

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF CYNTHIA K. COX
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 000907 - TP
5 OCTOBER 5, 2000
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR
9 BUSINESS ADDRESS.
10

11 A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director
12 for State Regulatory for the nine-state BellSouth region. My business address
13 is 675 West Peachtree Street, Atlanta, Georgia 30375.
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15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16 AND EXPERIENCE.
17

18 A. I graduated from the University of Cincinnati in 1981 with a Bachelor of
19 Business Administration degree in Finance. I graduated from the Georgia
20 Institute of Technology in 1984 with a Master of Science degree in
21 Quantitative Economics. I immediately joined Southern Bell in the Rates and
22 Tariffs organization with the responsibility for demand analysis. In 1985 my
23 responsibilities expanded to include administration of selected rates and tariffs
24 including preparation of tariff filings. In 1989, I accepted an assignment in the
25 North Carolina regulatory office where I was BellSouth's primary liaison with

1 the North Carolina Utilities Commission Staff and the Public Staff. In 1993, I
2 accepted an assignment in the Governmental Affairs department in
3 Washington D.C. While in this office, I worked with national organizations of
4 state and local legislators, NARUC, the FCC and selected House delegations
5 from the BellSouth region. In February 2000, I was appointed Senior Director
6 of State Regulatory.

7

8 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

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10 A. The purpose of my testimony is to present BellSouth's position on six of the
11 unresolved issues in the negotiations between BellSouth and Level 3
12 Communications, LLC ("Level 3"). BellSouth acknowledges that Level 3's
13 initial request for negotiations in Florida occurred on February 14, 2000.
14 BellSouth and Level 3 have negotiated in good faith and have resolved the vast
15 majority of the issues raised during the negotiations. There are, however,
16 issues that the companies have been unable to resolve. Those eight issues are
17 included in the Petition for Arbitration (the "Petition") filed by Level 3 with
18 the Florida Public Service Commission ("FPSC" or Commission") on July 21,
19 2000. My testimony addresses Issues 1, 2, 3, 6, 7, and 8 included in that
20 Petition. Mr. Ronald Pate's testimony addresses Issue 4 and Mr. Keith
21 Milner's testimony addresses Issue 5.

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23 ***Issue 1: (Attachment 3, Sections 1.1.1.1 and 1.1.1.2)***

24 ***How should the parties designate the Interconnection Points ("IPs") for***
25 ***their networks?***

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Issue 3: (Attachment 3, Section 2.5 and 2.6)

Should each party be required to pay for the use of interconnection trunks on the other party's network? If so, what rates should apply?

Q. WHY ARE YOU JOINTLY ADDRESSING ISSUES #1 AND #3 IN THIS TESTIMONY?

A. Issue #1 and Issue #3 are both really financial issues. Put simply, the financial question is whose customers should pay for the costs that Level 3 creates as a result of its network design decisions. Level 3 wants BellSouth's customers to bear those costs, and BellSouth's position is that Level 3 or Level 3's customers should bear such costs. All of the discussion concerning who gets to establish points of interconnection, how many points there will be, what compensation applies to the facilities, etc. is simply a means to an end. And that end is whether customers that Level 3 does not serve should bear the additional costs that result from Level 3's network design, or whether Level 3 or its own customers should bear those costs. Although the processes required to implement the parties' positions concerning network interconnection are very complicated, the key question for the Commission is whether Level 3 should bear the full costs of its network design choices.

Q. PLEASE DESCRIBE THE TERM INTERCONNECTION POINT, AS REFERRED TO IN THE LEVEL 3 PETITION.

1 A. The Interconnection Point is referred to as the Point of Interconnection (“POI”)
2 in the Interconnection Agreement, and is what I will use when discussing this
3 issue and throughout my testimony. The POI describes the point(s) where
4 BellSouth’s and Level 3’s networks physically connect. In its First Report and
5 Order, at paragraph 176, the FCC defined the term “interconnection” by stating
6 that:

7 We conclude that the term “interconnection” under section 251(c)(2)
8 refers only to the physical linking of two networks for the mutual
9 exchange of traffic.

10 Therefore, the term “Point of Interconnection” is simply the place, or places,
11 on BellSouth’s network where that physical linking of Level 3’s and
12 BellSouth’s networks takes place. Simply speaking, the POI is the place where
13 facilities that Level 3 builds connect to facilities built by BellSouth.

14

15 Q. WHAT IS THE REAL NATURE OF THE DISPUTE BETWEEN LEVEL 3
16 AND BELLSOUTH ON THIS ISSUE?

17

18 A. This issue can be explained simply. BellSouth has a local network in each of
19 the local calling areas it serves in Florida. BellSouth may have as many as 10,
20 20, or more such local networks in a given LATA. Nevertheless, Level 3
21 wants to interconnect its network with BellSouth’s “network” in each LATA at
22 a single point. This approach simply ignores that there is not one “network”
23 but a host of networks that are, generally, all interconnected. Importantly,
24 BellSouth does not object to Level 3 designating a single POI at a point in a
25 LATA on one of BellSouth’s “networks”, and Level 3 only building its own

1 facilities up to that point. Further, BellSouth does not object to Level 3 using
2 the interconnecting facilities between BellSouth's "networks" to have calls
3 delivered or collected throughout the LATA. What BellSouth does want, and
4 this is really the issue, is for Level 3 to be financially responsible when it uses
5 BellSouth's facilities in lieu of building its own facilities to deliver or collect
6 these calls.

7
8 On the other hand, Level 3 expects BellSouth to collect its local traffic in each
9 of BellSouth's numerous local calling areas in the LATA, and for BellSouth
10 also to be financially responsible for delivering local calls, destined for Level 3
11 local customers, in each of those local calling areas to a single point in each
12 LATA. BellSouth agrees that Level 3 can choose to build its own facilities to
13 connect with BellSouth at a single technically feasible point in the LATA
14 selected by Level 3. Level 3, however, cannot impose a financial burden on
15 BellSouth to deliver BellSouth's originating traffic to that single point. That
16 is, BellSouth does not object to completing calls between BellSouth's
17 customers and Level 3's customers using this single POI, provided that Level 3
18 is financially responsible for the additional costs that Level 3 causes.

19
20 Q. IF THIS COMMISSION ADOPTS BELLSOUTH'S POSITION ON THESE
21 ISSUES, WILL LEVEL 3 BE FORCED TO BUILD A NETWORK TO, OR
22 OTHERWISE HAVE A POINT OF INTERCONNECTION WITH,
23 BELLSOUTH'S LOCAL NETWORK IN EVERY LOCAL CALLING
24 AREA?

25

1 A. No. Level 3 can build out its network that way if it chooses, but it is not
2 required to do so. It can lease facilities from BellSouth or any other provider
3 to bridge the gap between its network (that is, where it designates its Point of
4 Interconnection) and each BellSouth network. Level 3 can pick any POI in the
5 LATA that is technically feasible. It can choose to have one or more POIs in
6 the LATA. Level 3, however, cannot shift its financial responsibility for
7 carrying local calls, to BellSouth, by choosing to have a single POI in each
8 LATA.

9
10 Q. IF BELLSOUTH WILL ALLOW LEVEL 3 TO INTERCONNECT WITH
11 BELLSOUTH'S NETWORK AT ANY TECHNICALLY FEASIBLE POINT,
12 WHY DOES ISSUE #1 EXIST?

13
14 A. Recall that what we are talking about is interconnection with "local networks."
15 The network architecture of the two companies is very important, and the
16 difference between the two architectures has created this issue. BellSouth
17 actually has a number of distinct networks. For example, BellSouth has local
18 networks, intraLATA toll networks, packet networks, signaling networks,
19 E911 networks, etc. Each of these networks is designed to provide a particular
20 service or group of services. With regard to "local networks," BellSouth, in
21 any given LATA, has several such local networks, usually interconnected by
22 BellSouth's long distance network.

23
24 Most telecommunications companies structure their networks as a group of
25 specialized networks. The important point is that for a customer to have a

1 particular service, the customer must be connected to the network where that
2 service is provided. Consequently, if an ALEC wants to deliver or receive a
3 particular kind of traffic from a BellSouth customer, the ALEC must connect
4 to the BellSouth network where that service is provided. For example, if a
5 customer receives local service from BellSouth, that customer must be
6 connected to the BellSouth local network in his *local calling area*. Likewise,
7 if an ALEC wants to deliver local traffic to, or receive local traffic from, that
8 customer, the ALEC must be connected to that same local network.

9

10 Q. PLEASE DESCRIBE FURTHER BELLSOUTH'S LOCAL NETWORK.

11

12 A. The geographic basis upon which customers purchase local service from
13 BellSouth is a local calling area. BellSouth uses a local network to provide
14 service within that local calling area. That local network has a number of local
15 switches that switch local calls. The local switches are interconnected by
16 facilities either directly, or through local tandem switches. These
17 interconnected switches allow one customer to call any other customer located
18 within that local calling area. BellSouth may have a number of such local
19 networks, or calling areas, in a LATA.

20

21 For example, in the Jacksonville LATA, BellSouth has local networks in
22 Jacksonville, Lake City, St. Augustine, Pomona Park, etc. Customers who
23 want local service in a particular local calling area must be connected to the
24 local network that serves that local calling area. A customer that connects to
25 the Jacksonville local network, therefore, will not also receive local service in

1 the Lake City local calling area because Lake City is not in the Jacksonville
2 local calling area. Likewise, an ALEC that wants to connect with BellSouth to
3 provide local service in Lake City has to connect to the local network that
4 serves the Lake City area. These local calling areas to which I am referring
5 have been defined over the years by this Commission.

