Level(3) COMMUNICATIONS

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EX PARTE

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

Re: *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, IP Enabled Services, WC Docket No. 04-36

I. EXECUTIVE SUMMARY

Press and industry reports indicate that Chairman Kevin Martin is circulating a proposal for consideration at the schedule agenda meeting on November 4, 2008. The proposal reforms the intercarrier compensation regime for the exchange of telecommunications traffic. It also provides the Federal Communications Commission's ("Commission") response to a Mandamus Order from the United States Court of Appeals for the District of Columbia ("Court of Appeals") that directed the Commission to provide the legal basis for its ISP Remand Order by November 5, 2008 or have the ISP Remand Order vacated.

Lacking details from the Commission on its complex and interrelated proposal, Level 3 and its industry brethren are unable to comment on the specific intricacies of the proposal or offer any perspectives on how they will impact the industry.[1] Given the highly integrated and interrelated nature of intercarrier compensation and universal service, Level 3 cannot comment effectively with the vague understanding gleaned from press reports on a few piece parts of the proposal. Moreover, the devil is in the details and if the Commission ignores a crucial implementation question, it will undermine its final order. For example, if the Commission fails to address how to determine the jurisdiction of a call, it will undermine the final order and extend the uncertainty and unnecessary litigation during a transition that is reportedly as long as 10 years. In these comments, Level 3 asserts that the Commission should protect two broad principles in any intercarrier compensation reform effort regardless of whether such effort is directed at intercarrier compensation reform or limited to a narrow response to the Court of Appeals Mandamus Order:

1. First, the Commission ***must establish a bright line rule*** that all calls will be rated and routed by telephone numbers without respect to the physical end points of the call; and
2. With respect to ISP-bound traffic reiterate that the ISP Remand Order covers ***all locally dialed ISP-bound traffic***, regardless of the architecture employed by the ISP or the supporting CLEC.

In addition, Level 3 urges the Commission to extend the transition period during which intrastate access rates are brought to interstate rates. According to public

[1] Level 3 supports the request by the National Cable & Telecommunications Association in its ex parte of October 15, 2008 that the FCC should provide the public with details of the proposed rules it is considering.

information, the proposed order brings intrastate switched access rates down to interstate levels through a two-year crash landing. Any transition must represent a smoother glide path from intrastate rates today to the final state determined compensation rates. A smooth glide path requires a five-year period to move from intrastate to interstate given the magnitude of that step down for most carriers.

II. THE IMPORTANCE OF CLASSIFYING TRAFFIC

One consistent criticism of today's intercarrier compensation system is that you can pay seven different rates for the same switching functionality based on how a call is jurisdictionalized. And in many cases, the classification between a local or interexchange call is the difference as to whether you pay for a call or get paid. This has become increasingly true where a technology has freed the end user from having a physical location in a specific calling area. Examples include wireless, Voice over IP and ISP-bound traffic.

The drafters of the Missoula Plan understood that during a transition period to a unified rate, this technological uncertainty would encourage carriers to engage in arbitrage, litigation and other conduct to maximize their financial advantage. This technological conflict will lead to the inefficient use of resources. Once a unified rate is reached, the physical location of the customer would no longer matter with respect to terminating compensation.

Recognizing the need for certainty and for bridging various technological platforms, the Missoula Plan supporters relied upon rating calls based on the dialed telephone numbers rather than a legacy model based on physical location which is increasingly becoming outdated and irrelevant by technological developments:

> The Plan establishes clear, concrete rules concerning how to classify traffic in order to determine which category of intercarrier compensation charge applies – ie reciprocal compensation or switched access. The Plan establishes a telephone-number based methodology that will rely on the calling and called telephone numbers to determine how a call should categorized for these purposes. While the parties recognize that telephone numbers do not always reliably identify end users' actual locations, this telephone-number-based rule is a compromise that will establish predictable rules to govern the exchange of traffic so long as distinct regimes/charges are maintained for access and Non-Access Traffic.[2]

Under this approach, 1+ dialed long distance calls will be treated as they are today or during a specific point in the transition. In and of itself and separate from any other reform adopted by the Commission as part of its comprehensive reform, this would not necessitate a change to the application of any access charges owed on wireless traffic. No changes will occur with locally dialed telephone calls except parties will no longer have the incentive to fight over the appropriate compensation for Virtual NXX traffic ("VNXX") and foreign exchange services or to draw arbitrary lines based solely on where modems or IP gateways are located in the terminating carrier's network. Since the Commission's ultimate goal is to harmonize its intercarrier compensation regimes, it make no sense to carve out one subset of traffic and leave it open to litigation for years as to whether originating access charges apply and the applicable termination rate only to see that termination reduced to the locally dialed rate within the specified transition period.

This ***bright line rule*** will provide the unequivocal clarity necessary to eliminate any future uncertainty or litigation surrounding the classification of traffic, especially foreign exchange or VNXX, both with respect to ISP-bound traffic and also the increasing amount of VoIP traffic. The incentive to arbitrage the classification of traffic will increase if the Commission retains existing originating access distinctions and

[2] The Missoula Plan for Intercarrier Compensation Reform, p. 25

unifies termination rates without establishing a bright line rule for classifying traffic for compensation purposes.

