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ATTORNEYS AT LAW

February 11, 2004

EX PARTE – Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Level 3 Petition for Forbearance*, WC Docket No. 03-266

Dear Ms. Dortch:

Level 3 Communications LLC (“Level 3”) submits this letter to respond to Verizon’s repeated efforts to mischaracterize IP-enabled services, distort the Commission’s precedent and rules, and scuttle Level 3’s Petition for Forbearance.

In its Petition and in subsequent filings, Level 3 has presented the Commission with a sensible and straightforward request: Reaffirm the intercarrier compensation rules that apply to certain IP-enabled traffic that providers exchange with each other.¹ Despite the clarity of existing law, the incumbent LECs are attempting an end run around more than 20 years of precedent. Eventually some decision-maker—whether the FCC or the federal courts—will declare what rules apply today to this traffic. Unless the Commission acts now to grant Level 3’s Petition, however, that answer likely will not come for years—long after investment decisions were made, business plans formulated and prices set. The overhang of this business uncertainty during the interim will stifle VoIP innovation and broadband deployment to the ultimate detriment of consumers and America’s economic growth.

Level 3’s Petition therefore asked the Commission to use its forbearance authority to remove any legal basis for applying access charges to communications between IP-based end users and PSTN-based end users (“IP-PSTN communications”), and certain PSTN-PSTN communications incidental thereto. Such forbearance would reaffirm, during the interim period while the Commission considers comprehensive intercarrier compensation reform, what the ESP exemption already provides—that access charges are not applicable to IP-PSTN communications. Instead, IP-PSTN communications would be exchanged pursuant to the Act’s only permanent intercarrier compensation provision—Section 251(b)(5).

¹ See *Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket No. 03-266 (filed Dec. 23, 2003) (“Level 3 Petition”).

Not surprisingly, Level 3's Forbearance Petition has generated opposition from those parties that earn substantial revenue under the byzantine system of access charges that applies to circuit-switched traffic. Verizon has filed two ex parte letters in which it reiterates its desire to extend access charges to IP-PSTN communications, and in which it asserts that Level 3's Petition fails to satisfy the Communications Act's standard for forbearance.² Verizon's first letter, dated December 13, 2004 ignores the actual language of the FCC's access charge rules, and it fails even to mention rule 69.5(b), which the FCC drafted to codify the ESP exemption. Verizon's second letter, dated February 7, 2005 misconstrues the forbearance provisions of the Communications Act and distorts the impact of Level 3's Petition.

Unlike Level 3, which has proposed an intercarrier compensation reform plan as part of the cross-industry Intercarrier Compensation Forum, Verizon lacks any plan for reconciling intercarrier compensation rules. Rather, Verizon seeks to pick and choose intercarrier compensation changes, in an effort to preserve its above-cost access charge revenues for as long as possible, while urging the Commission to eliminate those forms of intercarrier compensation that Verizon pays to other carriers. Under Verizon's approach, it's "heads, Verizon wins; tails, everybody else (including consumers) loses."

Verizon's approach conflicts with the Commission's precedent, ignores the reality of IP-enabled services, and focuses on minor transitional complexities that, despite Verizon's protestations, can be solved once the Commission makes clear who pays whom, and at what rate. In short, as explained below, Verizon's recent ex partes contain a host of inconsistencies, all of which advance Verizon's core goal of averting intercarrier compensation reform.

I. Level 3's Petition Satisfies Section 10's Standards for Mandatory Forbearance

In its ex parte dated February 7, 2005, Verizon relies on an inverted reading of the Communications Act and a distortion of Level 3's Petition to suggest that the Petition does not satisfy the statutory forbearance criteria of Section 10. Verizon presents three arguments to distract the Commission from the benefits that forbearance would bring to consumers in the form of lower rates and enhanced service.

First, Verizon argues that Level 3 has not shown that forbearance would lead to just and reasonable rates or that forbearance is necessary to ensure that consumers pay just and reasonable rates for service.³ This contention stands the statute's forbearance provision on its head. The Act requires the Commission to *grant* forbearance if, *inter alia*, the *existing regulatory provisions* are "not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable."⁴ The statute does not, as Verizon suggests, require the Commission to *deny* forbearance if *forbearance* is "not necessary"

² See Letter from Kathleen Grillo (Verizon Vice President, Federal Regulatory) to Marlene H. Dortch, WC Docket Nos. 04-36, 03-266 (filed Dec. 13, 2004) ("*Verizon December 13, 2004 Ex Parte*"); Letter from Kathleen Grillo (Verizon Vice President, Federal Regulatory) to Marlene H. Dortch, WC Docket Nos. 04-36, 03-266 (filed Feb. 7, 2005) ("*Verizon February 7, 2005 Ex Parte*").

³ See *Verizon February 7, 2005 Ex Parte* at 1.

⁴ 47 U.S.C. § 160(a)(1).

to ensure just and reasonable charges. It is the *existing rule* (not the requested forbearance) that must be necessary: if rates are just and reasonable even in the absence of the rule, Section 10(a)(1) is satisfied.

Moreover, if Verizon is arguing that reciprocal compensation rates are not “just and reasonable” rates, that argument fails as a matter of law. The Communications Act ensures that reciprocal compensation rates are just and reasonable by expressly requiring that they reflect “a reasonable approximation” of the costs associated with handling the traffic.⁵ Section 252(d)(2) sets forth specific pricing rules under which reciprocal compensation rates must be set, specifically describing rates that satisfy those requirements as “just and reasonable.”⁶ Of course, in some instances, a carrier may have voluntarily waived its rights to a rate calculated pursuant to Section 252(d)(2). In that case, however, because the carrier has entered into a voluntary agreement and expressly foregone its statutory right to arbitrate reciprocal compensation rates according to the pricing standards of Section 252(d)(2), it cannot argue that the rate itself is unjust and unreasonable. Thus, there is no basis for Verizon’s implied assertion that reciprocal compensation rates for termination of IP-PSTN traffic will be unjust and unreasonable.

Second, Verizon also argues incorrectly that, under Section 10, Level 3 must demonstrate that forbearance would be “non-discriminatory.”⁷ Verizon applies an elevated standard—higher than the actual statutory terms—and applies that standard to forbearance rather than to the rule. Section 10(a)(1) requires the Commission to forbear if (among other things) the *rule* is not “necessary” to ensure that charges, practices classifications and regulations by a carrier “are not unjustly or unreasonably discriminatory.”⁸

As the FCC has recognized, the statutory standard of “unjust and unreasonable discrimination,” contained in the 1934 Act (including Section 202(a) and Section 10(a)(1)) is different from, and not as stringent as, the statutory standard of “non-discriminatory” used in Section 251(c) and other provisions from the 1996 Act.⁹ Verizon’s invocation of the “non-discriminatory” standard with respect to Section 10(a)(1) is incorrect, and is belied by the terms of Section 10(a)(1). To meet the Section 10(a)(1) standard, Level 3 need only show that the rules from which it seeks forbearance are not “necessary” to ensure that charges, practices, classifications and regulations “are not unjustly or unreasonably discriminatory.”¹⁰

⁵ 47 U.S.C. § 252(d)(2)(A); *see also U.S. West Communications, Inc. v. Washington Utils. & Transp. Comm’n*, 255 F.3d 990, 994 (9th Cir. 2001) (“[T]he reciprocal compensation rate must be based on the carrier’s costs incurred transporting and terminating the call and on a reasonable approximation of the additional costs incurred terminating calls originating on the other carrier’s network.”).

⁶ 47 U.S.C. § 252(d)(2)(A).

⁷ *See Verizon February 7, 2005 Ex Parte* at 1-2.

⁸ *See* 47 U.S.C. § 160(a)(1).

⁹ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd. 15,499, 15,928-29 ¶¶ 859-862 (1996).

¹⁰ 47 U.S.C. § 160(a)(1).

As Level 3 has explained in both its Petition and its reply comments in support of the Petition, in the context of Byzantine intercarrier compensation mechanisms that treat many types of traffic differently (even between the same geographic end points) depending on the type of carrier or technology used to handle that traffic, the rules from which Level 3 seeks forbearance are hardly necessary to prevent unjust and unreasonable discrimination during this interim period while the Commission completes intercarrier compensation reform.¹¹ As the Commission has acknowledged forthrightly, the relevant “regulations treat different types of carriers and different types of services disparately, even though there may be no significant differences in the costs among carriers or services.”¹² Describing this system as “Byzantine and broken,” Commissioner Copps explained that “[i]n an era of convergence of markets and technologies, this patchwork of rates should have been consigned by now to the realm of historical curiosity.”¹³ Level 3 concurs; applying the Byzantine access charge system in this setting can hardly be said to be necessary to prevent unjust and unreasonable discrimination.

Third, Verizon contends incorrectly that Level 3 has not addressed the impact that forbearance would have on universal service.¹⁴ In fact, Level 3 has submitted the *only* hard evidence on the record regarding the effect of forbearance on universal service. In the Petition itself, Level 3 provided graphical evidence demonstrating that VoIP providers will collect only four percent of aggregate U.S. national and international long-distance revenues in 2006,¹⁵ thereby demonstrating that IP-PSTN services will have only a negligible impact on access revenues (and thus on universal service support).¹⁶ Moreover, Level 3 recently provided the Commission with a comprehensive study and cost model demonstrating that applying access charges to IP-PSTN traffic would generate only modest increases in non-rural ILEC revenues (and, correspondingly, in USF funding).¹⁷ That study found, for example, that in 2005 applying access charges would boost non-rural ILECs’ revenues by just 1.17%.¹⁸ In contrast, the

¹¹ See Level 3 Petition at 47-48; *Reply Comments of Level 3 Communications LLC*, WC Docket No. 03-266, at 7-9, 23-26 (filed March 31, 2004) (“Level 3 Reply Comments”).

¹² *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9613 ¶ 5 (“The interconnection regime that applies in a particular case depends on such factors as: whether the interconnecting party is a local carrier, an interexchange carrier, a CMRS carrier or an enhanced service provider; and whether the service is classified as local or long-distance, interstate or intrastate, or basic or enhanced.”).

¹³ Federal Communications Commission Commissioner Michael J. Copps, Remarks at the Quello Center Symposium, Washington, DC (Feb. 25, 2004), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-244356A1.pdf.

¹⁴ See *Verizon February 7, 2005 Ex Parte* at 2.

¹⁵ See Level 3 Petition at 49-50.

¹⁶ Level 3’s Petition seeks forbearance only as a transitional short-term measure, pending the Commission’s complete reform of intercarrier compensation.

¹⁷ See Letter from Charles Breckinridge, Counsel for Level 3, to Marlene H. Dortch (Jan. 27, 2005), attachment 2 (“QSI Study”).

¹⁸ See QSI Study at 6, 39.

ILECs have submitted no data or economic analysis in the record to support their “sky-is-falling” rhetoric.

As Level 3 pointed out in its Petition and reply comments, the ILECs have spread the myth that every dollar of ILEC revenue is necessary to support universal service.¹⁹ In fact, ILECs are also earning substantial profits. For the most recent reported periods, the price cap carriers, including all the RBOCs, reported the following interstate rates of return, all of which exceeded the FCC’s prescribed rate of return of 11.25%:

- BellSouth, 21.93%
- Qwest, 23.03%
- SBC, 20.37%
- Verizon, 12.36%
- Sprint, 35.27%
- All others (including price cap LECs owned by AllTel, CenturyTel, Cincinnati Bell, Citizens, Iowa and Valor), 23.33%.

Even the NECA carriers (the vast majority of which are excluded from the scope of the Level 3 Petition because Level 3 did not seek forbearance with respect to carriers still subject to the Section 251(f)(1) “rural exemption”) reported switched traffic sensitive interstate rates of return of 15.14% for 2003, and 15.5% through September 30, 2004.²⁰ The truth is that Level 3’s Petition poses no real threat to the universal service system.