6

7 Q. WHAT IS YOUR UNDERSTANDING OF HOW LEVEL 3'S NETWORK
8 WILL WORK?

9

10 A. Apparently Level 3 will not have a switch, or a POI, in every local calling area.
11 Instead, Level 3 will have a single switch and a single POI in each LATA,
12 combined with long loops. Level 3 would build facilities from its switch to its
13 POI in the LATA. For example, it appears that Level 3 will have a switch in
14 Jacksonville which, when combined with long loops, it will use to serve
15 customers in other local calling areas in the Jacksonville LATA. BellSouth
16 agrees that this arrangement is technically feasible, and there is nothing at all
17 wrong with such a configuration if it makes economic sense for Level 3.

18

19 Q. WHAT CONCERNS DOES LEVEL 3'S POSITION RAISE?

20

21 A. BellSouth's concern is that Level 3 is inappropriately attempting to shift costs
22 to BellSouth. The best example here is to describe the financial burden, or
23 additional costs, that Level 3 is attempting to shift to BellSouth, as a result of
24 its position on this issue. Compare two local calls in the Lake City local
25 calling area. The first local call is between two BellSouth customers. The

1 second local call is between a BellSouth customer and a Level 3 customer.
2 Assuming that the two customers are neighbors, let's look at the first local call.
3 The call originates with one customer, and is hauled over the customer's local
4 loop to a local switch in Lake City, where the call is connected to the other
5 customer's local loop. The important point is that the call never leaves the
6 Lake City local calling area. The only cost, therefore, that BellSouth incurs for
7 transporting and terminating that call is end office switching in Lake City.

8
9 Now, let's look at what happens when one of the two customers obtains her
10 local service from Level 3. Assume that the BellSouth customer calls her
11 neighbor, a Level 3 customer. This assumption is just for simplicity of
12 explanation; the effect is the same regardless of the direction of the call. The
13 BellSouth customer is connected to BellSouth's switch in Lake City. The
14 BellSouth switch then sends the call to Jacksonville, because that is where
15 Level 3 told BellSouth to send the call. The call is then hauled, over facilities
16 owned by Level 3, to Level 3's switch where it is connected through the switch
17 to the long loop serving Level 3's customer back in Lake City. Remember that
18 the customers are neighbors. In one case the local call never left the Lake City
19 local calling area. In the other, BellSouth hauled the local call all the way to
20 Jacksonville and the only reason that BellSouth did that was because that is
21 what Level 3 wanted.

22
23 To make the point more simply, Level 3 wants BellSouth to bear the cost of
24 the facilities used to haul the call, described above, from Lake City to
25 Jacksonville. There is nothing fair, equitable or reasonable about Level 3's

1 request. BellSouth believes that Level 3, which has chosen its network design,
2 and has designed that network in the way that is cheapest and most efficient for
3 Level 3, must bear the financial responsibility for the additional facilities
4 (costs) necessary to haul the local call between Lake City and Jacksonville.
5 Level 3 does not have to build the facilities. It does not have to own the
6 facilities. Level 3 just has to pay for them.

7

8 Q. DO BELLSOUTH'S LOCAL RATES COVER THESE ADDITIONAL
9 COSTS?

10

11 A. No. Although in theory, BellSouth is supposed to be compensated by the local
12 exchange rates charged to BellSouth's local customers for hauling local calls
13 within the same local calling area, there has always been a dispute over
14 whether local exchange rates actually cover the costs of handling local calls.
15 Certainly, there can be no dispute that the local exchange rates that BellSouth's
16 customers pay are not intended to cover, and indeed cannot cover, the cost of
17 hauling a local call from one Lake City customer to another Lake City
18 customer, by way of Jacksonville.

19

20 Indeed, if Level 3 is not required to pay for the extra transport which Level 3's
21 network design decisions cause, who will pay for it? The BellSouth calling
22 party is already paying for its local exchange service, and certainly will not
23 agree to pay more, simply to support Level 3. Who then is left to cover the
24 costs? The simple answer is that there is no one else. Level 3 has caused this

25

1 cost through its own decisions regarding its network design; Level 3 should be
2 required to pay the additional cost.

3

4 Q. DOES BELLSOUTH RECOVER ITS COSTS FOR HAULING LOCAL
5 CALLS OUTSIDE THE LOCAL CALLING AREA THROUGH
6 RECIPROCAL COMPENSATION CHARGES?

7

8 A. No. The facilities discussed in this issue provide interconnection between the
9 parties' networks. These costs are not covered in the reciprocal compensation
10 charges for transport and termination. Paragraph 176 of the FCC's First
11 Report and Order in CC Docket No. 96-98 clearly states that interconnection
12 does not include transport and termination: "Including the transport and
13 termination of traffic within the meaning of section 251(c)(2) would result in
14 reading out of the statute the duty of all LECs to establish 'reciprocal
15 compensation arrangements for the transport and termination of
16 telecommunications' under section 251(b)(5)". Reciprocal compensation
17 charges apply only to facilities used for transporting and terminating local
18 traffic on the local network, not for interconnection of the parties' networks.

19

20 In the Lake City example, Level 3 would pay reciprocal compensation for calls
21 originated by Level 3 customers in Lake City and terminated to BellSouth
22 customers in Lake City. That is, reciprocal compensation would apply to the
23 facilities BellSouth used within its Lake City local network to transport and
24 switch a Level 3 originated call. Reciprocal compensation does not include the
25 facilities to haul the traffic from Jacksonville to Lake City. Further, BellSouth

1 is paid reciprocal compensation only for calls that originate with a Level 3
2 customer and terminate to a BellSouth customer. BellSouth does not receive
3 reciprocal compensation for calls that originate from a BellSouth customer and
4 terminate to a Level 3 customer. Level 3, however, wants BellSouth to build
5 facilities, at no charge, for calls in both directions.

6

7 Q. IS WHAT LEVEL 3 PROPOSES AN EFFICIENT NETWORK
8 ARRANGEMENT?

9

10 A. Although Level 3 might claim that it is, Level 3 apparently equates efficiency
11 with what is most economical for Level 3. Of course, that is not an appropriate
12 measure of efficiency. Indeed, to measure efficiency, the cost to each carrier
13 involved must be considered. Presumably, Level 3 has chosen its particular
14 network arrangement because it is cheaper for Level 3. A principal reason that
15 it is cheaper for Level 3 seems to be because Level 3 is expecting BellSouth's
16 customers to bear substantially increased costs caused by Level 3 in its
17 network design. It simply makes no sense for BellSouth to bear the cost of
18 hauling a local Lake City call outside the Lake City local calling area just
19 because that is what Level 3 wants us to do; just so that Level 3 can lower its
20 costs. Level 3, however, wants this Commission to require BellSouth to do
21 just that. If Level 3 bought these facilities from anyone else, Level 3 would
22 have to pay for the facilities. Level 3, however, does not want to pay
23 BellSouth for the same capacity.

24

25

1 Level 3's proposed method of transporting local traffic shifts the costs to
2 BellSouth and BellSouth's customer, in order to subsidize Level 3. Instead of
3 encouraging competition, Level 3 is attempting to require BellSouth's
4 customers to subsidize Level 3's network. Competition is supposed to reduce
5 costs to customers, not increase them. Competition certainly is not an excuse
6 for enabling a carrier to pass increased costs that it causes to customers it does
7 not even serve.

8

9 Q. HOW DOES THE FCC ADDRESS THE ISSUE OF ADDITIONAL COSTS
10 CAUSED BY AN ALEC'S CHOSEN FORM OF INTERCONNECTION?

11

12 A. In its First Report and Order in Docket No. 96-98, the FCC states that the
13 ALEC must bear the costs caused by an ALEC's chosen form of
14 interconnection. Paragraph 199 of the Order states that "a requesting carrier
15 that wishes a 'technically feasible' but expensive interconnection would,
16 pursuant to section 252(d)(1), be required to bear the cost of the that
17 interconnection, including a reasonable profit." Further, at paragraph 209, the
18 FCC states that "Section 251(c)(2) lowers barriers to competitive entry for
19 carriers that have not deployed ubiquitous networks by permitting them to
20 select the points in an incumbent LEC's network at which they wish to deliver
21 traffic. Moreover, because competing carriers must usually compensate
22 incumbent LECs for the additional costs incurred by providing
23 interconnection, competitors have an incentive to make economically efficient
24 decisions about where to interconnect." (Emphasis added.)

25

1 Clearly, the FCC expects ALECs to pay whatever additional costs they cause
2 ILECs to incur due to their interconnection. If Level 3 is permitted to shift its
3 costs to BellSouth, Level 3 has no incentive to make economically efficient
4 decisions about where to interconnect.

5

6 Q. WOULD LEVEL 3'S ABILITY TO COMPETE BE HAMPERED BY
7 LEVEL 3'S INABILITY TO OBTAIN FREE FACILITIES FROM
8 BELLSOUTH?

9

10 A. No. Level 3 can build facilities to a single point in each LATA and purchase
11 whatever facilities it needs from BellSouth, or from another carrier, in order to
12 reach individual local calling areas that Level 3 wants to serve. Level 3 does
13 not have to build or purchase interconnection facilities to areas where Level 3
14 does not plan to serve customers. If Level 3 does not intend to serve any
15 customers in a particular area, its ability to compete cannot be hampered.