The following calling pattern highlights the problem: A VoIP customer is assigned a local telephone number in Broomfield, Colorado, yet its physical termination point is either a call center in Seattle or a backup call center in Colorado Springs. When a customer of the local ILEC picks up the phone and dials the local number provided to the call center customer, this locally dialed call is exchanged between the ILEC and the CLEC supporting the VoIP provider over the local interconnection trunks and then routed to the customer's call center. At any given time, the VoIP customer of the CLEC may redirect that call between the Seattle and Colorado Springs locations based on call management or other business considerations. That change is made without knowledge of the underlying CLEC which terminates traffic to a designated IP address.

After carriers exchange that call, the terminating carrier bills the originating carrier at the appropriate termination rate for a locally dialed call, for purposes of discussion we'll say its .0007. However, if originating access remains intact, the originating carrier has an economic incentive to characterize traffic as subject to originating access even though a local calling pattern and network architecture were used.

In the absence of such clarification from the Commission, the tension between revenue and costs will lead to interminable billing disputes, regulatory complaints and litigation across the nation which will preserve, rather than cut the Gordian Knot of interpretations that plagues the intercarrier compensation system. The industry needs a **bright line rule** that can be used to apply the intercarrier rates that result from the Commission's order, both during and after the transition to a unified terminating rate.

The industry's experience with the implementation of the ISP Remand Order illustrates the fate of any intercarrier compensation reform order that lacks clarity on how to classify traffic for compensation purposes.

III. LESSONS FROM THE ISP REMAND ORDER.

The regulatory treatment of ISP-bound traffic in the wake of the ISP Remand Order offers a stark lesson on how the intent of a compensation reform plan can be derailed by arguments over the classification of traffic. This lesson is worth remembering as the Commission moves to implement its plan to unify the terminating rates for traffic. If the Commission ignores these lessons it puts at risk its authority as an expert agency.

When the Commission wrote the ISP Remand Order, it struck an optimistic tone. "Finally," the Commission said, "we hope this Order brings an end to the legal confusion resulting from the Commission's historical treatment of ISP-bound traffic, for purposes of jurisdiction and compensation, and the statutory obligations and classifications adopted by Congress in 1996 to promote the development of competition for all telecommunications services,"[3] That has not been the case. Instead of abiding by the plain language and intent of the ISP Remand Order, incumbent local exchange carriers embarked on an eight-year campaign to deconstruct the ISP Remand Order and reduce their payment obligations for ISP-bound traffic. Many states have decided that the ISP Remand Order only applies to a subset of traffic. The result is a hodgepodge of confused, conflicting and contradictory regulatory and judicial decisions that have prevented the implementation of the Commission's original goal to establish a unified national policy toward compensation for ISP-bound traffic.

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[3] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 Order on Remand and Report and Order*, Rel. April 27, 2001 ("ISP Remand Order") at ¶ 95.

Now, faced with the deadline imposed by the Court of Appeals, the issue is back before the Commission. The legal confusion and wrangling surrounding ISP-bound traffic ***is so great*** that regardless of the Commission's legal justification, its decision will be open to reinterpretation unless it clarifies the universe of ISP-bound traffic that the order covers. Based on how the state commissions and various courts have sliced and diced the meaning of the ISP Remand Order, Level 3 estimates about 20 percent of all locally dialed ISP-bound traffic falls under the ISP Remand Order. The balance of 80 percent has been shoehorned into new interpretations with different interconnection and payment obligations. Unless the Commission reiterates that all locally dialed ISP-bound traffic is covered by its order, the end result will be years of litigation as the industry argues over the meaning of the compensation scheme for ISP-bound traffic within the new established legal framework. Those arguments will include whether access applies instead of the local compensation rate as well as whether the framework applies on a retroactive basis. The Commission must eliminate uncertainty and clarify the scope of the traffic covered based on its legal justification. The best way to accomplish this is to reiterate that the ensuing rate structure applies to all locally dialed ISP-bound calls without regard for the location of the ISP's modems or any other factors that might be used to classify such a call as "local."

Level 3 will not restate in these comments the legal justification that it has filed with the Commission.[4] Nor does Level 3 advocate a change in the existing rate cap of .0007 for the termination of ISP-bound traffic. Instead, Level 3 urges the Commission to

[4] Letter from John T. Nakahata to Marlene H. Dortch, CC Docket No. 99-68 and WC Docket No. 01-92., August 18, 2008. p. 4, "("Nakahata Letter")

clarify that for purposes of compensation that all ISP-bound calls are to be rated in the same manner as they are routed -- based on the dialed telephone numbers.

