BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. 000907-TP

PETITION BY LEVEL 3 COMMUNICATIONS, LLC FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC.

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VOLUME 2

Pages 148 through 324

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ

DATE: Wednesday, December 6, 2000

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: KORETTA E. STANFORD, RPR
Official FPSC Reporter

APPEARANCES:

(As heretofore noted.)

I N D E X

WITNESSES

EXHIBITS

P R O C E E D I N G S

(Transcript continues in sequence from Volume 1.)

MR. ROMANO: Level 3 would call Timothy Gates.

COMMISSIONER JABER: Mr. Gates, have you been sworn?

THE WITNESS: Yes, I have.

TIMOTHY J. GATES

was called as a witness on behalf of Level 3 Communications and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROMANO:

Q Mr. Gates, would you please state your name and business address for the record?

A My name is Timothy J. Gates, 15712 West 72nd Circle in Arvada, that's A-R-V- as in Victor -A-D-A, Arvada, Colorado 80007.

Q May I ask by whom you are employed?

A I'm employed by QSI Consulting.

Q And who are you appearing on behalf of today?

A I'm appearing on behalf of Level 3 Communications.

Q Have you prepared and caused to be filed in this docket 78 pages of prefiled direct testimony and 24 pages of prefiled rebuttal testimony?

A Yes, I have.

Q Do you have any changes, corrections or revisions to either copy of testimony?

A Yes, I do. I have three changes for my direct testimony.

Q Please, proceed.

A The first change is at Page 9, Line 21, please replace the word "transport" with the word "channel" so the line would read, "Please explain the local channel facility."

My next change is on Page 18, Line 27. Please strike the first occurrence of the word "the" so that line would read, "It is clear that each LEC bears the..."

And finally, on Page 65, Line 7, please replace Ameritech with BellSouth. And my apologies to BellSouth, its management and its employees for that faux pas.

COMMISSIONER JABER: They didn't accept your apology.

THE WITNESS: I understand.

A Those are the only changes I have, thank you.

BY MR. ROMANO:

Q With that correction and your unaccepted apology, if I ask you the same questions today that are contained in your prefiled direct testimony and in your prefiled rebuttal testimony, would your answers to those questions be the same?

A Yes, they would.

Q Madam Chair, I would ask that the prefiled direct and prefiled rebuttal testimony of Mr. Gates be inserted into the record as though read.

COMMISSIONER JABER: Yes. The prefiled direct testimony of Mr. Gates and the prefiled rebuttal testimony of Mr. Gates will be inserted into the record as though read.

BY MR. ROMANO:

Q Mr. Gates, also one further question. Have you also prepared prefiled Exhibits TJG-1 through TJG-9?

A Yes, I have.

MR. ROMANO: Madam Chair, I would ask that Exhibits TJG-1 through TJG-9 be marked for identification at this time.

COMMISSIONER JABER: All right. Is there any objection with identifying all of those as a composite exhibit, Staff?

MS. BANKS: Staff has no objection.

COMMISSIONER JABER: We'll identify TJG-1 through 9 as composite Exhibit 7.

(Exhibit 7 marked for identification.)

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

A: My name is Timothy J Gates. My business address is as follows: 15712 W. 72nd Circle, Arvada, Colorado 80007.

Q: WHO EMPLOYS YOU?

A: I am employed by QSI Consulting, Inc., ("QSI")

Q: PLEASE DESCRIBE QSI AND IDENTIFY YOUR POSITION WITH THE FIRM.

A: QSI is a consulting firm specializing in the areas of telecommunications policy, econometric analysis and computer aided modeling. I currently serve as Vice President.

Q: ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?

A: This testimony was prepared on behalf of Level (3) Communications, LLC ("Level 3").

Q: PLEASE DESCRIBE YOUR EXPERIENCE WITH TELECOMMUNICATIONS POLICY ISSUES AND YOUR RELEVANT WORK HISTORY.

A: Prior to joining QSI I was a Senior Executive Staff Member at MCI WorldCom, Inc. ("MWCOM"). I was employed by MWCOM for 15 years in various public policy positions. While at MWCOM I managed various functions, including tariffing, economic and financial analysis, competitive analysis, witness training and MWCOM's use of external consultants.

I testified on behalf of MWCOM more than 150 times in 32 states and before the FCC on various public policy issues ranging from costing, pricing, local entry and universal service to strategic planning, merger and network issues. Prior to joining MWCOM, I was employed as a Telephone Rate Analyst in the Engineering Division at the Texas Public Utility Commission and earlier as an Economic Analyst at the Oregon Public Utility Commission. I also worked at the Bonneville Power Administration as a Financial Analyst doing total electric use forecasts and automating the Average System Cost methodology while I attended graduate school. Prior to doing my graduate work, I worked for ten years as a forester in the Pacific Northwest for multinational and government organizations. Exhibit TJG 1 to this testimony is a summary of my work experience and education.

Q: YOU HAVE TESTIFIED IN 34 STATES TO DATE. DID YOU EVER TESTIFY IN FLORIDA?

A: Yes, I did. I filed testimony in the Commission's Investigation into IntraLATA Presubscription (Docket No. 92-47). That testimony was filed on behalf of MCI Telecommunications Corporation in 1994.

Q: WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A: The purpose of my testimony is to address certain issues identified in the Level 3 Petition for Arbitration ("Petition") that was filed on July 20, 2000, and identified in the Order Establishing Procedure that was filed on September 15, 2000. Specifically, I will address issues 2 (Conditions under which Level 3 is entitled to symmetrical Compensation), 3 (Compensation for Interconnection Trunks), 6 (Reciprocal Compensation for ISP-Bound Traffic), and 7 (Reciprocal Compensation Based on Location of Customers and the Application of Switched Access Charges to ISP-Bound Traffic).

Q: HOW IS YOUR TESTIMONY ORGANIZED?

A: My testimony is organized by issue. The various discussions of the issues can be found on the following pages:

Q: PLEASE SUMMARIZE THE CONCLUSIONS YOU REACH IN YOUR TESTIMONY.

A: I will provide the summaries by Issue:

Issue 2 - BellSouth's definition of serving wire center and the use of that definition for determining compensation for leased facility interconnection is inappropriate and results in an artificial increase in costs for alternative local exchange carriers ("ALECs"). The cost differential is caused, in part, when BellSouth unilaterally locates its interconnection points ("IPs") away from Level 3's switch. BellSouth's proposed language causes Level 3 to incur costs that BellSouth does not incur given the same network configuration. Level 3 proposes language that would ensure that symmetrical compensation is achieved.

Issue 3 - Level 3 opposes BellSouth's attempt to charge for interconnection trunks and facilities on its network. It is each carrier's responsibility to provide facilities on its side of the IP to deliver traffic to the terminating carrier. A recent FCC order confirms that, under the rules of the road for local interconnection, a LEC may not assess charges for local traffic (or facilities) that originates on the LEC's network. To charge for these trunks and facilities would result in double recovery of the LEC's costs. If Level 3 is required to pay for interconnection trunks and facilities, the rates must be based on forward looking long-run economic costs, not upon BellSouth's access tariff or other prices that have not been scrutinized for compliance with the requirements of the Telecommunications Act.

Issue 6 - The public policy and economic considerations associated with ISP-bound traffic have resulted in numerous decisions by state commissions, including the Florida Public Service Commission ("Commission"), concluding that ISP-bound calls should be considered local calls for purposes of reciprocal compensation.

Issue 7 - The use of NXX codes in the manner currently employed by Level 3, other ALECs, and even BellSouth itself, allows consumers efficient access to ISPs that would otherwise be impossible if such calls were treated as toll calls or anything other than local. Placing contractual restrictions on calls to certain NXX codes would inappropriately allow BellSouth to avoid payment of reciprocal compensation and give BellSouth a competitive advantage over ALECs. BellSouth's proposal would increase the cost of Internet access and reduce competition to the detriment of consumers, even though its own costs do not differ in handling these calls versus any other locally-dialed call. The Commission should deny BellSouth's attempt to eliminate this type of local call from reciprocal compensation, and to apply switched access charges to ISP-bound and other kinds of virtual NXX calls.

ISSUE 2 -- SHOULD LEVEL 3 RECEIVE SYMMETRICAL COMPENSATION FROM BELLSOUTH FOR LEASED FACILITY INTERCONNECTION?

Q: **WHAT IS THE DISPUTE BETWEEN BELLSOUTH AND LEVEL 3 ON THIS ISSUE?**

A: Under the terms of the Agreement (Section 1.2 of Attachment 3), the party originating local traffic has the option to interconnect by purchasing dedicated interoffice transport ("DIT") from its "serving wire center" to the other party's "first point of switching." BellSouth has proposed a complicated rate structure for this form of transport that could, in some circumstances, result in BellSouth charging higher rates than Level 3 for physically identical transport facilities, depending on which party's traffic is being transported. Level 3 has proposed to add a paragraph, Section 1.2.6, to ensure that Level 3 may charge BellSouth for facilities in an amount equal to that which BellSouth may charge Level 3 for traffic on the same route.

Q: **PLEASE EXPLAIN HOW BELLSOUTH'S PROPOSAL CAN LEAD TO UNEQUAL TRANSPORT RATES.**

A: BellSouth's rate structure for leased facility interconnection includes two different components: the "Local Channel Facility" ("LCF") and the DIT facility. The LCF extends from the IP of the carrier ordering the transport service to the "serving wire center," while the DIT extends from the "serving wire center" to the first point of switching on the other party's network. The asymmetry arises from the proposed definition of "serving wire center."

Q: PLEASE DEFINE A SERVING WIRE CENTER.

A: Generally speaking, a serving wire center is synonymous with a central office. By central office, I am referring to a "class 5"[1] central office where the local exchange company terminates the subscriber outside plant. Nevertheless, a carrier could designate a tandem switch location as its serving wire center. Essentially, a serving wire center is the central office with entrance facilities for the ALEC.

Q: DOES THE DEFINITION OF SERVING WIRE CENTER VARY BY CARRIER?

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[1] A "class 5" office is the lowest level in the hierarchy of local and long distance switches. The class 5 switch is the closest switch to the local end user.

A. Yes, it may. As a new entrant into the local exchange telecommunications market, Level 3 utilizes state-of-the-art digital technology, typically installing only a single switch in a single building that serves an entire LATA. This single switch would be considered BellSouth's serving wire center for purposes of terminating traffic originated by BellSouth subscribers. (In the BellSouth contract, the "BellSouth serving wire center" is the wire center on *Level 3's* network from which service is provided to BellSouth, and vice versa. This terminology is confusing, but I use it to be consistent with the contract language.) BellSouth, however, has multiple central offices and/or wire centers per LATA. The BellSouth switch closest to the Level 3 switch is normally designated as Level 3's serving wire center. Let's assume that Level 3 customers are originating traffic that is terminated on the BellSouth network. Level 3 would purchase DIT (which is charged on a per mile basis) between its serving wire center (the BellSouth central office or tandem) and BellSouth's first point of switching. The diagram attached as Exhibit __(TJG-1) (Diagram

1) shows the DIT charged to Level 3 in this scenario.

Now, assuming the same network configuration, let's see how these terms and definitions impact the parties if BellSouth originates traffic that terminates on the Level 3 network. Diagram 2 attached as Exhibit __(TJG-2) shows the same network configuration as Diagram 1.

In this scenario, however, according to BellSouth's definitions and proposed language, BellSouth would purchase DIT between its serving wire center (the Level 3 central office) and Level 3's first point of switching (the same Level 3 central office). In other words, BellSouth would <u>not</u> purchase DIT from Level 3, or it would purchase it at dramatically less than what Level 3 would have to pay. The fact that Level 3 is a new entrant with a single switch in the LATA results in dramatically different costs under BellSouth's proposed language.

Q: **PLEASE EXPLAIN THE LOCAL ~~TRANSPORT~~ CHANNEL FACILITY ("LCF") AS INDICATED IN DIAGRAMS ONE AND TWO.**

A: The LCF is a flat-rated, non-mileage sensitive switch transport facility between the IP and the originating party's serving wire center. Although the LCF appears longer for BellSouth when it originates local traffic, that rate element is flat-rated. As such, unlike the DIT, the mileage or distance of the LCF does not impact the cost.

Q: BUT DOESN'T THIS DIT PROPOSAL REFLECT THE ADDITIONAL COSTS THAT BELLSOUTH MUST INCUR TO PROVIDE FACILITIES FROM LEVEL 3'S SWITCH TO THE INTERCONNECTION POINT?

A: No. This example highlights the anticompetitive impact of its proposal to unilaterally designate IPs for BellSouth-originated traffic. If BellSouth designates IPs at end offices some distance from Level 3's point of presence, the intercarrier compensation will not be symmetrical. Indeed, BellSouth's proposal confirms the FCC's conclusion that --

> Because an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's

customers to the incumbent LEC's subscribers.[2] (footnote omitted)

Q: IT IS LEVEL 3'S CHOICE TO PLACE ONE IP PER LATA. SHOULDN'T BELLSOUTH BE ALLOWED TO PLACE ITS IP AT ITS DESIRED LOCATION?

A: No. The Act and FCC orders clearly allow new entrants to interconnect at any technically feasible point. The single IP per LATA allows new entrants to grow their business economically without having to duplicate the ILECs existing network.

If Congress had wanted ILECs to have the ability to designate IPs and ALECs to bear the same duty in establishing IPs as incumbent LECs bear, it would have specifically stated that outcome, rather than separating out the interconnection obligations to apply only to incumbent LECs under Section 251(c)(2).

Q: HAS THE FCC INTERPRETED SECTION 251 IN A SIMILAR MANNER?

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[2] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; **FIRST REPORT AND ORDER**; CC Docket No. 96-98; Released: August 8, 1996; at ¶ 10. *Local Competition Order.*

A: Yes, it has. In the FCC's First Report and Order it addressed technically feasible points of interconnection as follows:

> Section 251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection. The obligations of LECs that are not incumbent LECs are generally governed by sections 251(a) and (b), not section 251(c). Also, the statute itself imposes different obligations on incumbent LECs and other LECs (i.e., section 251(b) imposes obligations on all LECs while section 251(c) obligations are imposed only on incumbent LECs).[3]

As such, BellSouth does not have the same right as ALECs to identify a technically feasible IP.

Q: DOES THE FACT THAT THERE IS NO PROHIBITION AGAINST ILECS DETERMINING TECHNICALLY FEASIBLE INTERCONNECTION POINTS GIVE THEM THE RIGHT TO DO SO?

A: No. As noted above, the interconnection obligations of LECs and ILECs are specifically identified in the Act. BellSouth may not assume some authority that is not provided for in the Act. As such, BellSouth is wrong to suggest that each party may determine the IP for its own originating traffic.

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[3] Id. at ¶220.

Q: ARE THERE PUBLIC POLICY REASONS TO DENY BELLSOUTH THE ABILITY TO ESTABLISH IPS FOR TRAFFIC IT ORIGINATES TO ALECS?

A. Yes. The FCC correctly noted in the First Report and Order at paragraph 218 that "…the LEC has the incentive to discriminate against its competitors by providing them less favorable terms and conditions of interconnection than it provides itself." It is for this reason that the FCC rejected the ILECs' suggestion that they impose reciprocal terms and conditions with respect to interconnection obligations on ILECs and ALECs. If BellSouth were allowed to identify IPs for originating traffic it would be able to disadvantage ALECs and impose additional and unwarranted costs on new entrants. Such a result is not in the public interest and would severely impede the development of competition. Indeed, if BellSouth were allowed such discretion, it may force ALECs to essentially duplicate the incumbent's network, thereby eliminating the social benefits of the one IP per LATA rule. Such a result has been regularly rejected by regulators as not in the public interest.

Q: WHAT IS THE SOLUTION TO THIS PROBLEM?

A: The solution is to adopt Level 3's changes to Section 1.2 of Attachment 3, which ensures symmetrical compensation. Level 3 recommends the following language for Section 1.2.6:

> Notwithstanding the foregoing definitions, to ensure that symmetrical compensation is achieved, Level 3 may charge BellSouth for Local Channel and Dedicated Interoffice Transport facilities in an amount equivalent to that which may be charged by BellSouth to Level 3 for traffic on the same route.

This language ensures that Level 3 and other ALECs are not disadvantaged by BellSouth's unilateral placement of IPs and the different network architectures.

ISSUE 3 - SHOULD EACH CARRIER BE REQUIRED TO PAY FOR THE USE OF INTERCONNECTION TRUNKS ON THE OTHER CARRIER'S NETWORK? EVEN IF SO, SHOULD LEVEL 3 BE REQUIRED TO PAY RECURRING AND NONRECURRING RATES BASED UPON BELLSOUTH'S ACCESS TARIFF FOR THE USE OF INTERCONNECTION TRUNKS?

Q: IS IT APPROPRIATE TO IMPOSE ANY CHARGES FOR LOCAL INTERCONNECTION TRUNKS?

A: No. It is inappropriate to impose any charges for local interconnection trunks (and the facilities upon which those trunks ride), as these are co-carrier facilities and trunks provided for the mutual benefit of the parties in exchanging customer traffic, and both parties must deploy matching capacity on their side of the IP. Further, as both parties have already agreed in Section 1.1.1 of Attachment 3, it is each carrier's financial and operational responsibility to supply and maintain the network on its side of the IP to deliver traffic to the terminating carrier, so a requirement that each party then pay the other for trunks and facilities on its network is inconsistent with other resolved sections of the contract.

Q: WHAT DOES SECTION 1.1.1 OF THE INTERCONNECTION AGREEMENT STATE?

A: Section 1.1.1 of the Interconnection Agreement states in pertinent part, "Each party is financially and operationally responsible for providing the network on its side of the IP." This responsibility includes the interconnection trunks used to deliver traffic to the interconnection point or IP. To the best of my knowledge, this language is not being disputed by either BellSouth or Level 3. As the language indicates, BellSouth has agreed to be both financially and operationally responsible for its network on its side of the IP.

Q: WHAT DO YOU MEAN WHEN YOU SAY THE TRUNKS AND FACILITIES ARE FOR THE "MUTUAL BENEFIT" OF THE PARTIES?

A: The interconnection trunks and facilities are as valuable to BellSouth as they are to Level 3 or any ALEC. They are used by BellSouth to ensure that calls between its customers and Level 3 customers are completed. Without such trunks, BellSouth would not be able to provide the level of services demanded by its own customers.[4]

Q: DOES LEVEL 3 HAVE TO PROVIDE INTERCONNECTION TRUNKS AND FACILITIES AS WELL?

A: Yes. For every trunk that BellSouth sets up to handle Level 3 traffic, Level 3 must ensure that the appropriate level of capacity is available on its own side of the IP so that calls coming over the BellSouth trunks can then flow over the Level 3 network to their intended destination (and vice versa). Thus, it should be in both carriers' interest (or at least in both carriers' customers' interest) to have an adequate amount of co-carrier trunks and underlying facilities in place. Requiring each carrier to pay the other for

[4] By "level" of service, I am referring to the amount of blocking experienced by consumers.

co-carrier trunks and the underlying facilities on the other party's network is therefore inappropriate and contrary to the principles underlying cooperative reciprocal interconnection.

Q: **ON THIS PARTICULAR ISSUE, WE ARE TALKING ABOUT TRUNKS AND FACILITIES USED TO INTERCONNECT THE TWO NETWORKS. HAS THE FCC ISSUED ANY RECENT OPINIONS ON THE RESPONSIBILITIES OF THE CARRIERS IN THIS REGARD?**

A: Yes, it has. There has been some debate about FCC Rule 51.703(b), which states, "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." In a recent case before the FCC, several ILECs argued that this rule would apply only to "traffic," and would not prevent a carrier from charging an interconnecting carrier for the cost of "facilities" used in originating traffic. The FCC flatly rejected that argument::

> Defendants argue that section 51.703(b) governs only the charges for "traffic" between carriers and does not prevent LECs from charging for the "facilities" used to transport that traffic. We find that argument unpersuasive given the clear mandate of the *Local Competition Order*. The Metzger Letter correctly stated that the Commission's rules prohibit LECs from charging for facilities used to

> deliver LEC-originated traffic, in addition to prohibiting charges for the traffic itself. Since the traffic must be delivered over facilities, charging carriers for facilities used to deliver traffic results in those carriers paying for LEC-originated traffic and would be inconsistent with the rules. Moreover, the Order requires a carrier to pay for dedicated facilities only to the extent it uses those facilities to deliver traffic that it originates. Indeed, the distinction urged by Defendants is nonsensical, because LECs could continue to charge carriers for the delivery of originating traffic by merely re-designating the "traffic" charges as "facilities" charges. Such a result would be inconsistent with the language and intent of the Order and the Commission's rules.[5] (footnotes omitted; emphasis in original)

It is clear that ~~the~~ each LEC bears the responsibility of operating and maintaining the facilities used to transport and deliver traffic on its side of the IP. This responsibility extends to both the trunks and facilities as well as the traffic that transits those trunks and facilities. Likewise, an interconnecting terminating LEC will bear responsibility for the facilities on its side

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[5] In the Matters of TSR WIRELESS, LLC, et al, Complainants, v. US WEST COMMUNICATIONS, INC. et al, Defendants; **MEMORANDUM OPINION AND ORDER;** File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18; Released June 21, 2000; ¶25; (*TSR Order*)

of the IP, but then recover the costs of transporting and terminating traffic over those facilities from the originating LEC, in the form of reciprocal compensation.