16

17 Q. HOW HAS THE FCC ADDRESSED THE ISSUE OF WHO
18 ESTABLISHES THE POI?

19

20 A. BellSouth believes that each party may determine the point of interconnection
21 for its own originating traffic. The FCC addresses the POI in its First Report
22 & Order in CC Docket No. 96-98, dated August 1, 1996, in Section IV -
23 Interconnection. In that section, the FCC determined that the originating
24 company can determine its POI. The FCC states in Subsection F, Technically
25 Feasible Points Of Interconnection, ¶ 209:

1 “We conclude that we should identify a minimum list of technically
2 feasible points of interconnection that are critical to facilitating entry by
3 competing local service providers. Section 251(c)(2) gives competing
4 carriers the right to deliver traffic terminating on an incumbent LEC’s
5 network at any technically feasible point on that network, rather than
6 obligating such carriers to transport traffic to less convenient or
7 efficient interconnection points. Section 251(c)(2) lowers barriers to
8 competitive entry for carriers that have not deployed ubiquitous
9 networks by permitting them to select the points in an incumbent
10 LEC’s network at which they wish to deliver traffic. Moreover,
11 because competing carriers must usually compensate incumbent LECs
12 for the additional costs incurred by providing interconnection,
13 competitors have an incentive to make economically efficient decisions
14 about where to interconnect.”

15
16 The ruling only specifies that the ALEC must establish a POI on the incumbent
17 LEC’s network for traffic originated by the ALEC. It does not obligate the
18 incumbent LEC to specify a POI on the ALEC’s network for traffic originated
19 by the incumbent LEC. BellSouth’s position is that nothing in the Act limits
20 BellSouth’s ability to designate a POI for traffic it originates to Level 3.

21
22 Q. HOW HAS THE FCC ADDRESSED AN ILEC’S ABILITY TO
23 DESIGNATE A POINT OF INTERCONNECTION FOR ITS
24 ORIGINATING TRAFFIC?

25

1 A. As previously discussed, the FCC permits the ILEC to designate the POI for its
2 traffic, and does not require that point to be on the ALEC's network. The FCC
3 has determined that issues regarding the location of POIs should be determined
4 through the negotiation and arbitration process. In the First Report and Order,
5 the FCC rejected MCI's suggestion that the ILEC should be required to specify
6 a single POI on an ALEC's network for traffic originated by the ILEC's
7 customer. In paragraph 214 of that Order, the FCC states:

8 MCI also urges the Commission to require incumbents and competitors
9 to select one point of interconnection (POI) on the other carrier's
10 network at which to exchange traffic. MCI further requests that this
11 POI be the location where the costs and responsibilities of the
12 transporting carrier ends and the terminating carrier begin. [Emphasis
13 added.]

14 In paragraph 220, the FCC rejected MCI's request, stating that:

15 We also conclude that MCI's POI proposal, permitting interconnecting
16 carriers, both competitors and incumbent LECs, to designate points of
17 interconnection on each other's networks, is at this time best addressed
18 in negotiations and arbitrations between parties.

19

20 Consistent with the FCC's Order, an ALEC does not have the right to establish
21 the POI for ILEC originated traffic.

22

23 Q. WHY SHOULD LEVEL 3 BE FINANCIALLY RESPONSIBLE FOR THE
24 TRANSPORT OF THESE CALLS FROM LOCAL CALLING AREAS

25

1 THAT ARE DISTANT FROM THE POINT WHERE LEVEL3 HAS
2 CHOSEN TO INTERCONNECT ITS NETWORK TO BELLSOUTH'S?

3
4 A. This is the only approach that makes economic sense. The Act provides that
5 each party should pay for the use of interconnection trunks on the other
6 carrier's network. Specifically, 47 U.S.C. § 251(c)(2)(D) states:

7 “(2) INTERCONNECTION.—The duty to provide, for the facilities
8 and equipment of any requesting telecommunications carrier,
9 interconnection with the local exchange carrier's network—
10 (D) on rates, terms, and conditions that are just, reasonable, and
11 nondiscriminatory, in accordance with the terms and
12 conditions of the agreement and the requirements of this
13 section and section 252.”

14
15 Further, §252(d) addresses pricing standards. Section 252(d)(1) specifically
16 addresses the pricing for *Interconnection*, and §252(d)(2) specifically
17 addresses the pricing for *Charges for Transport and Termination of Traffic*. It
18 hardly seems logical that Congress and the FCC would separately and
19 expressly address both interconnection and reciprocal compensation for
20 transport and termination of traffic if they thought compensation for each
21 function was not appropriate.

22
23 Moreover, the United States Court of Appeals, Eighth Circuit, recently
24 confirmed that ALECs are entitled to interconnect with the ILEC's “existing
25 network”:

1 The Act requires an ILEC to (1) permit requesting new entrants
2 (competitors) in the ILEC's local market to interconnect with the
3 ILEC's existing local network and, thereby, use that network to
4 compete in providing local telephone service (interconnection)....
5 (Eighth Circuit Court Order dated July 18, 2000, page 2) [Emphasis
6 added.]

7 This point is very important. When Level 3 interconnects with BellSouth's
8 local network in Jacksonville, it is not interconnecting with BellSouth's local
9 network in Lake City. It is only interconnecting with the Jacksonville local
10 network. The fact that it is entitled to physically interconnect with BellSouth
11 at a single point within the LATA cannot overcome that fact that the single
12 POI cannot, by itself, constitute an interconnection with every other local
13 network in the LATA.

14

15 Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION?

16

17 A. BellSouth requests that this Commission require Level 3 to bear the cost of
18 facilities that BellSouth installs on Level 3's behalf, in order to extend
19 BellSouth's local network to Level 3's network at a POI outside that local
20 network.

21

22

Issue 2: (Attachment 3, Section 1.2.6)

23

Should the definition of Serving Wire Center preclude Level 3 from

24

receiving symmetrical compensation from BellSouth for leased facility

25

interconnection?

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2 Q. WHAT IS BELLSOUTH'S POSITION WITH REGARD TO
3 SYMMETRICAL COMPENSATION?

4

5 A. BellSouth's position is that symmetrical compensation is appropriate where the
6 services/functions provided are equal. However, in cases where different
7 services or functions are being provided, compensation will not necessarily be
8 symmetrical.

9

10 Q. IS THE DEFINITION OF SERVING WIRE CENTER THE ACTUAL
11 DISPUTE HERE?

12

13 A. No. Although the definition of serving wire center may be an issue, the real
14 dispute is whether a carrier should be paid only for the services and/or
15 functions it actually provides.

16

17 Q. WHY IS THE DEFINITION OF SERVING WIRE CENTER IMPORTANT?

18

19 A. The location of the serving wire center defines the rate elements that apply
20 when dedicated transport services, such as UNE transport and local
21 interconnection call transport and termination, are provided. Transport
22 services typically consist of two sets of rate elements. The first set is a flat-
23 rated local channel, which is the charge for the facility that connects the
24 ALEC's physical location, i.e., Point of Presence or POI, to the BellSouth wire
25 center that serves that location, or the serving wire center. The second set of

1 rate elements is distance sensitive charges that apply for facilities that are
2 provided between BellSouth wire centers.

3

4 Q. WHAT HAS BELLSOUTH PROPOSED AS THE DEFINITION OF
5 SERVING WIRE CENTER?

6

7 A. The definition of "serving wire center" that BellSouth has proposed to Level 3
8 is consistent with the definitions in Tariff FCC No. 1, Florida State Access
9 Tariffs, and Newton's Telecom Dictionary. BellSouth proposes to define
10 "serving wire center" as *the wire center owned by one Party from which the*
11 *other Party would normally obtain dial tone for its Point of Presence.*

12

13 Q. WHAT IS THE ACTUAL DISPUTE WITH REGARD TO ISSUE NO. 2?

14

15 A. Although the architectures of the two companies are structured differently, the
16 issue here is not whether or not Level 3 will be disadvantaged through a
17 proposed definition of serving wire center. The problem is that Level 3 plainly
18 seeks to charge Dedicated Interoffice Transport rates when it is not performing
19 the function that entitles an ALEC to such compensation.

20

21

22 Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DECIDE ON
23 THIS ISSUE?

24

25

1 A. BellSouth requests the Commission to affirm that BellSouth is complying with
2 the structure that the Commission and its rules have created and that
3 BellSouth's definition of Serving Wire Center is appropriate because it reflects
4 the actual location of the Serving Wire Center. Moreover, BellSouth requests
5 that the Commission find that Level 3 is not entitled to compensation for
6 functions it does not perform.

7

8 *Issue 6: (Attachment 3, Section 5.1.1.1)*

9 *Should the parties be required to pay reciprocal compensation on traffic*
10 *enhanced service provider, including an Internet Service Provider ("ISP")?*

11

12

13 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

14

15 A. As the Commission is well aware, BellSouth does not agree that ISP-bound
16 traffic is local traffic subject to reciprocal compensation. Level 3 has not
17 provided any evidence to the contrary, therefore, BellSouth's position has not
18 changed with respect to this issue in this proceeding. BellSouth recognizes that
19 the Commission has previously ruled in the ITC^DeltaCom, Intermedia and
20 ICG arbitration proceedings that the parties should continue to operate under
21 the terms of the current agreements until the FCC issues its final ruling on the
22 issue of ISP-bound traffic. In this arbitration proceeding, on an interim basis,
23 BellSouth agrees to this as a conciliatory offer that avoids requiring the
24 Commission to rehear this issue. In so doing, BellSouth reserves the right to
25 appeal or seek judicial review on this issue. Upon establishment of an

25

1 appropriate inter-carrier compensation mechanism, the parties would engage in
2 a retroactive true up based upon the established mechanism.

3

4

Issue 7: (Attachment 3, Section 5.1.8 and 5.1.9)

5

Should BellSouth be permitted to define its obligation to pay reciprocal

6

compensation to Level 3 based upon the physical location of Level 3's

7

customers? Should BellSouth be able to charge originating access to Level 3

8

on all calls going to a particular NXX code based upon the location of any

9

one customer?