1. **A LITTLE HISTORY WON'T HURT**

Before going further, it is worth restating what the Commission tried to accomplish in its ISP Remand Order: [5]

1. It established an 18-month transition to the rate cap of $.0007/mou which remains in place until further Commission action;

2. It imposed a cap on the total number of compensable ISP-bound minutes subject to 10 percent growth caps for 2001 and 2002 after which minutes of traffic above the caps were uncompensated;

3. Established a rebuttable presumption that traffic exchanged between LECs that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic subject to compensation;

4. Required ILECs wishing to receive the benefits of paying the lower termination rate for ISP-bound traffic to terminate all traffic under Section 251(b)(5) at the rates established by the transition. ("The Mirroring Rule").

In addition, the Commission developed a market exclusion rule. It stated that if a carrier expanded into a new market after the date of the ISP Remand Order, any ISP-bound traffic would be compensated at bill and keep for the "interim period."[6]

The Commission was clear that the "interim regime we establish here will govern intercarrier compensation for ISP-bound traffic until we have resolved the issues raised in the intercarrier compensation NPRM."[7] Adding clarity, the state commissions, the Commission wrote, "will no longer have authority to address" intercarrier compensation for ISP-bound traffic.[8]

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[5] *ISP Remand Order* at ¶ 8
[6] *ISP Remand Order* at ¶ 81
[7] Id. at ¶77
[8] Id. At ¶82

On May 23, 2002, the Court of Appeals overturned the Commission's legal basis for its rules.[9] The court found legally untenable the FCC's reliance on section 251(g) of the Act to carve ISP-bound traffic out of the requirements of section 251(b)(5)'s transport and termination requirements.[10] However, the Court found that there was a "non-trivial" likelihood that the Commission could justify its decision.[11] Accordingly, the court did not vacate the ISP Remand Order and the rules are in effect.

Subsequently, the Commission made two substantive changes to its ISP Remand Order when it granted in part the Forbearance Petition of Core Communications.[12] First, the Commission lifted the growth caps finding that they were no longer in the "public interest."[13] Citing increased adoption of broadband usage and a decline of dial-up minutes terminated to ISPs, the Commission said its concerns had eased regarding the caps it had imposed on the compensable amount of ISP-bound traffic.[14] The downward trend continues for dial-up minutes. Evidence filed in this docket shows that the decline in dial-up minutes has accelerated. For example, in 2007, the number of annual dial-up minutes of minutes of use was approximately 509 billion.[15] By the end of 2009, that number will fall by about 45 percent to 267 billion minutes of use. Projections show annual dial up minutes reaching 123 billion in 2014.

The second change adopted by the Commission involved the new markets rule. The FCC found that maintaining the rule created "different rates for similar or identical functions." The Commission found that the arbitrage opportunities it sought to limit had

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[9] *Worldcom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002)
[10] Id at 434.
[11] Id.
[12] In Re *Petition of Core Communications Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171, Rel. October 18, 2004, ("Core Communications")
[13] Id at ¶ 20.
[14] Id.
[15] See, *Nakahata Letter.*

decreased, and that those "concerns are now outweighed by the public interest in creating a uniform compensation regime."[16] But while lifting the growth caps and eliminating the new market rule, the Commission reaffirmed that the "rate caps and mirroring rule remain necessary to prevent regulatory arbitrage and promote efficient investment in telecommunications services and facilities."[17] In lifting the new market rule and growth caps the Commission found that the new rules were not necessary for the "protection of consumers" and that the statutory requirements of Section 10(a)(2) of the Act had been met.

2. CONFUSION AND LITIGATION

No sooner was the ink dry than the ILECs began challenging the interpretation of the ISP Remand Order as competitive carriers sought to conform interconnection agreements with the ISP Remand Order. Using superior bargaining positions, the ILECs engaged in a series of tactics that ranged from refusing to acknowledge the baseline traffic volumes from the first quarter of 2001 to withholding payments for other services such as IntraLata toll or traffic below the 3:1 traffic ratio.[18] The ILECs, according to Xspedius Communications, took the "best of the Order" but failed to live up to their obligations.[19] The experiences described by Xspedius were not confined to a single carrier.

The chart attached as Exhibit A details many of the complaints and other litigation that increased following the FCC's decision to lift the new markets rule and the growth cap. It seems clear from the intent of the FCC's ruling in the Core Forebearance

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[16] *Core Communications* at ¶ 21
[17] Id at ¶ 19
[18] Id. See, Comments of Xspedius Management Company LLC.
[19] Id.

Order that the effect should have been an increase in ISP-bound minutes that would be compensable. Instead, ILECs began challenging the interpretation of the original ISP Remand Order. These attacks centered on the argument that only "local" ISP-bound traffic was compensable and that in order for an ISP-bound call to be "local" the ISP's modems (or other identifiable gear) had to be physically located in the same local calling area as the originating caller. In making these claims, the ILECs turned away from the primary argument that they had advanced before the release of the ISP Remand Order in which they focused on excluding ISP-bound traffic from the reciprocal compensation obligations of Section 251(b)(5) because the calls were bound for ISPs not in the local calling area and were therefore "interstate" in nature.