Q: DID THE FCC FURTHER EXPLAIN ITS LOGIC FOR REQUIRING THE ORIGINATING CARRIER TO BEAR THE COSTS OF DELIVERING ORIGINATING TRAFFIC TO THE TERMINATING CARRIER?

A: Yes. In the *TSR Order* the FCC further clarified its logic as follows:

> According to Defendants, the *Local Competition Order*'s regulatory regime, which requires carriers to pay for facilities used to deliver their originating traffic to their co-carriers, represents a physical occupation of Defendants property without just compensation, in violation of the Takings Clause of the Constitution. We disagree. <u>The *Local Competition Order* requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation.</u> In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. <u>Under the Commission's regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network.</u> The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call

any other customer even if that customer is served by another telephone company. [6] (emphasis added) (footnotes omitted)

By this reasoning, Level 3 should not have to pay BellSouth for the interconnection trunks and facilities that transport BellSouth-originated traffic to Level 3 for termination.

Q: PLEASE ADDRESS THE SECOND PART OF THIS ISSUE - IF LEVEL 3 IS REQUIRED TO PAY RECURRING AND/OR NONRECURRING RATES, SHOULD THOSE RATES BE BASED UPON BELLSOUTH'S ACCESS TARIFF?

A: Before I respond to that question, let me be clear about Level 3's position - as a preliminary matter, the FCC's *Local Competition Order* and subsequent orders interpreting that decision make clear that one LEC should not be required to pay another LEC for facilities on the second LEC's network. Under the FCC's reasoning, reciprocal compensation for terminating traffic covers any use of the other carrier's network. That being said, it is also worthwhile to examine and critique the underlying cost basis of BellSouth's proposed rates.

Before discussing specific concerns about BellSouth's proposed rates, I should also note that

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[6] Id. at ¶34.

there has been some confusion about BellSouth's rates for interconnection trunks.[7] Even though the language in Attachment 3 of the contract refers to the parties paying recurring and nonrecurring rates for interconnection trunks and facilities, the pricing schedule provided by BellSouth only sets forth a nonrecurring trunk charge, and does not contain a recurring trunk charge. The pricing schedule does state, however, that if a price is not specified in that schedule, it will be assessed pursuant to BellSouth's tariffs. Level 3 has therefore been concerned that the recurring trunk charge to be imposed by BellSouth would come from the access tariff. Recently however, despite what the pricing schedule leaves open, we have been told by BellSouth that *there is no recurring charge for trunks*, so it would appear that the focus from a

[7] We understand that BellSouth's rates for unbundled transport - which would presumably be the rates that BellSouth seeks to impose for interconnection facilities - have been approved by the Commission. Therefore, Level 3 is not challenging the manner in which those rates have been set. Rather, as noted above, we question why those approved rates should apply for the payment of facilities on BellSouth's side of the IP - where it has already pledged to bear the financial responsibility of those facilities under Section 1.1.1. Instead, the unbundled transport rates should apply where Level 3 is seeking to lease facilities from BellSouth to *reach* a mutually-agreed Interconnection Point, not for the facilities on BellSouth's side of that point.

rate-setting perspective will be on the nonrecurring trunk charges. These nonrecurring charges should be rejected for several reasons.

First, as noted above, it is the responsibility of the originating carrier to transport the traffic to the terminating carrier. The terminating carrier is not responsible for paying for the traffic or the facilities associated with transporting that traffic to the IP.

Second, imposing these costs on ALECs would result in double recovery. The FCC has found that "The originating carrier recovers the costs of [its] facilities through the rates it charges its own customers for making calls."[8] The FCC reiterated that statement in the very next paragraph of the *TSR Order* when it stated "Defendants possess other options for recovering these costs, such as recovering these costs from the end users that originates [sic] the calls."[9] This finding is consistent with the principle of cost causation in that the end user originates the calls that result

[8] Id.

[9] Id. at ¶35.

in the traffic and facilities handled and deployed by BellSouth.

Q: PLEASE EXPLAIN.

A: The FCC has found that Section 252(d) of the Act, which addresses local interconnection pricing, requires that "prices for interconnection and unbundled elements . . . should be set at forward-looking long-run economic cost."[10] The FCC's rules also require rates based on forward-looking economic costs. FCC Rule 51.705(a)(1) states, "An incumbent LEC's rates for transport and termination of local telecommunications traffic shall be established, at the election of the state commission, on the basis of: (1) the forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511 of this part." As this Commission is well aware, FCC Rule 51.505 defines "Forward-looking economic cost" and total element long-run incremental cost study requirements. FCC Rule 51.511 develops the forward-looking economic cost per unit.

If the Commission requires Level 3 to pay charges for co-carrier trunks (a concept to which Level 3 strenuously objects), BellSouth must at

[10] *Local Competition Order* at ¶672.

least be required to set forward-looking, cost-based rates for those trunks in accordance with the Act, rather than relying upon rates that may contain additional subsidies to support BellSouth's earnings, subsidized service and foreign ventures.

Q: **IS IT CLEAR WHERE BELLSOUTH'S PROPOSED RATES FOR INTERCONNECTION TRUNKS COME FROM?**

A. Not at all. As I explained above, the contract language provided by BellSouth indicates that the rates for interconnection trunks are to be specified in the pricing schedule, or if they are not listed in the pricing schedule, the rates will be as set forth in BellSouth's (presumably intrastate) access tariffs. If the Commission decides that ALECs should pay BellSouth a nonrecurring charge for interconnection trunks, the Commission should require BellSouth to provide cost-studies supporting its rates. The parties should then be allowed to scrutinize those studies and associated rates through discovery and a contested hearing process. Only through such a process can the Commission assure itself that BellSouth's rates are just and reasonable.

Still, in the end, even if the rates are cost-based for all elements, Level 3 opposes *any* charges for interconnection trunks and facilities between the carriers. Such charges are contrary to the "rules of the road" for local interconnection as identified in FCC orders, inconsistent with the agreed-upon principle that each party should bear its own costs of bringing facilities to the Interconnection Point, and could lead to double recovery of the costs of the trunks and facilities in question.

ISSUE 6 - SHOULD THE PARTIES BE REQUIRED TO PAY RECIPROCAL COMPENSATION ON TRAFFIC ORIGINATING FROM OR TERMINATING TO AN ENHANCED SERVICE PROVIDER, INCLUDING AN INTERNET SERVICE PROVIDER ("ISP")?

Q: PLEASE DESCRIBE THE DISPUTE ON THIS ISSUE.

A: Level 3 argues that parties should compensate one another at the reciprocal compensation rate for ISP-bound traffic, just like any other local call. BellSouth argues that traffic originating from or terminating to an enhanced service provider, including an ISP, is not local traffic and should not be subject to reciprocal compensation. Indeed, BellSouth recommends in Sections 5.1.8 and 5.1.9 of Attachment 3 that ALECs be required to identify all

ISP-bound traffic and submit the results to BellSouth so that BellSouth can charge ALECs switched access charges for such calls.

Q: IS IT IN THE PUBLIC INTEREST TO BREAK-OUT SUCH ISP-BOUND CALLS FROM THE UNIVERSE OF LOCAL CALLS?

A: No. There are several reasons why the Commission should not establish a separate class of service for ISP-bound traffic. First, the Commission has determined repeatedly that ISP-bound calls are to be treated as local. Dial-up Internet traffic uses the same public switched network facilities used by other local calls. Likewise, the costs to carry this traffic are largely identical to other local calls exhibiting similar calling characteristics (i.e., time of day, duration, etc.). Hence, to segregate ISP-bound traffic from the larger population of local-billed calls (thereby separating it from some group of calls that largely match its calling characteristics, and costs) provides an artificial distinction between two types of traffic that are actually very similar.

Q: HAS THE FCC SAID ANYTHING ABOUT RATE SETTING BASED ON CLASSES OF CUSTOMERS?

A: Yes. FCC Rule 51.503 (c) states: “The rates that an incumbent LEC assesses for elements shall not vary on the basis of the class of customers served by the requesting carrier, or on the type of services that the requesting carrier purchasing such elements uses them to provide." To do so would be to discriminate against a particular class of customers or type of service being provided, based on something other than cost. Such discrimination is not in the public interest.

Q: WILL CREATION OF THIS ARTIFICIAL DISTINCTION HARM THE PUBLIC INTEREST?

A: Yes. Artificially distinguishing between these two types of calls (*i.e.*, ISP-bound calls and other local calls) skews the resource allocation decisions of the consumer, residential and business alike. Specifically, it skews the consumer's economic decision-making as to what level of each type of call to consume (*i.e.*, if prices for Internet-bound calling are higher than for other types of local calling, the consumer will undoubtedly suppress his/her demand for Internet calling in comparison to the level demanded absent such a price differentiation). For example, under BellSouth's proposal, a customer who makes a large number of local voice calls (or calls of longer than average length) will pay less than a customer who uses the same level of local usage for accessing the Internet. Obviously, under a situation like that described above, even though both customers consume the same level of local calling resources and generate equal costs on the network, the Internet subscriber will be required to pay more. This is problematic in that it provides consumption incentives that do not match the economically efficient incentives that would result from pricing identical or similar services at the same rate.

Q: **CAN YOU EXPLAIN IN GREATER DETAIL YOUR CONCERN REGARDING A SEPARATE CLASS OF SERVICE FOR ISP-BOUND TRAFFIC?**

A: My primary concern in this area is that this approach doesn't encourage efficient decision-making on the part of local callers. This results from the fact that even though both voice-grade local calling and calls to the Internet use the same network in almost exactly the same way (thereby generating largely identical costs), local callers would be faced with two different pricing structures for these two identical or similar types of calling. If the Commission were to introduce such a pricing structure, it would be arbitrarily distinguishing between two types of traffic that are largely identical. For example, one hour of local calling from your computer to the Internet generates exactly the same level of cost on the network as does one hour of calling from your home to your best friend who may live across town. Efficient economic results are generated when consumers are faced with the marginal costs of their decisions. Only when consumers are faced with a situation where the more local calling resources they use the more they pay (whether those be for local voice calls or Internet calling), will they ever be encouraged to make sound economic decisions with respect to how much local calling to use.

Separating ISP-bound traffic from all other types of local-billed traffic and subjecting only ISP traffic to this system will serve only to depress demand for Internet usage. At the same time, allowing voice grade traffic to remain under the same pricing structure it currently enjoys will result in an incentive to "over-use" voice grade local calling. In essence, the Commission would be using its regulatory authority to favor one type of local-billed traffic (voice traffic) over another type of local-billed traffic (ISP-bound traffic). This would undoubtedly cause market distortions that could have long-term effects on the growth of Internet traffic and the efficient allocation of resources to Florida's telecommunications infrastructure. One such unfortunate result could be an increase in the gap between those consumers who can afford to use the Internet at these artificially higher rates, and those that cannot (the so called "digital divide").

Q: **WOULD IT BE POSSIBLE TO SEPARATE THE ISP-BOUND CALLS FROM OTHER LOCAL CALLS?**

A: It would be very difficult and imprecise to break-out ISP-bound calls from other local calls. Two separate, and equally ineffective, methods of segregating ISP-bound traffic from other local calls have emerged to this point. First, ILECs such as BellSouth have asked that interconnecting carriers identify the specific NXX-XXXX telephone numbers that are assigned to ISP providers as dial-up access numbers. Then, the traffic that is terminated to these specified dial-in numbers would be measured and identified as ISP-bound traffic (and BellSouth would impose switched access charges on the traffic and refuse to make reciprocal compensation payments to the ALECs for carrying this traffic). Second, ILECs have argued that by measuring the average call duration (holding time) for traffic passed between two carriers, it is possible to estimate the percentage of that traffic that is bound for an ISP (ILECs generally have argued that calls longer than 15 - 20 minutes exhibit characteristics similar to ISP-bound traffic and should therefore be removed from reciprocal compensation obligations).

Q: DO YOU BELIEVE THAT EITHER OF THESE OPTIONS IS AN EFFECTIVE MECHANISM FOR "DISTINGUISHING INTERNET TRAFFIC" FROM OTHER TYPES OF LOCAL TRAFFIC?

A: No. First, there is no technical or economic distinction between ISP-bound traffic and other types of local traffic, other than the fact that ISP-bound calls generally tend to have longer holding times than do average local calls (and, dial-up ISP-bound calls typically take place in the evening whereas the majority of voice calls occur during the business day). However, as I described above, distinguishing between an Internet call and a local voice call of the same length is nonsensical. A twenty-minute voice call has exactly the same cost characteristics as does a twenty-minute Internet call. Hence, distinguishing between these two types of calls is an artificial distinction that can lead to poor rate design and consumption decisions.

Further, both methods described above for purposes of distinguishing between ISP-bound calls and other types of local traffic have major shortcomings. The first method (i.e., identifying ISP dial-in numbers) requires a carrier to maintain separate records of the telephone numbers used by its ISP customers for dial-up capability.[11] To the extent an ISP customer regularly expands or changes the dial-up numbers it uses for this purpose (many ISPs may have hundreds of dial-up numbers), it becomes difficult to ensure that all such numbers are captured effectively and/or that only dial-in numbers are identified (as opposed to numbers used by the ISP for its own business uses). The shortcomings of the second alternative described

[11] Indeed, this ILEC attempt to identify the phone numbers of ALECs' ISP customers is potentially anti-competitive. By forcing ALECs to provide customer information to the ILEC, this enables the ILECs to have key information about competitors and their customers. Taken to its logical conclusion, then, the ILEC position is to strip away ALEC compensation for the cost of serving ISP customers, while at the same time using the identification of ISP telephone numbers as a tool to market to these same customers.

above are even worse. Simply assuming that calls of greater than 15-20 minutes (or even 25-30 minutes) are dial-up calls to the Internet is, by definition, going to provide inaccurate results. (Going beyond voice calls, think for example of the corporate LAN, where a customer dials in but does not go to the Internet. The telecommuter could be dialed in all day to her office, but never reach the Internet. In that case, such a call would show up as ISP-bound notwithstanding the actual destination.) Obviously, a good number of local voice calls (and other non-Internet calls) last longer than 15-30 minutes. Under the second approach above, however, any call with duration greater than 15-30 minutes is generally considered to be an ISP-bound call. Using the second method generally tends to overestimate the volume of ISP-bound calls and underestimate the volume of other local calling on the network.

Q: PLEASE SUMMARIZE YOUR POSITION ON BREAKING OUT ISP-BOUND CALLS AND APPLYING SWITCHED ACCESS CHARGES TO SUCH TRAFFIC.

A. As shown above, it is not technically feasible to identify "ISP-bound" traffic. Nor is it necessary, since such calls impose absolutely no additional costs on BellSouth. ISP-bound calls have been treated as local calls by this Commission and they should continue to be treated as such. Applying access charges to local calls is completely inconsistent with the reciprocal compensation requirements I described earlier in this testimony.

Q: HOW DOES BELLSOUTH'S REFUSAL TO PAY RECIPROCAL COMPENSATION IMPACT LEVEL 3 AND OTHER ALECS?

A: Level 3 has been successful in attracting ISP providers and other customers requiring advanced telecommunications services to its network. BellSouth's attempt to exclude these types of local customers from reciprocal compensation obligations unfairly targets Level 3's customer base and threatens to leave Level 3 in the untenable position of delivering a large number of calls, originated by BellSouth customers, without any payment from BellSouth. In essence, Level 3 is being asked to carry large volumes of BellSouth traffic without any ability to charge BellSouth for its carriage.

Q: DO YOU HAVE ANY IDEA WHY LEVEL 3 AND BELLSOUTH HAVE NOT BEEN ABLE TO REACH CONSENSUS ON THIS ISSUE?

A: While I would never suggest to speak for BellSouth as to why it finds this issue to be of such importance, I think it is safe to say that BellSouth is oftentimes a "net payor" of reciprocal compensation. This is due primarily to the fact that ALECs appear to be more successful in attracting ISP providers to their local service offerings than BellSouth has been in retaining them. Consider that although the vast majority of services and prices included in an interconnection agreement between BellSouth and a ALEC govern the rates, terms and conditions by which the ALEC will pay BellSouth for service, this is one area where BellSouth may actually, in some circumstances, be required to pay the ALEC for services the ALEC provides to BellSouth. It is likely for that reason that BellSouth is acutely interested in the rates that will be paid for reciprocal compensation and the terms and conditions under which they will be assessed.

Q: HASN'T THE FCC ALREADY ADDRESSED THIS ISSUE AND FOUND THAT CALLS TO ISPS ARE INTERSTATE CALLS?

A: It did, but two aspects of that decision must be noted.[12] First, that decision no longer stands. On

[12] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; **Declaratory Ruling in CC Docket no. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68;** Released: February 26, 1999; (*ISP Order*)

March 24, 2000, the United States Court of Appeals for the District of Columbia Circuit vacated the FCC's Declaratory Ruling in CC Docket No. 96-98. *Bell Atlantic v. FCC*, Case No. 99-1094 (D.C. Cir.). Second, while the FCC had stated at paragraph 18 of its *ISP Order* that "a substantial portion of Internet traffic involves accessing interstate or foreign websites," the FCC clarified its position with respect to the intercarrier compensation of ISP calls at paragraph 25:

> Even where parties to interconnection agreements do not voluntarily agree on an inter-carrier compensation mechanism for ISP-bound traffic, state commissions nonetheless may determine in their arbitration proceedings at this point that <u>reciprocal compensation should be paid for this traffic.</u> The passage of the 1996 Act raised the novel issue of the applicability of its local competition provisions to the issue of inter-carrier compensation for ISP-bound traffic. Section 252 imposes upon state commissions the statutory duty to approve

voluntarily-negotiated interconnection agreements and to arbitrate interconnection disputes. As we observed in the Local Competition Order, state commission authority over interconnection agreements pursuant to section 252 "extends to both interstate and intrastate matters." Thus the mere fact that ISP-bound traffic is largely interstate does not necessarily remove it from the section 251/252 negotiation and arbitration process. However, any such arbitration must be consistent with governing federal law. <u>While to date the Commission has not adopted a specific rule governing the matter, we do note that our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic</u>. [emphasis added, footnotes removed]

Thus, even if one overlooks the fact that the FCC's *ISP Order* has been vacated, the text of that order would have supported a decision that reciprocal compensation is owed for ISP-bound traffic.

Q: **HOW WOULD YOU SUGGEST THE QUESTION OF COMPENSATION FOR ISP-BOUND TRAFFIC BE CONSIDERED SINCE THE *ISP ORDER* HAS BEEN VACATED?**

A: I would suggest that the Commission look to its own prior decisions in this area as well as to public policy and economic considerations in determining how to address the present dispute.

Q: **PLEASE EXPLAIN WHY SOUND PUBLIC POLICY AND ECONOMIC REASONING SUPPORT RECIPROCAL COMPENSATION PAYMENTS FOR ISP-BOUND TRAFFIC.**

A: The Commission's decisions in this regard will have a substantial impact on the Internet marketplace and the investment required to realize the potential of electronic communication and e-commerce as a whole. The list below provides an overview of the public policy and economic rationales that support requiring payments for ISP-bound traffic *via* the application of transport and termination charges (*i.e.* reciprocal compensation):

(a) ISP providers are an important market segment for all carriers - both ALECs and ILECs - and making it more costly to serve them is likely to distort one of the only local exchange market segments that appears to be well on its way toward effective competition. ISPs have been drawn to ALECs like Level 3 in large part because these ALECs have been more willing to meet their unique service needs such as collocation of facilities and short provisioning intervals. Allowing ILECs to direct calls to the ISPs by using the ALEC network without paying anything for its use penalizes the ALEC for attracting customers *via* innovative and customer service focused products.

(b) Despite complex legal arguments and historical definitions, the simple fact remains that calls directed to ISPs are functionally identical to local voice calls for which BellSouth agrees to pay termination charges. Applying different termination rates or, even worse, compensating a carrier for one type of call and not for the other, will generate inaccurate economic signals in the marketplace, the result of which will drive firms away from serving ISPs. This result could have a dire impact on the growing electronic communication and e-commerce markets.

(c) Requiring carriers to pay reciprocal compensation rates for the termination of ISP-bound traffic is economically efficient. Indeed, because termination rates must be based upon the incumbent's underlying costs, BellSouth should be economically indifferent as to whether it itself incurs the cost to terminate the call on its own network or whether it incurs that cost through a reciprocal compensation rate paid to Level 3. The fact that BellSouth is not economically indifferent stems from its incentive to impede Level 3's entry into the marketplace instead of an incentive to be as efficient as possible in terminating its traffic.

(d) Because BellSouth is required to pay, as well as receive, symmetrical compensation for local exchange traffic based upon its own reported costs, its payments to other carriers in this regard are an important check on BellSouth's cost studies used to establish rates for the termination of traffic. Unless BellSouth is required to pay the costs that it itself has established *via* its own cost studies, it has every incentive to over-estimate those costs for purposes of raising barriers to competitive entry. By removing large traffic volume categories such as ISP-bound traffic from BellSouth's obligation to pay terminating costs, the Commission would be removing an important disciplining factor associated with ensuring that BellSouth's reported termination costs are reasonable.

Q: PLEASE EXPLAIN IN GREATER DETAIL YOUR CONTENTION THAT BECAUSE ISP PROVIDERS ARE AN IMPORTANT MARKET SEGMENT FOR ALECS, ELIMINATING AN ALEC'S ABILITY TO RECOVER COSTS ASSOCIATED WITH SERVING THEM IS LIKELY TO DISTORT THE MARKET.