10

11 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

12

13 A.

BellSouth believes that reciprocal compensation should not be billed for calls

14

that originate in one local calling area and terminate in another, regardless of

15

the NPA/NXX assigned to the customers on either end of the call. BellSouth

16

is not attempting to restrict Level 3's ability to allocate numbers, to its end

17

users, out of its assigned NPA/NXX codes. It does not matter to BellSouth

18

how Level 3 chooses to allocate its numbers to its end users. Level 3 can elect

19

to give a telephone number to a customer who is physically located in a

20

different local calling area than the local calling area where that NPA/NXX is

21

assigned. If Level 3, however, chooses to give out its telephone numbers in

22

this manner, calls originated by BellSouth end users to those distant Level 3

23

customers are not local calls. Consequently, such calls are not local traffic

24

under the agreement and no reciprocal compensation applies.

25

1 Q. PLEASE EXPLAIN WHAT THIS NPA/NXX ISSUE IS REALLY ABOUT.

2

3 A. When Level 3, or any other carrier, is given an NPA/NXX code by the North
4 American Numbering Plan Administrator, the carrier must assign that
5 NPA/NXX code to a rate center. All other carriers use this assignment
6 information to determine whether calls originated by its customers to numbers
7 in that NPA/NXX code are local or long distance calls. For example, assume
8 that the administrator assigns the 561/336 NPA/NXX to Level 3. Level 3
9 would tell the administrator where 561/336 is assigned. Let's say Level 3
10 assigns the 561/336 code to the Jupiter, Florida rate center. When a local
11 carrier's customer calls a number in the 561/336 code, the local carrier bills its
12 customer based on whether a call from the location where the call originates to
13 the Jupiter rate center is a local call or a long distance call. If a BellSouth
14 customer in the Jupiter local calling area calls a number in the 561/336 code, in
15 this example, BellSouth treats the call as a local call for purposes of billing its
16 Jupiter customer. Likewise, if a BellSouth customer in Miami calls a number
17 in the 561/336 code, BellSouth would bill the customer for a long distance call.

18

19 Q. IS LEVEL 3 RESTRICTED TO GIVING NUMBERS ASSIGNED TO A
20 PARTICULAR RATE CENTER, TO CUSTOMERS WHO ARE
21 PHYSICALLY LOCATED IN THAT SAME RATE CENTER?

22

23 A. No. Level 3 is permitted to assign a number in the 561/336 code to any of its
24 customers, regardless of where they are physically located. In the example

25

1 above, Level 3 is not restricted to giving numbers in the 561/336 code only to
2 customers that are physically located in the Jupiter, Florida rate center.

3
4 Level 3 could assign a number, say 561-336-2000, to one of its customers who
5 is physically located in Jupiter, Florida. A BellSouth customer in Jupiter that
6 calls 561-336-2000 would be billed as if he or she made a local call. BellSouth
7 agrees that this is a local call and, therefore, appropriate reciprocal
8 compensation should apply.

9
10 Continuing with the hypothetical example, let's see what happens if Level 3
11 disassociates the physical location of a customer with a particular telephone
12 number from the rate center where that NPA/NXX code is assigned. Assume
13 that Level 3 gives the number 561-336-3000 to one of its customers in Miami,
14 Florida. If a BellSouth customer in Jupiter calls 561-336-3000, BellSouth will
15 bill its customer in Jupiter as if the customer made a local call. BellSouth,
16 however, would hand off the call to Level 3 at a BellSouth designated point of
17 interconnection, and Level 3 would then carry the call from that point to its end
18 user in Miami. The end points of the call are in Jupiter and Miami, and
19 therefore, would normally be a long distance call. To use a more extreme
20 example, Level 3 could elect to assign another number, say 561-336-4000, to
21 one of its customers who is physically located in New York. A BellSouth
22 customer in Jupiter who calls 561-336-4000 would be billed as if he made a
23 local call, but the call would actually terminate in New York, which plainly
24 would be a long distance call. Under Level 3's proposal, BellSouth would pay
25 reciprocal compensation on those calls from Jupiter to Miami or from Jupiter

1 to New York, which are clearly long distance calls and not subject to
2 reciprocal compensation.

3

4 Q. IS TRAFFIC JURISDICTION ALWAYS DETERMINED BY THE RATE
5 CENTERS WHERE THE ORIGINATING AND TERMINATING
6 NPA/NXXs ARE ASSIGNED, AS INDICATED IN LEVEL 3's PETITION?

7

8 A. No. Traffic jurisdiction based on rate center assignment is used for retail end
9 user billing, but not for inter-company compensation purposes. The FCC has
10 made it clear that traffic jurisdiction is determined based upon the originating
11 and terminating end points of a call, not the NPA/NXXs of the calling or called
12 number. One example is originating Feature Group A access service. Even
13 though the originating end user dials a number that appears local to him or her,
14 no one disputes that originating FGA traffic is switched access traffic with
15 respect to jurisdiction and compensation between the involved companies.

16

17 Another example is Foreign Exchange (FX) service. Here again, it appears to
18 the originating customer that a local call is being made when, in fact, the
19 terminating location is outside the local calling area (long distance). Further,
20 because the call to the FX number appears local and the calling and called
21 NPA/NXXs are assigned to the same rate center, the originating end user is not
22 billed for a toll call. Despite the fact that the calls appear to be local to the
23 originating caller, FX service is clearly a long distance service.

24

25

1 Q. WHAT IS THE CLOSEST PARALLEL TO THE SERVICE YOU HAVE
2 DESCRIBED THAT IS THE SUBJECT OF THIS ISSUE?

3

4 A. The closest parallel is 800 service. While there are some comparable
5 characteristics to the previously described Feature Group A (FGA) and Foreign
6 Exchange (FX) service, the service described here does not use lines dedicated
7 to a particular customer for transporting the call between rate centers. In fact,
8 some ALECs have even described this service as an FX-like service. Instead,
9 as in the case of 800 service, the calls in this issue are placed to a "toll free"
10 number and routed over trunking facilities to a distant location that would
11 normally incur a toll charge for the originating customer. Just as it is clear that
12 800 service is not local - that access charges rather than reciprocal
13 compensation apply, it should also be clear that service provided through the
14 use of NPA/NXXs outside the local calling area where the NPA/NXX is
15 assigned is not local and reciprocal compensation is not appropriate.

16

17 Q. WHEN LEVEL 3 ASSIGNS NUMBERS IN THE MANNER BELL SOUTH
18 IS DESCRIBING, IS LEVEL 3 ATTEMPTING TO DEFINE ITS OWN
19 LOCAL CALLING AREA?

20

21 A. No. When Level 3 assigns numbers in the manner described, Level 3 is not
22 necessarily attempting to define, or offer, a different local calling area for its
23 customers than the local calling area offered by BellSouth. In fact, in the
24 previous hypothetical example of the 561/336 code that Level 3 assigns to
25 Jupiter, Level 3 does not need to have any customers who are physically

1 located in the Jupiter local calling area. What Level 3 is doing is offering free
2 interexchange calling to customers of other LECs (i.e. BellSouth). Level 3 is
3 offering a service that allows BellSouth's local service customers to make
4 "local" calls to selected customers of Level 3 who are physically located in a
5 different local calling area.

6

7 The dispute here, however, is not the assignment of local calling areas. Level
8 3 is permitted to define the local calling area for its own customers however it
9 chooses. The dispute in this issue is again, a financial one. If, in the example,
10 Level 3 had any of its own local service customers in Jupiter, and offered those
11 customers the ability to call Miami without long distance charges, then it could
12 be said that Level 3 was offering a local calling area in Jupiter that was
13 different from BellSouth's. BellSouth's customer in Jupiter can also make a
14 "toll-free" interexchange call to a Level 3 customer in Miami, if Level 3
15 chooses to assign its NPA/NXXs in this manner. This, however, does not
16 make the call local for the BellSouth customer. The call is still an
17 interexchange call, and certainly does not entitle Level 3 to reciprocal
18 compensation.

19

20 Q. HOW DOES THE RESOLUTION OF THIS ISSUE IMPACT THE DEGREE
21 OF LOCAL COMPETITION IN FLORIDA?

22

23 A. Some ALECs have claimed that BellSouth's position on this issue would
24 impede local competition. The service at issue here, however, has nothing to
25 do with local competition. Using the Jupiter example, the service described

1 does not even create any local service, let alone any local service competition,
2 in Jupiter. Local service competition is only created where Level 3 offers local
3 service to its own customers. The service at issue here is offered to
4 BellSouth's local service customers in Jupiter, regardless of whether Level 3
5 has any local service customers physically located in Jupiter. When Level 3
6 allows a BellSouth customer in Jupiter to make a toll free call to one of its
7 actual 800 service numbers, no local service competition is created in Jupiter.
8 Likewise, in the example, when Level 3 assigns a number out of the 561/336
9 code to one of its customers in Miami, exactly the same amount of local
10 competition is created in Jupiter as is created by Level 3's 800 service
11 offerings; i.e., none. In this case, Level 3 has no contact or business
12 relationship with the BellSouth customers for use of this service. These
13 customers remain, in fact, BellSouth's local service customers. In this case,
14 there is nothing that Level 3 provides that even resembles local service. Yet,
15 Level 3 claims that it should be paid reciprocal compensation for providing
16 this non-local service.

17
18 Q. HAVE STATE COMMISSIONS, OTHER THAN FLORIDA, ADDRESSED
19 WHETHER THE SERVICE DESCRIBED IN THIS ISSUE IS LOCAL OR
20 INTEREXCHANGE?

21
22 A. To my knowledge, only the Maine Commission has definitively ruled on
23 whether the service described in this issue is local or interexchange service.
24 The California Commission has heard the issue, but did not decide whether the
25

1 service was local or interexchange and deferred the issue of appropriate inter-
2 carrier compensation to a later date.