In order to support their new position, the ILECs turned to paragraph 10 of the "Background" section of the ISP Remand Order which said, "[a]s we noted in the [FCC's 1999] Declaratory Ruling, an ISP's end user customer typically access the Internet through and ISP server located in the same local calling area."[20] The ILECs began to argue before state commissions and in state and federal court proceedings that the use of "typically" mandated that the ISP's modems be located in the same local calling area as the originating caller in order for the terminating carrier to be compensated pursuant to the ISP Remand Order. The ILECs took their argument a step further claiming that unless the ISP modems were in the local calling area, the terminating carrier would be required to accept the traffic at bill and keep, pay the appropriate intrastate access charges (provided the modems were located elsewhere in the state) or if the modems were out of

[20] *ISP Remand Order* at ¶10

state, interstate access charges.[21] The end result was not a unified, national rate for the termination of ISP-bound traffic but a state-by-stage regime that swings wildly based on the architecture of a carrier's ISP customer. In many states, there are now three separate rates for ISP-bound traffic. In addition, a number of states imposed various interconnection requirements on the terminating carrier for the ISP-bound traffic that was originated by an ILEC. Those requirements included establishing interconnection points in each local calling area or paying transport to the ILEC.[22]

Neither the Declaratory Order nor the ISP Remand Order defines ISP-bound traffic. Nor do they mandate that ISP-bound traffic requires the ISP's modems or other gear to be located in the same local calling area as the caller.[23] Yet the ILECs have been successful in confusing some state commissions by converting the FCC's *description* into a *requirement* into a physical presence requirement. This practice highlights the dangers in setting a rate without clearly defining the category of traffic to which it applies when traffic like ISP-bound calls combine locally dialed telephone numbers with characteristics of information services.

In reaching the rate of .0007 per minute of use for ISP-bound traffic, the FCC took notice of the rate structure in a number of commercially negotiated interconnection agreements: 1. Level 3 Communications and SBC Communications; 2. ICG

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[21] See attached chart: Florida Public Service Commission: *Petition of MCImetro Transmission Services dba Verizon Access Transmission Services for Arbitration of Disputes Arising from Negotiation of Interconnection Agreement with Embarq Florida Inc.*, Docket No. 060767-TP (Aug. 7, 2007); Ohio: *In the Matter of the Petition of Verizon Access Transmission Services, Inc. for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Embarq*. Case No. 06-1485TP-ARB (July 5, 2007); Washington: *Qwest Corporation v. Level 3 Communications, LLC, et al*, Docket UT-063038, Order 10, July 16, 2008

[22] California: *Opinion Regarding Treatment of Virtual NXX Calls with Respect to Small Local Exchange Carriers*. Decision No. 07-02-031. See also *In Re Pac-West Telecomm, Inc.* Application 04-11-005, Decision 06-028, para. 6. June 16, 2005 ;

[23] *ISP Remand Order* at ¶ 27

Communications and BellSouth; 3. KMC Telecom and BellSouth and 4. Level 3 Communications and Verizon.[24] In addition to setting the rate, these agreements expressly define how ISP-bound traffic will be identified. In each agreement, the parties decided to rate and route traffic based on traffic ratios for ***locally dialed calls*** without reference to the placement of the ISP's modems or the ISP's physical location. Those agreements recognize the difficulties in determining where an ISP's modems might be located. They also recognize the historic development of the ISP market in which technology has made it more efficient to aggregate modems and servers at central locations. In addition, technology has made it easier for ISPs to distribute their traffic across their entire network. A terminating carrier will deliver that ISP-bound call to the IP address designated by its customer who can change the location of that address in real time and across the country or the world. ISP-bound traffic does not lend itself to easy identification based on the physical presence of a modem bank or server.

3. UNINTENDED CONSEQUENCES

As a result of the conflicting state decisions, the ISPs who provide dial-up services across the nation have been forced to retrench or in some cases, abandon service in some areas. When states require an ISP to place a modem in a local calling area, that requirement increases the cost of providing that service to its customers even though a more efficient architecture would be to aggregate modems in geographically strategic areas. United Online cites the increased cost from state PUC decisions as forcing it to decrease its offerings, especially in rural areas.[25] Earthlink, another of the nation's largest providers of dial-up services, also highlights the impact of the discriminatory

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[24] Id. at ¶ 85, see fn. 158

[25] Letter of Tamar Finn to Marlene H. Dortch, CC Docket Nos. 99068 & 01-92 October 20 and 21, 2008.

interpretations of the ISP Remand: "State decisions treat a modem in the same local calling area as subject to the FCC's interstate compensation structure, but treat a modem in a different local calling area in a state as subject to intrastate access charges or another compensation structure."[26] The location of the ISP modem is not relevant for intercarrier compensations since the LECs involved rate and route the call based on the local dialing pattern.[27] As both parties make clear, the confusion and litigation that has plagued the implementation of the ISP Remand is impairing the abilities of ISPs to provide services to "low income and rural consumers where broadband is not competitive, affordable or available."[28] Only be establishing a ***bright line rule*** that calls will be rated based on the dialing pattern, and not the physical location of an ISP, will the Commission be able to ensure that dial-up services remain available to those consumers who prefer it or have no other choice.