II. The Access Charge Regime Does Not Apply to VoIP Under Existing Rules

In its December 2004 *ex parte*, Verizon continues to maintain that “the current rules,” including access charge rules, apply to IP-PSTN calls.²¹ In fact, the Commission’s rules apply access charges only to interexchange carriers, and not to other entities such as information service providers. Section 69.5(b) of the Commission’s rules provides that carrier switched access charges “shall be computed and assessed upon all *interexchange carriers* that use local exchange switching facilities for the provision of interstate or foreign telecommunications services,”²² and it contains no reference to “information service providers” or “enhanced service providers.” As Level 3 has explained in detail, the Commission’s choice of language is deliberate.²³ Even though information service providers “may use incumbent LEC

¹⁹ See Level 3 Petition at 51-53; Level 3 Reply Comments at 29-34.

²⁰ See National Exchange Carrier Association, Inc., *Summary of Pool Results for the Month Ending September 30, 2004*, (attached to Letter of Patricia A. Chirico (Executive Director, Tariffs, Rates, Costs and Average Schedules, NECA) to Marlene H. Dortch (Dec. 15, 2004)) (attached as Exhibit A).

²¹ *Verizon December 13, 2004 Ex Parte*, attachment 1 at 2.

²² 47 C.F.R. § 69.5(b) (emphasis added).

²³ See Level 3 Reply Comments at 39-56.

facilities *to originate and terminate interstate calls*,”²⁴ the Commission has concluded that they should be “classified as end users for purposes of the access charge system,”²⁵ and “should *not* be required to pay interstate access charges.”²⁶ By virtue of this distinct treatment—frequently referred to as the “ESP exemption”—information service providers “pay business line rates and the appropriate subscriber line charge, rather than interstate access rates.”²⁷

The history of the ESP exemption demonstrates the importance of the Commission’s omission of the term “enhanced service provider” or “information services provider” from the scope of rule 69.5(b). Rule 69.5(b) was added specifically to codify the ESP exemption. Prior to the order in which the FCC announced that enhanced service providers would not be subject to access charges, rule 69.5(b) did not exist.²⁸ In 1987, when the FCC tentatively concluded it should end the ESP exemption, it proposed to modify rule 69.5(b) by adding the words “or enhanced service provider” in addition to “interexchange carrier.”²⁹ The FCC, however, later expressly declined to amend rule 69.5(b), finding “this is not an appropriate time to assess interstate access charges *on the enhanced services industry*.”³⁰

Industry practice reflects the Commission’s rules in this regard. Verizon itself, in its recent interconnection agreements with Level 3, recognizes implicitly that it has not received access charges on IP-PSTN traffic to date and claims that its right to access charges hinges on the Commission’s IP-Enabled Services rulemaking.³¹

In its December 13, 2004 *ex parte*, Verizon does not even attempt to demonstrate that IP-PSTN providers qualify as “interexchange carriers,” the only category of provider subject to access charges. Indeed, Verizon *cannot* show that IP-PSTN providers are interexchange carriers because, by definition,

²⁴ *Access Charge Reform*, First Report and Order, 12 FCC Rcd. 15,982, 16,131-32 ¶ 341 (1997) (emphasis added) (“*Access Charge Reform Order*”).

²⁵ *Id.* at 16,134-35 ¶ 348.

²⁶ *Id.* at 16,131-32 ¶ 341 (emphasis added); *see also MTS and WATS Market Structure, Phase I*, Memorandum Opinion and Order, 97 FCC 2d 682, 715 ¶ 83 (1983).

²⁷ *Access Charge Reform Order*, 12 FCC Rcd. at 16,132 ¶ 342.

²⁸ *See MTS and WTS Market Structure*, 97 FCC 2d at 715, 769 ¶ 83 & App. A.

²⁹ *See Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, Notice of Proposed Rulemaking, 2 FCC Rcd. 4305, 4307, App. A (1987). The FCC proposed modifying rule 69.5(b) to read, “Carrier’s carrier charges shall be computed and assessed upon all interexchange carriers *or enhanced service providers* that use local exchange switching facilities for the provision of interstate or foreign telecommunications services *or enhanced services*.” *Id.* (emphasis added).

³⁰ *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, Order, 3 FCC Rcd. 2631, 2633 ¶ 20 (1988) (emphasis added).

³¹ *See, e.g.,* Amendment No. 2 to the Interconnection Agreement Between Verizon North Inc. and Level 3 Communications LLC, Attach. A, §§ 2.2, 3.2 (Oct. 20, 2004) (“*Verizon North – Level 3 Interconnection Amendment*”) (attached as Exhibit B).

the communications they carry undergo net protocol conversions, which render IP-PSTN providers information service providers as a matter of law.³²

Absent any argument that IP-PSTN providers are interexchange carriers, Verizon suggests implicitly that they are subject to access charges regardless of their classification. But, as described above, that argument ignores the terms of the rules itself. Rule 69.5(b), by its plain terms, does not subject any enhanced services provider (“ESP”) to carrier’s carrier charges, regardless of whether traffic originates from or terminates to an ESP, and regardless of whether the call is between an ESP and its customer or between an ESP and someone other than its customer. On this point, rule 69.5(b) is unambiguous: access charges do not apply to ESPs.

III. Verizon Mischaracterizes IP-PSTN Service As Merely A Replacement For Traditional Wireline Toll Service

A central feature of Verizon’s strategy to preserve its access charge revenues is to propagate the myth that IP-PSTN service is no more than a replacement for traditional wireline toll service.³³ Consumers can and do use IP-PSTN services to replace traditional wireline toll services (in the same way they use wireless services to replace toll service), but consumers receive much more from VoIP service than just long-distance calling. Far from representing only long-distance toll replacement, VoIP (and IP-PSTN service in particular) provides users with an unprecedented and dynamic suite of communications functionalities tailored to their needs, and allows for simultaneous communications among, across and within jurisdictions. Consumers thus subscribe to IP-PSTN service both as a substitute for circuit-switched communications—whether “local” or “long distance”—and for the enhanced capabilities that the IP platform allows.

The numbers of consumers who select IP-enabled options as replacements for *all* wireline circuit-switched communications services (*i.e.*, long-distance *and* local) should increase in coming years as cable companies and others deploy additional IP-enabled communications products.³⁴ Indeed, Verizon’s description of its own “VoiceWing” product confirms the “any distance” nature of VoIP service: “VoiceWing” includes, *inter alia*, “unlimited local calling,” “unlimited domestic long distance,” and “traditional and IP calling features” for a single, unified price of \$34.95 for Verizon DSL customers and \$39.95 for other broadband customers.³⁵

Verizon’s narrow perception of IP-PSTN service as a toll-service replacement disregards the true nature of the service. In the interest of preserving its access-charge revenue streams, Verizon elides the

³² See *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21,905, 21,956 ¶ 104 (1996) (“[B]oth protocol conversion and protocol processing services are information services under the 1996 Act.”).

³³ See *Verizon December 13, 2004 Ex Parte*, attachment 1 at 2.

³⁴ By some estimates, cable VoIP offerings alone will replace 17.4 percent of RBOCs’ consumer primary access lines by 2010. See Bernstein Research Call, *Cable and Telecom: VoIP Deployment and Share Gains Accelerating; Will Re-Shape Competitive Landscape in 2005* at 1 (Dec. 7, 2004) (“*Bernstein Cable VoIP Report*”).

³⁵ *Verizon December 13, 2004 Ex Parte*, attachment 2 at 3.

“all distance” nature of VoIP services and the array of enhanced functionalities that such services (including its own) can offer.

IV. Using Telephone Numbers to Classify Calls Ignores the Commission’s Conclusions in the *Vonage Order* And Conflicts with Verizon’s Position on ISP-Bound Traffic

Verizon also suggests in its December 13, 2004 ex parte that IP-PSTN service providers should rely on calling and called party telephone numbers (NPA-NXX codes) to determine the applicable intercarrier compensation regime (reciprocal compensation, intrastate access, or interstate access).³⁶ But Verizon cannot offer any justification for its suggestion beyond the desire to find a means to apply legacy access charges to VoIP. Verizon cites no *service-related* reason to determine a call’s endpoints. Indeed, SBC—Verizon’s fellow RBOC—recognizes the futility of tracking endpoints, as “devot[ing] dollars to developing [such] useless, inefficient technological capabilities . . . would improve neither service nor efficiency.”³⁷ Classifying IP-PSTN calls based on NPA-NXX codes as Verizon suggests serves no purpose beyond propping up above-cost access.

Verizon’s proposed NPA-NXX proxy for determining the geographic endpoint of an IP-PSTN communication conflicts directly with the *Vonage Order*, in which the Commission concluded that NPA-NXX codes and customer billing addresses are “very poor fits” for caller locations in the IP context.³⁸ Using them as proxies for location provides little value because a call to an IP end user’s number “can reach that customer anywhere in the world and does not require the user to remain at a single location”:³⁹

Indeed, it is the total lack of dependence on *any* geographically defined location that most distinguishes [IP-PSTN services] from other services whose federal and state jurisdiction is determined based on the geographic end points of the communications.⁴⁰

Verizon does not even attempt to harmonize its suggested approach with the *Vonage Order*.

Verizon’s approach to NPA-NXX codes in the IP-PSTN context diverges from its wholly unsupported approach with respect to traffic bound for ISPs. In the Commission’s ISP-Bound Traffic proceeding, Verizon argues that Section 251(b)(5) of the Communications Act (which obligates local exchange carriers to establish reciprocal compensation arrangements) applies only to local traffic.⁴¹ As

³⁶ See *id.*, attachment 1 at 3.

³⁷ *Petition of SBC Communications Inc. for a Declaratory Ruling*, WC Docket No. 04-29, at 38 (filed Feb. 5, 2004). See also *Comments of SBC Communications, Inc.*, WC Docket No. 04-36, at 29-33 (filed May 28, 2004).

³⁸ *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd. 22,404, 22,422 ¶ 29 (2004) (“*Vonage Order*”).

³⁹ *Id.* at 22,408 ¶ 9.

⁴⁰ *Id.* at 22,420 ¶ 25 (emphasis in original).

⁴¹ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Internet-Bound

Level 3 has explained in detail in other filings,⁴² however, the Commission⁴³ and the U.S. Court of Appeals for the D.C. Circuit⁴⁴ have flatly rejected Verizon's reading of Section 251(b)(5). All the same, Verizon proceeds from that unsupportable foundation to argue that providers must determine a call's endpoints in order to assess whether it is local. In the ISP-bound context, where NPA-NXX codes would suggest calls are "local" under Verizon's view of Section 251(b)(5) and outside of the access charge regime, Verizon argues that NPA-NXX codes are unreliable proxies and that the inquiry should focus on the actual locations of the endpoints instead.⁴⁵

In the VoIP context, by contrast, Verizon argues that NPA-NXX codes *should* serve as proxies. This approach to NPA-NXX codes contradicts its approach to ISP-bound traffic context, but it achieves the same end: preservation of profitable access charges receipts and avoidance of reciprocal compensation payments. In other words, Verizon has proposed a self-serving double standard: NPA-NXX codes should always serve as proxies when they would produce access charge revenues (*i.e.*, VoIP traffic), and never when they would place calls under the reciprocal compensation regime (*i.e.*, ISP-bound traffic).

Finally, in its myriad *ex parte* and comments filed in VoIP-related proceedings, Verizon never addresses how, in the face of the Commission's conclusion that IP-PSTN traffic is jurisdictionally *interstate*, Verizon could levy *intrastate* access charges on traffic based on NPA-NXX codes that the Commission has already held are insufficient to establish state jurisdiction.⁴⁶ Indeed, the Commission has recognized that the advanced functionalities of IP-PSTN services are "designed to overcome

Traffic Is Not Compensable Under Section 251(b)(5) and 252(d)(2) (ex parte submission of Verizon and BellSouth Corporation) (filed May 17, 2004).

⁴² See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Sections 251(b)(5) and 252(d)(2) Govern ISP-Bound Traffic and Are Not Limited to "Local" Termination (ex parte submission of Level 3 Communications LLC) (filed June 23, 2004).