3

4 Q. BRIEFLY DESCRIBE THE MAINE COMMISSION'S ORDER THAT YOU
5 REFERRED TO ABOVE.

6

7 A. The Maine Commission's Order, attached to my testimony as Exhibit CKC-1,
8 was issued on June 30, 2000 in Docket Nos. 98-758 and 99-593. The service
9 at issue in that order is the same type of service described in this issue. (Order
10 at p. 4) Brooks Fiber ("Brooks" – a subsidiary of MCI WorldCom) had been
11 assigned 54 NPA/NXX codes that it had subsequently assigned to various
12 exchanges that are outside the Portland, Maine local calling area. Brooks,
13 however, had assigned numbers from those codes to its customers who were
14 physically located in Portland. The Maine Commission was trying to
15 determine whether Brooks was entitled to retain the NPA/NXX codes used for
16 the service. If the service was local, Brooks was entitled to the codes; if the
17 service was interexchange, Brooks Fiber had to relinquish the codes. The
18 Maine Commission concluded that the service was interexchange, and since
19 Brooks did not have any customers at all in the rate centers where 45 of the
20 codes were assigned, the Maine Commission ordered the Numbering Plan
21 Administrator to reclaim those codes (Order at p. 29)

22

23 Now, there is a potential misunderstanding that could arise when reading the
24 Maine Order. There are several references to ISP in the Maine Order. The
25 reason is that Brooks Fiber had only given numbers in the NPA/NXX codes to

1 ISPs. This is not, however, the ISP reciprocal compensation issue that this
2 Commission has previously addressed. The findings of the Maine
3 Commission regarding this service do not depend on whether or not the
4 number is given to an ISP. Neither the Maine Commission findings on the
5 nature of this traffic, nor BellSouth's position on this issue depend on whether
6 the number is given to an ISP. The same findings and the same position apply
7 regardless of the type of customer that has been given the number. It is just a
8 fact in the Maine case that Brooks Fiber had only given numbers to ISPs;
9 therefore, there are references to ISPs in the Order.

10

11 Q. HOW DOES BELLSOUTH'S POSITION COMPARE TO THE MAINE
12 COMMISSION'S ORDER?

13

14 A. BellSouth's position is completely consistent with the Maine Commission's
15 Order. Most importantly, the Maine Commission found that the service was
16 interexchange. (Order at pps. 4, 8-12, 18). The Maine Commission concluded
17 that this service and FX service have some parallels but the closest parallel is
18 800 service. (Order at pps. 11-12) The Maine Commission found that Brooks
19 is not attempting to define its local calling area with this service. (Order at p
20 14) Finally, the Maine Commission concluded that this service has no impact
21 on the degree of local competition. (Order at p. 13) Again, none of these
22 findings depend on whether the number is given to an ISP, or another type of
23 customer.

24

25 Q. HAS THIS COMMISSION ADDRESSED ASSIGNMENT OF NPA/NXXs?

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A. Yes. On August 22, 2000, in Section XII.B. of Order No. PSC-00-1519-FOF-TP, Docket No. 991854-TP (In re: Petition of BellSouth Telecommunications, Inc. for Section 252(b) arbitration of interconnection agreement with Intermedia Communications, Inc.), the Commission ordered:

“If Intermedia intends to assign numbers outside of the areas with which they are traditionally associated, Intermedia must provide information to other carriers that will enable them to properly rate calls to those numbers. We find no evidence in the record indicating that this can be accomplished.

Based on the foregoing, we find it appropriate that the parties be allowed to establish their own local calling areas. Nevertheless, the parties shall be required to assign numbers with the areas to which they are traditionally associated, until such time when information necessary for the proper rating of calls to numbers assigned outside of those areas can be provided.”

In addition, the Commission adopted Staff’s recommendation that Intermedia “establish points of interconnection at all BellSouth access tandems where Intermedia chooses to home its NPA/NXX.” (Staff Recommendation at p. 61) Finally, the Commission adopted the Staff’s conclusion that “for each assigned NPA/NXX, Intermedia should be required to designate a ‘home’ local tandem....”

1 Q. WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION?

2

3 A. BellSouth requests that the Commission rule that reciprocal compensation is
4 not due for calls that originate in one local calling area and terminate in
5 another, regardless of the NPA/NXXs assigned to the customers on either end
6 of the call.

7

8

Issue 8: (Attachment 3, Sections 5.8.1)

9

Should Internet Protocol Telephony be defined as Switched Access traffic?

10

11 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

12

13 A. This issue addresses the appropriate compensation for phone-to-phone calls
14 that utilize a technology known as Internet Protocol ("IP"). As with any other
15 local traffic, reciprocal compensation should apply to local
16 telecommunications provided via IP telephony, to the extent that it is
17 technically feasible to apply such charges. To the extent, however, that calls
18 provided via IP telephony are long distance calls, access charges should apply,
19 irrespective of the technology used to transport them.

20

21 BellSouth's position is that switched access charges, not reciprocal
22 compensation, apply to phone-to-phone long distance calls that are transmitted
23 using IP telephony because such calls are just like any other long distance
24 calls. The IXC may use the Internet Protocol to transport all or some portion

25

1 of the long distance call, but that does not change the fact that it is a long
2 distance call.

3

4 Q. WHAT IS IP TELEPHONY?

5

6 A. IP Telephony is telecommunications service that is provided using Internet
7 Protocol for one or more segments of the call. IP Telephony is, in very simple
8 and basic terms, a mode or method of completing a telephone call. The word
9 "Internet" in Internet Protocol Telephony refers to the name of the protocol; it
10 does not mean that the service uses the World Wide Web. Technically
11 speaking, Internet protocol, or any other protocol, is an agreed upon set of
12 technical operating specifications for managing and interconnecting networks.
13 The Internet protocol is the language that gateways use to talk to each other. It
14 has nothing to do with the transmission medium (wire, fiber, microwave, etc.)
15 that carries the data packets between gateways, but rather concerns gateways,
16 or switches, that are found on either end of that transmission medium.

17

18 Currently there are various technologies used to transmit telephone calls, of
19 which the most common are analog and digital. In the case of IP Telephony
20 originated from a traditional telephone set, the local carrier first converts the
21 voice call from analog to digital. The digital call is sent to a gateway that takes
22 the digital voice signal and converts or packages it into data packets. These
23 data packets are like envelopes with addresses which "carry" the signal across
24 a network until they reach their destination, which is known by the address on
25 the data packet, or envelope. This destination is another gateway, which

1 reassembles the packets and converts the signal to analog, or a plain old
2 telephone call to be terminated on the called party's local telephone company's
3 lines.

4
5 To explain it another way, Phone-to-Phone IP Telephony is where an end user
6 customer uses a traditional telephone set to call another traditional telephone
7 set using IP Telephony. The fact that IP technology is used, at least in part, to
8 complete the call is transparent to the end user. Phone-to-Phone IP Telephony
9 is identical, by all relevant regulatory and legal measures, to any other basic
10 telecommunications service, and should not be confused with calls to the
11 Internet through an ISP. Characteristics of Phone-to-Phone IP Telephony are:

- 12 • IP Telephony provider gives end users traditional dial tone (not modem
13 buzz);
- 14 • End user does not call modem bank;
- 15 • Uses traditional telephone sets (vs. computer);
- 16 • Call routes using telephone numbers (not IP addresses);
- 17 • Basic telecommunications (not enhanced);
- 18 • IP Telephone providers are telephone carriers (not ISPs).

19 Phone-to-Phone IP Telephony should not be confused with Computer-to-
20 Computer IP Telephony, where computer users use the Internet to provide
21 telecommunications to themselves.

22

23 Q. HOW ARE IP TELEPHONY CALLS DIFFERENT FROM INTERNET
24 SERVICE PROVIDER (ISP) BOUND TRAFFIC?

25

1 A. Even though IP Telephony and ISP-bound traffic both have the word
2 "Internet" in their name, they are completely different services and should not
3 be confused. The FCC's April 10, 1998 Report to Congress states: "The
4 record... suggests... 'phone-to-phone IP telephony' services lack the
5 characteristics that would render them 'information services' within the
6 meaning of the statute, and instead bear the characteristics of
7 'telecommunication services'." Further, Section 3 of the Act defines
8 "telecommunications" as the "transmission, between or among points specified
9 by the user, of information of the user's choosing, without change in the form
10 or content of the information as sent and received." Thus, IP Telephony is
11 telecommunications service, not information or enhanced service.

12

13 Q. DOES THE FCC VIEW ISP-BOUND TRAFFIC DIFFERENTLY THAN IP
14 TELEPHONY IN TERMS OF APPLICABLE CHARGES?

15

16 A. Yes. While, neither ISP-bound traffic nor IP Telephony traffic is local traffic,
17 the FCC has treated the two types of traffic differently in terms of the rates that
18 such providers pay for access to the local exchange company's network.
19 Enhance Service Providers ("ESPs"), or ISPs, have been exempted by the FCC
20 from paying access charges for use of the local network in order to encourage
21 the growth of these emerging services – most specifically access to the
22 Internet. The FCC has found that ESPs and ISPs do use interstate access
23 service, but are exempt from switched access charges applicable to other long
24 distance traffic. Instead, ISP-bound traffic is assessed at the applicable
25 business exchange rate. On the other hand, the transmission of long-distance

1 voice services – whether by IP telephony or by more traditional means -- is not
2 an emerging industry. In fact, it is a mature industry – one that is not exempt
3 from paying access charges for the use of the local network. These same
4 access charges are currently paid by all other long-distance carriers. BellSouth
5 is required to assess access charges on long distance calls. To do otherwise
6 would be to discriminate between long-distance carriers utilizing IP telephony
7 and those who do not.