IV. THE FCC SHOULD EXTEND THE TRANSITION PERIOD FOR INTRASTATE TO INTERSTATE ACCESS TO AT LEAST FIVE YEARS

The Commission is reportedly considering a ten-year transition to a final unified termination rate with a reduction of intrastate access rates to interstate rates within the first two years of the transition. While Level 3 supports a ten-year glide path to reaching a unified termination rate, it opposes as too aggressive the goal of aligning intrastate and interstate access within the first two years. Such an aggressive reduction will impose significant economic hardships on many LECs, including many small rural LECs, by not providing an adequate time for carrier to adjust their business strategies and plans – particularly during the current economic crisis.

[26] Letter of Tamar Finn to Marlene H. Dortch , CC Docket Nos. 99-68 & 01-92, Oct. 17, 2008.
[27] Id.
[28] Id.

Before the Commission undertakes such significant revenue changes, it must first understand the impact. In this instance, it appears that the Commission has decided to "pick-and-choose" components from differing reform plans without considering all the compromises included in each plan. For example, the Missoula Plan provided for a rapid two-year reduction in intrastate access for Track 1 carriers. The glide path for the rural or Track 2 carriers was longer and required the Commission to conduct additional proceedings at year five to access whether further reductions were necessary. In addition, those rate reductions were built on other changes such as interconnection, transport costs and other economic considerations such as an expanded Universal Service Fund. If the FCC acts on a single section without the necessary changes brought by other parts of the plan, it acts at its and the industry's peril.

In addition, the Commission will allow some carriers to offset some revenue losses with nominal increases in the subscriber line charges of its customers and other recovery mechanisms. This recovery mechanism will be discriminatory if it is not available to all carriers who incur significant revenue reductions through the loss of intrastate access revenues. The Commission must maintain competitive and technological neutrality throughout its intercarrier compensation reform efforts.

In order to provide carriers adequate time to adjust their business models, and to minimize any detrimental impacts during the economic turndown, Level 3 urges the Commission to reduce intrastate revenues to interstate levels during a more deliberate five year transition. Level 3 proposes that the difference between its intrastate and interstate rates should be reduced by 20 percent annually until the rates are unified or five years, whichever occurs latest.

V. CONCLUSION

There is no question that the growth of the telecommunications industry is being frustrated by the inability of regulators and the industry to implement a plan that unifies intercarrier compensation rates. As the Commission moves forward with the proposal from Chairman Martin, Level 3 urges the Commission to ensure that its final order clearly classifies how to determine the appropriate compensation that applies to any given class of traffic. The lessons of the ISP Remand Order show the consequences of announcing a rate while creating ambiguity concerning how to classify the traffic.

Therefore, Level 3 urges the Commission to eliminate any doubt over compensation by stating that traffic will be rated and routed based on the dialed telephone numbers and that for ISP-bound traffic no "physical presence" is required. Further, Level 3 urges the Commission to extend the transition period for the reduction of intrastate to interstate rates from two years to five.

Respectfully submitted,

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STATE COMMISSION DECISIONS ON THE *ISP REMAND ORDER*

State	Decision	Date	Cite	Rating Decision Basis	Rate Structure
Arizona	VNXX traffic defined as any ISP traffic terminating to an ISP physically located outside of local calling area where call originated. VNXX permitted so long as routed over direct end office trunks between CLEC and ILEC end office serving the local calling area of the originating end user; cost of the direct end office trunks to be paid for by CLEC.	12/5/06	In the Matter of Petition of Level 3 Communications LLC for Arbitration of an Interconnection agreement with Qwest Corporation Pursuant to Section 252(b) of the Telecommunications Act of 1996, Dockets Nos T-03654-05-0350; T-010051B-05-0350	To receive reciprocal compensation the ISP must be physically located within the local calling area from which the caller originated the traffic. For VNXX traffic, CLEC has to incur the additional costs of trunking to the local calling area from its network and receives no reciprocal compensation for terminating the traffic (bill and keep for VNXX)	$.0007 for ISP traffic terminating to modem banks located in local calling area; bill and keep for all VNXX traffic with CLEC paying costs of trunking from its network to ILEC end offices.
California	If a carrier interconnects on an indirect basis, it must bear the responsibility for transport costs to get a VNXX call to the small LEC local calling are to the POI.	2/15/07	Opinion Regarding Treatment of Virtual NXX Calls with Respect to Small Local Exchange Carriers. Decision 07-02-031	Each party bears its costs of transport on its side of the POI and POIs within the CA PUC's 12-mile band for local calls are considered local. Compensation for ISP-bound traffic is per the FCC's ISP Remand Order. End user location, therefore, is irrelevant to this analysis. In Re Pac-West Telecomm, Inc. Application 04-11-005, Decision 05-06-028. California Public Utilities Commission, June 16, 2005, para. 6	Recip comp (local) by originating carrier; terminating carriers pays transport costs outside of local calling area.