⁴³ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9164-66 ¶¶ 26, 31 (2001) (finding that the Commission had "erred in focusing on the nature of the service (*i.e.*, local or long distance) . . . for purposes of interpreting the relevant scope of section 251(b)(5)," and concluding instead that, "[o]n its face," Section 251(b)(5) requires "local exchange carriers . . . to establish reciprocal compensation arrangements for the transport and termination of *all* 'telecommunications' they exchange with another telecommunications carrier, without exception") (emphasis in original).

⁴⁴ See *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2000) (holding that Section 251(b)(5) provides the default intercarrier compensation regime for all traffic other than traffic subject to pre-1996 Act rules carved out rules pursuant to Section 251(g)).

⁴⁵ See, *e.g.*, Letter from Donna Epps (Verizon Vice President, Federal Regulatory Advocacy) to Marlene H. Dortch, CC Docket Nos. 99-68, 01-92, attachment 1 at 1 (filed Dec. 16, 2004) ("*Verizon Virtual NXX Ex Parte*").

⁴⁶ See Level 3 Reply Comments at 57-60 (explaining that IP-PSTN traffic is jurisdictionally interstate and therefore entirely exempt from intrastate access charges).

geography, not track it.”⁴⁷ As a result, the Commission found no “plausible approach” to separating such traffic “into interstate and intrastate components,”⁴⁸ and it concluded that NPA-NXX codes are “very poor” proxies for such determinations.⁴⁹ Thus, Verizon’s suggestions would subject the Commission to summary reversal, as Verizon would require the Commission to take blatantly inconsistent positions with respect to the separability of IP-PSTN traffic and the use of NPA-NXX codes as proxies for endpoint locations.

Verizon’s inconsistent and unsupported approach to NPA-NXX codes, coupled with its perfectly consistent view of access charges, reveals its true agenda with respect to intercarrier compensation reform. Verizon fights tooth and nail to subject all traffic to the outdated access regime, while the Commission works to reform the regime and craft a single, unified approach to intercarrier compensation. Level 3’s Forbearance Petition, in contrast, provides the Commission an opportunity to take a meaningful step toward true intercarrier compensation reform.

V. Implementation Issues Can Be Resolved Relatively Easily, And They Do Not Preclude Forbearance

Verizon observes correctly that, if the FCC forbears as Level 3 requests, providers must distinguish IP-PSTN calls from PSTN-PSTN calls in order to assess intercarrier compensation obligations accurately.⁵⁰ Verizon is wrong, however, to suggest that making such distinctions would impose huge costs rendering forbearance uneconomic.

There are many ways carriers could choose to implement the clarified rules Level 3 seeks in its Petition. In the first instance, carriers could percentage usage factors to determine the amount of charges for IP-PSTN traffic, and the amount of charges for other traffic. Level 3’s interconnection agreement with Verizon, for example, requires the sending carrier to give the receiving carrier percentage usage factors whenever traffic cannot be classified on an automated basis.⁵¹ IP-originated traffic could be included within the existing “Percent Local Usage” factor.

In addition, existing technology provides ways of identifying IP-originated traffic. For example, Level 3 has placed in the record a proposal that IP-PSTN providers add Originating Line Information (“OLI”) indicators to their outbound call signals.⁵² These OLI fields are already present in the network today, as part of the existing “flex-ANI” technology. Likewise, SBC recently issued an Accessible Letter notifying interconnectors that it would begin using specific Exchange Message Interface (EMI) records to “indicat[e] that the transaction is IP originated.”⁵³ If the Commission sets the compensation

⁴⁷ *Vonage Order*, 19 FCC Rcd. at 22,420 ¶ 25.

⁴⁸ *Id.* at 22,418 ¶ 23.

⁴⁹ *Id.* at 22,422 ¶ 29.

⁵⁰ *See Verizon December 13, 2004 Ex Parte*, attachment 1 at 6.

⁵¹ *See, e.g., Verizon North – Level 3 Interconnection Amendment*, Attach. A § 6.4 (attached as Exhibit B).

⁵² *See, e.g., Letter from John T. Nakahata (counsel for Level 3) to Marlene H. Dortch*, WC Docket Nos. 03-266, 04-36 (filed Sept. 24, 2004) (explaining OLI signaling).

⁵³ *See SBC Accessible Letter, (Business Processes) EMI Changes Related to TIPToP Usage* (Nov. 30, 2004) (attached as Exhibit C).

rules clearly, the industry can develop and implement similar solutions for tracking and recording this traffic.

While these VoIP-call identification solutions would subject providers to modest costs, Verizon's alternative—*i.e.*, requiring IP-PSTN providers to track users' geographic locations and alter back-office operations accordingly in order to assess access charges—would generate enormous costs and inefficiencies. In addition to the sizeable cost of developing a technical fix from scratch, IP-PSTN providers would have to implement the expensive information technology infrastructure necessary for tracking, verifying and auditing access charge bills. Moreover, to the extent that applying access charges forced VoIP providers to convert their "all-you-can-eat" pricing models to per-minute billing systems, VoIP providers would have to invest in additional information technology infrastructure necessary to bill these currently fixed-rate consumers on a usage basis. Converting to the billing system of the past would generate additional technical challenges, and it would escalate customer-relation costs. As a Wall Street analyst has explained:

[T]he key advantages of the all-you-can-eat pricing model are speed to market and lower costs. Per-minute pricing requires a massive IT infrastructure to support integrated call detail recording, customer service, billing and remittance processing systems. None of that is necessary in a flat-rate world. In addition, as much as half of incoming calls to phone company call centers relates to call detail on bills. By replacing per minute pricing with a single line item, operators radically reduce the cost of customer service.⁵⁴

Most troubling, these massive costs would serve no purpose beyond propping up a convoluted intercarrier compensation system that the Commission aims to replace. Requiring such retro-fits "for the purpose of adhering to a regulatory analysis that served another network would be forcing changes on this service for the sake of regulation itself, rather than for any particular policy purpose."⁵⁵

Verizon's claims of implementation issues are a red herring. What is of paramount importance is that the Commission clarify the intercarrier compensation rules applicable to IP-PSTN traffic: who owes whom, and at what rate, when traffic is exchanged between a carrier serving an IP provider (and its end user) and a carrier serving a PSTN end user.

⁵⁴ *Bernstein Cable VoIP Report* at 11; *see also Vonage Order* 19 FCC Rcd. at 22,418-19 ¶ 23 ("[T]he significant costs and operational complexities associated with modifying or procuring systems to track, record and process geographic location information as a necessary aspect of the service would substantially reduce the benefits of using the Internet to provide the service, and potentially inhibit its deployment and continued availability to consumers.").

⁵⁵ *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, 19 FCC Rcd. 3307, 3320-21 ¶ 21 (2004); *see also Vonage Order*, 19 FCC Rcd. at 22,420-21 ¶ 25 ("[T]o require [IP-PSTN service providers] to attempt to incorporate geographic 'end-point' identification capabilities into its service solely to facilitate the use of an end-to-end approach would serve no legitimate policy purpose. Rather than encouraging and promoting the development of innovative, competitive advanced service offerings, we would be taking the opposite course, molding this new service into the same old familiar shape.").

Ms. Marlene H. Dortch
February 11, 2005
Page 12 of 12

* * * * *

Accordingly, Verizon has advanced no basis for the Commission to decline to grant Level 3's Forbearance Petition. Level 3 has met Section 10(a)'s statutory criteria, and forbearance is therefore required.

Sincerely,

/s/

John T. Nakahata

Counsel for Level 3 Communications LLC

EXHIBIT A



80 South Jefferson Road
Whippany, NJ 07981

Patricia A. Chirico
Executive Director
Tariffs, Rates, Costs & Average Schedules

RECEIVED

Voice: 973-884-8087
Fax: 973-884-8469
E-mail: pchiric@neca.org

DEC 15 2004

December 15, 2004

Federal Communications Commission
Office of Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

RE: MOU DATA/SUMMARY OF NECA TOTAL POOL RESULTS

Dear Ms. Dortch:

Enclosed is an original and five copies of historic interstate minutes of use (MOU) for the last quarter of 2003 and the first three quarters of 2004. The report displays company reported MOUs for non-NECA Common Line tariff participants and derived or reported MOUs for carriers participating in NECA's Common Line Pool from October 2003 through September 2004. In addition to this paper report, an electronic spreadsheet version of the report is enclosed.

Also enclosed are originals and five copies of each of the monthly summaries of pool results for third quarter 2004.

NECA checks the data and informs companies of any inconsistencies with previous reported numbers.

If there are any questions, please do not hesitate to call Victor Glass on (973) 884-8263. NECA's next MOU/Pooling filing is scheduled for March 15, 2005 and will include data for fourth quarter 2004.

Sincerely,

Enclosures

Cc: Service list

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

DECEMBER 2004 SUPPLEMENTAL REPORT OF ACCESS MINUTES

SAR-ID	SAR-ABBR	TIER	10/01/2003 To 12/31/2003	01/01/2004 To 03/31/2004	04/01/2004 To 06/30/2004	07/01/2004 To 09/30/2004
105111	VERIZON MAINE	1	436,143,826	425,206,041	425,788,315	457,079,887
115112	VERIZON MASS.	1	2,539,106,973	2,519,136,597	2,436,455,512	2,389,081,375
125113	VERIZON NEWHAMPSHIRE	1	592,549,860	620,273,889	597,275,584	577,247,865
135200	SOUTHERN NEW ENGLAND	1	1,925,909,385	1,973,898,914	1,934,728,933	1,907,508,380
145115	VERIZON VERMONT	1	293,980,420	298,060,024	287,589,323	293,397,841
150121	FRONTIER-ROCHESTER	1	292,807,323	299,218,952	283,441,155	296,124,923
154532	CITIZENS-FRONTIER-NY	1	162,668,269	172,349,024	160,682,064	223,956,511
154533	CITIZENS-FRONTIER-NY	1	11,277,287	11,896,951	11,217,203	14,156,082
155130	VERIZON NEW YORK	1	17,453,186	18,640,029	17,419,079	25,184,022
160138	UNITED TEL - NJ, INC	1	5,447,874,543	5,314,880,147	5,116,886,926	4,926,372,478
165120	VERIZON NEW JERSEY	1	178,924,994	173,747,080	166,617,731	171,169,648
170169	VERIZON NORTH-PA	1	4,018,080,228	3,975,666,266	3,772,130,032	3,656,776,187
170170	VERIZON N-PA(CONTEL)	1	318,545,406	336,775,304	317,629,487	301,586,415
170201	VERIZON N-PA(QUAKER)	1	39,315,706	37,074,065	35,284,349	36,048,626
170209	UTC OF PENNSYLVANIA	1	43,018,312	41,903,236	40,041,158	32,469,119
175000	VERIZON PENNSYLVANIA	1	257,354,349	267,878,148	264,451,474	253,673,818
185030	VERIZON MARYLAND INC	1	3,286,227,040	3,299,820,807	3,135,000,757	3,051,151,643
190233	VERIZON S-VA(CONTEL)	1	2,683,052,545	2,642,460,317	2,527,628,814	2,506,986,050
190479	VERIZON SOUTH-VA	1	560,172,483	560,934,395	535,665,539	526,680,663
190567	UNITED INTER-MT-VA	1	30,742,425	32,865,556	30,687,843	32,698,442
195040	VERIZON VIRGINIA INC	1	91,878,829	92,609,652	84,940,332	81,507,717
205050	VERIZON WVA INC.	1	2,488,584,663	2,420,473,550	2,291,349,341	2,165,843,732
210328	VERIZON FLORIDA, INC.	1	707,190,445	723,561,918	684,843,535	670,286,151
210341	SPRINT-FLORIDA, INC.	1	1,790,819,285	1,892,980,415	1,772,326,749	1,778,141,391
215191	SOUTHERN BELL-FL	1	1,565,757,475	1,757,552,810	1,635,499,963	1,642,196,798
223037	ALLTEL GEORGIA COMM.	1	4,055,532,967	4,256,969,300	4,139,709,171	4,139,096,975
225192	SOUTHERN BELL-GA	1	220,225,400	228,486,235	229,692,153	235,236,977
230470	CAROLINA TEL & TEL	1	2,719,889,660	2,740,573,393	2,704,955,969	2,718,972,120
230479	VERIZON SOUTH-NC	1	912,792,083	912,361,163	909,408,202	946,834,599
230509	VERIZON S-NC(CONTEL)	1	184,407,747	180,403,829	173,907,850	165,395,664
235193	SOUTHERN BELL-NC	1	113,757,522	111,921,596	111,315,540	129,577,653
240479	VERIZON SOUTH-SC	1	1,571,418,437	1,563,995,922	1,493,400,425	1,482,503,076
240526	VERIZON S-SC(CONTEL)	1	140,440,604	140,584,490	136,331,538	149,010,655
245194	SOUTHERN BELL-SC	1	23,234,502	23,296,330	20,989,481	22,530,984
255181	SO CENTRAL BELL-AL	1	1,005,843,196	989,798,159	963,744,545	978,513,740
265061	CINCINNATI BELL-KY	1	1,190,398,729	1,190,204,010	1,155,351,160	1,166,919,906
265182	KY ALLTEL-LEXINGTON	1	108,558,962	110,878,816	110,738,227	109,565,759
269690	KY ALLTEL-LONDON	1	738,207,434	739,161,411	711,670,422	699,693,309
269691	KY ALLTEL-LONDON	1	315,124,086	316,812,759	309,560,081	305,179,569
275183	SO CENTRAL BELL-LA	1	68,175,946	71,473,672	71,210,626	73,325,645
285184	SO CENTRAL BELL-MS	1	1,319,505,467	1,296,644,367	1,270,951,597	1,283,439,474
290567	UNITED INTER-MT-TN	1	974,450,924	973,504,594	961,225,790	986,990,268
295185	SO. CENTRAL BELL -TN	1	162,456,160	175,850,872	168,636,791	162,493,923
300615	VERIZON NORTH-OH	1	1,590,786,117	1,608,624,972	1,561,976,024	1,556,378,256
300661	UTC OF OHIO	1	541,400,111	550,397,170	521,617,451	505,925,719
			381,035,193	390,963,517	383,526,564	369,120,746

