telecommunications carrier for *telecommunications traffic that originates on the*
7 *LECs network.*” (Italics added). This rule pertains only to the costs associated
8 with telecommunications traffic originated by a local exchange carrier. It does not
9 state that each carrier is responsible for all costs on its side of the POI, as Mr. Gates
10 has suggested.

11

12 Q. MR. GATES DISCUSSES “MEET POINT” INTERCONNECTION AT
13 PAGE 42 OF HIS TESTIMONY AND STATES THAT THE FCC HAS
14 RECOGNIZED THAT WITH THIS TYPE OF ARRANGEMENT “EACH
15 PARTY IS RESPONSIBLE FOR ITS OWN COSTS IN GETTING TO A
16 MEET POINT.” IS THIS AN ISSUE AT DISPUTE IN THIS
17 ARBITRATION?

18 A. No. As I discussed in my direct testimony, section 7.1.2.3 of the agreement that
19 Qwest proposes allows for Mid-Span Meet POI interconnection,¹ which would
20 involve Qwest and Level 3 each building facilities to the meet point and each being

¹ *Local Competition Order*, ¶ 553, cited by Mr. Gates refers to “meet point arrangements (or mid-span meets).”

1 responsible for its own costs. This form of interconnection does not require
2 entrance facilities.

3

4 **Q. WHAT, THEN, IS THE CONFUSION?**

5 A. Mr. Gates seems to confuse establishing a Mid-Span Meet point with another form
6 of interconnection that does require entrance facilities. The relative use (RUF)
7 calculations, which apply to an entrance facility purchased from Qwest, do not
8 apply to a Mid-Span Meet Point of Interconnection. Section 7.1.2.3 states that,
9 under this latter option, “[e]ach Party will be responsible for its portion of the build
10 to the Mid-Span Meet POI.” Thus, to the extent that Level 3 seeks to avoid
11 financial responsibility for entrance facilities provided by Qwest, it is free, under
12 this agreement, to select the Mid-Span Meet POI option and thus avoid charges
13 based on the RUF calculation.

14 **Q. ON PAGE 43, MR. GATES STATES THAT “...QWEST WILL TRY TO**
15 **ASSIGN SOME OF THE COSTS OF ITS OWN NETWORK ON ITS SIDE**
16 **OF THE POI TO LEVEL 3, BASED IN SOME WAY ON THE AMOUNTS**
17 **OF TRAFFIC THAT QWEST SENDS LEVEL 3 AND VICE VERSA. THAT**
18 **IS UNREASONABLE IN AND OF ITSELF.” IS QWEST BEING**
19 **UNREASONABLE?**

20 A. No. Qwest is merely complying with FCC rule 51.709(b) cited earlier, which
21 allows for cost recovery in proportion to the parties’ usage of the facilities. If Level

1 3 subscribes to a Qwest facility, it is entirely reasonable for Qwest to be
2 compensated for network capacity used by Level 3 to transmit traffic that will
3 terminate on the Qwest network. I would add that Mr. Gates' testimony is also at
4 odds with the testimony of Mr. Ducloo, who states on page 5 of his direct testimony
5 that "the parties agree that the cost of facilities used to connect their networks will
6 be split based on relative use."
7

8 **Q. ON PAGE 43 OF HIS TESTIMONY, MR. GATES ALLEGES THAT**
9 **QWEST IS SEEKING TO "UNFAIRLY AND UNREASONABLY"**
10 **EXCLUDE ISP-BOUND TRAFFIC THAT IT SENDS LEVEL 3 FROM THE**
11 **RELATIVE USE CALCULATION. AT PAGE 6 OF HIS TESTIMONY, MR.**
12 **DUCLOO CHARGES THAT REMOVING ISP-BOUND TRAFFIC FROM**
13 **THE CALCULATION IS A "SLEIGHT-OF-HAND." PLEASE COMMENT.**