A: Transitionally competitive markets, like the local exchange market, have shown that new entrants are usually most successful in attracting customers that (1) are unsatisfied with the services or quality offered by the incumbent, (2) have technological, capacity or other specific requirements that are not easily met by the incumbent's oftentimes inflexible service offerings, and/or (3) don't have a long history of taking service from the incumbent. ISP providers fall directly into all three of these categories as many of them have been unable to reach agreement with ILECs in areas such as pricing for high capacity lines, provisioning intervals, collocation of their equipment in ILEC central offices or even in some circumstances, the ability to purchase service in sufficient quantity to meet their own end-user customer demands. Likewise, most ISP organizations are fairly new and have begun their enterprise at a time when competitive alternatives for local exchange services are available. Hence, it is reasonable to expect that these types of businesses are less restricted by long term or volume agreements, a long business relationship or other circumstances that often breed loyalty to the incumbent. The fact that these customers are far more likely to explore competitive opportunities than more traditional residential and/or business customers has made them an extremely important customer base for ALECs.

Likewise, ALECs, like Level 3, because of their new track record and non-existent customer base in new markets, are naturally more likely to serve customers that require services specifically tailored to their strengths (*i.e.* customer service, new technology deployment and substantial spare capacity). Given these characteristics, ISP providers and ALECs are effectively "made for one another" and ISPs have flocked to new entrant ALECs in increasing numbers. Likewise, ALECs have worked with ISPs to design new and innovative services and have provided ISPs the capacity they need to meet their customers' increasing demands.

Q: IS THE LIKELIHOOD THAT ALECS SERVE ISPS IN GREATER PROPORTION THAN A MATURE INCUMBENT LIKE BELLSOUTH THE RESULT OF A MARKET FAILURE?

A: Not at all. The relationships between ALECs and ISPs, as described above, are the direct result of how a competitive market is meant to work. Carriers who are unwilling to meet the demands of their customers, lose those customers to carriers who are more accommodating. Carriers who are attempting to build market share tend to be more accommodating than carriers who are attempting to merely keep market share. Likewise, carriers who provide customer focused services and supply the capacity required to meet their customers' demands are rewarded. The fact that relatively new customers who require specific technological support have embraced new ALECs is one of the most promising outcomes of the local exchange market's transition to competition. Indeed, ISPs and other technologically reliant customer groups are, in many cases, providing the revenue and growth potential that will fund further ALEC expansion into other more traditional residential and business markets.

Q: **IF THE COMPETITIVE MARKETPLACE FOR ISP CUSTOMERS APPEARS TO BE WORKING WELL, WHY IS LEVEL 3 ASKING THE COMMISSION FOR ITS ASSISTANCE IN THIS ARBITRATION?**

A: Within the interconnection agreement at issue in this proceeding, BellSouth is refusing to pay going forward, under the new contract, for traffic that originates on its network and is directed to a local ISP customer served by Level 3. Simply put, BellSouth is asking through its proposed contract language that Level 3 provide its facilities for the use of BellSouth's customers without compensation. Traffic originated on the BellSouth network and directed to Level 3's local ISP customers is no different than other types of traffic for which BellSouth has agreed to provide reciprocal compensation. Given this, and the fact that Level 3 has agreed to pay BellSouth for traffic originating on the Level 3 network and directed to a BellSouth local ISP, the Commission should require BellSouth to compensate Level 3 for transporting and terminating such calls.

Q: EARLIER YOU MENTIONED THAT ALLOWING BELLSOUTH TO ABBROGATE ITS OBLIGATION TO COMPENSATE LEVEL 3 FOR TRAFFIC DIRECTED TO ITS LOCAL ISP CUSTOMERS WOULD DISTORT ONE OF THE ONLY LOCAL EXCHANGE MARKET SEGMENTS THAT APPEARS TO BE WELL ON ITS WAY TOWARD EFFECTIVE COMPETITION. CAN YOU EXPLAIN THIS CONCEPT IN GREATER DETAIL?

A: Yes. As I described above, ALECs have been more successful in attracting a number of ISP customers because they have offered those customers innovations and reasonably priced advanced services at a level of customer care that BellSouth was unable or unwilling to provide. As such, BellSouth has lost a number of these customers to Level 3 and other ALECs, resulting in this particular market segment exhibiting some of the most competitive characteristics of any segment in the local market.

It is no coincidence that BellSouth wishes to avoid paying reciprocal compensation going forward for calls directed to this particular customer group. If BellSouth can successfully remove itself from an obligation to compensate ALECs for calls directed to their ISP customers, BellSouth will have accomplished two tasks inimical to the competitive marketplace.

First, BellSouth will have been successful in branding ISP customers as "unattractive" customers from a local provider's standpoint because ISP customers will generate costs for their local service provider without providing any reciprocal compensation revenues. By branding ISP customers as unattractive customers, BellSouth will have significantly diminished the hard-earned victories made by its competitor ALECs.

Second, a failure to provide any reciprocal compensation revenues associated with the function of transporting and terminating traffic to ISPs could disrupt the ISP marketplace. If ALECs need to raise prices to ISPs because BellSouth does not pay for call termination, this is likely to send many ISPs back to BellSouth where its vastly larger customer base can be used to offset the costs of terminating the ISPs' traffic without raising ISP local rates. Further, if their local exchange rates are increasing, ISPs who do not return to BellSouth would have little choice but to raise the rates charged to their individual end users. This will in turn make BellSouth's ISP retail service more attractive to individual end users, further stifling competition in the ISP market.

All of these circumstances are disruptions to a competitive segment of the local exchange marketplace that seems to be operating more effectively than most other more traditional segments. The fact that each of these disruptions happens to benefit BellSouth should not be lost on the Commission when it considers BellSouth's rationale for refusing to pay reciprocal compensation for ISP bound traffic.

Q: WOULD THERE BE NEGATIVE ECONOMIC RESULTS FROM ALLOWING BELLSOUTH TO PAY NOTHING FOR CALLS DIRECTED TO ISPS YET PAY A HIGHER RATE FOR ALL OTHER CALLS?

A: Of course. Given the option of receiving an amount greater than zero for carrying a non-ISP call and nothing for carrying an ISP call, any reasonable carrier would fill its switch with non-ISP calls to the extent possible. Likewise, any carrier that currently served a larger proportion of ISP customers would be a less profitable network than a network that served a smaller proportion of ISP customers. In effect, allowing BellSouth to skirt its obligation to pay for the use of an interconnecting carrier's network to terminate its local customers' calls to ISP providers will skew the supply substitutability of ISP services versus other local services, thereby making other local exchange services relatively more attractive production alternatives. This may in turn raise ISP prices in relation to other local exchange services thereby impairing an ISP's ability to receive services at rates comparable to other local end users. Not only is this in direct conflict with the FCC's intentions with respect to offering ISPs an access charge exemption so as to place them on a level playing field with other local customers, it also is likely, all else being equal, to suppress ISP communication demand versus other types of non-ISP communication.[13] This price discrimination effect will mean electronic communication and e-commerce demand will undoubtedly grow at a slower pace than if there were no discrimination. Any difference between the unrestricted growth of electronic communication and the suppressed growth caused by the uneconomic price discrimination described above would result

[13] <u>See</u>, *ISP Order* at ¶20.

in a net welfare loss due to the inefficient market consequences of BellSouth's failure to pay reciprocal compensation rates.

Q: **PLEASE EXPLAIN IN MORE DETAIL YOUR CONTENTION THAT BECAUSE TERMINATION RATES MUST BE BASED UPON THEIR UNDERLYING COSTS, BELLSOUTH SHOULD BE ECONOMICALLY INDIFFERENT AS TO WHETHER IT ITSELF INCURS THE COST TO TERMINATE THE CALL ON ITS OWN NETWORK OR WHETHER IT INCURS THAT COST THROUGH A RECIPROCAL COMPENSATION RATE PAID TO LEVEL 3.**

A: Assume that a BellSouth customer calls another BellSouth customer within the same local calling area, as described in Diagram 5 *infra*. The call will travel a similar path to the case described above in which a BellSouth customer is dialing a customer served by Level 3 or another ALEC, except that both end offices will now be owned by BellSouth.

In such a circumstance, BellSouth incurs costs associated with originating, transporting and terminating the call for which it is paid, by its originating customer, a local usage fee (either a flat fee per month or a per message or per minute charge, or both).

When compared to the scenario discussed above, in which the terminating customer is served by Level 3 or another ALEC, it is easy to see that the only difference between a call made between two BellSouth local customers and the call made from a BellSouth customer to a Level 3 customer is that the Level 3 network provides the terminating transport and switching function that was originally performed by the BellSouth network. In this way, BellSouth avoids those costs of terminating the call. Hence, if BellSouth has accurately established its terminating reciprocal compensation rate based upon its own costs of terminating a call, it should be economically indifferent with respect to whether a call both originates or terminates on its own network or whether a call terminates on the Level 3 network. BellSouth will either incur the terminating cost via its own switch or it will incur that cost via a cost-based rate paid to Level 3 for performing the termination function. Either way, the extent to which a particular call is directed to a particular kind of customer is irrelevant to the economics and engineering of the call.

Q: WHY IS THIS POINT CRITICAL TO UNDERSTANDING THE DISPUTE REGARDING PAYMENT FOR ISP-BOUND TRAFFIC AT ISSUE IN THIS PROCEEDING?

A: This point is critical for two reasons. First, assume that neither Level 3 nor any other ALEC existed and that BellSouth provides local services to 100 percent of the customer base. Assume further that ISP traffic is occurring at today's levels with future growth expected to be even greater. In such a circumstance, BellSouth would be responsible not only for originating every call but also for terminating every call, including calls made to ISP providers. BellSouth would undoubtedly need to reinforce its network to accommodate the additional capacity requirements associated with this increase in traffic. It is highly unlikely under such a circumstance that BellSouth would be arguing that terminating traffic to an ISP provider should be done for free. However, that is exactly what BellSouth is asking this Commission to do in this case.

The arbitration issue before the Commission differs from our hypothetical above in that instead of only BellSouth investing in its network to meet the capacity requirements of the traffic volume increases that have occurred over the past few years, new entrants have also invested capital and have deployed their own switching capacity to accommodate this growth. Likewise, as BellSouth would have undoubtedly argued in our hypothetical above that it should be compensated for its additional investment to meet this growth, ALECs should also be compensated for terminating that traffic such that their investments can be recovered.

The second reason is of paramount importance because it is at the heart of the dispute between the parties in this case. As I have shown above, BellSouth should be indifferent as to whether it terminates the traffic or it avoids the costs of termination and pays someone else, namely an ALEC, to do so. Yet we know that BellSouth is not indifferent because it has refused to agree to such a compensation framework as part of the new interconnection agreement. The question is: Why? The answer lies in one of two reasons. Either (1) BellSouth's current rate for call termination is not representative of its actual underlying costs and it realizes that paying an ALEC for terminating traffic actually makes it economically "worse off" than terminating the traffic itself, or (2) it has a competitive interest in not providing a cost recovery mechanism for its competitors regardless of the extent to which it is economically indifferent on any given call.

Q: DO YOU BELIEVE THAT EITHER OF YOUR SCENARIOS ABOVE IS LIKELY TO BE AT THE ROOT OF BELLSOUTH'S REFUSAL TO PAY COMPENSATION FOR CALLS DIRECTED TO ISP PROVIDERS SERVED BY AN ALEC?

A: Obviously, I can't speak to what motivates BellSouth's position in this respect. However, I can speak to the economic incentives that are at work in the local exchange marketplace and how participants within that marketplace react to them. And, in this case, it would make sense that any ILEC has an incentive (though an incentive steeped in self-interest) to avoid payment for traffic directed to an ISP served by an ALEC for <u>both</u> of the reasons described above.

Q: IN COMMENTS TO THE FCC, AND IN A NUMBER OF OTHER DOCUMENTS, ILECS HAVE ARGUED THAT IT IS UNFAIR TO FORCE THEM TO PAY ALECS FOR TERMINATING TRAFFIC TO ISPS WHEN THEY ARE UNABLE TO RECOVER THOSE RECIPROCAL COMPENSATION PAYMENTS EITHER THROUGH ACCESS CHARGES ASSESSED ON THE ISP OR FOR USAGE

CHARGES ASSESSED TO THEIR OWN LOCAL CUSTOMERS. DO YOU HAVE ANY COMMENTS REGARDING THIS ISSUE?

A. Yes, I do. First, I've already discussed the fact that calls to ISPs are really indistinguishable from calls to any other local customer. Hence, the fact that a call is directed to an ISP or to any other kind of customer is irrelevant to this argument. This argument does not support BellSouth's position that it will pay termination charges for calls made to certain customers yet not for calls directed to a business customer who happens to be an ISP provider.

Second, however, there seems to be some indication in this argument that ALECs are to blame for the increased costs the ILECs contend they are facing in meeting calling volume requirements associated with electronic communication and e-commerce. This simply isn't accurate. It is the public's seemingly unquenchable thirst for Internet access and other electronic communications media that have caused the increased calling volumes that generate costs associated with carrying local traffic to the Internet. And, it is important to note that companies like BellSouth are on the front lines marketing these services to feed the public's demand.

Q: PLEASE SUMMARIZE LEVEL 3'S POSITION ON RECIPROCAL COMPENSATION FOR ISP-BOUND CALLS.

A: Reciprocal compensation is required under the 1996 Act and the FCC rules. BellSouth's proposal would result in Level 3 carrying large volumes of BellSouth traffic without any compensation. This position is inconsistent and anticompetitive.

BellSouth has agreed to pay reciprocal compensation for local calls dialed to an ALEC residential or business customer. Consistent with public policy and economic objectives and the Commission's decision in other arbitration cases, BellSouth should also pay Level 3 reciprocal compensation for calls to those customers who happen to be ISPs. Charging different rates for what are identical types of calls would result in significant negative impacts in the market place and to BellSouth's competitors. Finally, the FCC has enforced the ESP exemption such that enhanced service providers, including ISPs, should not pay access charges. At paragraph 20 of the *ISP Order,* the FCC states as follows:

> Our determination that at least a substantial portion of dial-up ISP-bound

> traffic is interstate does not, however, alter the current ESP exemption. ESPs, including ISPs, continue to be entitled to purchase their PSTN links through intrastate (local) tariffs rather than through interstate access tariffs. Nor, as we discuss below, is it dispositive of interconnection disputes currently before state commissions.

Q: HAS THIS COMMISSION RULED ON THE JURISDICTIONALITY OF ISP-BOUND TRAFFIC?

A: Yes. To the best of my knowledge, this Commission has addressed the reciprocal compensation issue for ISP-bound traffic in at least three proceedings in the last year. The proceedings were arbitrations between BellSouth and ITC^DeltaCom Communications, Intermedia Communications, and Global NAPS.

Q: WERE THE RULINGS IN THOSE PROCEEDINGS SIMILAR?

A: Yes, they were. The Commission recognized that the FCC's Declaratory Ruling and Notice of Proposed Rulemaking (referred to herein as the *ISP Order*) does not have a final rule governing inter-carrier compensation for ISP-bound traffic and that states are allowed to determine whether reciprocal compensation is due for the traffic. Indeed, in the Delta^Com Order the Commission stated,

> We agree with ITC^DeltaCom witness Rozycki that state commissions may

determine that reciprocal compensation is due for ISP-bound traffic.[14]

Consistent with that ruling, the Commission has ordered the continuation of inter-carrier agreements pending the FCC's final rule on the treatment of ISP-bound traffic. In the order cited above, the Commission stated:

> Upon consideration, we find it reasonable that the parties shall continue to operate under the terms of their current interconnection agreement regarding reciprocal compensation until the FCC issues its final ruling on whether ISP-bound traffic should be defined as local or whether reciprocal compensation is otherwise due for this traffic.[15]

Q: PLEASE SUMMARIZE YOUR POSITION ON ISSUE 6.

A: Calls to ISPs are handled and processed in the same manner as any other local call and reciprocal compensation should be paid on those calls. BellSouth should not be allowed to avoid reciprocal compensation for these calls as it would result in ALECs carrying calls originated by BellSouth customers without any compensation. Further, BellSouth has failed to show why calls to ISPs

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[14] Before the Florida Public Service Commission; FINAL ORDER ON ARBITRATION; Docket No. 990750-TP; Order No. PSC-00-0537-FOF-TP; Issued March 15, 2000; at 33.

[15] Id. at 34.

should be treated any differently from other local calls. Finally, this Commission has determined in other proceedings that its decision on the jurisdictionality of ISP-bound calls may be impacted by the FCC's final rule. As such, the status quo should be maintained unless and until the FCC issues a decision that definitively addresses this issue.

ISSUE 7 - SHOULD BELLSOUTH BE PERMITTED TO DEFINE ITS OBLIGATION TO PAY RECIPROCAL COMPENSATION TO LEVEL 3 BASED UPON THE PHYSICAL LOCATION OF LEVEL 3'S CUSTOMERS? SHOULD BELLSOUTH BE ABLE TO CHARGE ORIGINATING ACCESS TO LEVEL 3 ON ALL CALLS GOING TO A PARTICULAR NXX CODE BASED UPON THE LOCATION OF ANY ONE CUSTOMER?

Q: PLEASE BRIEFLY DESCRIBE THE DISPUTE ON THIS POINT.

A: BellSouth argues that it should not be required to pay reciprocal compensation for any call terminating to a customer who is physically located outside of the local calling area where the call originates. Further, BellSouth argues that it should be able to charge originating access charges for all calls to customers physically located outside the local calling area. BellSouth provides no evidence that such calls increase its costs as compared to other local calls in any way such that additional cost recovery is justified.

BellSouth does not incur any additional costs in delivering traffic to Level 3's switch based on the location of Level 3's customers. Further, it would be inconsistent and anticompetitive to allow BellSouth to evade reciprocal compensation and then to charge Level 3 originating switched access charges for calls going to a particular NXX code. Finally, the FCC's ESP Exemption specifically prohibits the imposition of access charges on enhanced service providers, including ISPs.

Q: WHAT ARE NXX CODES?

A: NXX codes are the fourth through sixth digits of a ten-digit telephone number. These codes are used as rate center identifiers, but it is not uncommon for NXX codes to be assigned to customers who are not physically located in that rate center. This type of arrangement has at times been referred to as "Virtual NXX" because the customer assigned to the telephone number has a "virtual" presence in the associated local calling area. This flexible use of NXX codes allows carriers to offer valuable services to their customers. For instance, so-called virtual NXX arrangements enable ISPs to offer low cost dial-up numbers throughout Florida, including the more isolated areas of the State. Access to the Internet is affordable and readily available in all areas of the state because virtual NXX arrangements allow ISPs to establish a small number of points of presence (POP) that can be reached by dialing a local number regardless of the physical location of the Internet subscriber (within the LATA).

Q: IS IT UNLAWFUL OR AGAINST ANY RULES FOR ALECS TO PROVIDE VIRTUAL NXXS TO THEIR CUSTOMERS?

A: No. The use of virtual NXX codes is not unlawful or in any other way improper. BellSouth provides a virtual NXX service to ISPs called foreign exchange service. Indeed, nobody complained about such uses of NXX codes until ALECs had some success in attracting ISP customers and the ILECs began looking for any means possible to avoid paying ALECs for terminating calls to ISPs.

Q: CAN YOU DESCRIBE THE IMPACT OF BELLSOUTH'S PROPOSED LANGUAGE WITH RESPECT TO THE CUSTOMER'S PHYSICAL LOCATION, IN MORE DETAIL?

A: Yes, as noted above, the language proposed by BellSouth would have at least three significant negative impacts in Florida. First, if the

Commission adopted BellSouth's proposed language, BellSouth would be able to evade its reciprocal compensation obligations under the 1996 Act.

Second, and also contrary to one of the fundamental goals of the 1996 Act, BellSouth's proposed language would have a negative impact on the competitive deployment of affordable dial-up Internet services in Florida.

Finally, BellSouth's proposed language would give BellSouth a competitive advantage over Level 3 in the ISP market.

Q: HOW WOULD BELLSOUTH EVADE ITS RECIPROCAL COMPENSATION OBLIGATIONS TO LEVEL 3 BY LIMITING RECIPROCAL COMPENSATION TO CALLS ORIGINATING AND TERMINATING IN THE SAME LOCAL CALLING AREA?

A: Placing limitations on reciprocal compensation by referring to a customer's physical location would give BellSouth the ability to re-classify local calls as toll calls. This is because according to BellSouth's proposed language, it would be nearly impossible and much more economically burdensome for Level 3 (or any other ALEC in a similar situation) to utilize virtual NXXs in the provision of service to its customers. Virtual NXXs are often used by carriers to provide a local number to customers in local calling areas in which the customer is not physically located. Customers who are physically located (both ILEC and ALEC customers) in that area are then able to place calls to the virtual NXX customer without incurring toll charges. If BellSouth precludes Level 3 or any other ALEC from using virtual NXXs for local calls to ISPs, not only would BellSouth customers no longer be able to reach many of their ISPs by dialing a local number, but because calls to the ISP have been re-classified as toll calls, BellSouth would no longer be obligated to pay the reciprocal compensation associated with local calls. One must consider the implications in both the competitive telecommunications market and the Internet access market - if a carrier cannot use virtual NXXs to serve ISPs without paying BellSouth a high per-minute charge for originating each call and then also loses the ability to collect *any* compensation from BellSouth in terminating the call, what incentive will any carrier have to serve ISPs? And who then will the ISPs turn to in order to ensure that their own customers in Florida don't have to dial a toll call to reach the Internet? I will discuss later in this testimony how these considerations could affect the Florida telecommunications and Internet access markets.