California	VNXX is interexchange, rated as local – subject to state jurisdiction. Originating carrier recovers from the terminating carrier the transport and facilities costs of bringing VNXX calls to the POI; The terminating carrier is receiving compensation for terminating the VNXX traffic. PUC ruled that 251(b(5) and FCC Rule 51.703 (b) do not apply in the case of VNXX	12/8/03	Pacific Bell V. PacWest, Decision 03-05-031West		
Florida	Physical end points of a call determine the appropriate intercarrier compensation. If the physical end points are in the same LCA, the call should be considered local for intercarrier comp. If one end of the call is outside the local calling area, the cal should be considered interexchange and is subject to originating access (billed by the carrier whose end user makes the VNXX call.)	8/7/07	Petition of MCI Metro Transmission Services dba Verizon Access Transmission Services for Arbitration of Disputes Arising form Negotiation of Interconnection Agreement with Embarq Florida Inc., Docket No. 060767-TP	Based upon state law: (1) if the physical end points of a VNXX call are within the local calling area, the call should be considered local for intercarrier compensation purposes; (2) if one of the physical end points of the call is outside of the local calling area, the call should be considered interexchange and subject to originating access charges – presumably intrastate or interstate depending upon physical location.	Potential 3-tier structure – local, intrastate and interstate.

Illinois	Ruled that virtual NXX traffic to ISPs is governed by FCC regime. Said issues re what the ILEC charges the CLEC must be taken to the FCC. Also ruled that virtual NXX traffic to non-ISPs is subject to bill and keep.	7/24/02	Essex Telecom, Inc. v. Gallatin River Communications, LLC, Case No. 01-0247, Order; Global NAPs Illinois, Inc. Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with Verizon North, Inc., f/k/a GTE North Incorporated and Verizon South, Inc., f/k/a GTE South Incorporated, Docket No. 02-0253, Arbitration Decision	VNXX services are exchange services, not exchange access services, and that access charges should not be associated with such services. P 17, Docket No. 02-0253, Arbitration Decision	Bill and keep
Michigan	ILECs have a statutory option to address VNXX traffic on a retail pricing basis through tariffs, i.e. ILECs may opt to charge retail subscribers toll charges for VNXX, thereby allowing them to impose access charges on the traffic.	7/1/08	In the matter of the petition of Sprint Communications Company, LP for arbitration pursuant to Section 252 (b) of the Telecommunications Act of 1996 to establish an interconnection agreement with CenturyTel Midwest – Michigan, U-15534	Legislation passed by the MI Legislature based upon "gap" in federal jurisdiction over VNXX mandated that a call made to a called party who is not located within the geographic area of the caller's local calling area is not a local call if the tariff of the provider originating the call does not classify the call as a local call (MCL 484.2304(9), 2005); MECA citing in workshop to para 10 of ISP Remand to validate this result for ISP bound traffic.	Depending upon the option created, 3 rates exist – local, intraLATA and interLATA

New York	Ruled that calls to virtual NXX codes customers will be handled on a bill and keep basis, and are not entitled to reciprocal compensation. CLECs must arrange to transport traffic from the edge of the service area (Verizon was ordered to implement tariff terms for third-party transport from the ITC meet point to the Verizon tandem). May not charge CLECs access charges for virtual NXX traffic. And CLECs must establish direct trunking when call volumes beyond the DS-1 level.	7/30/01	*Joint Petition of AT&T Communications of New York, Inc., TCG New York, Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, Case 01-C-0095, Order Resolving Arbitration Issues	Single /MOU recip comp rate structure for ISP traffic: Defers to FCC's rate mechanism in the ISP Remand Order -- "The Commission finds that the FCC's order speaks for itself, and there is no need for the agreement to include any terms, conditions or rates for the internet traffic that the FCC order addresses." Page 25, Case 01-C-0095, Order Resolving Arbitration Issues	Local rate

Ohio	Access charges apply to "non-local" ISP-bound calls – including those delivered to the POI in the same LCA as the originating caller but terminated to an ISP physically located outside the LCA.	7/5/2007	In the Matter of the Petition of Verizon Access Transmission Services, Inc. for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Embarq, *Arbitration Award* (April 18, 2007), *Order on Rehearing* (July 25, 2007), Case No. 06-1485-TP-ARB.	Since FCC has not pre-empted the commission's ability to apply access charges to non, local ISP-bound calls, the commission can utilize its Local Service Guidelines that any end user call originating and terminating within a local calling area, shall be treated as a local call – all others subject to access charges. pp. 6-7, Case No. 06-1485-TP-ARB.	3 rates – local, intrastate & interstate
Penn.	VNXX is non-local traffic and, therefore, subject to existing access charge regime (ALJ Recommended decision). Requires that the ISP have a physical local presence by virtue of how VNXX is defined. The remand order only applies to such traffic originating and terminating within a single local calling area.	10/19/20 07	Petition of Core Communications Inc. for Arbitration of Interconnection Rates, Terms and Conditions with the Untied Telephone Company of Pennsylvania, dba Embarq Pursuant to 47 USC 252(b), Recommended Decision, Docket No. A-310922F7002	References applicability of Remand Order only to "calls between dial up users and ISPs in a single local calling area" and cites to federal cases since then (i.e. Global NAPS).and the FCC's amicus brief. (see pp. 10-13)	2-tier rate structure: (1) Remand Order regime for ISP traffic in the same local calling area; (2) State access charge regime for balance of Core's ISP-bound traffic.