14 **A.** Although Mr. Gates argues that "there is no basis for excluding ISP-bound traffic
15 from any RUF calculation," both he and Mr. Ducloo are certainly aware that
16 commissions in a number of Qwest states have ruled that Internet-related traffic
17 should be excluded when calculating the relative use factor (RUF) by the
18 originating carrier. Given the previous rulings on this issue, Qwest's proposal to
19 exclude this traffic is neither "unreasonable" nor accomplished through a "sleight of
20 hand."
21

1 **Q. HAVE FEDERAL COURTS REVIEWED THE ISSUE OF EXCLUDING ISP**
2 **BOUND TRAFFIC?**

3 A. Yes. Qwest's language and position have been subject to federal court review in
4 both Oregon and Colorado, and both courts upheld Qwest's language.² Judge
5 Nottingham of the United States District Court for the District of Colorado recently
6 addressed this issue and affirmed that Qwest's language accurately reflects the law.
7 In particular, Judge Nottingham held that the rules that relate to relative use, 47
8 C.F.R. §§ 703(b) and 709(b), apply only to "telecommunications traffic" and, under
9 the unambiguous terms of the *ISP Remand Order*, Internet-bound traffic is not
10 "telecommunications traffic."³ He further held that because Internet-bound traffic is
11 not "telecommunications traffic," Rule 709(b) is inapplicable and the Colorado
12 commission properly excluded Internet-bound traffic from the relative use
13 provisions of the parties' interconnection agreement.⁴ Moreover, Judge Nottingham
14 upheld the Colorado commission's policy determinations, the same policy
15 determinations the FCC made in the *ISP Remand Order* and that Qwest relies upon

² Order and Memorandum of Decision, *Level 3 Communications, LLC v. Pub. Utils. Comm'n of Colorado*, Civil Action No. 01-N-2455 (CBS) (D. Colo. Dec. 8, 2003) ("*Colorado Level 3 Order and Memorandum of Decision*"); Opinion and Order, *Level 3 Communications, LLC v. Public Utils. Comm'n of Oregon*, CV 01-1818 (D. Or. Nov. 25, 2002) (slip op.).

³ See *Colorado Level 3 Order and Memorandum of Decision* at 23.

⁴ *Id.* at 22.

1 here, i.e., that costs of serving ISPs should be absorbed by ISPs, not Qwest and its
2 customers.⁵

3

4 **Q. MR. GATES STATES THAT EXCLUDING THE ISP-BOUND TRAFFIC IS**
5 **CONTRARY TO THE ECONOMIC RULE OF COST CAUSATION. DO**
6 **YOU AGREE?**

7 A. No. In a previous arbitration between Level 3 and Qwest, the Colorado
8 Commission directly addressed the issue of cost causation, stating:

9

10 When connecting to an ISP served by a CLEC, the ILEC end-user
11 acts primarily as the customer of the ISP, not as a customer of the
12 ILEC. The end-user should pay the ISP; the ISP should charge the
13 cost-causing end-user. The ISP should compensate both the ILEC
14 (Qwest) and the CLEC (Level 3) for costs incurred in originating
15 and transporting the ISP-bound call. Therefore, we agree with
16 Qwest that Internet related traffic should be excluded when
17 determining relative use of entrance facilities and direct trunked
18 transport.⁶

19

20 Qwest believes that this is a reasonable principle, and thus believes that this

21 Commission should adopt this principle for Idaho.

⁵ *Id.* at 25.

⁶ *In the Matter of Petition of Level 3 Communications LLC, for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Qwest Corporation*, docket No. 00B-601T (Colorado PUC, March 16, 2001), p. 36.

1 **Q. HOW DO YOU RESPOND TO MR. GATE'S CLAIMS AT PAGE 46 OF HIS**
2 **TESTIMONY, THAT QWEST IS ATTEMPTING TO SHIFT ITS OWN**
3 **NETWORK COSTS TO LEVEL 3?**

4 A. The reality is that it is Level 3 who is attempting to shift costs. As the Colorado
5 Commission noted in the order just cited, it is *Level 3* who is attempting to shift the
6 cost of providing service to its ISP customers to Qwest. These costs should not be
7 borne by Qwest.