Q: **DO THE COSTS INCURRED BY BELLSOUTH DIFFER WHEN ONE OF ITS CUSTOMERS DIALS A VIRTUAL NXX NUMBER AS OPPOSED TO A PHYSICAL NXX, THEREBY PROVIDING JUSTIFICATION FOR BELLSOUTH TO AVOID PAYING RECIPROCAL COMPENSATION AND BEGIN IMPOSING SWITCHED ACCESS CHARGES?**

A: No. There is no additional cost incurred by BellSouth when a virtual NXX is provided to an ALEC customer, because BellSouth carries the call the same distance and incurs the same costs regardless of whether the call is terminated to an ALEC customer with a physical location in the NXX rate center, or an ALEC customer with a virtual presence. BellSouth's obligations and costs are therefore exactly the same in delivering a call originated by one of its customers, regardless of whether the call terminates at a so-called "virtual" or "physical" NXX behind the ALEC switch. At a time when regulators and the industry are looking to move to more competitive market models by eliminating implicit subsidies in telecommunications rates and intercarrier payments, it would seem contrary to reason to suddenly now foist switched originating access charges on a certain type of customer traffic when the costs of originating that traffic do not differ from any other local call.

Q: DOES THE USE OF VIRTUAL NXX CODES IMPACT THE HANDLING OR PROCESSING OF A CALL TO A LEVEL 3 CUSTOMER?

A: No. BellSouth would always be responsible for carrying the call to the IP on its own network and then paying for delivery of the call over the same distance (from the IP to the ALEC switch). The use of a virtual NXX does not impact BellSouth's financial and/or operational responsibilities such that it should be eligible to avoid paying any compensation to the terminating LEC or collecting additional compensation itself.

Q: PLEASE EXPLAIN IN GREATER DETAIL YOUR CONTENTION THAT CALLS DIRECTED TO ISPS ARE FUNCTIONALLY IDENTICAL TO LOCAL VOICE CALLS FOR WHICH BELLSOUTH HAS AGREED TO PAY TERMINATION CHARGES.

A: Let's begin with a quick review of the technical requirements of reciprocal compensation. This drawing attached hereto as Exhibit __ (TJG-3)(Diagram 3) depicts one way that BellSouth may route and terminate local calls on its own network, to and from its own customers.

The customer on the left calls the customer on the right. The call is switched at the central office to the tandem where is it routed to the terminating central office and finally to the called party.[16] In this scenario, ~~Ameritech~~ BellSouth is financially and operationally responsible for both originating and terminating the call.

Q: HOW DOES THE FINANCIAL AND OPERATIONAL RESPONSIBILITY CHANGE IN A MULTIPLE PROVIDER ENVIRONMENT?

A: In an environment with multiple providers, the parties share the responsibility for carrying this call. Interconnection and reciprocal compensation agreements define carrier responsibilities in a multiple provider environment. See Diagram 4 attached as Exhibit __ (TJG-4).

In comparing Diagram 3 and this diagram (Diagram 4), there is a point of interconnection or "POI" in a multiple provider situation. The POI is

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[16] This is just one example of how a call might be routed. There are other possible routes a call could take that would not include the tandem. Direct trunking between central offices is possible and so is an intra-office call. These different scenarios do not impact the point of this discussion.

the physical interconnection between the two networks and represents the point where financial and operational responsibility for handling local calls changes. The POI is sometimes referred to as the interconnection point or IP. I use these terms interchangeably in this testimony.

Q: PLEASE EXPLAIN HOW A CALL IS ROUTED IN THIS MULTIPLE CARRIER ENVIRONMENT.

A: Assuming a BellSouth customer originates a call to the Level 3 customer, BellSouth is responsible for getting the call to Level 3's POI. BellSouth switches and transports the call to the POI. From the POI, Level 3 is responsible for terminating the call for BellSouth - again, switching and transporting the call to the called party. In return, BellSouth pays Level 3 for terminating the call. The originating carrier is compensated for its portion of the call through local rates, vertical features (i.e., call waiting, call forwarding, star codes), EAS arrangements and other subsidies, such as access charges, that support local rates. The routing and compensation responsibilities are reversed if a Level 3 customer calls a BellSouth customer. Hence the term "reciprocal."

Q: DO YOU AGREE WITH BELLSOUTH'S ATTEMPT TO LIMIT ITS OBLIGATION TO PAY RECIPROCAL COMPENSATION?

A: No. BellSouth insists on language that would limit the reciprocal compensation obligations by defining local calls as only those calls originating and terminating to customers located physically within the same local calling area. BellSouth also excludes traffic destined for Internet Service Providers, or ISPs, from the reciprocal compensation obligation. These positions are anticompetitive and should be rejected by this Commission.

Q: PLEASE PROVIDE SOME EXAMPLES THAT SHOW THE FLAWS IN BELLSOUTHS'S POSITION.

A: BellSouth's definition of local calls subject to reciprocal compensation would eliminate reciprocal compensation for terminating BellSouth customer calls to an entire class of customers who purchase local exchange service. A few diagrams will show that ISP-bound calls served through a virtual NXX arrangement are no different than other local calls and they will show the inconsistency of BellSouth's arguments.

In the diagram attached hereto as Exhibit __ (TJG-5) (Diagram 5) I show a call that both originates and terminates within the same local calling area.

BellSouth is responsible for carrying the call from its customer to the POI. Level 3 is responsible for terminating the call to the Level 3 customer for BellSouth.

Q: DOES THE PHYSICAL LOCATION OF THE CUSTOMER IMPACT BELLSOUTH'S COSTS AND/OR RESPONSIBILITIES?

A: No. The importance of this comparison rests in the fact that BellSouth's costs of transporting and terminating traffic are not impacted by the location of the customer to whom the call terminates and/or the extent to which the terminating customer is either a residential, business or Internet Service Provider.

In the diagram attached hereto as Exhibit ___ (TJG-6) (Diagram 6), the called party (Level 3 customer) is physically located in another local calling area. For purposes of discussion, let's assume it's not an EAS area, or an adjacent exchange toll-calling plan.

Level 3's customer has an NXX associated with Calling Area 1 - a service option I have described above as a virtual NXX. In short, this service allows the customer to have a local telephone number in calling area 1.

BellSouth's customer calls the Level 3 customer in local calling area 2 using a virtual NXX number. As in our prior example, BellSouth is still responsible for getting the call to the POI. Again, Level 3 is responsible for terminating the call. The location of the called party does not change the handling of the call by BellSouth or Level 3, nor does it change BellSouth's costs of handling the call.

Q: HOW DO BELLSOUTH'S RESPONSIBILITIES CHANGE IF THE BELLSOUTH CUSTOMER CALLS THE LEVEL 3 CUSTOMER IN LOCAL CALLING AREA 1?

A: Again, referring to Diagram 6 above, if the BellSouth Customer calls the Level 3 customer in the same local calling area, the routing and handling of the call is no different than if the call was made to the Level 3 customer in local calling area 2 with a virtual NXX. BellSouth is responsible for getting the call to the POI and Level 3 terminates the call. So, as you can see, the location of the called party has no impact on BellSouth's responsibilities or costs. Further, whether the BellSouth customer dials a physical NXX (to the Level 3 customer in local calling area 1) or a virtual NXX (to the Level 3 customer in local calling area 2) the responsibilities and costs for BellSouth do not change.

Now, let's look at a situation where the POI and the called party are in another local calling area.

In this situation (Diagram 7) attached hereto as Exhibit __ (TJG-7), BellSouth is still responsible for getting the call to the POI. The fact that the called party is in a different local calling area does not impact BellSouth's responsibility or costs. There is therefore no rational cost basis for allowing BellSouth to assess originating access charges on this call or avoid paying terminating compensation on this call.

Q: PLEASE SUMMARIZE YOUR POSITION ON THIS POINT.

A: A call originated on the BellSouth network using a physical or virtual NXX and directed to any ALEC's network travels exactly the same path and requires the use of exactly the same facilities as any other local call would. Calls to physical or virtual NXX numbers use the same path and the same equipment to reach the Interconnection Point and the terminating carrier's switch. To single out the virtual NXX calls to ISPs and suggest that no compensation should be paid for purposes of carrying that particular call ignores the simple economic reality that both kinds of calls are functionally identical and should be subject to reciprocal compensation.

Q: PLEASE EXPLAIN WHY IMPOSITION OF ORIGINATING ACCESS CHARGES ON LEVEL 3 FOR VIRTUAL NXX CALLS IS INAPPROPRIATE.

A: BellSouth's proposal to limit its reciprocal compensation obligations and to collect originating access from Level 3 based upon customers' physical location has no basis in law or fact. Indeed, the *TSR Order* at paragraph 34 specifically notes that "The Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation." In that same paragraph, the FCC states, "This regime represents 'rules of the road' under which all carriers operate, and which make it possible for one company's customer <u>to call any other customer</u> even if that customer is served by another telephone company." (emphasis added)

As I have shown, ISP-bound calls are handled and processed in exactly the same manner as any other local call. Further, this Commission has found repeatedly that, at least on an interim basis, ISP-bound calls shall be treated as local calls for purposes of reciprocal compensation. Deciding now that virtual NXX calls should somehow be treated differently would effectively render meaningless any decision that reciprocal compensation is due for ISP-bound traffic, since ISPs are often served through such arrangements.

BellSouth's proposal is especially egregious given that BellSouth's costs do not change depending upon the location of the called party. Regardless of the customer's location, BellSouth's responsibility for carrying originating locally-dialed traffic on its own network will always end at the IP, where its network ends and Level 3's network begins. Its responsibility for paying reciprocal compensation to Level 3 will always end at the Level 3 switch, regardless of where the customer is served beyond that switch. Thus, BellSouth's costs and obligations in originating a locally-dialed call from a particular BellSouth customer cannot differ because of where

Level 3's customer is located. Given that there is no cost difference, it would seem arbitrary to then impose a different rate structure on these virtual NXX calls.

Q: **HAS THIS COMMISSION FOUND THAT APPLYING ACCESS CHARGES TO ISP-BOUND TRAFFIC IS INAPPROPRIATE?**

A: Yes, it has. In the Global NAPS arbitration proceeding, the Commission stated,

In considering other possible compensation options for ISP-bound traffic, we find GNAPS witness Selwyn's argument compelling, wherein he states:

> [w]hile one could make a case in the abstract for the notion that ISPs should pay access charges, as opposed to being allowed to connect to the public switched network just like other end users, not only is such an arrangement not in place today, it is affirmatively banned today by the operation of the [FCC's] ESP exemption.[17]

Increasing the cost of Internet access through the introduction of access charges and the denial of reciprocal compensation would be inconsistent with the Act's mandate for Internet services. More specifically, Section 230(b)(2) (47 U.S.C.

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[17] Before the Florida Public Service Commission; <u>FINAL ORDER ON ARBITRATION</u>; Docket No. 991220-TP; Order No. PSC-00-1680-FOF-TP; Issued: September 19, 2000; at 13.

230) of the Act states "It is the policy of the United States to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or state regulation." To the extent BellSouth's proposal to distinguish Internet usage from other local usage depresses demand for Internet usage, it is not in the public interest.

Q. WHY IS IT IMPORTANT FOR LEVEL 3 TO PROVIDE ITS CUSTOMERS WITH VIRTUAL NXXS?

A: Level 3 and other ALECs provide (and, as discussed below, seemingly BellSouth itself provides) a valuable service to customers by providing them with virtual NXXs. For example, Level 3 may attract ISP customers by providing virtual NXXs. The virtual NXX allows the ISP's subscribers to access the Internet by calling a local number, even though the ISP's POP may be further away.

A key competitive advantage - indeed, a practical business necessity - for any ISP is having a local dial-up for a prospective customer. Because Internet-bound calls are often longer in duration than other calls, avoiding toll charges associated with accessing an ISP's POP that is not located in the user's rate center dramatically reduces the user's Internet costs. Therefore, ISPs will often choose their carrier based on the carrier's ability to provide local dial-up capability via the virtual NXX.

Q: **HOW WOULD THE COMPETITIVE DEPLOYMENT OF AFFORDABLE INTERNET SERVICES BE IMPACTED IF BELLSOUTH RESTRICTS ALECS USE OF NXX CODES?**

A: By contractually inhibiting the use of NXXs in such a manner that Level 3 and other ALECs cannot offer virtual NXXs without facing additional charges, the costs associated with accessing the Internet would increase. By using virtual NXX assignments, Level 3 and other ALECs have been able to provide services that allow ISPs to provide low cost Internet services throughout Florida, by allowing ISP customers to access the Internet by dialing a local number. Eliminating the ability to provide virtual NXX codes - or refusing to pay reciprocal compensation for these local calls -- would be a step in the wrong direction in the deployment of affordable Internet services in Florida, as the end result would be a decrease in usage of Internet services by Florida citizens facing the prospect of toll charges or other increased costs to access their ISPs.

This would be in direct conflict with the 1996 Act, which calls for consumers in all regions of the Nation, including those in rural, insular, and high cost areas, to have access to telecommunications and information services at just, reasonable, and comparable rates. (Sec. 254(b)) 47 U.S.C. § 254(b).

Q: WOULD BELLSOUTH'S PROPOSED LANGUAGE GIVE BELLSOUTH A COMPETITIVE ADVANTAGE IN THE ISP MARKET?

A: Yes. BellSouth markets certain products to ISPs. These service offerings appear to be no different from what ALECs such as Level 3 offer their own ISP customers using a virtual NXX arrangement. If ALECs are prohibited from receiving reciprocal compensation for virtual NXX calls to prospective and current ISP customers through BellSouth's proposed contract restrictions, ISPs would either have to establish multiple POPs in order to allow their subscribers to access the Internet via a local number or to contract with BellSouth and subscribe to BellSouth's ISP products. Because each POP requires a significant investment in hardware and leased line connections, and because provisioning services in new areas may cause delays in ISP service offerings, the ability to offer ISP customers local dial-up and single POP capability is a critical competitive consideration. More importantly, forcing ISPs and CLECs to deploy these facilities - when, as described above, such deployment is not at all necessary - would encourage inefficiency and a wasteful allocation of limited ALEC resources. Only BellSouth, with its ubiquitous network developed with the support of decades of subsidies, could likely offer ISPs the kind of presence required in each local calling area to avoid a virtual NXX situation. Moreover, by precluding Level 3 from receiving reciprocal compensation for these services, and then threatening to impose higher access charges on each call, BellSouth is creating an economic barrier to any other carriers providing service to ISPs, and is giving itself a significant competitive advantage. This clear advantage for BellSouth would not only stifle the ability of ALECs such as Level 3 to provide service to ISPs in Florida, but would essentially eliminate the prospect for competition in this market.

Q: PLEASE SUMMARIZE YOUR POSITION ON ORIGINATING ACCESS RECIPROCAL COMPENSATION FOR CALLS UTILIZING VIRTUAL NXX CODES.

A: The use of virtual NXX codes allows consumers efficient access to ISPs and Internet services that would otherwise be impossible if such calls were treated as toll calls. Further, treating calls to virtual NXX numbers as something other than local would inappropriately allow BellSouth to avoid payment of reciprocal compensation and give BellSouth a competitive advantage over ALECs in the ISP market. For all these reasons, the Commission should adopt Level 3's position and delete BellSouth's proposed language that would impose originating access charges and eliminate reciprocal compensation for local calls based on the physical location of the ISPs, and the Commission should specifically find that calls to ISPs should be treated as local calls since there are no additional costs or responsibilities borne by BellSouth.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes, it does.

Q: PLEASE STATE YOUR NAME, TITLE, AND ADDRESS FOR THE RECORD.

A: My name is Timothy J. Gates. I am a Senior Vice President of QSI Consulting. My business address is as follows: 15712 W. 72nd Circle, Arvada, Colorado 80007.

Q. ARE YOU THE SAM. TIMOTHY J. GATES WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut certain statements made by BellSouth witness Cynthia K. Cox in her direct testimony filed in this Docket on October 5, 2000, with regard to Issues 1, 3, 6 and 7.

ISSUE 1 – How should the parties designate the Interconnection Points ("IPs" or "POIs") for their networks?

***ISSUE 3* – Should each carrier be required to pay for the use of interconnection trunks on the other carrier's network? Even if so, should Level 3 be required to pay recurring and nonrecurring rates based upon BellSouth's access tariff for the use of interconnection trunks?**

Q. PLEASE BRIEFLY DESCRIBE THE DISPUTE ON THESE POINTS.

A. BellSouth has created a fiction in order to support its position that Level 3 should be required to collect traffic from each BellSouth local calling area. That fiction is that each local calling area is a distinct, stand alone local network to which the FCC and the Telecommunications Act ("Act") requirements apply. If BellSouth's position is accepted, the effect would be to require new entrants such as Level 3 to build or lease facilities to transport traffic originated by a BellSouth customer on the BellSouth side of the point of interconnection with Level 3. This is completely inconsistent with the FCC rules and the incumbent LEC ("ILEC") requirements identified in the Act.

Q: DID THE FCC RECOGNIZE THAT NEW ENTRANTS WOULD LIKELY DEVELOP THEIR NETWORKS WITH ONLY ONE POINT OF INTERCONNECTION ("POI") PER LATA?

A. Yes. Mr. Rogers addresses this issue in some detail. It is clear, however, that the FCC recognized that most, if not all, new entrants would initiate service with a single POI per LATA. In its order on the SBC 271 application filed in Texas, the FCC stated in pertinent part:

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the

> option to interconnect at only one technically feasible point in each LATA.[1]

Consistent with the FCC's approach, and recognizing that many LATAs in BellSouth's network are served by more than one access tandem, this Commission has, where requested by an ALEC, found that it is technically feasible to require a single POI per LATA.[2]

Q. BELLSOUTH SUGGESTS THAT LEVEL 3 "SHOULD BEAR THE FULL COSTS OF ITS NETWORK DESIGN CHOICES." (TESTIMONY OF COX AT 3) PLEASE COMMENT.

A. What Ms. Cox refers to as a "design choice" is not a choice at all. To suggest that a choice is available is to suggest that Level 3 would be indifferent to either outcome. This is certainly not the case in network deployment. Instead, the economic reality of network development is that it is accomplished one piece at a time, not all at once. The fact that an ALEC starts its business with one switch and not two or 20, reflects the business reality that new entrants must grow their business (market share) to justify the purchase of additional network

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1 *In The Matter of Application of SBC Communications, Inc. Pursuant to Section 271 to Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65, Memorandum Opinion And Order, ¶78 (rel. June 30, 2000) (*Texas 271 Order*).

2 *Petition by Sprint Communications Company Limited Partnership d/b/a Sprint for arbitration with BellSouth Telecommunications, Inc. concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996*, Docket No. 961150-TP, Final Order on Arbitration, Order No. PSC-97-0122-FOF-TP, 9 (Feb. 3, 1997).

facilities. What BellSouth is really trying to do is penalize ALECs for not deploying more switches at the time of market entry.

Successful companies are guided by the economic ramifications of their decisions. As such, telecommunications companies do not replace switches or network facilities until they are outdated or near exhaust. They do not add additional switches or remotes until there is a traffic forecast to justify the cost of such deployment. The same is true of new technology. BellSouth will deploy SONET rings in such places as Jacksonville and Orlando before they deploy them in Lake City or Sanford. As such, the decision to add new switches or facilities are not mere design choices as suggested by Ms. Cox, they are rational resource allocation decisions based on the ability of the carrier to attract various levels of business and the amount of traffic a carrier expects to handle.

Q. MS. COX CLAIMS THAT "BELLSOUTH HAS A LOCAL NETWORK IN EACH OF THE LOCAL CALLING AREAS IT SERVES IN FLORIDA." (TESTIMONY OF COX AT 4) PLEASE COMMENT.

A. This is the fiction I referred to earlier. BellSouth is using this play on words in an attempt to justify its proposal that Level 3 be financially responsible for delivering BellSouth's originating traffic from each of these purportedly separate networks to the POI. As noted above in the *Texas 271 Order*, the ALECs are allowed one technically feasible point per LATA, <u>not</u> per local calling area.

BellSouth uses the definition of "interconnection" – the physical linking of two networks – in an attempt to justify its proposal.

Q. PLEASE EXPLAIN.

A. Ms. Cox cites the definition of interconnection as being a connection between two networks, and then proceeds to suggest that each local calling area is a separate and distinct network. For instance, at page 18 of her testimony she states, "When Level 3 interconnects with BellSouth's local network in Jacksonville, it is not interconnecting with BellSouth's local network in Lake City." This is simply not true.

The local networks Ms. Cox is referring to are not stand-alone networks – they are an integral part of the larger BellSouth network. To use Ms. Cox's approach, BellSouth would have anywhere from 100 to 200 or more local networks in Florida alone. Ms. Cox says that BellSouth has "...as many as 10, 20, or more such local networks in a given LATA." (Testimony of Cox at 4) Thus, under BellSouth's theory, an ALEC could have to interconnect with BellSouth up to 200 times in its Florida serving area – and thereby duplicate the historical development of the BellSouth network – just so it could exchange traffic with BellSouth.

Q. IS MS. COX'S POSITION ON LOCAL NETWORKS CONSISTENT WITH OTHER STATEMENTS BY BELLSOUTH?

A. No. Mr. Sachetti cites several statements by BellSouth that indicate that Ms. Cox's representation is incorrect. I would like to add a few more examples to reinforce this point.