8

9 Q. IS INTERNET PROTOCOL TELEPHONY AN INFORMATION SERVICE
10 ACCORDING TO THE FCC?

11

12 A. Yes, in most instances. In ¶104 of FCC Docket No. 96-149, the FCC says
13 “[w]e further conclude that, subject to the exceptions discussed below,
14 protocol processing services constitute information services under the 1996
15 Act.” In ¶106, the FCC describes these exceptions.

16

17 . . . we have treated three categories of protocol processing services as
18 basic services, rather than enhanced services, because they result in no
19 net protocol conversion to the end-user. These categories include
20 protocol processing: 1) involving communications between an end-user
21 and the network itself . . . rather than between or among users; 2) in
22 connection with the introduction of a new basic network technology. . . ;
23 and 3) involving internetworking (conversions taking place solely
24 within the carrier’s network to facilitate provision of a basic network
25 service, that result in no net conversion to the end user. (Emphasis
added.)

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In the issue at hand, phone-to-phone IP telephony (exception 3 above), a voice call made at the originating end that ends up a voice call at the terminating end is a “no net” protocol conversion and, therefore, is not an information service, in accordance with the above FCC exceptions. Phone-to-phone Internet Protocol Telephony has no net protocol conversion and should be treated as a telecommunications service.

Q. HAS THE COMMISSION RECENTLY ADDRESSED THIS ISSUE?

A. Yes. In its recent decision in the Intermedia arbitration proceeding (Docket No. 991854-TP), the Commission adopted the Staff’s recommendation that IP telephony is technology neutral and IP telephony traffic is clearly subject to switched access charges. In Section XVI.B. of Order No. PSC-00-1519-FOF-TP, the Commission stated:

...phone-to-phone IP Telephony is technology neutral. A call provisioned using phone-to-phone IP Telephony but not transmitted over the internet, to which switched access charges would otherwise apply if a different signaling and transmission protocol were employed, is nevertheless a switched access call. Except for, perhaps, calls routed over the internet, the underlying technology used to complete a call should be irrelevant to whether or not switched access charges apply. Therefore, like other telecommunications services, it would be included in the definition of switched access traffic. Therefore, we find that switched access traffic shall be defined in accordance with BellSouth’s

1 existing access tariff and include phone-to-phone internet protocol
2 telephony.

3

4 Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DECIDE ON
5 THIS ISSUE?

6

7 A. BellSouth requests that the Commission find that IP telephony is technology
8 neutral and that long distance IP telephony traffic is clearly subject to switched
9 access charges.

10

11 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

12

13 A. Yes.

14

15

16 PC DOCS #230345

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EXHIBIT CKC - 1

**TESTIMONY OF CYNTHIA K. COX
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

DOCKET NO. 000907 - TP

OCTOBER 5, 2000

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

June 30, 2000

PUBLIC UTILITIES COMMISSION
Investigation into Use of Central Office
Codes (NXXs) by New England Fiber
Communications, LLC d/b/a Brooks Fiber
Docket No. 98-758

ORDER REQUIRING
RECLAMATION OF NXX
CODES AND SPECIAL
ISP RATES BY ILEC'S
(ORDER NO. 4)

NEW ENGLAND FIBER COMMUNICATIONS
D/B/A BROOKS FIBER
Proposed Tariff Revision To Introduce
Regional Exchange (RX) Service
Docket No. 99-593

ORDER DISAPPROVING
PROPOSED SERVICE
(PART 2)

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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I. SUMMARY OF DECISION

We address two cases in this Order. In the Investigation Case (Docket No. 98-758), we direct the North American Numbering Plan Administrator (NANPA) to reclaim the central office (NXX) codes acquired by New England Fiber Communications d/b/a Brooks Fiber (Brooks) that it is using for an unauthorized interexchange service and not for facilities-based local exchange service. Brooks shall discontinue the unauthorized service in six months. In a related matter, we find that Brooks's tariff filing in Docket No. 99-593 for a proposed "regional exchange" (RX) service is unjust and unreasonable, and we disapprove the filing.

In the Investigation Case, we also require Bell Atlantic-Maine (BA) (with the participation of all other incumbent local exchange carriers (ILECs) as access providers) to offer the special retail service to Internet Service Providers (ISPs) that Bell Atlantic proposed in response to our last order in the Investigation Case. In addition, we require Bell Atlantic to provide the same service with a wholesale discount.

II. BACKGROUND

In our Order issued on June 22, 1999 in the Investigation Case, we made factual findings and factual and legal conclusions, all of which we had proposed in prior orders. Those included findings that the service provided by Brooks was interexchange rather than local and that the 54 NXX codes Brooks had acquired outside its Portland area exchange were not being used to provide local service. We also requested comments about a proposal set forth in the Order for a special retail service to be offered by ILECs to ISPs. The proposed service would be an interexchange service, but would provide a substantial discount from existing retail toll rates. Because it would be an interexchange service, it also would provide a more appropriate level of revenue to the ILECs than Bell Atlantic was receiving for the "local" traffic under the interconnection agreement between BA and Brooks.

Following comments that we received on that proposal, the Staff Advisors for the Commission issued an Examiner's Report and Supplemental Examiner's Report. The Examiner's Reports not only addressed the issue of the discounted rate mentioned above, but also recommended that we should order the NANPA to reclaim the 54 NXX codes that have been assigned to Brooks, and that we should disapprove Brooks's tariff filing in Docket No. 99-593 for "RX service."

Several parties filed exceptions and other comments to the Examiner's Reports. We will discuss those within the headings below.

III. RECLAIMING NXX CODES

In the Notice of the Investigation Case, we raised questions about the resolution of this case with respect to Brooks's use of the 54 NXX codes assigned to areas outside its Portland area exchange that Brooks has claimed are being used for local service.

We have made findings and factual legal conclusions about Brooks's service and the use of those codes, but we have not addressed the issue of the disposition of those codes in any detail since the initial Notice.

In the June 22, 1999 Order, we found that Brooks was not providing local exchange service in those locations of the state that are outside of its Portland area exchange, and that it was not using the central office (NXX) codes it had acquired from the North American Numbering Plan Administrator (NANPA) for the purpose of providing local exchange service. We found that Brooks has no local switching facilities or loops deployed in any of the locations outside its Portland area exchange to which the 54 non-Portland codes are nominally assigned. Brooks was instead using the NXX codes for the purpose of providing an interexchange service that it characterized as like foreign exchange ("FX-like").

Brooks's "FX-like" service uses the interoffice trunking of another carrier rather than dedicated facilities provided by Brooks. Brooks created the FX-like service by the expedient of acquiring a group of NXXs from the NANPA and assigning various geographic locations to them that are outside of its Portland area exchange, even though it had no local exchange customers in those locations and all of its local exchange service customers were located in the Portland area exchange. As a result, calls to the numbers assigned to locations outside the Portland area exchange, which in reality were calls to Brooks customers located in the Portland area exchange, were rated (at least by Bell Atlantic) as if they were calls to the assigned locations, e.g., Augusta. If a call originated within the Augusta basic service calling area (BSCA) and was directed to a Brooks number that was assigned to Augusta, Bell Atlantic rated it as a "local" call. Nevertheless, the call would be routed from a Bell Atlantic customer over a local loop owned by Bell Atlantic, through a local switch owned by Bell Atlantic, over trunking owned by Bell Atlantic to Bell Atlantic's access tandem in Portland, then to Brooks's switch in Portland, and finally to a Brooks ISP customer, also located in Portland.

Because Brooks was not using the 54 NXX codes for the provision of local exchange service, we found that it had no need for them, that their use by Brooks could lead to the exhaustion of NXX codes in the 207 area code, and that Brooks's use of those codes was an unreasonable act or practice by Brooks under 35-A M.R.S.A. § 1306.

The Federal Communications Commission (FCC) has delegated "significant additional authority" to this Commission to "take steps to make number utilization more efficient" and authorized the Commission to utilize "tools that may prolong the life of the existing area code." *In the Matter of Maine Public Utilities Commission, Petition for Additional Delegated Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, Order (Sept. 28, 1999) (FCC *Delegation Order*), ¶¶ 5, 8. The FCC stated:

The CO Code Assignment Guidelines provide that carriers shall activate NXXs within six months of the "initially published effective date." We are, however, concerned that enforcement of the Guidelines has been lax. Reclaiming NXX codes that are not in use may serve to prolong the life of an area code, because these codes are added to the total inventory of assignable NXX codes in the area code. Therefore, we grant authority to the Maine Commission to investigate whether codeholders have activated NXXs assigned to them within the time frames specified in the CO Code Assignment Guidelines, and to direct the NANPA to reclaim NXXs that the Maine Commission determines have not been activated in a timely manner. We also extend this reclamation authority to instances where, contrary to the CO Code Assignment Guidelines and Maine's rules, a carrier obtaining NXX codes has not been certified as a provider of local exchange service or has not established facilities within the certified time frame. This authority necessarily implies that the Maine Commission may request proof from all carriers that NXX codes have been "placed in service" according to the CO Code Assignment Guidelines as well as proof of certification in the specified service area and proof that facilities have been established within the specified time frame. We further direct the NANPA to abide by the Maine Commission's determination to reclaim an NXX code if the Maine Commission is satisfied that the codeholder has not activated the code within the time specified by the CO Code Assignment Guidelines or has obtained numbering resources without being certified to provide local exchange service.

FCC *Delegation Order* at ¶ 19 (footnotes omitted). According to the quoted portions of the *Delegation Order*, this Commission may require the NANPA to reclaim codes when a carrier either is not certified as a provider of local exchange service or fails to establish facilities within the required time period. *Delegation Order* at ¶ 19. The NANPA *CO Code Assignment Guidelines (Guidelines)* require carriers to "activate" codes within six months of the "initially published effective date." *Guidelines* at § 6.3.3. The failure to establish facilities is by itself a ground for reclaiming NXX codes. *Delegation Order* at ¶19.