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

DECEMBER 2004 SUPPLEMENTAL REPORT OF ACCESS MINUTES

SAR-ID	SAR-ABBR	TIER	10/01/2003 To 12/31/2003	01/01/2004 To 03/31/2004	04/01/2004 To 06/30/2004	07/01/2004 To 09/30/2004
305062	CINCINNATI BELL-OH	1	429,818,838	425,973,480	431,603,846	438,701,268
305150	OHIO BELL TEL CO	1	1,783,722,487	1,836,726,389	1,641,702,047	1,805,481,055
310695	VERIZON NORTH-MI	1	410,853,363	410,324,636	398,299,323	413,470,837
313033	VERIZON N-MI(ALL TEL)	1	36,208,918	36,869,846	35,012,190	35,746,945
315090	MICHIGAN BELL TEL CO	1	2,040,692,461	2,044,255,918	1,964,152,135	1,990,954,507
320772	VERIZON N-IN	1	531,705,279	531,276,943	504,127,560	507,075,091
320779	VERIZON N-IN(CONTEL)	1	130,116,520	132,432,169	125,999,991	123,373,891
320832	UTC OF INDIANA	1	176,240,625	183,031,769	182,819,199	183,794,546
323034	VERIZON N-IN(ALL TEL)	1	5,576,938	5,755,749	5,651,782	5,551,257
325080	INDIANA BELL TEL CO	1	1,097,172,099	1,113,881,475	1,120,894,379	1,134,900,863
330886	VERIZON NORTH-WI	1	225,650,602	224,886,114	226,161,666	243,362,911
335220	WISCONSIN BELL	1	974,114,419	978,585,316	964,992,823	963,540,312
341015	VERIZON NORTH-IL	1	379,716,644	384,127,253	375,412,365	389,741,366
341036	VERIZON N-IL(CONTEL)	1	78,886,050	79,114,894	77,285,705	78,804,812
343035	VERIZON S-IL(ALL TEL)	1	20,202,524	20,297,809	20,315,174	19,419,647
345070	ILLINOIS BELL TEL CO	1	3,405,442,627	3,435,947,349	3,429,059,741	3,419,621,598
355141	QWEST CORP-IA	1	664,072,485	671,075,806	651,499,238	629,691,215
365142	QWEST CORP-MN	1	1,131,556,775	1,160,741,916	1,142,809,003	1,103,216,189
367123	CITIZENS-FRONTIER-MN	1	2,352,142	2,583,490	2,294,268	2,118,448
371568	ALLTEL NEBRASKA, INC	1	171,759,707	176,295,863	173,619,131	169,162,592
375143	QWEST CORP-NE	1	301,576,897	299,286,092	288,128,799	282,460,009
385144	QWEST CORP-ND	1	128,340,787	124,927,573	120,767,485	114,672,740
395145	QWEST CORP-SD	1	168,300,774	159,747,437	154,149,945	148,010,223
405211	SOUTHWESTERN BELL-AR	1	726,244,987	732,816,100	708,814,604	696,780,679
415214	SOUTHWESTERN BELL-KS	1	853,026,681	852,798,500	830,615,295	794,718,822
425213	SOUTHWESTERN BELL-MO	1	1,621,512,682	1,642,444,882	1,604,268,800	1,557,496,100
429784	CENTURYTEL-MO CEN	1	66,531,841	65,130,360	63,170,153	61,967,946
429785	CENTURYTEL-MO BELLE	1	2,558,215	2,709,110	2,645,424	2,577,868
429786	CENTURYTEL-MO SOUTH	1	19,192,192	19,778,927	19,244,890	19,319,996
429787	CENTURYTEL-MO SW	1	162,992,982	165,407,873	164,859,566	168,016,194
435215	SOUTHWESTERN BELL-OK	1	1,083,249,935	1,088,870,728	1,061,445,198	1,028,889,174
442080	GTE SW VERIZON-TX	1	886,326,832	887,467,480	873,587,707	873,992,751
442154	GTE-SW VERIZON-TX	1	55,545,778	57,600,723	56,037,549	59,447,321
445216	SOUTHWESTERN BELL-TX	1	4,831,936,483	4,952,269,865	4,956,073,995	4,839,624,510
452302	VERIZON CALIF-AZ	1	8,581,054	9,388,906	8,190,657	8,056,407
455101	QWEST CORP-AZ	1	1,824,440,788	1,916,707,832	1,855,797,405	1,735,630,922
465102	QWEST CORP-CO	1	1,923,374,488	1,988,652,900	1,921,887,951	1,897,209,270
472416	VERIZON N'WEST-ID	1	123,037,120	119,866,183	119,390,768	121,498,727
475103	QWEST CORP-ID	1	407,426,728	411,178,951	398,333,021	389,022,456
475162	QWEST CORP-IDAHO	1	24,942,399	25,272,632	25,243,469	25,151,812
485104	QWEST CORP-MT	1	306,142,942	307,568,138	299,550,584	293,910,694
495105	QWEST CORP-NM	1	668,386,913	693,792,646	679,843,912	666,417,880
505107	QWEST CORP-UT	1	681,609,898	726,881,771	694,693,789	669,374,233
515108	QWEST CORP-WY	1	218,379,864	214,710,710	214,710,710	221,524,443
522416	QWEST CORP-WA	1	527,542,083	511,981,705	495,218,092	494,238,512
522449	VERIZON N'WEST-WA	1	53,648,651	49,953,977	49,423,554	50,963,759
525161	QWEST CORP-WA	1	1,507,268,944	1,556,777,399	1,534,805,685	1,496,326,269

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

DECEMBER 2004 SUPPLEMENTAL REPORT OF ACCESS MINUTES

SAR-ID	SAR-ABBR	TIER	10/01/2003 To 12/31/2003	01/01/2004 To 03/31/2004	04/01/2004 To 06/30/2004	07/01/2004 To 09/30/2004
532416	VERIZON N'WEST-OR	1	328,214,204	329,048,146	310,353,006	301,400,627
535163	WEST CORP-OR	1	869,343,635	906,442,026	889,263,859	864,310,108
542302	VERIZON CA(CONTEL)	1	217,693,822	267,287,358	230,074,624	225,741,834
542319	VERIZON-CA (GTE)	1	2,112,634,037	2,095,869,197	1,949,031,354	1,861,120,569
542344	VERIZON W-COAST-CA	1	8,977,507	9,152,825	8,915,779	9,308,796
545170	PACIFIC BELL	1	8,266,554,505	8,464,740,286	8,262,116,423	7,996,507,371
552302	VERIZON CALIF-NV	1	40,809,392	40,758,544	40,641,709	42,977,453
552348	CENTEL OF NV	1	1,015,968,858	1,044,878,418	1,059,425,235	1,029,335,799
555173	NEVADA BELL	1	323,888,001	332,547,008	322,183,334	320,670,817
565010	VERIZON DELAWARE INC	1	466,679,769	450,750,610	428,762,556	431,106,049
575020	VERIZON WA, DC INC.	1	603,560,384	576,056,899	583,557,478	568,543,608
585114	VERIZON RHODE ISLAND	1	353,043,821	353,563,765	342,263,278	323,362,119
623100	VERIZON HAWAII-HI	1	416,385,687	433,296,792	410,364,099	396,948,763
633200	PRTC - CENTRAL	1	78,456,063	77,523,665	79,663,098	81,552,205
633201	PUERTO RICO TEL CO	1	663,292,008	689,719,642	725,980,522	752,112,466
	NON-TIER 1		11,024,822,690	11,284,003,048	11,083,482,419	11,394,212,585
	Total Tier 1		96,760,578,648	97,996,979,636	94,992,908,742	93,784,059,432
	Total Industry		107,785,401,338	109,280,982,684	106,076,401,161	105,178,272,017

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.
SUMMARY OF POOL RESULTS FOR THE MONTH ENDING July 31, 2004
REPORTED AS OF September 2004

<u>COMMON LINE (CL) (NOTE 1)</u>	<u>Current Month</u>	2004 <u>Pool YTD</u> <u>(NOTE 2)</u>
Carrier Common Line (CCL) Earned Revenues		
Premium	0	0
Non-Premium	0	0
Special Access Surcharge	9,017,032	61,519,728
CCL Net Realized Uncollectibles	455,931	2,887,480
CCL Net Earned Revenue	8,561,101	58,632,248
End User Net Earned Revenue (Note 3)	83,264,680	581,719,143
Total Common Line Net Earned Revenues	91,825,781	640,351,391
ICLS	74,836,248	272,620,143
Long Term Support	0	243,831,816
Total Common Line Revenues	166,662,029	1,156,803,350
NECA Administrative Costs	2,303,770	15,528,515
Average Schedule Company Settlements	30,995,719	213,245,368
Common Line Expenses & Other Taxes	104,226,644	723,164,961
Common Line Adjusted Federal Income Tax	6,374,850	45,098,566
Total Common Line Expenses	143,900,983	997,037,410
Common Line Residue For Distribution (Note 4)	22,761,046	159,765,940
Common Line Net Investment	2,352,719,392	1,365,418,340
Annualized Common Line Residue Ratio (Note 5)	11.61%	11.70%

Note 1: All of the individual line items include some estimates and are subject to further adjustments under current NECA procedures.

Note 2: The 2004 Pool Year is the period beginning January 1, 2004 through December 31, 2004. The Net Investment is an average of the cumulative months reported.

Note 3: Amount includes End User SLC Waiver Revenue for NECA Tariff participants.

Note 4: Residue for Distribution is Total Revenues less Total Expenses.