At a recent speaking engagement, BellSouth Chairman and CEO, Mr. Duane Ackerman boasted about the integrated nature of BellSouth's wireline network, especially as it relates to data, saying that BellSouth's network is "the most robust local network in the U. S., if not the world", and that the network is "not about a series of stand-alone internet data centers", but "about an integrated e>business network platform, available to all of our customers wherever they are." Mr. Ackerman attributes BellSouth's ability to provide advanced services to its customers to the integration of its existing network facilities consisting of "Internet points-of-presence, central offices, SONET rings and Fast Packet switches".[3]

Clearly, Mr. Ackerman's references to "the most robust local network in the US, if not the world" was not a reference to one of the many "local networks" that may be found in a LATA as suggested by

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[3] Remarks of Duane Ackerman at the Goldman Sachs 2000 Communicopia IX Conference, October 4, 2000.

Ms. Cox. Instead, the industry readily recognizes his comments to refer to the entirety of the integrated BellSouth network.

Q. MS. COX CLAIMS THAT "LEVEL 3 IS INAPPROPRIATELY ATTEMPTING TO SHIFT COSTS TO BELLSOUTH." (TESTIMONY OF COX AT 8) PLEASE RESPOND.

A. This is not true. Level 3 is deploying its network consistent with efficient engineering principles. Ms. Cox's arguments regarding the number of POIs is an attempt by BellSouth to raise Level 3's costs to enter BellSouth's heretofore monopoly market. In doing so, Ms. Cox is attempting to relitigate points which Congress and the FCC have already decided. Delivering traffic originated by BellSouth customers to the POI is BellSou'h's responsibility – financially and operationally. Mr. Rogers addresses this extensively in his rebuttal testimony.

Q. PLEASE RESPOND TO MS. COX'S EXAMPLE OF A CALL BETWEEN TWO NEIGHBORS IN LAKE CITY – ONE WHO IS A CUSTOMER OF BELLSOUTH AND ONE WHO IS A CUSTOMER OF LEVEL 3. (TESTIMONY OF COX AT 8-10)

A. First of all, many neighbors have different telecommunications providers. In the long-distance market, for instance, it would be highly unusual for all neighbors in a cul-de-sac to have the same provider. This is one of the key benefits of competition – choice of providers and services.

The fact that a BellSouth customer in Lake City calls a Level 3 customer in Lake City does not change the responsibilities of the carriers. BellSouth delivers the call from Lake City to Jacksonville and Level 3 then terminates the call from Jacksonville to Lake City. There is nothing one-sided about this arrangement. As noted in my Direct Testimony, it is inappropriate to impose any charges for local interconnection trunks (and the facilities upon which those trunks ride), as these are co-carrier facilities and trunks provided for the mutual benefit of the parties in exchanging customer traffic, and both parties must deploy matching capacity on their side of the POI. Further, as both parties have already agreed in Section 1.1.1 of Attachment 3, it is each carrier's financial and operational responsibility to supply and maintain the network on its side of the POI to deliver traffic to the terminating carrier, so a requirement that each party then pay the other for trunks and facilities on the other's network is inconsistent with other resolved sections of the contract.

Q. MS. COX STATES THAT "TO MAKE THE POINT MORE SIMPLY, LEVEL 3 WANTS BELLSOUTH TO BEAR THE COST OF THE FACILITIES USED TO HAUL THE CALL, DESCRIBED ABOVE, FROM LAKE CITY TO JACKSONVILLE. THERE IS NOTHING FAIR, EQUITABLE OR REASONABLE ABOUT LEVEL 3'S REQUEST." PLEASE RESPOND.

A. First, as noted above, the FCC's "rules of the road" validate Level 3's approach and this Commission has found – in the Sprint decision – that it is technically feasible to require a single POI within a LATA. Despite BellSouth's protestations to the contrary, these decisions have already been made. Further, as noted above, given the reciprocal responsibilities on each side of the POI, the handling of traffic as required by the FCC and proposed by Level 3 is certainly fair, equitable and reasonable. Requiring an ALEC to pay for the trunks and facilities on the BellSouth side of the POI – on the BellSouth network – renders the establishment of a single POI meaningless. Under BellSouth's theory, an ALEC is responsible to pick up traffic wherever BellSouth demands, thereby making the POI a useless concept.

Q. IF THE COMMISSION ACCEPTED BELLSOUTH'S PROPOSAL WHAT WOULD BE THE RESULT?

A. The result would be one of two scenarios – uneconomic duplication of BellSouth's network, and/or, elimination of competition. The Commission should reject BellSouth's fiction of independent, stand-alone local networks for purposes of interconnection.

Q. MS. COX STATES THAT BELLSOUTH DOES NOT RECOVER THE COSTS FOR CARRYING TRAFFIC TO THE POI THROUGH

RECIPROCAL COMPENSATION. (TESTIMONY OF COX AT 11) PLEASE COMMENT.

A. She is correct. Reciprocal compensation is for the termination of traffic originated by another provider. As such, BellSouth is compensated for calls originated by Level 3 customers and Level 3 is compensated for calls originated by BellSouth customers.

Q. DOES THAT MEAN THAT BELLSOUTH MAY CHARGE FOR THE FACILITIES USED TO DELIVER TRAFFIC TO THE POI?

A. Absolutely not. As noted by the FCC, "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." (FCC Rule 51.703(b)) In a recent Order, the FCC again reiterated its position that a LEC may not charge for facilities or traffic on its side of the POI. The FCC stated the following:

> Defendants argue that section 51.703(b) governs only the charges for "traffic" between carriers and does not prevent LECs from charging for the "facilities" used to transport that traffic. We find that argument unpersuasive given the clear mandate of the *Local Competition Order*. The Metzger Letter correctly stated that the Commission's rules prohibit LECs from charging for facilities used to deliver LEC-originated traffic, in addition to prohibiting charges for the traffic itself. Since the traffic must be delivered over facilities, charging carriers for facilities used to deliver traffic results in those carriers paying for LEC-originated traffic and would be inconsistent with the rules. Moreover, the Order requires a carrier to pay for dedicated facilities only to the extent it uses those facilities to deliver traffic

> that it originates. Indeed, the distinction urged by Defendants is nonsensical, because LECs could continue to charge carriers for the delivery of originating traffic by merely re-designating the "traffic" charges as "facilities" charges. Such a result would be inconsistent with the language and intent of the Order and the Commission's rules.[4] (footnotes omitted; emphasis in original)

It is clear that each LEC bears the responsibility of operating and maintaining the facilities used to transport and deliver traffic on its side of the POI. This responsibility extends to both the trunks and facilities as well as the traffic that transits those trunks and facilities. Likewise, an interconnecting terminating LEC will bear responsibility for the facilities on its side of the POI, but then recover the costs of transporting and terminating traffic over those facilities from the originating LEC, in the form of reciprocal compensation.

Q. DID THE FCC FURTHER EXPLAIN ITS LOGIC FOR REQUIRING THE ORIGINATING CARRIER TO BEAR THE COSTS OF DELIVERING ORIGINATING TRAFFIC TO THE TERMINATING CARRIER?

A. Yes. In the *TSR Order* the FCC further clarified its logic as follows:

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[4] *In the Matters of TSR WIRELESS, LLC, et al., Complainants, v. US WEST COMMUNICATIONS, INC. et al., Defendants*, Memorandum Opinion and Order, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, ¶25 (rel. June 21, 2000) (*TSR Order*).

> According to Defendants, the *Local Competition Order*'s regulatory regime, which requires carriers to pay for facilities used to deliver their originating traffic to their co-carriers, represents a physical occupation of Defendants property without just compensation, in violation of the Takings Clause of the Constitution. We disagree. <u>The *Local Competition Order* requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation.</u> In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. <u>Under the Commission's regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network.</u> The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.[5] (emphasis added) (footnotes omitted)

By this reasoning, Level 3 should not have to pay BellSouth for the interconnection trunks and facilities that transport BellSouth-originated traffic to Level 3 for termination.

***ISSUE 6* – Should the parties be required to pay reciprocal compensation on traffic originating from or terminating to an**

[5] *Id.* at ¶34.

enhanced service provider, including an internet service provider ("ISP")?

Q. AT PAGE 18 OF HER TESTIMONY, MS. COX STATES THAT LEVEL 3 HAS NOT PROVIDED ANY EVIDENCE TO SHOW THAT ISP-BOUND TRAFFIC IS LOCAL. DO YOU AGREE?

A. No. BellSouth has evidently decided not to respond to Level 3's evidence, which is substantial. The fact that calls to an ISP travel the same path and use the same facilities as any other local call, is not rebutted by BellSouth. It would be completely inconsistent for BellSouth to pay reciprocal compensation for some local calls but not for others.

Q: HAS THIS DISPUTE ESSENTIALLY BEEN RESOLVED BY MS. COX'S CONCILIATORY OFFER TO ABIDE BY THE COMMISSION'S PREVIOUS DECISIONS AND TRACK AND TRUE-UP PAYMENTS ONCE AN INTERCARRIER COMPENSATION MECHANISM IS ESTABLISHED? (COX AT 21)

A: No. Ms. Cox's position that BellSouth agrees to apply the Commission's Orders in the ITC^DeltaCom, Intermedia and ICG cases, as a "conciliatory offer" that avoids requiring the Commission to rehear this issue is a red herring. Although Ms. Cox does not state BellSouth's interpretation of the Commission's "status quo" rulings, BellSouth has made clear in its response (paragraphs 26 and 27) to Level 3's Petition for Arbitration that it believes the status quo is that BellSouth will not pay Level 3 reciprocal compensation for ISP-bound traffic. Accordingly, Level 3 asks that the Commission affirmatively address BellSouth's obligation to pay reciprocal compensation for ISP-bound traffic. The Commission should rule, once again, that reciprocal compensation is owed for traffic to Internet Service Providers.

Furthermore, Level 3 does not agree that a "track and true up" arrangement is appropriate. The retrospective effect of a final resolution of this issue on a national level is not an issue in this arbitration. If there is to be any retrospective adjustment for Level 3, to avoid a discriminatory impact on Level 3, it should not be determined until a final resolution of this issue has been rendered.

***ISSUE 7* – Should BellSouth be permitted to define its obligation to pay reciprocal compensation to Level 3 based upon the physical location of Level 3's customers? Should BellSouth be able to charge originating access to Level 3 on all calls going to a particular NXX code based upon the location of any one customer?**

Q. **MS. COX REFERENCES THE MAINE COMMISSION ORDER AS SUPPORT FOR ITS POSITION ON THIS ISSUE. (TESTIMONY OF COX AT 28-30) PLEASE COMMENT.**

A. The ILECs frequently cite this order as support for their positions. Many commissions, however, have not agreed with the ILECs on this issue. For instance, in a recent decision on this dispute, the Michigan Commission stated:

> Commission precedent on the issue of the appropriate rating of a call to a customer located outside the geographic area associated with the NXX assigned to that customer has consistently found that intra NXX calls are to be considered local for rating purposes, despite their actual routing. ...
>
> The arbitration panel adopted the reasoning of the ICC in its May 8, 2000 decision involving an arbitration agreement between Focal and Ameritech Illinois. In that case, Ameritech Illinois requested language that would have required Focal to establish a point of interconnection within 15 miles of the rate center for any NXX code that Focal used to provide FX service. The ICC determined that nothing in state or federal law required adoption of the proposal and it rejected Ameritech Illinois' arguments concerning the alleged "free ride" that Focal would obtain without the requirement. That free ride argument appears to be the same as one of the arguments that Ameritech Michigan poses in this case. In the ICC's view, the manner in which the parties currently handle traffic belied Ameritech Illinois' argument, because Ameritech Illinois would not be required to carry traffic any further or incur any extra expense based on the nature of the call being FX service. Rather, Ameritech Illinois delivers the call to the point of interconnection associated with the NXX, after which, Focal

> delivers the call to the FX customer, wherever that customer might be located. [6]

Level 3 urges this Commission to consider, as Michigan did, how the industry traditionally rated calls, and the actual functions involved in exchanging this traffic.

Q. MS. COX STATES THAT "THE FCC HAS MADE IT CLEAR THAT TRAFFIC JURISDICTION IS DETERMINED BASED UPON THE ORIGINATING AND TERMINATING END POINTS OF A CALL, NOT THE NPA/NXX OF THE CALLING OR CALLED NUMBER." (TESTIMONY OF COX AT 25) PLEASE COMMENT.

A. Recent rulings specifically rebut Ms. Cox's suggestion. For instance, The United States Court of Appeals for the District of Columbia Circuit's decision[7] requires the Commission to find that ISP-bound calls are subject to reciprocal compensation. In *Bell Atlantic*, the D.C. Circuit vacated and remanded the FCC *Declaratory Ruling*[8] which had held that ISP-bound traffic is

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6 *Petition of Coast to Coast Telecommunications, Inc., for arbitration of interconnection rates, terms, conditions, and related arrangements with Michigan Bell Telephone Company, d/b/a Ameritech Michigan*, Case No. U-12382, Order Adopting Arbitrated Agreement, 9 (Mich. P.S.C. Aug. 17, 2000).

7 *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1 (D.C. Cir. 2000) ("*Bell Atlantic*").

8 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, 14 FCC Rcd 3689 (1999). This order is frequently referred to as the FCC *ISP Order*.

jurisdictionally mixed but largely interstate traffic and not subject to Section 251(b)(5)'s reciprocal compensation obligation.

The D.C. Circuit held that the FCC applied the wrong analysis in the *ISP Order*. In determining that ISP-bound traffic was not subject to reciprocal compensation under Section 251(b)(5), the FCC engaged in the end-to-end analysis that it has traditionally used to determine the jurisdictional nature of traffic. The court rejected this approach, saying that "[h]owever sound the end-to-end analysis may be for jurisdictional purposes, the Commission has not explained why viewing [ISP-bound calls] as continuous works for purposes of reciprocal compensation." *Id.* at 7. In other words, the fact that a call to an ISP may be jurisdictionally interstate under an "end-to-end" analysis does mean that reciprocal compensation is not paid on the call.

Q: MS. COX STATES IN HER TESTIMONY THAT "TRAFFIC JURISDICTION BASED ON RATE CENTER ASSIGNMENT IS USED FOR RETAIL END USER BILLING, BUT NOT FOR INTER-COMPANY COMPENSATION PURPOSES." (COX AT 25). DO YOU AGREE WITH HER?

A. No. The regulatory treatment of a particular call should be the same for retail end user billing and for intercarrier compensation. A call that is rated as local for retail purposes by comparing the NXX codes of the calling party and the called party should also be a local call for compensation purposes.

Q: WHY SHOULD A CALL RATED AS LOCAL FOR RETAIL PURPOSES BE TREATED AS LOCAL FOR COMPENSATION PURPOSES?

A: The calls should be treated the same because in a competitive environment, the costs are the same to the originating carrier. Also, they should be treated the same because adopting BellSouth's position would require both parties to establish elaborate billing mechanisms to distinguish calls to customers with virtual presences from calls to customers with physical presences that share the same NXX code.

Q: DOES THE EXCHANGE OF TRAFFIC IN A COMPETITIVE ENVIRONMENT MAKE A DIFFERENCE?

A: Yes. In a competitive environment, the ILEC already incurs costs in addition to those it would typically incur in a monopoly environment. These additional costs are the costs of transporting all traffic bound to a Level 3 customer to the Level 3 POI. In a monopoly environment, BellSouth probably would not route all traffic through a single hub. In a competitive environment, however, the minor inefficiencies related to routing to a central exchange point are offset by increased benefits related to improved service quality, lower prices, and additional service options provided by competitors.

With this distinction in mind, I believe two additional diagrams demonstrating interconnection would be helpful. The first diagram, which should go before Diagram 6, illustrates the path of a call when Level 3 expands its service offerings to provide local service to a second local calling area. In this scenario, Level 3's switch and POI are still in the first local calling area (as illustrated in Diagram 5). This diagram is labeled Diagram 5.1 and is attached as Exhibit __ (TJG-8). The BellSouth customer and the Level 3 customers in local calling area 2 may place local calls to each other, but the traffic is routed out of local calling area 2 to the POI in local calling area 1, before it is routed back to be terminated in local calling area 2. If BellSouth were serving both customers, the call probably would not be routed out of local calling area 2. In a competitive environment, however, BellSouth must route the call to the POI with Level 3 in local calling area 1, and then Level 3 bears the obligation of transporting the call back to its customer in local calling area 2.

The virtual NXX arrangements at issue in this case are a variation on the scenario illustrated in Diagram 5.1. A virtual NXX arrangement is illustrated in Diagram 5.2 which is attached as

Exhibit __ TJG-9). The transport provided by Level 3 back to local calling area 2 is indicated by a dotted line because it is not necessary for it to be provided. Level 3's customer has a virtual presence in local calling area 2 rather than a physical presence. In other words, to the BellSouth customer in local calling area two, it appears that the Level 3 customer is physically located in local calling area 2. It would be physically possible to establish such a presence in each local calling area, but as I've stated before, that would unnecessarily increase the cost of Internet access for consumers and ISPs alike. If the ISP or Level 3 did establish a local presence, the diagram would be the same as in Diagram 5.1. Level 3 could provide the transport back to local calling area 2, and its customer could establish a physical presence there, in which case the scenario would be the same as in Diagram 5.1, and the call would be unmistakably local. In both scenarios, Diagram 5.1 and Diagram 5.2, the transport obligations of BellSouth, and the accompanying costs, are identical. The physical location of the customer makes no difference in terms of BellSouth's network costs in the scenarios illustrated by Diagram 5.1 and Diagram 5.2. When I say that the physical location of the called party should not matter for purposes of reciprocal compensation, I am referring to the arrangement illustrated in Diagrams 5.1 and 5.2. These diagrams show, contrary to Ms. Cox's contentions, that there is good reason from a network cost and operational perspective to treat calls rated as local for retail purposes as local for intercarrier compensation purposes as well.

Q: HAS ANY STATE COMMISSION ADOPTED THIS APPROACH?

A: Yes. The Michigan and California Commissions have ruled that the rating of a call based upon a comparison of the NXX codes of the calling and the called parties determines the intercarrier compensation for the call.[9]

Q: IS THERE A SECOND REASON FOR A CALL THAT IS RATED AS LOCAL TO BE TREATED AS A LOCAL CALL FOR COMPENSATION PURPOSES?

A: Yes. BellSouth has not explained how the parties could possibly comply with a ruling that denies reciprocal compensation based on the physical location of the called party when the called party has a telephone number associated with a rate center where a call to it would otherwise be rated as a local call. If the BellSouth position were adopted, reciprocal compensation would be owed for a call to

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9 *See In re Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan*, Case No. U-12460, Opinion and Order (Mich. P.S.C. Oct. 24, 2000); *In re Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom Pursuant to Section 252(b) of the Telecommunications Act of 1996*, D. 99-09-969 (Ca. P.U.C. Sep. 17, 1999).

a customer with a physical presence in a local calling area associated with a particular NXX code, but reciprocal compensation would not be owed to a customer without such a physical presence. Again, this goes back to how the industry has always rated telephone calls. To the switches and billing systems used by BellSouth and Level 3, those two calls are identical for billing purposes because the switches and billing systems compare NXX codes, and make no reference to the physical location of the called party. Adopting BellSouth's position on this issue could likely require Level 3 and BellSouth to compile billing records by hand and screen out calls to numbers for customers with only virtual presences in local calling areas. Such a process creates a disincentive for Level 3 to expand its subscriber base: the larger the subscriber base, the more onerous the screening function, the longer the delay in submitting bills to BellSouth, which would add further delay in receiving compensation for services rendered to BellSouth.

Simply denying reciprocal compensation for all traffic to an NXX code used to provide customers with a virtual presence is unsupportable because nothing prevents Level 3 from using a single NXX code for all of its customers in a local calling area, whether their presence is physical or virtual. The alternative –

requiring Level 3 to use unique NXX codes for customers with physical presences and customers with virtual presences – is also contrary to sound public policy because it will contribute to numbering resource exhaust.

Further, adopting BellSouth's resolution of this issue may lead to unusual and confusing results. Assume, for example, that the facilities of a customer using Level 3's virtual NXX product are located in downtown Jacksonville. Under BellSouth's position, a call from a BellSouth subscriber in Jacksonville to the Jacksonville NXX of the customer served by Level 3 would be rated as local and reciprocal compensation would be owed. Furthermore, under BellSouth's position, a call from a BellSouth subscriber in Lake City to the same Level 3 customer's Lake City NXX code would not be rated as local and reciprocal compensation would not be owed because the Level 3 customer has no presence in Lake City. However, under BellSouth's reasoning, a call from the same Jacksonville BellSouth subscriber to the Lake City NXX code of the Level 3 customer should be considered local because the call originates and physically terminates in Jacksonville, even though the number dialed is associated with Lake City and the switches processing the call would recognize the call as a toll call. In that case, reciprocal compensation would be owed for a call that has the appearances of a toll call to the switches connecting the call.

These practical considerations, as well as an understanding that BellSouth's costs of handing traffic off to Level 3 are not increased by the use of a virtual NXX to serve customers, should provide the Commission with good cause to reject BellSouth's proposal to treat locally-dialed calls differently from one another for intercarrier compensation purposes.

Q: UNDER BELLSOUTH'S PROPOSAL, HOW WOULD ALECS BE COMPENSATED FOR HANDLING TRAFFIC ORIGINATED BY BELLSOUTH CUSTOMERS?