8

9 **Q. AT PAGE 45 OF HIS TESTIMONY, MR. GATES STATES THAT UNDER**
10 **FCC RULE 51.703(b), QWEST HAS AN OBLIGATION TO COMPENSATE**
11 **LEVEL 3 FOR ALL CALLS WHICH ORIGINATE ON QWEST'S**
12 **NETWORK. DO YOU AGREE?**

13 A. No. Clearly, under the FCC's rules, Qwest has an obligation to compensate Level 3
14 for "telecommunications traffic" that originates on its network. The ISP-bound
15 traffic in question here, however, has been defined as "information access" by the
16 FCC and, as such, is explicitly excluded from the FCC's definition of
17 "telecommunications traffic."⁷

18

19 **Q. ON PAGE 42, MR. GATES STATES THAT THE FCC'S TRIENNIAL**

⁷ FCC rule 51.701(b)(1) defines "telecommunications traffic" as 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.*" (Italics added).

1 **REVIEW REMAND ORDER HELD THAT ENTRANCE FACILITIES ARE**
2 **“NO LONGER TO BE PROVIDED – AT LEAST AT TELRIC-BASED**
3 **RATES.” IS THIS YOUR UNDERSTANDING AS WELL?**

4 A. No. The FCC determined that ILECs were no longer required to make unbundled
5 elements available for use as entrance facilities. As Qwest’s proposed language in
6 the interconnection agreement makes clear, Qwest continues to offer entrance
7 facilities as an interconnection option. These entrance facilities are offered at
8 TELRIC rates.

9 **Q. AT PAGE 22, MR. GATES REFERS TO PARAGRAPH 995 OF THE FCC’S**
10 **LOCAL COMPETITION ORDER⁸, STATING THAT ONCE A POI IS**
11 **ESTABLISHED IT CAN BE USED FOR THE EXCHANGE OF ALL TYPES**
12 **OF TRAFFIC. IS THIS AN ACCURATE DESCRIPTION OF PARAGRAPH**
13 **995.**

14 A. No. Mr. Gates refers to only a portion of the paragraph. The full text of paragraph
15 995 reads as follows:

16 We conclude that, if a company provides both telecommunications
17 and information services, it must be classified as a
18 telecommunications carrier for purposes of section 251, and is
19 subject to the obligations under section 251(a), to the extent that it
20 is acting as a telecommunications carrier. We also conclude that
21 telecommunications carriers that have interconnected or gained

⁸ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rec. 15499 (August 8, 1996), *aff’d in part and rev’d in part, Iowa Utils. Bd. v. FCC*, 525 U.S. 1133 (1999)(the “*Local Competition Order*”).

1 access under sections 251(a)(1), 251(c)(2), or 251(c)(3), may offer
2 information services through the same arrangement, so long as they
3 are offering telecommunications services through the same
4 arrangement as well. Under a contrary conclusion, a competitor
5 would be precluded from offering information services in
6 competition with the incumbent LEC under the same arrangement,
7 thus increasing the transaction cost for the competitor. We find this
8 to be contrary to the pro-competitive spirit of the 1996 Act. By
9 rejecting this outcome we provide competitors the opportunity to
10 compete effectively with the incumbent by offering a full range of
11 services to end users without having to provide some services
12 inefficiently through distinct facilities or agreements. *In addition,*
13 *we conclude that enhanced service providers that do not also*
14 *provide domestic or international telecommunications, and are thus*
15 *not telecommunications carriers within the meaning of the Act, may*
16 *not interconnect under section 251. (Italics added.)*
17

18 It is clear that telecommunications carriers are allowed to interconnect and, having
19 done so, may carry both information services and telecommunications services. It
20 is also clear that companies that do not provide telecommunications services are not
21 entitled to interconnect under section 251. What is not clear is whether Level 3 has
22 any end-user telecommunications customers, which raises the question whether it is
23 in fact a telecommunications carrier or an enhanced service provider.