Note 5: Annualized Residue Ratio in the CURRENT MONTH is calculated by dividing the amount of Residue for Distribution by the amount of Net Investment and multiplying by 12 months x 100. The Pool YTD is computed by dividing the YTD Residue for Distribution by the YTD sum of the monthly Net Investment amounts, divided by 12, as shown in the table above.

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.
SUMMARY OF POOL RESULTS FOR THE MONTH ENDING August 30, 2004
REPORTED AS OF October 2004

<u>COMMON LINE (CL) (NOTE 1)</u>	<u>Current Month</u>	2004 <u>Pool YTD</u> <u>(NOTE 2)</u>
Carrier Common Line (CCL) Earned Revenues		
Premium	0	0
Non-Premium	0	0
Special Access Surcharge	9,049,711	70,545,023
CCL Net Realized Uncollectibles	377,679	3,270,590
CCL Net Earned Revenue	8,672,032	67,274,433
End User Net Earned Revenue (Note 3)	82,781,428	664,492,202
Total Common Line Net Earned Revenues	91,453,460	731,766,635
ICLS	74,836,248	347,456,391
Long Term Support	0	243,831,816
Total Common Line Revenues	166,289,708	1,323,054,842
NECA Administrative Costs	1,885,792	17,414,307
Average Schedule Company Settlements	31,082,824	244,266,966
Common Line Expenses & Other Taxes	104,254,289	827,497,999
Common Line Adjusted Federal Income Tax	6,355,873	51,353,370
Total Common Line Expenses	143,578,778	1,140,532,642
Common Line Residue For Distribution (Note 4)	22,710,930	182,522,200
Common Line Net Investment	2,359,772,844	1,565,028,266
Annualized Common Line Residue Ratio (Note 5)	11.55%	11.66%

Note 1: All of the individual line items include some estimates and are subject to further adjustments under current NECA procedures.

Note 2: The 2004 Pool Year is the period beginning January 1, 2004 through December 31, 2004. The Net Investment is an average of the cumulative months reported.

Note 3: Amount includes End User SLC Waiver Revenue for NECA Tariff participants.

Note 4: Residue for Distribution is Total Revenues less Total Expenses.

Note 5: Annualized Residue Ratio in the CURRENT MONTH is calculated by dividing the amount of Residue for Distribution by the amount of Net Investment and multiplying by 12 months x 100. The Pool YTD is computed by dividing the YTD Residue for Distribution by the YTD sum of the monthly Net Investment amounts, divided by 12, as shown in the table above.

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.
SUMMARY OF POOL RESULTS FOR THE MONTH ENDING September 30, 2004
REPORTED AS OF November 2004

<u>COMMON LINE (CL) (NOTE 1)</u>	<u>Current Month</u>	2004 <u>Pool YTD</u> <u>(NOTE 2)</u>
Carrier Common Line (CCL) Earned Revenues		
Premium	0	0
Non-Premium	0	0
Special Access Surcharge	9,040,974	79,576,681
CCL Net Realized Uncollectibles	376,230	3,745,341
CCL Net Earned Revenue	8,664,744	75,831,340
End User Net Earned Revenue (Note 3)	82,363,116	746,910,235
Total Common Line Net Earned Revenues	91,027,860	822,741,575
ICLS	74,836,248	422,292,639
Long Term Support	0	243,831,816
Total Common Line Revenues	165,864,108	1,488,866,030
NECA Administrative Costs	2,230,375	19,644,682
Average Schedule Company Settlements	30,814,899	274,692,804
Common Line Expenses & Other Taxes	104,626,018	933,666,982
Common Line Adjusted Federal Income Tax	6,128,231	57,416,637
Total Common Line Expenses	143,799,523	1,285,421,105
Common Line Residue For Distribution (Note 4)	22,064,585	203,444,925
Common Line Net Investment	2,355,996,996	1,761,798,269
Annualized Common Line Residue Ratio (Note 5)	11.24%	11.55%

Note 1: All of the individual line items include some estimates and are subject to further adjustments under current NECA procedures.

Note 2: The 2004 Pool Year is the period beginning January 1, 2004 through December 31, 2004. The Net Investment is an average of the cumulative months reported.

Note 3: Amount includes End User SLC Waiver Revenue for NECA Tariff participants.

Note 4: Residue for Distribution is Total Revenues less Total Expenses.

Note 5: Annualized Residue Ratio in the CURRENT MONTH is calculated by dividing the amount of Residue for Distribution by the amount of Net Investment and multiplying by 12 months x 100. The Pool YTD is computed by dividing the YTD Residue for Distribution by the YTD sum of the monthly Net Investment amounts, divided by 12, as shown in the table above.

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.
SUMMARY OF POOL RESULTS FOR THE MONTH ENDING July 31, 2004
REPORTED AS OF September 2004

<u>TRAFFIC SENSITIVE (TS) (Note 1)</u>	<u>Current Month</u>	2004 <u>Pool YTD</u> <u>(NOTE 2)</u>
TS Earned Revenue	66,977,745	466,232,028
Local Switching Support	27,090,990	189,919,776
TS Net Realized Uncollectibles	98,812	798,265
TS Net Earned Revenue	93,969,923	655,353,539
Total Traffic Sensitive Revenues	93,969,923	655,353,539
NECA Administrative Costs	1,378,668	9,265,986
Average Schedule Company Settlements	29,342,904	213,931,840
TS Expenses & Other Taxes	43,072,572	301,771,770
TS Adjusted Federal Income Tax	4,576,996	29,098,004
Total Traffic Sensitive Expenses	78,371,140	554,067,600
TS Residue For Distribution (Note 3)	15,598,783	101,285,939
TS Net Investment	1,136,564,269	662,846,099
Annualized Traffic Sensitive Residue Ratio (Note 4)	16.47%	15.28%

Note 1: All of the individual line items include some estimates and are subject to further adjustments under current NECA procedures.

Note 2: The 2004 Pool Year is the period beginning January 1, 2004 through December 31, 2004. The Net Investment is an average of the cumulative months reported.

Note 3: Residue for Distribution is Total Revenues less Total Expenses.

Note 4: Annualized Residue Ratio in the CURRENT MONTH is calculated by dividing the amount of Residue for Distribution by the amount of Net Investment and multiplying by 12 months x 100. The Pool YTD is computed by dividing the YTD Residue for Distribution by the YTD sum of the monthly Net Investment amounts, divided by 12.

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.
SUMMARY OF POOL RESULTS FOR THE MONTH ENDING August 30, 2004
REPORTED AS OF October 2004

<u>TRAFFIC SENSITIVE (TS) (Note 1)</u>	<u>Current Month</u>	<u>2004 Pool YTD (NOTE 2)</u>
TS Earned Revenue	68,357,996	534,948,206
Local Switching Support	27,090,990	217,010,766
TS Net Realized Uncollectibles	17,404	815,983
TS Net Earned Revenue	95,431,582	751,142,989
Total Traffic Sensitive Revenues	95,431,582	751,142,989
NECA Administrative Costs	1,128,533	10,394,519
Average Schedule Company Settlements	30,208,005	244,158,254
TS Expenses & Other Taxes	43,248,827	345,936,109
TS Adjusted Federal Income Tax	4,767,472	33,705,688
Total Traffic Sensitive Expenses	79,352,837	634,194,570
TS Residue For Distribution (Note 3)	16,078,745	116,948,419
TS Net Investment	1,139,338,014	758,662,910
Annualized Traffic Sensitive Residue Ratio (Note 4)	16.93%	15.42%

Note 1: All of the individual line items include some estimates and are subject to further adjustments under current NECA procedures.

Note 2: The 2004 Pool Year is the period beginning January 1, 2004 through December 31, 2004. The Net Investment is an average of the cumulative months reported.

Note 3: Residue for Distribution is Total Revenues less Total Expenses.

Note 4: Annualized Residue Ratio in the CURRENT MONTH is calculated by dividing the amount of Residue for Distribution by the amount of Net Investment and multiplying by 12 months x 100. The Pool YTD is computed by dividing the YTD Residue for Distribution by the YTD sum of the monthly Net Investment amounts, divided by 12.

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.
SUMMARY OF POOL RESULTS FOR THE MONTH ENDING September 30, 2004
REPORTED AS OF November 2004

<u>TRAFFIC SENSITIVE (TS) (Note 1)</u>	<u>Current Month</u>	<u>2004 Pool YTD (NOTE 2)</u>
TS Earned Revenue	68,123,550	603,635,067
Local Switching Support	27,090,990	244,101,756
TS Net Realized Uncollectibles	26,059	957,969
TS Net Earned Revenue	95,188,481	846,778,854
Total Traffic Sensitive Revenues	95,188,481	846,778,854
NECA Administrative Costs	1,334,745	11,729,264
Average Schedule Company Settlements	30,072,622	274,246,641
TS Expenses & Other Taxes	43,348,815	390,233,019
TS Adjusted Federal Income Tax	4,621,317	38,110,697
Total Traffic Sensitive Expenses	79,377,499	714,319,621
TS Residue For Distribution (Note 3)	15,810,982	132,459,233
TS Net Investment	1,139,309,332	854,681,655
Annualized Traffic Sensitive Residue Ratio (Note 4)	16.65%	15.50%

Note 1: All of the individual line items include some estimates and are subject to further adjustments under current NECA procedures.

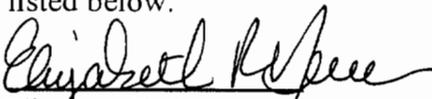
Note 2: The 2004 Pool Year is the period beginning January 1, 2004 through December 31, 2004. The Net Investment is an average of the cumulative months reported.

Note 3: Residue for Distribution is Total Revenues less Total Expenses.

Note 4: Annualized Residue Ratio in the CURRENT MONTH is calculated by dividing the amount of Residue for Distribution by the amount of Net Investment and multiplying by 12 months x 100. The Pool YTD is computed by dividing the YTD Residue for Distribution by the YTD sum of the monthly Net Investment amounts, divided by 12.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOU and pooling report was served this 15th day of December 2004, by mailing copies thereof by United States Mail, first class postage paid, or by hand delivery, to the persons listed below.

By: 
Elizabeth R. Newson

The following parties were served:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC. 20554*
(Original and five copies)

Jim Lande
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, SW
Washington, DC 20554

Lawrence Povich
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

William Maher
Chief – Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Robert M. Pepper
Chief, Office of Plans & Policy
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Eugene Gold
Wireline Competition Bureau
Federal Communication Commission
445 12th Street, SW
Washington, DC 20554

Bryan Clopton*
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
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Jose Rodriguez
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
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Stephen Burnett*
Wireline Competition Bureau
Federal Communications Commission
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Alex Belinfante*
Wireline Competition Bureau
Federal Communications Commission
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Orjiakor Isiogu
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Thomas Dunleavy
New York State Public Service
Commission
Three Empire State Plaza
Albany, NY 12223

Lila A. Jaber
Florida Public Service Commission
2540 Shumard Oak Blvd
Gerald Gunter Bldg
Tallahassee, FL 32399

Bob Rowe
Montana Public Service Commission
1701 Prospect Avenue
Helena, MT 59620

Bob Nelson
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Billy Jack Gregg
Consumer Advocate Division
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7th Floor, Union Building
Charleston, WV 25301

Greg Fogleman
Florida Public Service Commission
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Gerald Gunter Bldg.
Tallahassee, FL 32399- 0850

Carl Johnson
New York Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Lori Kenyon
Alaska Public Utilities Commission
701 West Eighth Avenue, Ste. 300,
Anchorage, AK 99501

Joel Shifman

Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta ME 04333- 0018

Peter Bluhm
Vermont Public Service Board
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Montpelier, VT 05620- 2701

Charlie Bolle
Nevada Public Utilities Commission
1150 E. Williams Street
Carson City, NV 89701- 3105

Peter A. Pescosolido
Connecticut Department of Public
Utility Control
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New Britain, CT 06051

Jeff Pursley
Nebraska Public Service Commission
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P. O. Box 94927
Lincoln, NE 68509- 4927

Mary E. Newmeyer
Alabama Public Service Commission
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Montgomery, AL 36104

Larry M. Stevens
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319

Brad Ramsay
NARUC
1101 Vermont Avenue NW, Ste. 200
Washington, DC 20005

David Dowds
Florida Public Service Commission
2540 Shumard Oaks Blvd.