A. ALECs would receive no compensation for terminating calls originated by BellSouth's customers and would instead pay BellSouth for originating such calls even though BellSouth incurs no more cost in doing so than for any other locally-dialed call. Such a result is anticompetitive as it would increase the cost of new entrants and at the same time result in a "free ride" for BellSouth. The Commission should reject BellSouth's proposal.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

COMMISSIONER JABER: Your witness has agreed to summary?

MR. ROMANO: Yes.

BY MR. ROMANO:

Q Mr. Gates, would you please provide your summary at this time?

A Yes. Madam Chair, Commissioner Baez, good morning. I do have a brief summary of my testimonies. I address four issues.

The question in Issue 2 is should Level 3 receive symmetrical compensation from BellSouth for leased facility interconnection? The answer to that question is yes, absolutely. The dispute over the serving wire center definition is caused, in significant part, because of the differences between the two networks. The BellSouth network has been developed over the last hundred years with monopoly rents. Because of that and changes in technology, it's not necessarily the most efficient network out there today.

The Level 3 network is a brand new network utilizing the latest technologies, and it's being expanded over time as the profits allow. Obviously, the Level 3 network is not as extensive, certainly not ubiquitous like the BellSouth network.

Recognizing this disparity between the two networks, BellSouth has structured its rates in such a way that BellSouth can charge more for the very same transport, the same transport facility, based only upon its location in a multiswitch network.

Based on the language proposed by BellSouth, when BellSouth originates traffic, it pays no dedicated interoffice transport. But when Level 3 originates traffic, it must pay for the dedicated interoffice transport, and that's patently unfair.

New entrants, like Level 3, should not be disadvantaged by their choice of technology or by their network design. Level 3 should be allowed to charge BellSouth whatever it is that BellSouth charges Level 3 in order to have symmetrical rates. In other words, 10 miles of transport purchased by Level 3 should cost the same as 10 miles of transport purchased by BellSouth.

Issue Number 3. The question is should each carrier be required to pay for the use of interconnection trunks on the other carrier's network? The answer to that question is no. Any charges for interconnection trunks are inappropriate, because these are co-carrier trunks.

You heard Mr. Romano talk about co-carrier trunks earlier today. These trunks are in place for the mutual benefit of both carriers. Both carriers, both parties, must deploy matching capacity on their side of the point of interface or the interconnection point.

For instance, BellSouth could not have 300 circuits coming into the interconnection point and Level 3 only have 30 coming out. They do have to match. Indeed, and this is curious in this proceeding, Section 1.1.1 of the interconnection agreement, which is not being disputed by either BellSouth or Level 3 says, and I'm quoting, "Each party is financially and operationally responsible for providing the network on its side of the IP," closed quote.

Given that agreement, BellSouth's attempt to charge Level 3 for the facilities on its side of the IP should be rejected; otherwise, the provision for a single IP has no meaning whatsoever. As BellSouth would make new entrants, like Level 3, pay for the cost of reaching out beyond the interconnection point further into the BellSouth network.

Issue Number 6. That question asks should the parties be required to pay reciprocal compensation on traffic originating from or terminating to an enhanced service provider, including an ISP or Internet Service Provider? Yes, they should.

BellSouth incorrectly argues that traffic to an ISP is not a local call and as such is not eligible for reciprocal compensation. I think, you'll find during our presentations today that their actions belie the statement. BellSouth handles calls to ISPs in exactly the same manner as it handles all other local calls.

It is not technically feasible or in the public interest to break out these ISP-bound calls from other local calls; one, because they are handled and processed in the same manner; two, because there are no good ways to do so. Separately identifying these calls and charging a different rate for the ISP-bound calls results in discrimination, because there is no difference in the function of delivering ISP-bound calls from other local calls.

If BellSouth's proposal to treat these calls as nonlocal is accepted, new entrants like Level 3 will be forced to terminate traffic which has been originated by BellSouth customers with no compensation whatsoever.

Issue Number 7. Should BellSouth be permitted to define its obligation to pay reciprocal compensation to Level 3 based upon the physical location of Level 3's customers? The answer to that question is no. BellSouth, again, is attempting to avoid paying reciprocal compensation by limiting that compensation to calls between customers physically located in the same local calling area.

BellSouth fails to show any policy, cost, or other justification for eliminating this traffic from its reciprocal compensation obligation or for imposing switched access charges on this traffic. In fact, what BellSouth proposes is troubling twice over. Not only would the new entrant, like Level 3, pay switched access charges on every minute of a call that's originated by BellSouth, but would also receive absolutely nothing in return for helping BellSouth to terminate that call.

The jurisdiction of calls has traditionally been determined by comparing NXX codes. And I've been reviewing the discovery and other documents, and I'm finding that, indeed, BellSouth determines the jurisdictionality of a call based on NXX codes.

What BellSouth is proposing, however, is inconsistent with that historical approach, and they've developed this new and self-serving method that would eliminate these calls from its reciprocal compensation obligation. The fact is these calls do not change the costs incurred by BellSouth, and they're handled like all other local calls.

BellSouth's proposal should be rejected, and it should be required to treat these calls as local for intercarrier compensation purposes. The Commission should also reject BellSouth's proposal to impose access charges on this traffic. The Commission has already found that the application of access charges is inappropriate in significant part because of the FCC's enhanced service provider exemption.

Moreover, since BellSouth has admitted that its costs of originating these calls don't differ from the cost of originating any local calls allowing BellSouth to impose switched access charges on these calls introduces an unjustifiable noncost-based inefficiency at a time when regulators in the industry are trying to move rates closer to cost.

Thank you.

Q Mr. Gates, does that conclude your summary?

A Yes, it does.

MR. ROMANO: Madam Chair, Mr. Gates is available for cross examination.

COMMISSIONER JABER: Mr. Lackey?

MR. LACKEY: Thank you, ma'am.

CROSS EXAMINATION

BY MR. LACKEY:

Q Mr. Gates, my name is Doug Lackey. I'm an attorney for BellSouth.

A Good morning, Mr. Lackey.

Q Good morning. Did the previous witness leave Exhibits 5 and 6 there on the table for you?

A No, he did not.

Q Let me have some brought down to you.

A Thank you.

Q Do you have them, sir?

A I do have them in front of me.

Q Okay. I have a question that I want to ask you that's based on Exhibit 6, first. In Exhibit 6, do you see the BST end user that is represented by the triangle with the line on top of it that's located in Local Calling Area Number 1?

A Yes, I do.

Q Do you see the Level 3 end user that is represented by the same symbol that is located in what's marked Local Calling Area 2?

A Yes, I do.

Q Okay. Now, if the BellSouth end user in Local Calling Area 1 places a call to the Level 3 end user in Local Calling Area 2, is it Level 3's position that Level 3 is entitled to reciprocal compensation to be paid by BellSouth to Level 3 for that call?

A Well, it's not Level 3's position. I've heard that comment today a few times. It's the opinion of Congress, and it's the opinion of the FCC implementing the Act of 1996. Level 3 is just exercising its rights for interconnection in receiving the terminating reciprocal compensation for that call.

Q So, the answer to my question was yes?

A Level 3 would expect to receive termination costs for terminating that call for BellSouth so, yes, it would receive reciprocal compensation.

Q Now, you will agree with me, won't you, that we only owe reciprocal compensation for calls that originate and terminate in the same local calling area, won't you?

A No, of course, not.

Q You will not?

A No.

Q Are you familiar with the Code of Federal Regulations, particularly Section 51 as it relates to reciprocal compensation?

A Well, I don't have it memorized, but I'm aware of it.

Q All right. Let me see if I can find you a copy of that that we used earlier today, too.

A I have that in front of me.

Q All right. I have the whole thing, if you think I've left something out.

A No, I trust you.

Q I wouldn't do that, if I were you.

A You've crossed me before, Mr. Lackey. I've learned my lesson.

Q Have I?

A Yes, you have.

MR. LACKEY: You know, getting old is terrible, Commissioners, I can't remember.

BY MR. LACKEY:

Q Look at Section 51.701. This is the section that Mr. Turner read to, I think, Mr. Rogers earlier today, 51.701(a), right?

A Right.

Q And it says that "The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers," right?

A Yes, sir, that's what it says.

Q And you will agree with me that a call that goes from a BellSouth customer to a Level 3 customer is a call between wire line customers and not a call between a wire line customer and a CMRS customer, won't you?

A For purposes of your example, I would.

Q All right. If we look at 51.701(b)(1) -- well, let's start with (b). (b) defines local telecommunications traffic, doesn't it?

A Well, (b) is kind of the label for the definition of local telecommunications traffic.

Q Okay. (b) says, local telecommunications traffic -- for purposes of this subpart, local telecommunications traffic means... and then there are followed two subparts, right?

A Yes.

Q And subpart one, if I read it correctly, says, "Telecommunications traffic between a LEC and a telecommunications carrier, other than a CMRS provider, that originates and terminates within a local service area established by the state commission," I read that correctly, didn't I?

A I think, you did.

Q Now, in Florida, as in most other states, the incumbent local exchange carriers, generally with the assistance and always with the approval of the state Public Service Commission, establish local calling areas, correct?

A Yes, they do.

Q And in our Exhibit 6, I had already -- or actually, Mr. Turner had already indicated that this represented two different local calling areas, correct?

A That's correct. But, of course, there are situations when calls between local calling areas are, indeed, local. EAS, Extended Area Service, is one, optional local calling plans is another example.

Q Excuse me, Mr. Gates. Wasn't Mr. Turner very careful to always say that he was talking about a customer that had plain-vanilla local service?

A Well, yes. But honestly, Mr. Lackey, I don't know what that means, plain-vanilla local service. I'm not familiar with that phrase. It's probably not in the tariff.

Q Well, --

A But I would point out one thing that's very obvious to me with this discussion and that's that despite this definition, both the FCC and this Commission have decided to treat these calls as local calls.

Q Well, I'm not ready to go there just yet.

A Okay.

Q I want to make sure we've got the facts straight. We had established in this Exhibit Number 6 that there were two -- and if it wasn't clear before -- separate local calling areas. That's what's represented on the diagram, isn't it?

A Yes, I see that.

Q And the call I gave you a moment ago that originated with a BellSouth local user in Local Calling Area 1, that call originated in Local Calling Area Number 1 and, under my example, it terminated in Local Calling Area Number 2, didn't it?

A Yes, it did.

Q And if local telecommunications traffic is defined as traffic that originates and terminates within a local calling -- a local service area established by the state commission, you will agree with me that in this case that call did not originate and terminate in the same local calling area, won't you?

A It originates in one and terminates in another. And if we're assuming basic service with no EAS or no virtual NXX service -- I'll let you ask the question, Mr. Lackey. What's your point on this?

Q I don't make points. I just ask questions.

My question to you is, and I may be confused now, but I want to know whether Level 3 wants this Commission to order BellSouth to pay Level 3 reciprocal compensation that is due for terminating a local call for the call that begins in Local Calling Area 1, BellSouth's end user, and terminates in Local Calling Area 2 with the Level 3 end user?

A Yes. Level 3 is asking this Commission to provide reciprocal compensation in that situation. And I would also note that that request has been supported by decisions in amicus briefs and orders of the FCC.

The alternative, and that is, to build facilities to each local calling area within the state to each of BellSouth's local calling areas, has been found by the FCC to be an enormous cost that would thwart the fundamental goal of the Telecom Act, which is to allow for local competition.

Q Well, let's just assume, for the moment, that instead of Level 3 end user up in Local Calling Area 2, that that was a BellSouth end user in Local Calling Area 2. Will you assume that with me just for a moment?

A Yes.

Q Now, if the BellSouth end user in Local Calling Area 1 had just had plain basic telephone service, no extended area service, nothing else, no bells or whistles, called the BellSouth's subscriber in Local Calling Area 2, the BellSouth end user would be charged a toll call, correct?

A Well, I don't know that, Mr. Lackey. I don't know what BellSouth's local service says. I don't know what the toll offering is. In a general sense, I can agree, but not specifically.

Q All right. If we assume, for the purpose of this question, that calls within a local calling area are paid for by a local calling rate and that calls between local calling areas where there's no EAS are treated as toll calls, that in that scenario that would be a toll call, correct?

A Based on your representations, that would be a toll call for BellSouth.

Q Well, for instance, can a customer in Jupiter, Florida call a customer in Miami without paying a toll call, if you know?

A I've heard you refer to Jupiter. I assume, it's a long, long ways away from Miami, but I don't know that location.

Q Okay. Now, let's change the Level 3 end user in Exhibit 6. And instead of -- it's still a Level 3 end user, but let's say it's an ISP, an Internet Service Provider, okay?

A Okay.

Q And I suppose your answer would still be the same; and that is, when the BellSouth end user in Local Calling Area 1 places a call to the ISP located in a different local calling area, that reciprocal comp should be paid for that call as well, correct?

A Yes. And again, it's not just the Level 3 position. That's the way reciprocal compensation works. The BellSouth customer originates the call, BellSouth carries it to the interconnection point and, then, it's Level 3's responsibility to terminate the call.

And we could come up with scenarios that would look just as dire as the ones that you've suggested, perhaps, between Jupiter and Miami, but the point is the financial and operational responsibilities change at the interconnection point.

Q Do you see the Level 3 end user located in Local Calling Area 1 at the bottom oval?

A Yes.

Q Now, if the BellSouth end user -- let's just assume that the BellSouth end user and the Level 3 end user in that Local Calling Area 1 happened to be next-door neighbors. Now, in that scenario where the BST end user calls the Level 3 end user, you want BellSouth to pay reciprocal comp to Level 3 for that call as well, correct?

A Yes, and let me explain why. That call is delivered to the interconnection point in Local Calling Area 2, and then it becomes Level 3's responsibility to terminate that call based on the calling numbers supplied by the BellSouth customer. So, then, Level 3 would terminate that call from Local Calling Area 2 down to Local Calling Area 1.

Q Would it be a fair statement --

COMMISSIONER JABER: Excuse me.

MR. LACKEY: Yes, ma'am.

COMMISSIONER JABER: How is that different, Mr. Gates, from BellSouth having to transport the call to Local Area 2 to get to your IP?

THE WITNESS: Well, really, my point is that it's really the same. It's somewhat symmetrical.

BellSouth transports it up to the Level 3 switch; do you see it there? And then, Level 3 brings it back down on the right-hand side down to Local Calling Area 2. It's a shared responsibility in provisioning of the call.

COMMISSIONER JABER: Okay. And in provisioning that call, explain to me the compensation that you expect. How is BellSouth compensated for the routing of the call to the switch or to the IP? And how is it you expect Level 3 to be compensated for the routing from your switch back to the Level 3 customer?

THE WITNESS: Okay. Under the terms of reciprocal compensation, which have been laid out, it's the originating carrier's responsibility, BellSouth's responsibility, to get that call from the person, the BellSouth end user there, up to the interconnection point. The TSR order and other FCC orders have said that --

COMMISSIONER JABER: Okay, that's the responsibility to deliver the call.

THE WITNESS: Yes.

COMMISSIONER JABER: I'm talking about charges.

THE WITNESS: Yes, I was going to get to that. Let me get to it right now. The orders also refer to this, because this complaint has been made, obviously, before the FCC and the courts.

The compensation for BellSouth is the local rates. We've heard Mr. Lackey and others talk about a $10 rate. I don't know what those rates are, and I don't know what the costs are providing service. But clearly, the local -- basic local rate, subscriber line charges, revenues from vertical services, any universal service surcharges that might apply, and other subsidies, such as from access charges, also compensate BellSouth. It's not just the $10 rate that BellSouth has suggested that provides compensation.

So, those are the responsibilities of the originating carrier to get it up there, how is it compensated through those local rates and other subsidies that it receives? Once it gets to the IP, then, it becomes Level 3's responsibility to terminate that call. So, Level 3, either through its own network or through the lease of BellSouth's network, will terminate that call back down to Local Calling Area 1.

Now, pursuant to the reciprocal compensation guidelines, the terminating carrier is allowed to receive terminating charges for the switching, local switching, tandem switching, and the transport for terminating that call.

Now, we might want to argue about what costs we're talking about here and what rates, but it's important to note that those rates are based on

BellSouth's costs. And this Commission, of course, has dealt with that extensively, so I know you're aware of that. So, Level 3 would receive terminating rates for terminating that call back down to Local Calling Area 1.

COMMISSIONER JABER: Okay. So, now as to the question, the fact that BellSouth delivering that call to Level 3 switch or the IP is outside the local calling area; therefore, under the daily scheme that BellSouth has set up for its networks, that would be a toll call.

THE WITNESS: Only in the way they're kind of framing this discussion. We're talking about interconnection. And the FCC has said that new entrants only need one interconnection point per LATA, okay? And they've said that very specifically in the Texas 271 order, paragraph 78, one interconnection point per LATA, okay? That means the ILEC or BellSouth is responsible to get all of the originating traffic from its customers to the interconnection point conversely or symmetrically and the other side of that Level 3, then, terminates all that traffic.

COMMISSIONER JABER: All right. That's the responsibility to deliver the traffic. What does the FCC say about charging for the toll call or compensating for the fact that it's outside the local calling area?

THE WITNESS: There is no distinction in the FCC orders between local and toll with respect to interconnection and pricing, okay? It doesn't matter in the FCC's orders whether it's a 50-foot call or a 6-inch call or a 300-mile call. If the originating call -- I mean, the originating call has to be delivered to the interconnection point. And on the other side of that, it doesn't matter if that call is a 300-mile distance. Level 3 still has to terminate that call 300 miles.

What we've seen today is some kind of extreme examples which may, in fact, occur. Now, my guess is that the amount of that traffic in those extreme examples would be very small, I don't know.

COMMISSIONER JABER: Do you think reciprocal compensation is a cost recovery mechanism?

THE WITNESS: It is a cost recovery mechanism. And, in fact -- yeah, it definitely is. And could I expand on that just briefly? If Level 3 were not in the state, okay, and this call had to be handled entirely by BellSouth, that customer would -- well, that's a bad example.

The point is that Level 3 is performing a function for BellSouth. And if Level 3 hadn't terminated that call, BellSouth would have to terminate that call. So, Level 3 and BellSouth, particularly, should be indifferent as to whether they terminate the call or whether they pay Level 3 or some other new entrant to terminate the call, because we're using BellSouth's costs. So, they should be fully compensated for that termination.

COMMISSIONER JABER: Okay.

BY MR. LACKEY:

Q Let me just explore this for a moment more, and then I'll move on to something else.

The logical extension of the discussion you just had, and the one you had with me, seems pretty clear, but I want to examine it.

You do agree, don't you, that with my statement, and I made it as a statement and I should have asked you the question, that BellSouth and this Commission do establish local calling areas for BellSouth and the state of Florida, correct?

A Certainly.

Q And I suppose Level 3, for its customers, can define any local calling area in the state of Florida that it chooses, correct?

A I don't know the requirements for new entrants in Florida.

Q Okay.

A I just don't know.

Q All right. But under your interpretation of BellSouth's obligations, BellSouth would owe Level 3 reciprocal compensation for any call that its customer originated that Level 3 terminated anywhere in the LATA that the call originated in, correct?

And what I mean is I was just using two calling areas here, but if there were 30 calling areas, the same logic would apply, correct?

A Well, generally, I would agree with your statement. We may differ on the specifics and how that's implemented.

Q Okay. Now, I tried to write it down. I think, I've got it. You said something about using an extreme example, which I've been known to do, but I want to show you something else.

MR. LACKEY: I'd like to have this marked as Exhibit -- I think, we're up to 8.

COMMISSIONER JABER: 8. Exhibit 8 is a diagram indicating Local Call within the Same Local Calling Area.

(Exhibit 8 marked for identification.)

MR. LACKEY: If you need a short title -- you're okay? All right.

BY MR. LACKEY:

Q Now, somebody, in their exuberance in the diagram to the upper right put Level E instead of Level 3, so would you correct that for me, Mr. Gates?

A Yes.

Q Now, what this Chart 8 lays out is on the left side it's simply a replication, if we've done it correctly, of Exhibit 5. Do you see that?

A Appears to be similar.

Q Okay. If we did it right, it's the same, but as long as we can agree it's similar, that's fine. Again, the big box represents a local calling area, and then the -- a BellSouth local calling area, and then the things that are within the box are the same as they were represented to be on Exhibit 5.

And what I've done on this Chart 8 is I've put a heavy black-dotted line that I've labeled several state lines, and then I've got another box that's got a telephone subscriber in it, shows that it's in Louisville, Kentucky, and it's labeled a Level 3 end user. Do you see that?

A Yes, I do.

Q Okay. Now, here's my question. I see what's missing on this. In the original Exhibit 5, if you'll look at the BellSouth customer on the lower left-hand corner, we call that BellSouth end user number one and the BellSouth end user in the middle was BellSouth end user number two. Would you add those to the chart as well, so you know what I'm talking about?

A Yeah. So, the one on the left is number one and the one further right is number two?

Q The one on the left is number one, the one in the middle is number two.

A Yes.

Q That should be the only two BellSouth end users on the chart.

Now, if BellSouth end user number one dials a number that Level 3 has assigned to its end user in Louisville, Kentucky, Level 3 will complete that call to its end user, won't it?

A If a BellSouth customer dials a Louisville, Kentucky customer, yes, Level 3 would complete that call.

Q Okay. Now, would Level 3 expect BellSouth to pay Level 3 local reciprocal compensation for that call?

A No, sir, that's not a local call.

Q Okay. What would Level 3 ask BellSouth to compensate Level 3, at what level, do you know?

A Well, it's not a local call. Reciprocal compensation issues wouldn't apply to this. It would be a toll call, per se, so if anything applied, it would be access charges.