Texas	Made a distinction between "local" ISP-bound traffic—for which they had set a rate—and FX ISP-bound traffic—for which there was no rate. Under the terms of the *ISP Remand Order*, in their view, if it was bill-and-keep before the Order, it is bill-and-keep after the Order. Hence, FX ISP-bound traffic is subject to bill-and-keep.	8/28/02	Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for "FX-Type" Traffic Against Southwestern Bell Telephone Company, PUC Docket No. 24015, Revised Arbitration Award	ISP Remand order "informative" as to the issue of local versus access traffic	Results in 1-tier rate structure: bill and keep for all ISP-bound traffic.
Washington	VNXX is interexchange traffic to be exchanged on a bill and keep basis with the originating carrier paying all costs of transport.	7/16/08	Qwest Corporation v. Level 3 Communications, LLC, et al, Docket UT-063038, Order 10	WUTC stated that FCC focused only on ISP-bound traffic that terminates locally, paraphrasing para 10 of the ISP Remand Order – para 26, pp 13-14, Qwest Corporation v. Level 3 Communications, LLC, et al, Docket UT-063038, Order 10	

Wyoming	The Commission finds the *ISP Remand Order* makes it clear the only traffic considered is ISP traffic that originates and terminates in the same LCA. The Commission finds ISP-bound traffic does not include VNXX-routed ISP-bound traffic, and VNXX traffic is not subject to reciprocal compensation.	April 30, 2007	In re Level 3 Communications, LLC, Docket No. 70043-TK-05-10, Memorandum Opinion, Findings and Order (April 30, 2007).	Quoted language from ISP Declaratory Order as basis for FCC statement in ¶10 of ISP Remand Order. (see paragraph 80) Also cited to Oregon and other decisions in support by pointing out that they had cited ¶10 of ISP Remand Order. (see paragraph 83 and footnote 15)	Results in 2-tier rate structure: (1) .0007 for "local" ISP-bound traffic, and (2) access charges for VNXX traffic (though never explicitly stated)

Colorado	The calling party and called party must both be physically located in the same local calling area for the call to be a "local" call for reciprocal compensation purposes. The commission also found that calls originating from and terminating to customers in different LCAs are interexchange in nature, and that the FCC did not eliminate the distinction between "local" and "interexchange" traffic.	4/24/07	In The Matter Of Level 3 Communications, LLC's Petition For Arbitration Pursuant To Section 252(B) Of The Communications Act Of 1934, As Amended By The Telecommunications Act Of 1996, And The Applicable State Laws For Rates, Terms, And Conditions Of Interconnection With Qwest Corporation, *Initial Commission Decision* (adopted February 22, 2007) and *Decision No C07-0318* (April 24, 2007), Colorado Public Utilities Commission Docket No. 05B-210T
Connecticut	VNXX traffic was subject to federal intercarrier compensation regime, and non-ISP-bound VNXX traffic was not subject to reciprocal compensation, but not subject to access charges, either.	1/30/02	DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities, Final Decision, Docket No. 01-01-29 (Ct. DPUC Jan. 30, 2002).
Georgia	The Georgia PSC ruled that access	7/23/01	In re Generic Proceeding on Point of Interconnection and Virtual FX Issues,

	charges, and not reciprocal compensation, are due for Virtual FX traffic		Docket No. 13542-U, Final Order
Indiana	VNXX calls terminate outside the local calling area of the party originating the call. Such calls are not local for the purpose of intercarrier compensation and access charges should instead apply.	3/12/08	Petition of MCI Metro Transmission Services dba Verizon Access Transmission Services for Arbitration of Interconnection Agreement with United Telephone Company of Indiana, Inc. Embarq 43373 Int. 01
Kentucky	"Foreign exchange and virtual NXX services should be considered local traffic when the customer is physically located within the same LATA as the calling area with which the telephone number is associated." The Commission limited virtual NXX traffic so that only traffic originating and terminating within a LATA would qualify for reciprocal compensation.	2/14/01	In re Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Order, Case No. 2000-404
Maine	Ruled that virtual NXX service is interexchange traffic and therefore not eligible for reciprocal compensation. Ordered to provide a "Single Number Service" available only to ISPs.	6/30/00	*Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber*, Order Requiring Reclamation of NXX Codes and Special ISP Rates by ILECs
Minnesota	ISP-bound traffic that is originated by the ILEC end user customer and that is delivered to an ISP customer served by CLEC where the ISP has a sever located within the same local calling area (as approved by the state Commission) as the originating caller, will be compensated.	2/6/08	In the matter of the petition of MCImetro Access Transmission Services dba Verizon Access Transmission Services for Arbitration of an interconnection agreement with Embarq Minnesota pursuant to 47 USC 252(b), P-430, 5321M-07-611