Gerald Gunter Bldg.
Tallahassee, FL 32399- 0850

Jennifer A. Gilmore
Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington Street, Ste. E306
Indianapolis, IN 46204

Michael H. Lee
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Helena, MT 59620- 2601

Philip McClelland
PA Office of Consumer Advocate

555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101- 1923

Barbara Meisenheimer
Missouri Office of Public Counsel
301 West High St., Ste. 250
Truman Building
P. O. Box 7800
Jefferson City, MO 65102

Earl Poucher
Consumer Advocate Office of
the Public Counsel
111 West Madison, Rm. 812
Tallahassee, FL 32399

* Company specific data on diskette, as
well as paper

EXHIBIT B

Michael J. Wirl
Director
Regulatory and Governmental Affairs



100 Communications Drive
P.O. Box 49
Sun Prairie, WI 53590-0049

Phone: 608-837-1732
FAX: 608-837-1128
E-mail: mike.wirl@verizon.com

November 1, 2004

VIA PSC ELECTRONIC REGULATORY FILING SYSTEM

Ms. Lynda L. Dorr, Secretary to the Commission
Public Service Commission of Wisconsin
PO Box 7854
Madison, WI 53707-7854

Re: Notification of an executed second amendment to the }
Interconnection Agreement between Verizon North, } 05-TI-
Inc. ("Verizon") f/k/a GTE North Incorporated and }
Level 3 Communications, LLC ("Level 3") }

Enclosed is a copy of the referenced executed second amendment to the agreement between Verizon North Inc ("Verizon") f/k/a/ GTE North Incorporated and Level 3 Communications, LLC for the State of Wisconsin. The original interconnection agreement was filed on April 24, 2001 and assigned docket number 05-TI-650. Amendment one was filed on November 22, 2002 and assigned docket number 05-TI-733. An electronic copy of this second amendment was sent to Mr. Ken Barth of the PSCW on November 1, 2004.

I have been authorized by Level 3 Communications, LLC to submit this filing to the Public Service Commission pursuant to 47 U.S.C. Section 252(e) and in recognition of the Public Service Commission's jurisdiction in this matter.

If you have questions relating to this matter, I can be contacted at the above numbers.

Very Truly Yours,

/s/ Mike Wirl

Mike J. Wirl

c: Mr. Peter Blisard
Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021
Peter.Blisard @Level3.com

Ken Barth – PSCW w/o attachments

AMENDMENT NO. 2

to the

INTERCONNECTION AGREEMENT

between

VERIZON NORTH INC.

and

LEVEL 3 COMMUNICATIONS, LLC

This Amendment No. 2 (the "Amendment") shall be deemed effective on the "Effective Date" by and between Verizon North Inc. ("Verizon"), a Wisconsin corporation with offices at 8001 West Jefferson, Ft. Wayne, IN 46804, and Level 3 Communications, LLC, a Delaware limited liability company with offices at 1025 Eldorado Boulevard, Broomfield, Colorado 80021 ("Level 3"). Verizon and Level 3 may hereinafter be referred to collectively as the "Parties" and individually as a "Party". This Amendment covers services in the State of Wisconsin.

WITNESSETH:

WHEREAS, pursuant to an adoption letter dated March 29, 2002 (the "Adoption Letter"), Level 3 adopted in the State of Wisconsin, the interconnection agreement between MH Telecom Inc. and Verizon (such Adoption Letter and underlying adopted interconnection agreement referred to herein collectively as the "Agreement"); and

WHEREAS, the Parties wish to amend the Agreement to reflect their agreement on intercarrier compensation and interconnection architecture as set forth in Attachment A to this Amendment.

NOW, THEREFORE, in consideration of the mutual promises, provisions and covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties agree that the terms and conditions set forth in Attachment A shall govern the Parties' mutual rights and obligations with respect to intercarrier compensation and interconnection architecture.

2. Conflict between this Amendment and the Agreement. This Amendment shall be deemed to revise the terms and provisions of the Agreement to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement, this Amendment shall govern, *provided, however*, that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2.
3. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.
4. Captions. The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or provision of this Amendment.
5. Scope of Amendment. This Amendment shall amend, modify and revise the Agreement only to the extent set forth expressly in Section 1 of this Amendment, and, except to the extent set forth in Section 1 of this Amendment, the terms and provisions of the Agreement shall remain in full force and effect after the Effective Date.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed.

LEVEL 3 COMMUNICATIONS, LLC

VERIZON NORTH INC.

By: 

By: 

Printed: LaCharles Keese

Printed: Jeffrey A. Masoner

Title: Vice President - Wholesale Voice Services

Title: Vice President - Interconnection Services

10/20/2004

Attachment A

1. Definitions. For the purposes of this Attachment, the following terms shall have the meanings provided below.
 - (a) “Act” means the Communications Act of 1934 (47 U.S.C. Section 151 et. seq.), as amended from time to time (including, but not limited to, by the Telecommunications Act of 1996).
 - (b) A “Call Record” shall include identification of any VOIP Traffic as VOIP Traffic, as well as at least one of the following: charge number, Calling Party Number (“CPN”), or Automatic Number Identifier. In addition, a “Call Record” may include any other information agreed upon by both Parties to be used for identifying the jurisdiction of the call or for assessing applicable intercarrier compensation charges. If the Forbearance Order and/or the FCC VOIP Order (as such terms are defined in Section 3.2) render this definition of “Call Record” to be inapplicable for the purpose of determining the jurisdiction of the call, the Parties will negotiate to agree upon any other information to be used prospectively for identifying the jurisdiction of a call and/or for assessing applicable intercarrier compensation charges as a replacement for charge number, CPN, or ANI.
 - (c) “Compensable Base” means the total combined minutes of use of ISP-Bound Traffic and Local Traffic originated by Verizon to Level 3 from July 1, 2002 through June 30, 2003 in all jurisdictions, that Verizon has agreed in writing are subject to intercarrier compensation. Any minutes of use that Verizon has not agreed are subject to intercarrier compensation, or as to which there remains an outstanding billing dispute between the Parties, shall not be included in the Compensable Base.
 - (d) “End User” means a third party residence or business end-user subscriber to Telephone Exchange Services, as such term is defined in the Act, provided by either of the Parties.
 - (e) “Effective Date” means April 1, 2004.
 - (f) “End Office” means a switching entity that is used to terminate End User station loops for the purpose of interconnection to each other and to trunks.
 - (g) “Extended Local Calling Scope Arrangement” means an arrangement that provides a End User a local calling scope (Extended Area Service, “EAS”), outside the End User’s basic exchange serving area. Extended Local Calling Scope Arrangements may be either optional or non-optional. “Optional Extended Local Calling Scope Arrangement Traffic” is traffic that under an optional Extended Local Calling Scope Arrangement chosen by the End User terminates outside of the End User’s basic exchange serving area.
 - (h) “Exchange Access” shall have the meaning set forth in the Act.

- (i) *Intentionally left blank.*
- (j) “Information Access” means the provision of specialized exchange Telecommunications Services in connection with the origination, termination, transmission, switching, forwarding or routing of Telecommunications traffic to or from the facilities of a provider of information services, including an Internet service provider.
- (k) “Information Service” shall have the meaning set forth in the Act.
- (l) “ISP-Bound Traffic” means any Telecommunications traffic originated on the public switched telephone network (“PSTN”) on a dial-up basis that is transmitted to an internet service provider at any point during the duration of the transmission, including V/FX Traffic that is transmitted to an internet service provider at any point during the duration of the transmission, but not including VOIP Traffic.
- (m) “LERG” or “Local Exchange Routing Guide” means a Telcordia Technologies reference containing NPA/NXX routing and homing information.
- (n) “Local Traffic” consists of Telecommunications traffic for which compensation is required by both Section 251(b)(5) of the Act and 47 C.F.R Part 51; and, for the avoidance of any doubt, the following types of traffic, among others, do not constitute Local Traffic under the terms of this Agreement: ISP-Bound Traffic; Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access; toll traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; Optional Extended Local Calling Scope Arrangement Traffic; special access, private line, frame relay, ATM, or any other traffic that is not switched by the receiving party; tandem transit traffic; V/FX Traffic; voice Information Service traffic; or VOIP Traffic.
- (o) “NXX or “NXX Code” means the three-digit switch entity indicator (i.e. the first three digits of a seven-digit telephone number).
- (p) “Switched Exchange Access Service” means the offering of transmission and switching services for the purpose of the origination or termination of toll traffic. Switched Exchange Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 800 access, 888 access and 900 access.
- (q) “Tandem” or “Tandem Switch” means a physical or logical switching entity that has billing and recording capabilities and is used to connect and switch trunk circuits between and among End Office Switches and between and among End Office Switches and carriers’ aggregation points, points of termination, or points of presence, and to provide Switched Exchange Access Services.

- (r) “Telecommunications” shall have the meaning set forth in the Act.
- (s) “Telecommunications Carrier” shall have the meaning set forth in the Act.
- (t) “Virtual Foreign Exchange Traffic” or “V/FX” Traffic means a call to an End User assigned a telephone number with an NXX Code (as set forth in the LERG) associated with an exchange that is different than the exchange (as set forth in the LERG) associated with the actual physical location of such End User’s station.
- (u) “VOIP Traffic” means voice communications that are transmitted in whole or in part over packet switching facilities using Internet Protocol or any similar packet protocol. For avoidance of doubt, VOIP Traffic does not include ISP-Bound Traffic that is not used to generate voice traffic to or from the PSTN.
- (v) “Wire Center” means a building or portion thereof which serves as the premises for one or more Central Office Switches and related facilities.

2. General/Term. Notwithstanding any change to Applicable Law effected after the Effective Date (and notwithstanding any provision in the Agreement governing the Parties’ rights or obligations in the event of such a change in Applicable Law), subject to compliance with Sections 6 and 7 below, and provided that there are no outstanding billing disputes between the Parties with respect to intercarrier compensation charges billed by either Party prior to the Effective Date with respect to Local Traffic, ISP-Bound Traffic or switched access traffic, the terms set forth in subsections 2.1-2.4 below shall govern the Parties’ rights and obligations regarding compensation for ISP-Bound Traffic and Local Traffic. If there are outstanding billing disputes between the Parties with respect to intercarrier compensation charges billed by either Party prior to the Effective Date with respect to Local Traffic, ISP-Bound Traffic or switched access traffic, then subsections 2.1-2.4 below shall not apply and compensation for ISP-Bound Traffic and Local Traffic exchanged between the Parties shall be governed by the following: (i) an intercarrier compensation rate of zero (\$0) shall apply to ISP-Bound Traffic delivered by Verizon to Level 3 and (ii) Verizon’s then-prevailing reciprocal compensation rates in each particular service territory (as set forth in Verizon’s standard price schedules, as amended) shall apply to ISP-Bound Traffic delivered by Level 3 to Verizon and to all Local Traffic exchanged between the Parties. For purposes of the preceding sentence only, all Local and ISP-Bound Traffic above a 2:1 ratio shall be considered to be ISP-Bound Traffic.

2.1 Inter-carrier Compensation for ISP-Bound Traffic and Local Traffic. Commencing on the Effective Date, and continuing prospectively for the applicable time periods described below, when ISP-Bound Traffic or Local Traffic is originated by an End User of a Party on that Party’s network (the “Originating Party”) and delivered to the other Party (the “Receiving Party”) for delivery to an End User of the Receiving Party, the Receiving Party shall bill and the Originating Party shall pay intercarrier compensation at the following equal and symmetrical rates: \$.0005 per minute of use for

the period beginning on the Effective Date and ending on December 31, 2004, \$.00045 per minute of use for the period beginning January 1, 2005 and ending on December 31, 2005, \$.0004 per minute of use for the period beginning January 1, 2006 and ending upon the effective date of termination of this Section 2.1 (collectively, the “Intercarrier Compensation Rates”); **provided, however**, that Verizon shall be under no obligation to pay any intercarrier compensation to Level 3 on Local Traffic or ISP-Bound Traffic insofar as the total combined minutes of use of such traffic originated by Verizon to Level 3 in all jurisdictions in which the Parties exchange traffic exceeds the Compensable Base by the following threshold percentages during each of the specified calendar years: 175% for 2004, 200% for 2005, 225% for 2006, and 225% for any calendar year subsequent to 2006 in which this Section 2.1 remains in effect.