24 **Q. DO YOU HAVE ANY OTHER COMMENTS ON THE LEVEL 3**
25 **TESTIMONY ON ISSUE NO. 1?**

26 A. Yes. As I explained in my direct testimony, and as Level 3 details in the matrix of
27 disputed issues, Issue 1 is comprised of 10 subparts. It is worth noting that, other
28 than the high-level discussion about points of interconnection, compensation on
29 each party's side of the POI and the RUF calculation, to which I have just
30 responded, Level 3 has offered neither detailed objections to Qwest's proposed

1 language, nor an explanation of why Level 3's language is appropriate. The
2 Commission should therefore adopt Qwest's contract language on this issue.
3

1 **IV. DISPUTED ISSUE NO. 2: ALL TRAFFIC ON INTERCONNECTION**

2 **TRUNKS**

3
4 **Q. AT PAGE 6 OF HIS TESTIMONY, MR. GATES STATES THAT QWEST**
5 **WANTS LEVEL 3 TO SEPARATE TRAFFIC AND ROUTE IT OVER**
6 **DIFFERENT TRUNK GROUPS BASED ON WHETHER THE TRAFFIC**
7 **FALLS INTO “ARBITRARY” CATEGORIES. IS THIS WHAT QWEST IS**
8 **PROPOSING?**

9 A. No. First, the “arbitrary” categories to which Mr. Gates refers are anything but
10 arbitrary. These categories (e.g. local vs. toll) have long been established and
11 maintained by the telecommunications companies and regulators alike. Each
12 category has its own well-recognized intercarrier compensation mechanism.

13
14 More importantly, Qwest does allow all traffic types to be combined on a single
15 trunk group. Qwest’s proposed language in section 7.2.2.9.3.2 of the agreement
16 allows for the combining of traffic over the same Feature Group D (FGD) trunk.
17 But, as I explained in my direct testimony, Qwest is not able to allow both local and
18 switched access traffic to be combined over LIS trunks because LIS trunks are not
19 capable of producing records for the billing of switched access charges associated
20 with toll or interexchange services. In addition to the systems changes necessary to
21 create Jointly Provided Switched Access records from LIS trunks, there are
22 extensive billing changes that have the potential to be extremely expensive to

1 implement. There are also potential network changes and multiple process changes
2 required to reflect the changed manner in which LIS trunks will be used. Finally,
3 Level 3's proposal would necessitate a change in Qwest's access catalog provisions,
4 which spell out how switched access is ordered, provisioned and billed today.

5
6 Combining all traffic over FGD trunks would allow for the efficiencies that Level 3
7 claims it is seeking, while allowing Qwest to use its existing processes and access
8 tariffs for billing the appropriate tariffed rates for switched access and for producing
9 the necessary Jointly Provided Switched Access records used by other ILECs,
10 CLECs and wireless carriers.

11
12 **Q. ON PAGE 27, MR. GATES SPECULATES THAT QWEST'S TRUNKING**
13 **PROPOSAL APPEARS TO BE DESIGNED TO "DISADVANTAGE OR**
14 **DRIVE ITS COMPETITORS FROM THE MARKET PLACE." PLEASE**
15 **COMMENT.**

16 A. Qwest's trunking proposal here is entirely consistent with what Qwest has offered
17 every other carrier, and with what the Commission has approved in numerous ICAs.
18 Despite Mr. Gates' overheated rhetoric and speculation, the accurate and more
19 rational explanation is that Qwest has offered Level 3 a solution that allows Qwest
20 to use the catalog provisions , processes and systems it has in place, and to avoid
21 investing significant amounts in systems and processes to meet the demands of a
22 single carrier.