Q Okay. So, if the BellSouth end user dialed the number in Louisville, Kentucky of the Level 3 end user, it would -- a call would go to the Level 3 switch and Level 3 would then transmit the call to Louisville, Kentucky and would, presumably, charge BellSouth some form of access for that long-distance call; is that correct?

A You know, it's really not clear to me. I don't know how Level 3's interstate network works. There would be some charges, obviously, in Louisville to terminate the call with the local phone company. I really don't know, without looking more specifically at how it's actually handled, what charges would apply, but clearly not reciprocal compensation.

Q Now, in fact, if Level 3 were acting as an interexchange carrier in this scenario, Level 3 would pay BellSouth access charges for delivering the originating call to Level 3, wouldn't it?

A Well, it's a BellSouth customer --

Q Yes.

A -- making the call.

Q That's correct.

A In order for Level 3 to pay originating access charges, Level 3 would have to be the toll provider for the BellSouth end user.

Q Exactly.

A We haven't established that fact. Is that what you're suggesting?

Q Well, why don't we assume that. Why don't we assume that Level 3 is acting as the interexchange carrier here and that BellSouth end user number one, because BellSouth cannot carry traffic interstate, has selected Level 3 to haul its long-distance traffic.

A Okay. So, Level 3 is the pick, the primary interexchange carrier. That customer would go off hook, and BellSouth would deliver it to Level 3. Level 3 would pay originating access charges, and there would be some terminating access charges for the call, although it's not clear exactly, based on this, how they would apply.

Q Yeah. Well, let's not worry about the terminating end, unless you think it's really relevant, because we don't know who is in Kentucky or anything else.

A Yeah, it's really not relevant, because just as with local calls, your responsibility ends at the interconnection point. So, the costs are no different for BellSouth for this, you know, 500-mile toll call versus a 2-mile local call.

Q All right. Now, I don't mean to repeat myself, and I'm sorry if I am, but I just want to make sure we're clear. The BellSouth customer has picked the Level 3, Level 3 is there their interexchange carrier. They dial a number in Louisville, Kentucky which, I guess, is 11 digits. BellSouth hands the call off to Level 3, Level 3 sends the call off to Kentucky. Level 3 pays BellSouth originating access for that call and then, presumably, charges the end user for a toll call, correct?

A Yes, that's correct. And the distinction is that as compared to local with the toll call, Level 3 is billing the end user. In a local call, BellSouth would be billing the end user.

Q Okay.

A So, Level 3 is getting the revenues from the call and is paying BellSouth originating access for performing that function that it could not perform, just like with reciprocal compensation, terminating reciprocal compensation is paid to Level 3 for terminating the call for BellSouth. So, I think, there are some analogies here.

Q Okay. Now, you've been in the business long enough and were with MCI long enough to know what Feature Group A is, correct?

A I vaguely remember. It's something that rarely, if ever, gets used anymore because it's so archaic, and there are no transmission parameters. It's pretty risky to use and pretty difficult to use.

Q But when long-distance competition first started, there was no equal access and as a result, long-distance carriers used Feature Group A to have their customers access their facilities, right?

A Feature Group A was used, even though there was no answer supervision. You may remember this years ago. People got billed for one and two-minute calls when, in fact, the called party never answered, but there was no answer supervision like you find on Feature Group D or even Feature Group B, so it was very problematic.

Q And the way Feature Group A would have worked in this scenario, if that was what was used, is the BellSouth end user number one would have dialed a 7-digit local number, would have gotten to the IXE switch here at Level 3, would have gotten a second dial tone, and would have dialed the 11 digits necessary to get to Louisville, Kentucky, right?

A No. You left out probably a 14-digit pin that would also have to be entered, because there is no --

Q Good point.

A -- ANI, Automatic Number Identification. So, there'd be about 32 digits that would have to be entered.

Q Good point. The BellSouth customer would dial a 7-digit number. That would carry the call to the Level 3 switch for where a second dial tone would be obtained. The customer would dial some kind of a pin that would tell the IXE who it was, and then they would dial the long-distance call, right?

A Yes, that's correct.

Q And for that BellSouth would receive originating terminating -- I'm sorry, originating Feature Group A and, presumably, Level 3 would bill the end user, correct?

A Right. And there were all sorts of premium switched access differentials and pricing issues associated with that quality of that call, but essentially people would pay it.

Q Now, do you happen to note whether Level 3 either owns or owns an interest in any ISPs?

MR. ROMANO: Objection, Your Honor. I don't quite now what the relevance is of that and also, Mr. Gates is not a company employee.

COMMISSIONER JABER: Mr. Lackey, the objection is relevance.

MR. LACKEY: Well, I think, I'm going to show why, in just a moment, but the point of the matter is that in his testimony he makes continual references about the benefits that this arrangement brings in terms of bringing ISPs to the state and the services that are provided to end users.

What I'm curious about is whether Level 3 owns an ISP and whether there is some arrangement between that ISP and Level 3 that is predicated upon the payment of reciprocal comp for calls to ISPs. That's where I'm trying to go with that.

COMMISSIONER JABER: I'm going to allow the question, Mr. Romano, but to the degree he doesn't know the answer, he doesn't know.

MR. ROMANO: Yeah, actually, I'll withdraw the objection based on that explanation.

A Yeah, I do not know, Mr. Lackey.

BY MR. LACKEY:

Q Okay. Will you accept that it's possible that Level 3 is routing calls, ISP-bound calls, to ISPs that are located in a state completely different than Florida, maybe even Kentucky?

A I don't know.

Q Well, I understand you don't know, but I mean, I think, you say in your testimony that not every ISP has a local location in every local calling area and that that's part of the reason why the virtual NXX is important, don't you?

A Well, the virtual NXX issue is still a local calling issue. And, I think, you're asking me about interstate calls. I guess, it's conceivable that Level 3, as an interexchange carrier, could deliver a call out of state, if that's what you're asking me.

Q Well, let me ask you the question a little bit differently, then, because I didn't realize it was going to be confusing.

The virtual NXX issue, Issue 7, that this

Commission is addressing, involves the question of assigning NXXs, numbers out of an NXX, to customers who are not physically located in the local calling area where the NXX is resident, correct?

A Yes, sir, that's correct, but it's not simply an ISP issue. I mean, many customers use a virtual NXX to provide a presence in another exchange. Companies who -- heaven forbid, it could be a law firm who wants a presence in another exchange until they have enough business to justify renting office space or it could be a car dealership or a chiropractor or anybody who would want a virtual presence there. It's not just ISPs.

Q And the physical location of the customer, whoever it happens to be, doesn't have to be, for instance, in the state of Florida. The number could be assigned to customers located in Kentucky, correct?

A Well, that's certainly not any of the examples that we've used in my testimony. We've talked about a virtual NXX, and we're talking about intra-NXX calls so that the NXX in the virtual exchange is associated with the NXX so that it is truly a local call, what we call intra-NXX calls.

I think, what you're suggesting, Mr. Lackey, is not really an intra-NXX call but something like a toll call which, as we discussed earlier, really has nothing to do with reciprocal compensation.

Q My question to you is -- let me break it down into pieces. Maybe I'm not being clear.

Let's assume that Level 3 has an NXX that's 551, 551-XXXX. That's a 10,000 number block that starts with 555-0000 and goes up to whatever it is, 551-9999, right?

A Yes, sir.

Q And if that NXX is assigned to Level 3 in this diagram on page 8 -- I'm sorry, Exhibit 8, that NXX would be resident in the Level 3 switch, correct?

A Yes, it would.

Q And so, everybody in the country using the LERG -- what is that, the Local Exchange User's Guide?

A Local Exchange Routing Guide.

Q Routing Guide -- would know that exchange 551, with the proper area code, I guess, is located in that Level 3 switch that we've designated here, correct?

A Well, not really, and here's the flaw in your argument. You can't use 551 everywhere; or you can, if you include the NPA, and that's the flaw in this example. The NPA would be different in Louisville than it is in Florida.

Q Okay.

COMMISSIONER JABER: NPA, meaning the area code?

THE WITNESS: Yes, like 850.

COMMISSIONER JABER: Well, I understood his question to be that assume it's the same area code.

MR. LACKEY: I'll put that in. It was there. Why don't I rephrase the question and see if I can get that in, Madam Chairman.

BY MR. LACKEY:

Q Let's assume that the NXX code that has been assigned to that level switch is 850-551-XXXX, okay?

A Okay.

Q Then, a call from anywhere in the country to 850-551-whatever it happens to be, would be routed to that Level 3 switch that's in our little local calling area here on Exhibit 8, correct?

A It would be routed to which local calling area?

Q It would be routed to the box labeled Level 3 switch on Exhibit 8.

A Yes.

Q Okay. Now, under Level 3's approach to Issue 7, could Level 3 assign to the Level 3 end user in Louisville, Kentucky the number 850-551-1234?

A I don't believe so. And, I think, that would violate the Local Exchange Routing Guide, but I will freely admit that I'm not an engineer, so I would defer to Mr. Sachetti on that particular issue. But it makes no sense to me that that would work. I mean, that would completely mess up the routing tables which are taken care of with the LERG.

Q Well, maybe we need to discuss what happens when you have a virtual NXX. When you have a virtual NXX and one of the numbers that's included and that's dialed, does the Level 3 switch do a translation and convert that number into a different number?

A The way it works is that the NXX and the 7-digit number is assigned to that particular customer in the originating exchange, okay? And that's not normally done with an NPA. It's done with an NXX. And, historically and traditionally and operationally, that's the way we determine local calls. If the NXXs are in the same routing table, it is a local call.

And that's the way, for instance, BellSouth bills for its foreign exchange service based on the NXX of the numbers, not based on the actual location of the originating caller versus the terminating or caller number. That's the way BellSouth books its revenues and its expenses based on the NXXs, not based on the physical location of the call-in and calling parties.

Q Well, thank you for that, but what I asked you was does the switch translate the number into something else?

A Well, I'm not a switch translation expert, but, I think, what it does is associates that number with that other exchange, and that would be done -- I don't know if it's in the translation table, Mr. Lackey, or in routing tables or in some other part of the switch. I'm not a soft switch expert. I'm more familiar with the circuit switches that BellSouth would use. And soft switches, as you know, using Internet protocol, are a different animal, and I'm not an expert on those.

Q All right. So, let's see if I picked up a piece of what you said there. The Level 3 switch associates the number that was dialed with a number in another exchange; is that what you said?

A Yeah. They assign a number. That customer is assigned a number in the, say, Local Calling Area 2 that is the same NXX as in Local Calling Area 1 that provides the local presence for the customer in that foreign exchange or in that exchange other than the exchange where the call was originated.

Q Well, let's see if I understand that. And I'm going to use a Florida-to-Florida example here, because I know the area codes here.

Let's assume that there is a customer of Level 3's who is located in Tampa, Florida and that's area code 727, but he wants a number that's associated with the Level 3 switch on Exhibit 8, which is in the 850 area code.

Now, is the way this works, to your understanding, that if Level 3 is assigned 850-551-1234 to that customer, that when a call came into the Level 3 switch that was dialed 850-551-1234, that that switch would then associate that call with a second number? And let's just assume it's 727-441-1234. Is that what happens?

A I don't know. I would be guessing to speculate on that, Mr. Lackey, but, I think, including the NPA has -- introduces another parameter that I, personally, haven't thought about. When I think of virtual NXX I think of intra-NXX calls within the NPA, not calls, you know, between NPAs.

Q Okay.

COMMISSIONER JABER: But why would you ask for assignability within the NPA? Help me understand that.

THE WITNESS: Well, within the NPA?

COMMISSIONER JABER: Because you said that's what you think of when you talk about assignability.

THE WITNESS: Right. Well, those, of course, are large areas, quite large areas, depending on how many NPAs we have in the state. So, when I say within the NPA, I'm referring to the NXX code. I'm assuming people are dialing local calls, and that's what has confused me about this line of cross is that we're referring now to NPAs and NXXs and, to me, that's a toll call.

And that's the confusion, that we've never really discussed this. I haven't discussed it with Level 3, and I don't know how soft switch would manage those numbers, given that type of an assignment. But the assignments that I'm talking about in my testimony, in my direct and rebuttal, deal with intra-NXX calls within an NPA.

So, the NPA is not an issue. And that is a, by definition, a local call. And this whole NPA issue is an interesting intellectual discussion, and I know we will figure this out, I just don't know if I'm the right person to do that at this point.

COMMISSIONER JABER: I thought he added the NPA to his example because you didn't think you could answer the question without knowing what the NPA was.

THE WITNESS: Well, as I said before, I think, if you have different NPAs, that's not a local call, that's a toll call. And that's why I asked him to tell me what NPAs were involved, because if we're talking about different NPAs, we're not talking about local.

COMMISSIONER BAEZ: See, I understood the question to be what's behind that local call. If you're just going to assume, for the moment, that is a local call, it's intra NXX, what happens behind that?

THE WITNESS: Behind it? What happens behind it? And that's a very good question, and I can see where that confusion would come from.

What happens behind the call is based on the numbers that were dialed, okay? If someone dials 551-XXXX, it's going to be routed based on that number. That's the calling number. It will go to the switch, it'll terminate to that number, okay?

If someone dials whatever the Louisville, Kentucky NPA is and then 551-XXXX, then it's going to be routed out of state. That is not a local call.

COMMISSIONER BAEZ: And I'm not sure that's what we're talking about. If you're talking about a virtual NXX, you're suggesting a situation where, if I wanted -- as you described, if I wanted a presence within a certain NXX --

THE WITNESS: Yes.

COMMISSIONER BAEZ: -- and by default and by definition within a certain NPA, and I happen to be either outside of one or outside of both, behind that local call there's a -- you know, there's a -- I guess, I would assume a toll component or some additional routing that gets it to where I am. I'm not in the NXX that I have a presence in.

THE WITNESS: Right.

COMMISSIONER BAEZ: So, something has to happen after that local number is called to get to -- you know, to get to me. And I'm just interested in knowing what that is. And I'm not sure that I'm in line with what Mr. Lackey is trying to develop, but I'm curious to know what happens after that local call.

THE WITNESS: Well, that number, that local number, is associated with a Level 3 customer. So, when that number is dialed, it is -- BellSouth routes it to the interconnection point, and the call is then given to Level 3, and then Level 3 terminates it to that number, okay?

COMMISSIONER BAEZ: As a regular call.

THE WITNESS: Yes.

COMMISSIONER BAEZ: No matter where it's located --

THE WITNESS: Right, because it's --

COMMISSIONER BAEZ: -- in relation to you.

THE WITNESS: Right, because it's a 7-digit call, right, local call.

COMMISSIONER BAEZ: I guess, I'm not sure we're crossing that -- after you receive it as a local call and you have to route it to where the true physical presence is --

THE WITNESS: Right.

COMMISSIONER BAEZ: -- that is still a local call for you?

THE WITNESS: Yes.

COMMISSIONER BAEZ: Or in relation to the customer, I guess.

THE WITNESS: Yes. And it's also -- that's the way BellSouth does NXX service. Because the NXXs are within the same routing cable, per se. Like a call from one NXX to this NXX is known be a local call, okay? That's what the routing cables tell you. If it's a different NXX, then, it must be, you know, a toll call, so yes.

BY MR. LACKEY:

Q I'm sorry, if I've confused things, but let me ask you this, Mr. Gates. How does this work in Miami where there's an NPA overlay?

A I don't think on overlay or even an NPA split would make a difference, because those overlays and splits are all accounted for in the LERG, the Local Exchange Routing Guide.

Q Well, I'm afraid I've managed to obfuscate the point here, so let me ask a different question, and I apologize for doing that.

COMMISSIONER JABER: Actually, how much further do you have to go? How much more time do you need with this witness?

MR. LACKEY: It's going to take a little while.

COMMISSIONER JABER: I think, we're going to go until 12:45, and then take a short break for lunch.

BY MR. LACKEY:

Q Just so we're clear on what the issue is here, we've got a switch in Miami, right? You have a switch in Miami, right?

A Level 3 does, yes.

Q Level 3 does. And you have an NXX, probably more than one, that's honed in that office in Miami, correct?

A Yes.

Q And someone who is in Jupiter, which I will represent to you is in a different NPA than Miami, could buy one of the local numbers out of your Miami switch, right?

A That I don't know. I don't know the NPA impacts.

Q Okay.

A Now, if you'd like, if you want to take a break, we could discuss that internally and get you an affirmative answer, but the NPA issue is something that I would be guessing on.

Q Okay. Why don't I move to another line of questioning for the next 15 minutes and see what I can wrap up and then I'll pick this up after the lunch break, because it may be more fruitful. We might actually get where I need to be, if we do that.

Let's move to Issue 2, which deals with symmetrical reciprocal compensation, if I understand; is that correct?

A Yes.

Q All right. Do you have Exhibit 5 there in front of you?

A Yes, I do.

Q Okay. And when Mr. Turner went through this with the earlier witnesses, I think, we identified what all the component parts were; a single local calling area, an agreed upon IP, a Level 3 switch to BellSouth end office switches; do you see all that?

A Yes, I do.

Q Okay. Now, if I understand what the issue is here is when the Level 3 end user calls the BellSouth end user one, the call travels from the Level 3 end user to the Level 3 switch, right?

A Yes.

Q From the Level 3 switch to the IP, right?

A Yes.

Q The call is then handed off to BellSouth where it is transported to the end office with the Xs in it, right?

A Yes.

Q And the call is then transported to the end office serving the called party, correct?

A Yes.

Q And what we've described on this Exhibit 5 are two alternative ways of getting from that end office with the Xs in it to the BellSouth end office switch, either using dedicated interoffice transport or, in an appropriate case, using tandem switching and common transport; is that correct?

A I see that there, yes.

Q Well, that is two ways that the call could get to that end office, correct?

A Yeah, you could use dedicated transport or through the tandem, yes.

Q Okay. Now -- and I may be confused about this, so, if I'm wrong, help me.

What I understand the issue here to be is that when the call goes from the Level 3 end user to the BellSouth end user, Level 3 has to pay call transport for the red line that's marked local channel and then has to, assuming it's dedicated transport, has to pay call transport for the red line marked DIT.

But when the call goes from the BellSouth end user number one to the Level 3 end user, BellSouth only pays Level 3 an amount equal to the red line between the IP and Level 3 switch marked LC. And Level 3 says those two amounts are different, and that's unfair. Is that your position?

A Well, generally, I would agree with your characterization. I think, the important point here is that this is a fixed scenario, this transport. And if the traffic originates from BellSouth or if it originates from Level 3, these trunks don't change, the costs should be the same.

And the problem is by virtue of the way BellSouth has designed serving wire center, Level 3 when it originates a call, will have to pay dedicated interoffice transport, whereas BellSouth would not.

MR. LACKEY: I want to hand out another chart, which I'd like to have labeled Exhibit 9, Madam Chairman.

COMMISSIONER JABER: Mr. Lackey, can you give me a short title for Exhibit 9, please?

MR. LACKEY: Yes. This is Cost of Exchanging Local Calls.

COMMISSIONER JABER: Thank you.

(Exhibit 9 marked for identification.)

BY MR. LACKEY:

Q Mr. Gates, do you see that this chart looks somewhat like Exhibit 5, except I've added a line along the bottom and I have partitioned the call into three segments, the segment between the Level 3 switch and the IP, between the IP and the BellSouth end office, and between the BellSouth end office and the BellSouth end office serving the called party. Do you see that?

A I do see that. Can you tell me -- to help me with this example, where is the BellSouth serving wire center? When BellSouth originates a call, where is the serving wire center?

Q I would believe that the serving wire center, in the context of this case and in the context of the testimony that's being given, is in the box labeled BST wire center.

A Labeled -- excuse me?

Q You see the box labeled BST wire center? It's right in the middle of the page?

A Oh, BST wire center.

Q It's got the end office switch in it. It's got a tandem switch in the --

A Well, that would not be the serving wire center for BellSouth originating traffic, and that's my confusion.

Q I'm sorry.

A The serving wire center has to be on the Level 3 network.

Q I don't believe that I mentioned BellSouth originating traffic yet.

A Oh, well, I thought we were going both ways.

Q Not yet.

A Okay. Would you tell me, then, where the Level 3 serving wire center is?

Q I believe, as you point out in your testimony, using the confusing language of the interconnection agreement, that the serving wire center you just mentioned is the one labeled BST wire center.

A Okay, so that's the Level 3 serving wire center?

Q Yeah. And just to put a fork in it, if the call were going the other way, the BellSouth serving wire center would be the box marked Level 3 switch, right?

A Yes.

Q That's the confusing language that you point out in your testimony.

A Yes. And we had to add that here to make this clear, just kind of ironic.

Q Well, I'm sure everybody appreciates that clarity.

I have put along the bottom the three segments of the call, and I have assigned, quite arbitrarily, figures to that; do you see that, 10 cents, one cent, one cent?

A Yes.

Q Now, I have another chart, killed another tree, that's got the actual figures on it about what that would cost, but I thought I'd use this for simplicity if you could agree with me, just for illustrative purposes, to use those costs that I've put on Exhibit 9, okay?

A Yes.

Q And what I've posited here is that the local channel between the box marked Level 3 switch and the IP is one penny. And I posited that the cost of the facility between the IP and the BellSouth end office with the Xs is also one cent, okay?

A Yes.

Q And I've assumed that, because they're both local channels, which are flat-rated facilities, correct?

A Yeah. In actuality, it's probably just one channel going from the Level 3 switch through the IP to the end office. They're probably not two separate pieces, but you can illustrate it that way, if you'd like.