2.2 The Intercarrier Compensation Rates shall not apply to V/FX Traffic that is not ISP-Bound Traffic, which such other V/FX Traffic shall be subject to applicable Switched Exchange Access Service tariff charges; provided, however, that the Parties do not agree on the compensation due for the exchange of VOIP Traffic that may constitute V/FX Traffic under Section 1(t) (“V/FX VOIP Traffic”). Pending resolution of the Parties’ dispute on the compensation due for V/FX VOIP Traffic, Level 3 shall pay at least the Intercarrier Compensation Rates to Verizon for V/FX VOIP Traffic (other than V/FX VOIP Traffic addressed in Section 3.1, as to which interstate access charges shall apply) that it delivers to Verizon (in doing so, but without any probative value as to the substance of either Party’s position on the appropriate compensation due on V/FX VOIP Traffic, Level 3 may dispute access or intercarrier compensation charges billed by Verizon in excess of the Intercarrier Compensation Rates). The Parties hereby agree that, as of the Effective Date, they are exchanging only a de minimis amount of V/FX Traffic that is not ISP-Bound Traffic; the Parties further agree that, from time to time, upon written request from either Party, the other Party shall review with the requesting Party whether the amount of such V/FX Traffic that is not ISP-Bound Traffic exchanged between them remains de minimis. For avoidance of doubt, the Intercarrier Compensation Rates also shall not apply to VOIP Traffic, except as set forth in this paragraph or to the extent otherwise required by Section 3 below.

2.3 Notwithstanding anything else in this Attachment, and except as otherwise provided in this Section 2.3, if Level 3 fails to comply with Sections 6 and 7 of this Attachment, the Intercarrier Compensation Rates set forth in this Section 2 shall not apply to ISP-Bound Traffic and Local Traffic delivered by Verizon to Level 3. Instead, the applicable intercarrier compensation rate for such ISP-Bound Traffic and Local Traffic delivered by Verizon to Level 3 shall be zero (\$0) effective on the date Verizon provides Level 3 written notice detailing the specific facts and documentation supporting its position of non-compliance with Sections 6 and 7 of this Attachment (“Non-Compliance Notice”) and continuing until the earlier of a determination by Verizon that Level 3 is in compliance with Sections 6 and 7 of this Attachment or termination of Sections 2 and 3 of this Attachment, as provided in Section 4 below. If Level 3 disagrees with the non-compliance finding, Level 3 shall respond in writing to Verizon within ten

business days of receipt of the Non-Compliance Notice with: (i) facts and documentation supporting its position and (ii) the name of an individual who will serve as Level 3's representative for purposes of negotiating resolution of the non-compliance dispute ("Level 3 Response"). Verizon shall have ten business days from receipt of the Level 3 Response to designate its representative to the negotiation, and shall continue to make payments during the Negotiation Period (as defined below) as though the Intercarrier Compensation Rates in this Section 2 continued to apply. The Parties' representatives shall meet at least once within 45 days after the date of the Level 3 Response in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties' representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations. If the Parties have been unable to resolve the dispute within 45 days of the date of the Level 3 Response ("Negotiation Period"), either Party may pursue any remedies available to it under the Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction; *provided, however*, that if the matter is resolved with a finding that Level 3 was not in compliance with Sections 6 and 7 of this Attachment, Level 3 shall refund any payments of the Intercarrier Compensation Rates made by Verizon during the Negotiation Period.

2.4 In the event that Verizon should continue to offer or provide unbundled network element platforms ("UNE-P") after the Effective Date, the Intercarrier Compensation Rates shall not apply to any traffic involving Level 3 End Users served by UNE-P, and the Parties instead will negotiate in good faith to conclude mutually acceptable provisions governing intercarrier compensation associated with traffic to Level 3 End Users served by UNE-P.

3. VOIP Traffic.

3.1 Agreement to Comply with FCC Declaratory Ruling. The Parties agree that VOIP Traffic that originates on and terminates to the PSTN shall be subject to interstate access charges, as set forth in the FCC's Order, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, FCC 04-97, WC Docket No. 02-361 (released April 21, 2004) ("AT&T Order") unless and until the AT&T Order is modified in the Forbearance Order and/or the FCC VOIP Order (as such terms are defined in Section 3.2), in which case the Parties will negotiate an amendment to this Attachment to apply prospectively from the date of such Forbearance Order and/or the FCC VOIP Order addressing intercarrier compensation for the VOIP Traffic described in this Section 3.1.

3.2 Other VOIP Traffic. Except as provided in Section 3.1, the Parties do not agree on the compensation due for the exchange of VOIP Traffic. Accordingly, until such time as the FCC issues a substantive order in WC Docket No. 04-36 (FCC 04-28) on what compensation is due for the exchange of VOIP Traffic ("FCC VOIP Order") and such order becomes effective, Level 3 shall: (i) identify and track all VOIP Traffic that either

originates or terminates on the PSTN and (ii) pay at least the Intercarrier Compensation Rates to Verizon for VOIP Traffic other than VOIP Traffic addressed in Section 3.1 that it delivers to Verizon (in doing so, but without any probative value as to the substance of either Party's position on the appropriate compensation due on VOIP Traffic, Level 3 may dispute access or intercarrier compensation charges billed by Verizon in excess of the Intercarrier Compensation Rates) . Upon effectiveness of the FCC VOIP Order, such FCC VOIP Order shall be applied prospectively from the effective date of the FCC VOIP Order and retroactively to the Effective Date (taking into account intercarrier compensation payments made on VOIP Traffic under the preceding sentence); **provided, however,** that if a Party has filed a forbearance proceeding at the FCC addressing whether access charges should apply to VOIP Traffic originating or terminating on the PSTN, such as Level 3's filing of a petition for forbearance in Docket No. 03-266 ("Forbearance Proceeding"), then if the FCC issues an order in such Forbearance Proceeding or the petition for forbearance otherwise becomes effective (in either case, the "Forbearance Order") prior to issuance of the FCC VOIP Order, the Parties agree to apply the results of the Forbearance Order to the VOIP Traffic defined in the Forbearance Order prospectively from the effective date of the Forbearance Order and retroactively to the Effective Date until such time as the FCC VOIP Order is issued (taking into account intercarrier compensation payments made on VOIP Traffic under the preceding sentence), at which time such FCC VOIP Order shall be applied to the VOIP Traffic defined in the FCC VOIP Order prospectively from the effective date of the FCC VOIP Order (such implementation of a Forbearance Order and/or the FCC VOIP Order, the "VOIP Order Application"); **provided, further** that if VOIP Traffic is treated as Information Service traffic or as Local Traffic (either substantively or for compensation purposes only) by the Forbearance Order and/or the FCC VOIP Order, then for purposes of implementing such order(s) as part of the VOIP Order Application only (and only so long as the Forbearance Order and/or the FCC VOIP Order are in effect), VOIP Traffic terminated to or originated on the PSTN shall be subject to a rate of \$.0007 per minute of use except to the extent the amount of VOIP Traffic delivered by Verizon to Level 3 exceeds the amount of VOIP Traffic delivered by Level 3 to Verizon in a monthly billing period by more than 10% ("Imbalance Factor"), in which case for all VOIP Traffic delivered by Verizon to Level 3 during that billing period in excess of the Imbalance Factor, Level 3 shall bill and Verizon shall pay the Intercarrier Compensation Rates; and **provided, further,** that Level 3 and Verizon expressly waive any grounds they may have to raise any timing limitation on back-billing implemented by the other Party to effectuate the VOIP Order Application.

4. **Termination.** Either Party may terminate Sections 2 and 3 of this Attachment effective on or after January 1, 2007 (such date, "Termination Effective Date") by providing nine (9) months advance written notice to the other Party if the notice is provided on or before November 30, 2006 or by providing thirty (30) days advance written notice to the other Party if the notice is provided on or after December 1, 2006 (in either case, the date such notice is provided shall be the "Termination Notice Date," which shall not be prior to

April 1, 2006), provided that in the event that either Party elects to exercise its right to terminate Sections 2 and 3 of this Attachment: (i) the Parties shall promptly amend the Agreement to govern intercarrier compensation between the Parties for Local Traffic and ISP-Bound Traffic, and any such amendment (whether negotiated, arbitrated or otherwise litigated) shall be effective as of the Termination Effective Date and (ii) the VOIP Order Application described in Section 3.2 of this Attachment shall not apply to any time period after the Termination Notice Date (but which VOIP Order Application, for avoidance of doubt, will continue to apply to all time periods between the Effective Date and the Termination Notice Date regardless of the issuance date of the Forbearance Order or FCC VOIP Order; provided, further, that Section 3.2 shall be included in any interconnection agreement or amendment (including adoptions) entered into by the Parties unless and until the VOIP Order Application has been implemented by the Parties).

5. Other Traffic.

Notwithstanding anything else in this Attachment, for traffic Level 3 delivers to Verizon that originates with a third carrier, except as may be subsequently agreed to in writing by the Parties, Level 3 shall pay Verizon the same amount that such third carrier would have paid Verizon for that traffic at the location the traffic is delivered to Verizon by Level 3.

6. Call Records. Each Party shall take steps to ensure that all calls (including VOIP traffic) that it delivers to the receiving Party include a Call Record, and that such Call Records are transmitted intact to the receiving Party. Neither Party shall: (i) remove Call Records, (ii) alter or replace Call Records, or (iii) insert or add any Call Record information (such as a Charge Number) that does not correspond to that of the calling party. Using its best efforts and to the extent technically feasible, each Party also shall undertake steps to ensure that any service provider who hands off traffic for delivery to the other Party does not: (i) remove Call Records, (ii) alter or replace Call Records, or (iii) insert or add any Call Record information (such as a Charge Number) that does not correspond to that of the calling party. Neither Party shall knowingly and intentionally (a) strip or alter Call Records to disguise the jurisdiction of a call or (b) permit third parties to do so for traffic the Party delivers to the other Party.

6.1 For billing purposes, each Party shall pass a Call Record on each call delivered to the other Party to the extent technically feasible. The Receiving Party shall bill the Originating Party the then-current Intercarrier Compensation Rate, intrastate Switched Exchange Access Service rates, or interstate Switched Exchange Access Service rates applicable to each relevant minute of traffic for which Call Records are passed based on the Call Records, or other information that allows the Receiving Party to determine the jurisdiction of the call in accordance with the provisions herein, as provided in this Attachment, the applicable interconnection agreement between the Parties or the Receiving Party's applicable tariffs.

6.2 If, the percentage of calls passed with Call Record information is greater than ninety percent (90%), all calls exchanged without Call Record information will be billed according

to the jurisdictional proportion of the calls passed with Call Record information. If the percentage of calls passed without Call Record information is less than ninety percent (90%), all calls without Call Record information up to (but not exceeding) ten percent (10%) of all calls, will be billed according to the jurisdictional proportion of the calls passed with Call Record information, and the remaining calls without Call Record information will be billed at intrastate Switched Exchange Access Service rates.