1 **Q. ON PAGE 35, MR. DUCLOO OFFERS THAT LEVEL 3 WILL SEND TOLL**
2 **TRAFFIC THAT DOES NOT TERMINATE TO QWEST END USERS, OR**
3 **UNE/RESALE CUSTOMERS TO QWEST TOLL TANDEMS WHERE**
4 **ADEQUATE RECORDINGS FOR THE THIRD PARTIES CAN BE MADE.**
5 **DOES THIS ALLEVIATE QWEST'S CONCERNS ABOUT THE USE OF**
6 **FACTORS FOR BILLING?**

7 A. No. Level 3's offer does not reduce the systems changes required of Qwest to
8 apply the factors, and the appropriate tariffed rates, to traffic on LIS trunks. Nor
9 does it eliminate the issue of the third parties' need for Jointly Provided Switched
10 Access records. It also does not remove the need for Qwest to modify its state
11 catalogs and federal access tariffs to allow for this new way of ordering,
12 provisioning and billing switched access service. I would also note that the
13 proposed agreement filed by Level 3 does not include language that describes how
14 traffic destined to non-Qwest end users would be handled. Thus, there is no
15 language for the Commission to even consider regarding this. The Commission
16 should therefore adopt Qwest's contract language on Issue No 2.

17

1

VII. DISPUTED ISSUE NO. 17: TRUNK FORECASTING

2

**Q. DID LEVEL 3 FILE ANY TESTIMONY SPECIFICALLY RELATED TO
3 TRUNK FORECASTING?**

3

4

A. No. Thus, since Level 3 did not file any testimony specifically objecting to Qwest's
5 proposed language, the Commission should adopt Qwest's contract language on this
6 issue.

6

7

1 **VIII. DISPUTED ISSUE NO. 18: JURISDICTIONAL ALLOCATION**

2 **FACTORS**

3 **Q. AT PAGE 25 OF HIS TESTIMONY, MR. GATES ARGUES THAT THE**
4 **USE OF BILLING FACTORS IS A SIMPLE, INEXPENSIVE WAY TO**
5 **RESOLVE BILLING ISSUES RELATED TO ALLOWING ALL TRAFFIC**
6 **TYPES ON A LIS TRUNK GROUP. DO YOU AGREE?**

7 A. No. Changing Qwest systems to allow for the use of factors is not a trivial matter,
8 and would require Qwest to significantly rework its systems and processes. In
9 addition, Level 3's "factors" proposal relies on estimates of traffic, based on
10 periodic sampling, rather than on recordings of actual traffic information, which is a
11 clearly superior method and is what Qwest is able to use today. There is simply no
12 need to go through a process of developing estimates when there is already a system
13 in place (FGD) that does this, based on actual traffic recording.

14
15 **Q. AT PAGES 34 OF HIS TESTIMONY, MR. DUCLOO ARGUES THAT**
16 **QWEST ALREADY USES FACTORS TO DETERMINE HOW MANY**
17 **MINUTES ARE SUBJECT TO ACCESS CHARGES AND HOW MANY**
18 **ARE SUBJECT TO RECIPROCAL COMPENSATION. IS HE CORRECT?**

19 A. No. Mr. Ducloo apparently misunderstands how Qwest uses the Percent Local
20 Usage (PLU) factor. The PLU is used only with traffic that does not contain a

1 calling party number, and thus cannot be jurisdictionalized based on a comparison
2 of the calling and called parties' numbers. In these situations, the PLU is applied to
3 the bucket of these "unidentified" calls to determine what percent should be billed
4 at the local rate. These calls represent a small minority of the total number of calls.
5 The jurisdiction for all other calls is based on a comparison of the calling and called
6 parties' numbers.

7 **Q. IT APPEARS THAT THE LEVEL 3 PROPOSED LANGUAGE REQUIRES**
8 **QWEST TO PROVIDE FACTORS TO LEVEL 3. ARE SUCH FACTORS**
9 **NECESSARY?**

10 A. No. Qwest believes that Level 3 is able to bill accurately today. Level 3 provides
11 no reasons why Qwest-provided factors would be necessary in the future.