A. Requirements that a Carrier Using NXX Codes Have Local Exchange Authority and Facilities

In its exceptions, Brooks argued that, as long as it had either obtained authority to provide service, or has met the test of establishing facilities, we cannot require the NANPA to reclaim codes assigned to Brooks. According to this argument, Brooks would be permitted to keep all the codes if it were acting contrary to Maine law with respect to authority but had established facilities in a timely way; or it could keep all the codes if it had lawful authority but had built no facilities. Brooks has misread the *Delegation Order*. Under that Order, there are two independent conditions that allow the Maine PUC to require the return of the codes: first, if Brooks has no authority for the

service it provides; and second, regardless of whether or not Brooks has authority, if Brooks has not established facilities within the allowed time.

In fact, Brooks has failed both tests. Brooks has not established facilities for local exchange (or any other kind of) service within the 6-month period required by the NANPA *Guidelines* in the areas outside its Portland area exchange to which the 54 NXX codes are assigned. Brooks has built absolutely no facilities (e.g., loops or switching) for local exchange (or any other kind of service) in those exchanges and has no customers in those exchanges.

Brooks has obtained general statewide authority under 35-A M.R.S.A. § 2102 to provide both local exchange and interexchange service.¹ That does not end the inquiry into whether Brooks has authority to provide service to a specific area, however. The FCC *Delegation Order* states that a carrier must be "certified" to provide local exchange service. We construe that statement, consistent with language in the *Guidelines*, to require that a LEC must obtain all necessary authority to provide the service that requires the use of NXXs. The *Guidelines* § 4.1.4 states that an applicant for an NXX code:

must be licensed or certified to operate in the area, if required, and must demonstrate that all applicable regulatory authority required to provide the service for which the central office code is required has been obtained.

We have previously found that Brooks does not have the authority under its approved terms and conditions to provide local exchange service in any location in Maine outside its Portland area exchange. Notwithstanding general authority under section 2102, a utility does not have the authority to provide service to an area, unless its approved terms and conditions define those areas as part of its facilities-based local exchange service territory. A utility cannot offer a service without approved terms and conditions "that in any manner affect the rates charged . . . for any service." 35-A M.R.S.A. § 304. Brooks's approved terms and conditions limit the service area in which it will provide local exchange service to its Portland area exchange. Under current policies, consistent with the *Central Office Code Guidelines* and the *FCC Delegation Order*, we will grant authority to provide facilities-based local exchange service only for areas where a LEC can demonstrate that it will be able to provide facilities-based service within six months. Absent that showing, we would not approve a term or

¹As pointed out by Brooks's exceptions, Brooks does have authority under section 2102 to provide interexchange service. It obtained that authority on September 9, 1997 in Docket No. 97-559.

condition for Brooks to provide facilities-based local exchange service outside its Portland area exchange.²

B. Requirement that NXX Codes Be Used For Local Exchange Service

In addition to the two requirements that are specifically stated in the FCC *Delegation Order*, we believe the *Delegation Order* and the *Guidelines* also require that NXX codes must be used for local exchange service rather than interexchange service. In our prior order we found that the "FX-like" service presently provided unlawfully³ by Brooks is interexchange. In reaching the conclusion in our prior orders that the Brooks "FX-like" service is an interexchange service, and that Brooks is not using the 54 non-Portland NXX codes for local exchange service, we relied primarily on the definitions of local exchange and interexchange services contained in Chapter 280 of the Commission's rules, and on the substantively identical definitions contained in the interconnection agreement between Brooks and Bell Atlantic.

In its exceptions, Brooks suggested that the NANPA *Central Office Assignment Guidelines* do not necessarily require that NXX codes be used only for local exchange service. We disagree. The *Guidelines* state that NXX codes "are assigned to entities for use at a Switching Entity or Point of Interconnection they own or control." *Guidelines* § 3.1 and 4.1. They "are to be assigned only to identify initial destination addresses in the public switched network." *Guidelines* § 3.1 (emphasis added). "Assignment of the initial code(s) will be to the extent required to terminate PSTN [public switched telephone network] traffic as authorized or permitted by the appropriate regulatory or governmental authorities" *Guidelines* § 4.1 (emphases added).

The quoted *Guidelines* leave little doubt that NXX codes are to be used only for the purpose of providing facilities-based local exchange service. IXCs generally do not terminate traffic at end-user locations. Except where they use special access (which, because it is dedicated, does not require switching or NXX codes), IXCs hand over their interexchange traffic to a facilities-based local exchange carrier, most often at a tandem switch. The LEC carries the call to a local switch and local loop, and then

²In our recent orders granting authority to provide facilities-based local exchange service, we have restricted the authority to provide service granted at the certification level pursuant to 35-A M.R.S.A. § 2101, rather than at the term and condition level. If Brooks should pursue an argument in any forum that it has the authority to provide facilities-based service throughout Maine solely because of the order granting it authority to provide local exchange service, issued pursuant to Section 2102 in Docket No. 97-331, we will not hesitate to reopen that Order and review whether we should amend it in a manner consistent with other recent orders.

³The "unlawfulness" of offering the present service is due to the fact that Brooks is offering the service without approved rate schedules and terms and conditions. As noted above, Brooks does have authority under 35-A M.R.S.A. § 2102 to provide interexchange service.

terminates the call at the called customer, i.e., the destination address. As we found in our prior orders, Brooks is not terminating traffic on "destination addresses" in any of the 54 non-Portland locations.

The conclusion that the *Guidelines* require that NXX codes be used only for local exchange service is supported by the requirement in the FCC *Delegation Order* that an applicant for an NXX code be certified as a provider of "local exchange service."

C. Further Discussion of Prior Finding that the Brooks Service is Interexchange

In finding that Brooks's "FX-like" service was interexchange, not local, we relied in part on Brooks's characterization of the service as being "like" foreign exchange service. Although foreign exchange service has a local component (the "local" service of one exchange is brought to a customer in another exchange, hence the name "foreign"), it is the routing of calls from one exchange to another, between which toll charges otherwise would apply, that makes the service interexchange.⁴ Brooks is correct that FX service has attributes of local service, because it brings local service to a remote location, but the primary purpose of FX is as a toll substitute, and we reaffirm our prior finding that FX is an interexchange service.

⁴The interconnection agreement between Brooks and Bell Atlantic does provide definitions of local and interexchange traffic; these definitions apply to the traffic of both Brooks and Bell Atlantic. They are identical to the Commission's definitions in Chapter 280. Under those definitions, we concluded that the traffic that originated from areas outside the Bell Atlantic Portland BSCA, and that terminated in Portland, is interexchange. Bell Atlantic and the other ILECs gather that traffic using their loops and local switches in the various locations outside Brooks's Portland area exchange, and they carry it over interoffice transport facilities to Brooks's only switch, located in Portland. Because the traffic is interexchange, it is subject to the access charge provisions of the Brooks-BA interconnection agreement (for interexchange traffic) rather than the reciprocal compensation provisions (for local traffic).

As explained in our prior orders, the definitions of interexchange traffic in Chapter 280, § 2(G) and the BA-Brooks interconnection agreement expressly depend on toll charges applying; traffic between exchanges that have "local" (EAS or BSCA) calling is not considered interexchange. The BA-Brooks interconnection agreement refers to BA's retail tariff to determine whether a call is local or interexchange.

If any doubt should arise about our interpretation of the Brooks-BA interconnection agreement, we would not hesitate to reconsider our approval of that agreement to ensure that its definitions of local and interexchange traffic would not lead to an exhaustion of scarce public numbering resources.

FX (foreign exchange) service in effect brings the local exchange service of a distant ("foreign") exchange to another exchange. Thus, for example, a customer located in Portland who subscribes to FX service for Augusta will be provided with an Augusta telephone number and may make calls as if the customer were located in Augusta. Calls to locations within the basic service calling area (BSCA) for Augusta will be toll-free. If the customer's Augusta telephone number is provided to callers located in the Augusta BSCA, they may dial that number and be connected, toll-free, to the customer in Portland. For customers (e.g., ISPs) seeking to gather traffic from distant exchanges without the caller incurring a toll charge, this is a particularly valuable feature of FX service. However, for "traditional" FX service, the customer must pay for the cost of the transport facilities (ordinarily dedicated) between Portland and Augusta. Those costs are often substantial. Customers subscribe to FX to avoid paying toll charges, and to allow others to call them without toll charges,⁵ but typically they must have substantial toll-calling volume between the two locations to justify the cost of the dedicated transport facilities.

Brooks's exceptions do not profess to relitigate our prior finding that its "FX-like" service is interexchange.⁶ Nevertheless, Brooks does cite to us a decision of the California Public Utilities Commission, *Order Instituting Rulemaking on the*

⁵Customers occasionally subscribe to FX service for an exchange that is within the BSCA of the home exchange. Nevertheless, even that FX service normally is for the purpose of avoiding toll charges. For example, a Portland customer might subscribe to FX service for Freeport, which is within the Portland BSCA. Freeport's BSCA includes Brunswick, but Portland's does not. Accordingly, the Portland customer, using the Freeport number, may call toll-free to locations, including Brunswick, that are within the Freeport BSCA; and persons in Brunswick may call toll-free to the customer in Portland by dialing the Freeport number.

⁶On May 1, 2000, AT&T filed a Petition to Intervene, accompanied by comments that purport to address our Order issued on June 22, 1999. When we grant a late petition to intervene, the intervenor is entitled to participate only in issues that are not yet settled and cannot seek to relitigate decided issues. AT&T's comments, however, do primarily argue that Brooks's "FX-like" service is local, notwithstanding the fact that this issue has been fully litigated. Nevertheless, we grant AT&T's petition so that we can address other arguments in its comments.