6.3 *Intentionally left blank.*

6.4 If the Receiving Party lacks the ability to use Call Records to classify on an automated basis traffic delivered by the other Party as either ISP-Bound Traffic or Local Traffic or toll traffic, the Originating Party will supply, at the request of the Receiving Party, an auditable Percent Local Usage (“PLU”) report (including Local Traffic and ISP-Bound Traffic) quarterly, based on the previous three (3) months’ traffic, and applicable to the following three (3) months’ traffic. If the Originating Party also desires to combine interstate and intrastate toll traffic on the same trunk group, it will supply an auditable Percent Interstate Usage (“PIU”) report quarterly, based on the previous three (3) months’ terminating traffic, and applicable to the following three (3) months’ traffic. In lieu of the foregoing PLU and/or PIU reports, the Parties may agree to provide and accept reasonable surrogate measures for an agreed-upon period.

6.5 Measurement of billing minutes for purposes of determining terminating compensation shall be in conversation seconds. The Parties agree that, in addition to any applicable audit provisions in their applicable interconnection agreement, each Party shall have the right to conduct, at its own cost, periodic (but in any case no more frequent than semi-annual) audits, on commercially reasonable terms and conditions, with respect to billings sent in connection with this Attachment; and the other Party agrees to reasonably cooperate with any such audits.

6.6 For avoidance of doubt, all of this Section 6 shall apply to VOIP Traffic exchanged between the Parties until such time as the VOIP Order Application is implemented pursuant to Section 3.2 above, at which time all of this Section 6 shall continue to apply to VOIP Traffic except as otherwise provided by implementation of the VOIP Order Application.

7. Points of Interconnection; Mutual POIs. Notwithstanding any other provision in the interconnection agreement between the parties, any applicable tariff or SGAT, or under Applicable Law, this Section shall set forth the Parties’ respective rights and obligations with respect to interconnection architecture.

7.1 Mutual points of interconnection (“POIs”) in each LATA in which the Parties exchange traffic shall be established as set forth in this Section 7.

(a) Level 3 shall establish at least one technically feasible point on Verizon's network in each of the Verizon Tandem serving areas in each LATA in which the Parties exchange traffic at which each Party shall deliver its originating traffic to the other Party (such a point, a "mutual POI"). Each mutual POI shall be at the relevant Verizon Tandem Wire Center, unless otherwise agreed to in writing by the Parties. Level 3 shall deliver traffic that is to be terminated through a Verizon End Office to the mutual POI at the Verizon Tandem Wire Center that such Verizon End Office subtends. Each mutual POI established under this Section 7.1(a) may be accomplished by Level 3 through: (1) a collocation site established by Level 3 at the relevant Verizon Tandem Wire Center, (2) a collocation site established by a third party at the relevant Verizon Tandem Wire Center, or (3) transport (and entrance facilities where applicable) ordered and purchased by Level 3 from Verizon at the applicable Verizon intrastate access rates and charges.

- (i) The Parties may use the trunks delivering traffic to the mutual POI to deliver the following types of traffic between their respective Telephone Exchange Service End Users: Local Traffic, ISP-Bound Traffic, VOIP Traffic, tandem transit traffic, translated LEC IntraLATA toll free service access code (e.g., 800/888/877) traffic, and where agreed to between the Parties and as set forth in subsection (ii) below, IntraLATA and InterLATA toll traffic.
- (ii) Under the architectures described in this Section 7, and subject to mutual agreement of the Parties, either Party may use the trunks delivering traffic to the mutual POI for the termination of intraLATA or interLATA toll traffic in accordance with the terms contained in this Section 7 and pursuant to the other Party's Switched Exchange Access Services Tariffs. If Level 3 seeks for Verizon to deliver intraLATA and interLATA presubscribed traffic originated by Verizon End Users to Level 3 over existing local interconnection architecture, Level 3 shall make a written request of Verizon, and subject to the mutual agreement of the Parties: (i) the Parties will evaluate the feasibility of transporting such traffic in this manner through testing and other means (in which case, all testing and development costs incurred by Verizon shall be borne by Level 3) and (ii) the Parties shall attempt in good faith to negotiate an amendment to this Attachment to address such traffic. When toll traffic is delivered over the same trunks as Local and/or ISP-Bound Traffic, any port, transport or other applicable access charges related to the delivery of toll traffic from the mutual POI on Verizon's network in a LATA to the terminating Party's End User shall be prorated so as to apply to the toll traffic.
- (iii) Notwithstanding anything else in this Agreement, Interstate and

intrastate Exchange Access, Information Access, exchanges services for Exchange Access or Information Access, and toll traffic, shall be governed by the applicable provisions of this Attachment, the Agreement and applicable Tariffs.

(b) At any time that Level 3 has established a Collocation site at a Verizon End Office Wire Center, then either Party may request that such Level 3 Collocation site be established as a Mutual POI for traffic originated from or terminated to Verizon End Users served by an End Office in the Verizon End Office Wire Center.

(c) In any LATA in which there are fewer than two (2) Verizon Tandems, then in addition to the mutual POI at the Verizon Tandem Wire Center, Verizon may request and Level 3 shall establish an additional mutual POI at any Verizon End Office Wire Center: (i) at any time after the traffic exchanged between Level 3 and Verizon End Users served by the Verizon End Office reaches six (6) DS1s (approximately 1.3 million minutes of use per month) or (ii) at any Verizon End Office which is subtended by remote Verizon End Office(s) (any mutual POI located at a Verizon End Office Wire Center pursuant to this Section 7.1(c), an “Additional Mutual POI”). Verizon also may require the establishment of an Additional Mutual POI at a Verizon End Office other than the serving Verizon End Office, in which case Level 3 shall order Direct End Office Trunks (“DEOTs”) from Verizon between the serving Verizon End Office and the Additional Mutual POI, with all costs of the portions of such DEOTs carrying Local Traffic and ISP-Bound Traffic to be borne by Verizon. In the situation described in the foregoing sentence, Level 3 shall be responsible for ordering and providing DEOTs on the Level 3 side of the Additional Mutual POI, with all costs of such DEOTs to be borne by Level 3. Level 3 shall establish any Additional Mutual POI requested by Verizon under this Section 7.1(c) within six (6) months of the date of the request, unless otherwise agreed to by the Parties. Each Additional Mutual POI requested under this Section 7.1(c) may be established by Level 3 through: (i) a collocation site established by Level 3 at the requested Verizon End Office Wire Center, (ii) a collocation site established by a third party at the requested Verizon End Office Wire Center, or (iii) transport (and entrance facilities where applicable) ordered and purchased by Level 3 from Verizon at the applicable Verizon intrastate access rates and charges. Each Party shall bear its own costs with respect to migration to Additional Mutual POIs established under this Section 7.1(c).

(d) For those Verizon End Offices that subtend a third party Tandem, Verizon may elect to exchange traffic through the third party Tandem or may designate a point on the Verizon network in the relevant Tandem serving area as the relevant mutual POI. Any point elected by Verizon under this Section 7.1(d) shall be the point at which the Inter-carrier Compensation Rates shall be applied. If the designated mutual POI is not at the relevant Tandem, then Level 3 shall hand off direct non-switched trunks to

the relevant terminating Verizon End Offices at the mutual POI. For avoidance of doubt, nothing in this Section 7.1(d) shall alter Verizon's ability to require the establishment of Additional Mutual POIs under Section 7.1(c) above. If Verizon elects to exchange traffic through a third party Tandem under this Section 7.1(d), then any transiting, transport or fixed (as prorated) charges imposed by the third party shall be paid by the Party originating the traffic exchanged through the third party Tandem.

(e) Should Level 3 interconnect with any Telecommunications Carrier that is not a Party to this agreement at a point that is not a mutual POI under this Attachment, Verizon may elect to deliver traffic to such point(s) for the NXXs or functionalities served by those Points. To the extent that any such point is not located at a Collocation site at a Verizon Tandem (or Verizon Host End Office), then Level 3 shall permit Verizon to establish physical interconnection at the point, to the extent such physical interconnection is technically feasible.

7.2 Subject to subsections 7.4 and 7.6 below, neither Party may charge (and neither Party shall have an obligation to pay) any recurring fees, charges or the like (including, without limitation, any transport charges), with respect to ISP-Bound Traffic and Local Traffic that either Party delivers at a mutual POI, other than the Intercarrier Compensation Rates; **provided, however,** for the avoidance of any doubt, Level 3 shall also pay Verizon, at the rates set forth in an applicable interconnection agreement between the Parties or applicable Verizon Tariff for any multiplexing, cross connects or other Collocation-related services that Level 3 obtains from Verizon.

7.3 If the traffic destined for an End Office exceeds the CCS busy hour equivalent of two (2) DS1s for any three (3) months in a six (6) month period, Verizon may request Level 3 to order DEOTs to that End Office. Verizon shall be responsible for providing such DEOTs on the Verizon side of the mutual POI, with all costs of the portions of such DEOTs carrying Local Traffic and ISP-Bound Traffic to be borne by Verizon. Level 3 shall be responsible for ordering and providing such DEOTs on the Level 3 side of the mutual POI, with all costs of such DEOTs to be borne by Level 3. After initially establishing DEOTs pursuant to this subsection, traffic routed to this End Office will be allowed to overflow to the Tandem not to exceed the CCS busy hour equivalent of one (1) DS1. For avoidance of any doubt, neither Party will assess recurring and/or non-recurring charges for the implementation, installation, maintenance and utilization of interconnection trunks and facilities for the portions of such trunks carrying Local and ISP-Bound Traffic on its side of the mutual POI.

7.4 In those LATAs in which the Parties have previously established interconnection at POIs and/or are using interconnection transport and trunking architectures other than as set forth pursuant to the terms of Section 7.1(a), the interconnection transport and trunking architectures shall be governed by this Section 7.4.

- (a) Verizon may require Level 3, via written notice to Level 3, to bring pre-existing interconnection arrangements into compliance with the terms of Section 7.1(a) through one of the following methods:
 - (i) Unless otherwise agreed in writing by the Parties, Level 3 shall implement a physical migration of the pre-existing arrangements to the terms prescribed herein within six (6) months of the date of such notice; or
 - (ii) In lieu of requiring physical rearrangements of pre-existing facilities or where the physical rearrangement has not been completed within six (6) months following such notice, the Parties shall implement a billing arrangement pursuant to which Level 3 shall pay Verizon for the transport (and entrance facilities if provided by Verizon) between each Verizon Tandem (or Additional Mutual POIs at Verizon End Offices in LATAs with less than two (2) Verizon Tandems) and the delivery to or from Level 3 at the Level 3 switch or other location, at the applicable Verizon intrastate access rates and charges.
- (b) With respect to subsection 7.4(a) directly above, each Party shall bear its own costs with respect to any such migration; the Parties will coordinate any such migration, trunk group prioritization, and implementation schedule; and Verizon agrees to develop a cutover plan and to project manage the cutovers with Level 3 participation and agreement.
- (c) *Intentionally left blank.*
- (d) From and after the Effective Date, in any LATA where the Parties have not yet established mutual POIs or Additional Mutual POIs as described in Section 7.1(a) (including, without limitation, the situation presented in subsection 7.4(a) above), Level 3 shall not bill (and Verizon not have any obligation to pay) any fees, charges, or the like (including, without limitation, any transport charges) with respect to such arrangements, and to the extent that Level 3 utilizes transport provided by Verizon between the Level 3 network and the current point at which the Parties interconnect, Level 3 shall purchase such transport from Verizon at Verizon's tariffed intrastate access rates.

7.5 The Parties recognize that embedded one-way trunks may exist for the exchange of traffic between the Parties. To the extent either Party requires a transition of such one-way trunks to two-way trunks, the Parties agree to negotiate an amendment to set forth the terms and conditions for two-way trunks (if necessary), as well as to negotiate a transition plan to migrate the embedded one-way trunks to two-way trunks provided that Verizon shall bill, and Level 3 shall pay, the non-recurring charges for such conversions as set forth in Verizon's applicable tariffs.

7.6 Level 3 may apportion spare capacity on existing access entrance facilities (and/or transport where applicable) purchased by Level 3 between the relevant mutual POIs and/or the Level 3 switch as described in this Section 7; however, any such apportionment shall not affect the rates or charges applied to the relevant facilities.

EXHIBIT C