12 **Q. DO YOU HAVE ANY ADDITIONAL COMMENT ON LEVEL 3'S**
13 **PROPOSED FACTORS?**

14 A. Yes. Level 3's proposed language does not include a factor for intrastate toll
15 traffic. It is unclear to Qwest how this type of traffic would be handled under Level
16 3's proposal.

17

1 **IX. DISPUTED ISSUE NO. 21: ORDERING OF INTERCONNECTION TRUNKS**

2

3 **Q. DID LEVEL 3 FILE ANY TESTIMONY SPECIFICALLY RELATED TO**
4 **THE ORDERING OF INTERCONNECTION TRUNKS?**

5 A. No. Thus, since Level 3 did not file any testimony specifically objecting to Qwest's
6 proposed language, the Commission should adopt Qwest's contract language on this
7 issue.

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**X. DISPUTED ISSUE NO. 22: COMPENSATION FOR SPECIAL
CONSTRUCTION**

**Q. DID LEVEL 3 FILE ANY TESTIMONY SPECIFICALLY RELATED TO
COMPENSATION FOR SPECIAL CONSTRUCTION?**

A. No. Since Level 3 did not file any testimony specifically objecting to Qwest's proposed language, the Commission should adopt Qwest's contract language on Issue No 22.

1

XI. SUMMARY/CONCLUSION

2 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

3 A. Despite the pages and pages of contract language at dispute in the arbitration,
4 Level 3 has failed to file testimony on the contract language itself, offering neither
5 detailed objections to Qwest's language, nor explanations of why its own proposed
6 language is appropriate. Instead, Level 3 offers only high-level philosophical
7 discussions, inaccurate interpretations of FCC rules based on fragments that are
8 taken out of context, and repeated claims that Qwest is unreasonable, backward-
9 thinking and somehow should be punished for the fact that it was once a regulated
10 monopoly. However, the determination of the appropriate language for the
11 interconnection agreement must be based on the language itself, in conjunction with
12 the language of the Act, the FCC rules implementing the Act, this Commission's
13 own rulings and common sense, and not on rhetoric.

14

15 In its proposed interconnection agreement, Qwest offers Level 3 several different
16 options for interconnecting with the Qwest network. These options have been
17 identified and discussed before this Commission in various cost dockets and have
18 been approved by this Commission. Despite Level 3's denials, there is no question
19 that under the Act, Qwest is allowed to recover costs that are just and reasonable
20 and that are based on the costs of providing interconnection. Indeed, it only makes

1 sense that Qwest be allowed to charge for network capacity used by Level 3 to send
2 traffic that will terminate on the Qwest network.

3 In this arbitration, Level 3 has raised objections to the concept of a relative use
4 factor calculation and, specifically, to Qwest's proposal to exclude ISP-bound
5 traffic from the calculation of the RUF. These objections are misplaced, as the FCC
6 has specifically provided for compensation based upon the relative usage of the
7 parties, and this Commission (and a federal court) has specifically ruled in the
8 parties' previous arbitration proceeding that ISP-bound traffic should be excluded
9 from the relative use calculation.

10

11 Finally, Level 3 mischaracterizes Qwest's trunking options by stating that Qwest
12 refuses to allow Level 3 to combine all traffic on a single trunk group. Level 3 fails
13 to acknowledge that Qwest has agreed to allow the combining of all traffic over
14 Feature Group D trunks. This proposal allows for the efficiencies that Level 3
15 claims it is seeking, while allowing Qwest to use existing tariffs, processes and
16 systems to bill appropriate rates for switched access and for producing Jointly
17 Provided Switched Access records. This proposal also has the benefit of using
18 actual recordings of traffic for billing purposes, rather than using "estimated
19 factors," as Level 3 proposes.

20

21 For all of these reasons, Qwest respectfully requests that the Commission approve
22 and adopt Qwest's language as it relates to these issues.

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

2 **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 WILLIAM R. EASTON** upon all parties of record in this matter as follows:

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