Q Okay. And you don't have any objection with me assigning an identical cost to those two pieces, correct?

A Well, I'm not expressing any opinions on the cost of this.

Q Okay. And then, I have on the piece that's represented by the dedicated interoffice transport, I've assigned a cost of 10 cents to it, okay?

A Yes, I see that.

Q Now, if I understand correctly, the way this would work is when a Level 3 caller -- and again, I'm not asking you to accept that my costing is right, I'm just trying to illustrate a point -- that when a Level 3 caller calls the BellSouth end user number one that we've been talking about, that the call goes to the Level 3 switch, goes to the IP, goes to the end office marked with the Xs, goes over the DIT to the BellSouth end office switch, and then and in that call, Level 3 would have to pay, using my cost figures, BellSouth 11 cents; is that correct?

A 11 cents or 12 cents.

Q Well, I don't believe that you would pay us for your facility between the Level 3 switch and the IP.

A Oh, I see. So, these are costs and not rates, per se.

Q In this case, since rates equal cost, we can call them either one. But the point is for call transport you'd have to pay us 11 cents under this very simplistic example, correct?

A Okay.

Q Is that right?

A Yes.

Q Okay. And if the call went from the BellSouth end user to the Level 3 end user; that is, it went from end user one to the BellSouth end office switch to the BST wire center to the IP, and we then handed it off to you there at the IP, you carried it to your switch, we would only pay you one cent, correct?

A Yeah, BellSouth originated call, the DIT would go from the BellSouth serving wire center, which is the Level 3 switch, to the first point of switching, which is the same Level 3 switch, so there would be, yes, one cent.

Q Okay. But I want to make sure I've captured your point exactly and; that is, when a call goes from a Level 3 end user to the BellSouth end user, you have to pay us 11 cents, but when the call goes from the BellSouth end user to the Level 3 end user, we only have to pay you a penny.

A In essence, that might be the complaint, per se, but the point is that they should be equivalent.

Q Okay.

A They shouldn't differ based on definitions.

Q All right. And Level 3 --

COMMISSIONER JABER: Wait, that what should be equivalent?

THE WITNESS: The charges for using these facilities. If Level 3 purchased 10 miles of local transport from BellSouth, that price should be the same as if BellSouth purchased 10 miles of transport from Level 3, they should be symmetrical.

COMMISSIONER JABER: So, if BellSouth pays you one cent for purposes of this example, are you saying that Level 3 should pay BellSouth one cent?

THE WITNESS: Well, yes, in a way. I wouldn't have stated it quite that way, but the point is if you look at this diagram, the transport is there. The only reason BellSouth is paying one cent instead of 11 is because of the definition. The Level 3 switch is both the BellSouth serving wire center and the first point of switching. And per their contract language, that's where the DIT goes between. And if it's the same switch, there is no DIT, so because of that, the prices are different.

And yes, we're saying that they should be the same, whether it's one cent or 10 cents or $10,000, we're saying the rates should be the same. The physical facilities don't change. They should be symmetrical.

COMMISSIONER JABER: Okay. And that's how you define symmetrical reciprocal compensation?

THE WITNESS: Well, symmetrical, not reciprocal.

COMMISSIONER JABER: Okay. And that definition, according to your position, doesn't take into account how many steps or how many functions or how many services BellSouth has to go through to deliver the call.

THE WITNESS: That's correct, because they're the same on both sides. If Level 3 is provisioning the transport or if BellSouth is provisioning the transport, both companies do the same functions, you know, tack up the same facilities, so there is no discrepancy there, but there is a huge discrepancy in what the carriers are paid just based on the definitions and the language. So, we just want to make sure that the language alone doesn't force this huge discrepancy in what we pay and what we receive.

BY MR. LACKEY:

Q Let me follow-up on that question. You were asked whether Level 3 wanted to pay a penny for the call that goes from Level 3 end user to BellSouth end user. In actuality what you've asked the Commission to do in your testimony is to allow Level 3 to charge BellSouth 11 cents, using my example, for the call that goes from the BellSouth end user to the Level 3 end user, haven't you?

A That's correct, Mr. Lackey. What we're saying is that if you're going to charge Level 3 11 cents based on these definitions in your language, then Level 3 should be able to charge BellSouth 11 cents because, as you can see, the trunks aren't changing. The facilities are the same. The rates and the costs should be the same as well.

Q Well, that's what I want to talk about. Now, we had this conversation about rates and costs, and I told you that they were the same in this case, that the cost of the local channel was a penny and that the cost of the DIT was 10 cents; do you recall that?

A Yeah, just for a hypothetical, correct?

Q Yeah, that's all.

A Sure.

Q I'm just trying to get the principle.

A Mm-hmm.

Q So, if BellSouth's end user originates a call to a Level 3 end user, BellSouth is going to incur the cost of local switching at its switch right above that end user one, right?

A Well, that's its own internal cost, yes.

Q Sure. And it's going to incur the cost of carrying the call from that end office to the end office in that wire center of 10 cents, right? I'm sure you're going to say its internal cost, but it's going to incur that 10-cent cost, right?

A Well, here's the problem.

Q Can I have a yes or no before I get the problem?

A That's what we're asking. The problem is based on the definition. BellSouth wouldn't pay a dime for that. There would be no dedicated interoffice transport.

Q Excuse me. Is it your position or Level 3's position that it costs BellSouth absolutely nothing to haul a call between the BST end office switch on the left side of this diagram and the BST serving or the BST wire center that's in the middle of this diagram?

A Well, let's be sure we understand your example. We're talking about a call that BellSouth is originating and BellSouth is purchasing from Level 3 dedicated interoffice transport and local channel facilities. That's the scenario, okay?

In this scenario, when that call gets to the switch and then it's transferred over to the IP, BellSouth pays Level 3 nothing. They get no dedicated interoffice transport for that. They do get the local channel facility, which is the one cent.

Q All right, Mr. Gates, that wasn't the question. Let me try it a different way.

We've agreed already, haven't we, under my example, my hypothetical, that going from the right to the left, that from the IP to the BellSouth end office switch costs 11 cents. We've already discussed that, right?

A Well, yeah. It doesn't matter really what anything costs. Our dispute here is over who's paying what.

Q I understand that, but we've agreed that it costs 11 cents, correct?

A That's fine.

Q Now, if it costs 11 cents to move the call from the IP to the BST end office switch, then doesn't simple logic tell you that it would cost 11 cents to move it from BellSouth's end office switch to the IP over BellSouth's own facilities? Cost is cost, isn't it?

A That's right. And if you're going to impose those costs on a competitor, then the competitor should also be able to impose those costs on BellSouth; hence, our request for symmetrical rates.

Q Well, excuse me, Mr. Gates. When BellSouth's end user calls the Level 3 end user and BellSouth has to deliver that call to that IP, it has already incurred 11 cents worth of cost to deliver that call to that IP; then, it hands it off to you and you charge me one cent for delivering it to your central office, and I've incurred a total cost of 12 cents, haven't I?

A No. This example is just completely confused by the fact that you're linking in kind of reciprocal compensation issues and the symmetrical compensation issues associated with this leased transport.

This is not a reciprocal compensation issue whatsoever, okay? We're talking about leasing transport facilities from each other to, in fact, interconnection.

Q Mr. Gates, I didn't say a word about leasing any facilities.

COMMISSIONER JABER: Mr. Lackey --

MR. LACKEY: Yes, ma'am.

COMMISSIONER JABER: Let me try to understand what you're saying. You acknowledged, at least it was your testimony in response to my question that reciprocal compensation was a cost recovery mechanism.

THE WITNESS: It is.

COMMISSIONER JABER: All right. So, for purposes of understanding what reciprocal compensation should mean, in the case of Level 3 and BellSouth, we have to look at cost; is that correct?

THE WITNESS: That's correct.

COMMISSIONER JABER: All right. You acknowledge that it costs BellSouth something to deliver a call to a Level 3 end user?

THE WITNESS: Yes.

COMMISSIONER JABER: Is it your testimony that BellSouth should recover that cost?

THE WITNESS: See, and this is the confusion, your last question about delivering to an end user. That's not what we're talking about in this scenario. We're just talking about trunks between facilities, okay?

Reciprocal compensation does deal with terminating the call to an end user. That's not what this particular issue is. We're talking about trunks that meet at the IP or the interconnection point.

COMMISSIONER JABER: So, in this example, it would be the trunk that's indicated in the red line between the X and the IP?

THE WITNESS: Yes, that's a local channel facility. And then the DIT, which is to the left, the red, okay, and the point is, very simply, if Level 3 originates a call, okay, and uses those facilities of BellSouth, it gets charged for the DIT, okay, because the BellSouth serving wire center or -- excuse me, the Level 3 serving wire center, which is the BST wire center there, okay, the DIT goes between there and the first point of switching, the first point of switching is the box to the left, the BST end office switch. That's the definition for DIT, it goes from the Level 3 serving wire center to that first point of switching, okay?

Now, so Level 3 would pay that for those trunks. The problem is conversing on the other side, if BellSouth were to have trunks from Level 3, because of the definition the BellSouth serving wire center -- okay, I'm sorry, let me be very specific.

COMMISSIONER JABER: Let's take it one step at a time, so I don't get confused.

THE WITNESS: Okay.

COMMISSIONER JABER: The red line marked DIT --

THE WITNESS: Yes.

COMMISSIONER JABER: -- the line from Level 3 wire center to that X, you're saying that does not equate, for purposes of this example to the 10 cents, because we're talking about the cost of the trunk and not the cost of delivering the call.

THE WITNESS: Well, what I'm saying is -- that's not exactly what I'm saying, excuse me.

COMMISSIONER JABER: Well, that's the confusion.

THE WITNESS: And I apologize, yeah.

COMMISSIONER JABER: That's the confusion.

THE WITNESS: Yes. What I'm saying is, based on the tariff language or the contract language that they're proposing, BellSouth would be compensated for DIT if Level 3 were to lease DIT for calls, okay?

On the other side of that, if Level 3 were to lease facilities to BellSouth, Level 3 would not receive any DIT because of the definitions. And the point is the facilities are the same. Whether Level 3 provided those or whether BellSouth provided those facilities they would look just like this, they wouldn't change. The only difference would be in how much compensation you would receive.

BellSouth would receive 11 cents, and Level 3 would receive a penny, but they're providing the same physical facilities. And the only reason that occurs, that anomaly, is because of the definitions.

And we're saying one way to fix that is to make sure that whatever it is that BellSouth charges allow Level 3 to charge the same so that it is symmetrical.

COMMISSIONER JABER: Who established those definitions?

THE WITNESS: BellSouth did.

COMMISSIONER JABER: In accordance with the FCC?

THE WITNESS: Well, these definitions are in the contract.

COMMISSIONER JABER: Okay.

THE WITNESS: I don't think the FCC guidelines provided any guidance for these issues.

COMMISSIONER JABER: Okay. Mr. Lackey.

THE WITNESS: One final point, if I may. It's not that Level 3 is opposing paying for these trunks. Level 3 is willing to pay, but it just requests that its costs be recovered, too, through a symmetrical rate design so that they can recover their costs as well.

BY MR. LACKEY:

Q Mr. Gates, do you know whether the definitions that you've just been talking about are in dispute or not in this proceeding?

A The definitions themselves?

Q The definitions themselves, are they in dispute?

A Well, I think, Ms. Cox and I had a somewhat difference of opinion on how we define serving wire center. If you're asking me whether the company has negotiated the language in the contract, I don't know. I'd defer to Mr. Romano, who did most of those negotiations.

Q Mr. Who?

A Mr. Romano.

Q Okay. So you don't know, in response to an earlier question, whether BellSouth proposed those definitions or whether they were mutually agreed upon between BellSouth and Level 3?

A I don't know. I would note, though, Mr. Lackey, that we're trying to change them. So, I sincerely doubt Level 3 would agree to something that we're now trying to change.

Q Let's approach this a little differently. Are you saying now that beginning at the IP and moving to the left that -- I'm sorry, there's two ways to do this, isn't there? First of all, Level 3 can interconnect with our network at the IP and then pay us call termination -- call transport and termination reciprocal comp for completing that call to our end user, correct?

A Yes, for reciprocal compensation, that's correct.

Q Okay.

A We would hand the call off at the IP and BellSouth would terminate it.

Q Alternatively, even though we're interconnecting our networks at the IP, you could lease facilities from BellSouth; say, a facility that's marked LC there and the facility labeled DIT, you could lease those from us and then avoid paying call transport as reciprocal comp for a call, correct?

A Yes. That's an agreement the companies reached. And, of course, it goes both ways for Level 3 and for BellSouth.

Q Okay. And so, there's two ways to look at this problem. If you don't buy the -- lease the facilities from us, then it's reciprocal comp from the IP to the BellSouth end office switch on the left where you'd have to pay end office switching or you could lease LC, the line labeled LC and the line labeled DIT, and all you would owe us for reciprocal comp is end office switching, correct?

A I think, that's one way that we would do that.

That doesn't solve the problem with this scenario, but it could be done that way, yes.

Q All right. I'm just trying to get the definitions. I'm trying to figure out what we're talking about, because you were talking about having leased the facilities between the IP and the BellSouth's end office switch, I thought. You did say that, didn't you?

A No. Well, yeah, that's the purpose of this leased facility arrangement --

Q Okay.

A -- is that we lease the trunks from BellSouth to accomplish this.

Q Okay. Let me ask you to assume one thing, and I'll finish on this line. Let me just ask you to assume as an absolute indisputable, undeniable, can't-contest-it fact that the cost of moving a call, whether it's going from Level 3 to BellSouth or BellSouth to Level 3 is 12 cents. It's marked on the bottom line here, okay?

A That's your assumption.

Q Well, I mean, there's no reason why the cost would be any different in a scenario from a call moving in one direction versus another direction. The cost is the cost is the cost, right?

A True, because we're talking about dedicated facilities. That's probably even more true. The costs should be the same going either way.

Q Okay. And part of Level 3's position in this litigation is that BellSouth has an absolute obligation to deliver BellSouth's originating calls to that IP, correct?

A Yes.

Q Okay. And if a cost is a cost is a cost, then when BellSouth's end user calls the Level 3 end user, BellSouth itself internally incurs 11 cents worth of costs, using this example, in getting the call to its IP, however it gets it there, right?

A Well, based on your assumption, that's correct.

Q Okay.

A And if we're doing reciprocal compensation and we're not using these leased facility interconnections, then we're talking about your obligation to deliver that service to the IP.

Q All right. And so, BellSouth incurs 11 cents to deliver to the IP, and then under this example we pay you the penny for the line class code -- I'm sorry, for the line class code, I'm tired.

A Local channel facility?

Q Local channel facility. And so, BellSouth has incurred a cost of 11 cents, paid you a penny, so BellSouth has a total cost of 12 cents that it has incurred hauling that call or transmitting that call or carrying that call from its end office to the Level 3 end office, right?

A That's what your diagram shows.

Q And if a call goes in the other direction, Level 3, presumably, incurs a penny from its local channel, and then it pays BellSouth, because it's leased the facilities, a penny for the next local channel and 10 cents for the DIT, so it's incurred a cost of 12 cents for that call, correct?

A That's correct. The problem lies in that both carriers are incurring the same cost. The problem is BellSouth is allowed to recover those costs through rates; Level 3, by virtue of these definitions, is not.

Q So, what you want, your solution is even though BellSouth has already incurred 12 cents worth of costs, you want BellSouth to pay an additional 10 cents for that call for that little facility marked LC between the IP and the Level 3 switch in order to be safe, right?

A No. We expect BellSouth to pay for dedicated interoffice transport in the same manner that Level 3 would pay for dedicated interoffice transport.

Q In this example, you want us to write you a check, an 11-cent check, for our use of that little facility between the IP and the Level 3 switch for every call we send to you in this scenario, correct?

A Well, I wouldn't agree with that characterization. What we are asking for is that the rates be the same, that Level 3 not be discriminated against or denied compensation simply because of definitions in the wording of the tariff.

And we're willing to sit down and discuss that wording, change the wording, or if BellSouth isn't willing to change it so that it's acceptable so that it's not discriminatory based on network design, then, the only way to fix that is to order that Level 3 be allowed to charge the same rates that BellSouth is allowed to charge.

Q If you pay us 11 cents for hauling this call, you want us to pay you 11 cents, even though we've already incurred an 11-cent cost to get it to the IP, right?

A Asked and answered. I'm sorry --

Q Can I have a yes?

A I can't -- I think, I've answered it as many ways as I can.

Q How about with a yes.

A Would you like to ask the question again?

Q Sure, if you don't object to it as asked and answered.

A I'm sorry.

Q If BellSouth charges, in this scenario, 11 cents to Level 3 for these facilities for the call going from

Level 3 to BellSouth, you want BellSouth to pay you 11 cents for the use of the facility between the IP and the Level 3 switch, even though BellSouth has already incurred an 11-cent cost to get the call to the IP in the first instance? Yes or no, please.

MR. ROMANO: Actually, I'm going to object, not on asked and answered grounds, but for the fact that this hypothetical has gone on for a while without touching on reality. I'm not sure where the one-cent basis comes from for the local facility channel cost for Level 3. I think, that is probably the strongest objection. There's no basis for the hypothetical to show the one-cent cost for the local channel is, in fact, a cost being incurred by Level 3, in this instance.

COMMISSIONER JABER: Okay. So, your objection is foundation hasn't been laid for the question?

MR. ROMANO: Precisely.

MR. LACKEY: My response is it's a little late. We've been talking about this for a half an hour. And I indicated that it was for illustrative purposes so that we could simply see what they were really asking for here.

COMMISSIONER JABER: Mr. Romano, we're going to do this. The questions have been allowed. He was about to answer the question. You may redirect him. I think, it has been clear that this is a hypothetical, and he was asked to accept some assumptions.

MR. ROMANO: I understand.

COMMISSIONER JABER: So, I'll allow this question.

And Mr. Gates, it goes a lot better if you start with a yes or no, and then you're allowed to elaborate, but answer the question. Re-ask it.

MR. LACKEY: Yes, ma'am.

BY MR. LACKEY:

Q If BellSouth charges Level 3 11 cents for a call in this Exhibit 9 that moves from the Level 3 end user to the BellSouth end user number one, then what Level 3 is asking the Commission to do is to allow Level 3 to charge BellSouth 11 cents for a call that goes the other way from the BellSouth end user number one to the Level 3 end user, even though BellSouth, using this diagram and the assumptions we've been talking about, has already incurred 11 cents worth of costs to get the call to the IP?

A The answer, first of all, is no. That's the only way I can answer that question. It's a compound question. Several assumptions I disagree with.

We're not talking about a call, which Mr. Lackey keeps referring to. We're talking about a fixed facility, a trunk group. Maybe it's a DS-3, 672 waste-grade circuits. We're not talking about a call. We're talking about a fixed facility that's made available on a dedicated basis for a particular charge, okay?

COMMISSIONER JABER: To deliver a call?

THE WITNESS: Well, you can use it for delivering calls, yes.

COMMISSIONER JABER: All right. Let me ask it, because I really am very interested in your answer, in this regard.

If BellSouth has to use all of these trunks and facilities and loops and all of the other acronyms that are in this diagram or any other diagram they show and they incur a charge, and that happens to be 12 cents --

THE WITNESS: Mm-hmm.

COMMISSIONER JABER: -- is it your position that there should be an additional charge paid to you for the delivery of the call using -- not using, in this case, trunks or facilities or loops from the IP to the Level 3 switch?

See, the question is are you asking them to pay you an additional cost for the trunk between the IP and the Level 3 switch?

THE WITNESS: We're not asking for any additional fees or rates for that; no, not at all. What we're trying to point out is that Level 3 should receive compensation for DIT, just like BellSouth receives compensation for DIT.

COMMISSIONER JABER: Even if Level 3 isn't using a DIT?

THE WITNESS: Well, the only reason we're not using DIT is by virtue of this definition and the fact that we have one switch, okay, and they've picked this -- if you look at this example, this BellSouth end office switch over here, okay, that's the first point of switching, okay?

By calling it the first point of switching, I mean, they could have defined the Level 3 serving wire center as the point at which the DIT runs between here, and they didn't. They picked a different switch other than this switch, okay? Knowing that Level 3 only has one switch, those definitions don't help Level 3 in terms of cost recovery. So, even though this trunk group is nailed up, you know, physically there, there would be different compensation for those trunk groups based on those definitions.

And the point about equivalent compensation for what appears to be different facilities, the key there is that we need to fix these definitions to make it fair for new entrants. You can't discriminate against a company simply because they don't go out and buy those old classified switches and stick them in every, you know, small calling area, okay?

This is a new technology company with soft switches that can serve an entire LATA or more with a soft switch. And we're merely asking to change these definitions to make it more fair, make it equitable in terms of cost recovery, that they not be able to impose costs that Level 3 is not able to also impose on them.

COMMISSIONER JABER: Okay. We're going to take a lunch break. We're going to come back at 1:45.

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(Transcript continues in Volume 3.)

STATE OF FLORIDA

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, KORETTA E. STANFORD, RPR, Official Commission Reporter, do hereby certify that the Hearing in Docket No. 000907-TP was heard by the Staff of the Florida Public Service Commission at the time and place herein stated.

It is further certified that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript, consisting of 177 pages, Volume 2 constitutes a true transcription of my notes of said proceedings and the insertion of the prescribed prefiled testimony of the witnesses.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 13TH DAY OF DECEMBER, 2000.

Koretta E. Stanford

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