	ISP-bound traffic that is originated by an ILEC end user customer, and is delivered to CLEC where the ISP is physically located outside the ILEC caller's local calling area (as approved by the sate Commission) as the originating caller (regardless of either NPA-NXX dialed or whether the CLECs end user customer is assigned the NPANXX associated with a rate center with which the Qwest customer is physically located) will be subject to bill and keep.		
Missouri	VNXX not local traffic and compensated at bill and keep	6/27/06	Socket Telecom, LLC v. CenturyTel of Missouri, LLC, TO-2006-0299
Nevada	Ruled that, for purposes of reciprocal compensation, shall adopt the local calling areas defined in Sprint's tariff. Further, may assign VNXX numbers, but intercarrier compensation shall not apply to FX and FX type services.	5/2/02	Petition of Global NAPs, Inc. for Arbitration of an Interconnection Agreement with Central Telephone Company – Nevada d/b/a Sprint of Nevada, pursuant to Section 252 of the Telecommunications Act of 1996, Dkt. 01-10018, Order
New Hampshire	CLEC must meet a local "nexus" test to gain state wide VNXX – service must be provided to at least on customer physically located in the exchange from which the service is requested and that the service must be provided through collocation with an ILEC, using CLECs own facilities, EELS or other leased facilities.	9/16/05	Re Independent Telephone Companies and Competitive Local Exchange Carriers – Local Calling Areas – Investigation as to Whether Certain Local Calls are Local, DT 00223, DT00-054
North Carolina	Commission concluded that: "the Parties should be subject to reciprocal compensation obligations to each other for calls to numbers with NPA/NXX codes associated with the same exchange, provided that the	6/11/03	*Petition of US LEC of North Carolina, Inc., for Arbitration with Verizon South, Inc.*, NCUC Docket No. P-561, SUB 19, Opinion, at *23 (NCUC, June 11, 2003).

	NPA/NXX code of the customer is 'homed' in the same LATA and this arrangement is accomplished through traditional FX service, i.e., the service arrangement uses owned or leased dedicated lines.".		
North Dakota	Ruled that the FCC *ISP Remand Order* applies to all ISP-bound traffic, rejecting the ILEC argument that the *ISP Remand Order* was limited to only "local" ISP-bound traffic	3/3/03	Level 3 Communications, LLC Interconnection Arbitration Application, Case No. PU-2065-02-465, Decisions and Recommendations of the Arbitrator Concerning Level 3 Communications, LLC's Interconnection Arbitration Application
Rhode Island	VNXX calls rated as local or toll based upon the geographic physical end points of call.	10/16/02	In Re; Arbitration of the Interconnection Agreement Between Global Naps and Verizon Rhode Island, Order No. 17193
South Carolina	FCC orders and rules make clear that traffic destined for ISP customers outside the LCA is interexchange traffic and is to be treated as such, the commission found that virtual NXX for dial-up calls to ISPs is not ISP-bound traffic but is interexchange traffic subject to access charges. The commission further found that the physical location of the ISP determines the compensation.	1/11/2006	In re MCI Metro Access Transmission Services, LLC, Order, Docket No. 2005-188-c, 2006 WL 2527432
South Dakota	VNXX not subject to intrastate access charges, but subject to interstate access. ISP calls are jurisdictionally interstate, state commission free to require or not require reciprocal compensation; noting in ISP-Remand the FCC's finding that ISP-bound calls are interstate in nature is somehow limited to calls to ISP made within the same local calling area.	3/14/05	Black Hills Fibercom v. Qwest Corporation. CT03-154

Tennessee	Ruled that calls to an NPA/NXX in the local calling area outside the rate center where the NPA/NXX is homed should be treated as intrastate interexchange toll traffic for purposes of intercarrier compensation and are subject to access charges.	6/25/01	Petition for Arbitration of the Interconnection Agreement between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant To Section 252(B) of The Telecommunications Act of 1996, Docket 99-00948
Vermont	VNXX prohibited by all telecommunications carriers to avoid what otherwise would be toll charges unless originating carries purchases or builds facilities to transport the traffic from the remote exchanges where the traffic is originated to its ISP customer; the originating carrier to only receive compensation from its ISP customer.	9/28/04	In re Acquisition and Use of Central Office Codes by Local Exchange Carries in Vermont, Docket No. 6209
Wisconsin	*ISP Remand Order* applies to all ISP-bound traffic, regardless of the terminating point of the call.	2/13/03	Level 3 Communications, LLC Petition for Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection Rates, Terms, and Conditions, Docket No. 05-MA-130, Order Approving an Interconnection Agreement