We cannot let pass, however, AT&T's statement that "ILECs themselves treat calls from their end-user customers to their own foreign exchange customers as local under their retail tariffs." AT&T's statement is nothing more than a description of the "local" component of FX service; it ignores the interexchange component. In any event, the placement of a service in a carrier's tariff is not necessarily determinative of its substantive character. As we found in our prior orders, the very purpose of FX service is as a substitute for toll (interexchange) calling, and FX customers pay substantial amounts in lieu of toll charges. AT&T and Brooks would have us redefine the interexchange component as "local."

Commission's Own Motion Into Competition for Local Exchange Service, Rulemaking 95-04-043; Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service, Investigation 95-04-044, Decision No. 99-09-029, California Public Utilities Commission, (Sept. 2, 1999) (California PUC Rulemaking/Investigation Order) apparently to support its argument that its existing "FX-like" service, and its essentially identical proposed RX service, are "economically efficient" and will avoid "unnecessary duplication" of the incumbent's network. We address those arguments in Part IV below. Brooks also claims, however, that the California PUC designated "foreign exchange service as a local exchange service."

The California Commission addressed a service configuration established by a "competitive local carrier" (CLC) that is identical to the configuration that Brooks established in Maine, with the distinction (probably insignificant in the long run) that the California CLC was using only two NXX codes.

We see nothing in the California PUC decision (particularly in the portion of the order quoted by Brooks) that suggests that FX service as a whole is local rather than interexchange. The California Commission did rule that charges to the *caller* should be rated by virtue of the "location" of the rate center (i.e., the location to which the rate center is assigned) rather than by the rate center of the ultimate destination. Thus, as under the present Brooks configuration in Maine, if the NXX were assigned to an area within the local calling area of the caller, no toll charge would be assessed on the caller. To that extent, the California decision is not necessarily remarkable.⁷ If, indeed, a carrier is offering a reasonable and legitimate FX service, the normal expectation is that end users who dial a "local" number will not be charged toll charges for those calls, even though those calls are routed to a place to which toll charges normally apply. Another normal expectation, however, is that the FX subscriber (the customer that causes the call to go to the remote exchange) pays rates for that transport service that take into account the lost toll revenue.

The California PUC did not ignore the interexchange component of the service. It addressed this component as a compensation issue, stating:

We conclude that, whatever method is used to provide a local presence in a foreign exchange, a carrier may not avoid responsibility for negotiating reasonable interexchange intercarrier compensation for the routing of calls from the foreign exchange merely by redefining the rating designation from toll to local.

⁷What is remarkable about the California decision, however, is the fact that such a substantial portion of the order addressed the issue of how calls made by end-users should be rated. The California approach would be paralleled here if our investigation concentrated primarily on the fact that some of the independent ILECs in Maine have rated the calls to the 54 non-Portland codes as toll calls to Portland.

The provision of a local presence using an NXX prefix rated from a foreign exchange may avoid the need for separate dedicated facilities, but does not eliminate the obligations of other carriers to physically route the call so that it reaches its proper destination. A carrier should not be allowed to benefit from the use of other carriers' networks for routing calls to ISPs while avoiding payment of reasonable compensation for the use of those facilities.

Cal. Order at 32.

And:

We conclude that all carriers are entitled to be fairly compensated for the use of their facilities and related functions performed to deliver calls to their destination, irrespective of how a call is rated based on its NXX prefix. Thus, it is the actual routing points of the call, the volume of traffic, the location of the point of interconnection, and the terms of the interconnection agreement – not the rating point – of a call which properly forms a basis for considering what compensation between carriers may be due.

Cal. Order at 36.

The California PUC never labeled the California CLC's "FX-like" service as wholly local or interexchange.⁸ Brooks's claim that the California PUC found the service to be local exchange service is incorrect.

While the comparison of Brooks's "FX-like" service to traditional FX service has some parallels, we find that an even better comparison is to 800 service. Unlike "traditional" FX service, the Brooks service does not use any dedicated lines. Instead, as in the case of 800 service, Brooks's "FX-like" calls are placed to a "toll-free" number and routed over trunking facilities to a distant location that normally incurs a toll charge. It is beyond argument that 800 service is interexchange and that the charges paid for 800 service are charges for an interexchange service, paid instead of regular toll charges.⁹ As discussed in more detail below, in connection with our rejection of

⁸Based on its discussion about the considerations to be addressed in determining proper compensation, it is arguable that the California PUC considers FX service to be neither local nor interexchange, but *sui generis*.

⁹The California *Rulemaking/Investigation Order* recognized that, in addition to FX service, "another traditional method to provide toll-free calling is '800' service," and that if the California CLC had provided 800 service, it would have to pay "intercarrier switched access charges."

Brooks's proposed RX service, there is nothing preventing Brooks from providing a true 800 service, aside from its apparent unwillingness to pay for it.

We also doubt that Brooks has any real interest in retaining the 54 non-Portland NXX codes for any technical or engineering reason, or for any reason beyond the economic advantage that the codes provided, since 800 or some equivalent service would provide the same or better toll-free access to ISP customers. A toll-free service that uses trunking facilities rather than dedicated facilities can be provided efficiently (from an engineering perspective) using either the Brooks "FX-like" configuration or an "800-like" configuration. The significant difference between the two methods is the vastly greater number of NXX codes used in the Brooks configuration. We suspect that the real difference to Brooks between those two alternatives is that, by continuing to argue that it should be permitted to use 54 NXX codes to provide its service, on the ground that the "FX-like" service is "local exchange service," it may hold onto its hope that it might avoid paying Bell Atlantic for the interexchange transport service provided by Bell Atlantic. By contrast, under an 800-like service, it would be clear without any doubt that Brooks would have to pay the legitimate interexchange costs of long-distance transport, either by using (and paying access charges for) the facilities of another carrier or by paying for the costs of providing its own facilities.

The record makes clear that Brooks's "FX-like" service is being used by Brooks's ISP customers for the purpose of allowing the ISPs' customers who are outside Portland (and who are customers of Bell Atlantic or other ILECs rather than of Brooks) to call the ISPs from locations throughout the state without paying toll charges. It has exactly the same purpose as "traditional" FX service: it is a substitute for interexchange toll service. Alternatively, it is a variant on "800" service, which is a recognized interexchange service. We therefore reaffirm our finding that Brooks's "FX-like" service is an interexchange service, not a local exchange service.

D. Conclusion to Part III: Reclaiming NXX Codes

In this Order, pursuant to our authority under the FCC Delegation Order, we order the NANPA to reclaim the 54 non-Portland NXX codes assigned to Brooks, pursuant to the schedule described in Part V below. Brooks is not using those codes for purposes that are consistent with the NANPA *Guidelines* or the requirements of the *FCC Delegation Order*. It does not have the authority from this Commission to provide local exchange service to anywhere in Maine outside its Portland area exchange (the municipalities of Portland, South Portland and Westbrook); it has no loop, switching or other facilities in, or local exchange service to, those areas; and the "FX-like" service that it is providing with the use of the 54 non-Portland NXX codes is an interexchange service.

With regard to the procedure that we must use to order NANPA to reclaim NXX codes, the FCC stated:

We note that the CO Code Assignment Guidelines dictate substantial procedural hurdles prior to reclamation of an unused NXX, in part to afford the codeholder an opportunity to explain circumstances that may have led to a delay in code activation... We clarify that the Maine Commission need not follow the reclamation procedures set forth in the CO Code Assignment Guidelines relating to referring the issue to the Industry Numbering Committee (INC) as long as the Maine Commission accords the codeholders an opportunity to explain extenuating circumstances, if any, behind the unactivated NXX codes.

FCC Delegation Order at ¶ 20 (footnote omitted).

Brooks has had an ample opportunity in this proceeding to contest the findings and rulings we have made previously, and in this Order. Our findings fully support an order to the NANPA to reclaim the unused Brooks codes.

In Part VI below we address a service, to be furnished by the ILECs (and other carriers who wish to provide it), that will provide a reasonable substitute for the Brooks service, so that ISPs and their customers may continue to have affordable access to the Internet. We expect that it will take some time to implement that service, and we do not want to disrupt service to either ISPs that subscribe to the Brooks service or their customers. We therefore will delay the effective date of reclamation for a period of six months after the date of this Order so that Bell Atlantic and other ILECs will have sufficient time to establish the services and rates described in Part VI, and so that ISPs (and IXCs on a wholesale basis) will have a reasonable opportunity to subscribe to those services.

IV. CLAIMS BY BROOKS AND OTHER PARTIES THAT THE COMMISSION'S RULINGS IMPEDE COMPETITION AND EFFICIENCY

Brooks and others make an argument suggesting that the Commission's findings and rulings, and the rulings proposed in the Examiner's Report (that we now adopt), will impede local competition in Maine. In our view, the activities of Brooks that we have investigated in this case have nothing to do with local competition. Brooks's service does not create any local exchange service or competition whatsoever outside the Portland area exchange, which is the only exchange in which Brooks has any local exchange customers. The amount of local exchange competition created by Brooks's "FX-like" service is precisely the same as the amount of local exchange competition created by WorldCom's 800 service offerings in Maine's remote regions, i.e., none. Brooks has not built any local exchange facilities in the exchanges outside of Portland, and Brooks has no customers in those exchanges. Brooks has no contact with the callers in those exchanges who use Brooks's service to call the ISPs and has no idea who is "using" the service. The callers are in fact customers of Bell Atlantic, of the independent ILECs, and possibly of other CLECs. There is nothing that Brooks is providing in any of those non-Portland exchanges that resembles local competition in

any meaningful sense of the word, a fact borne out eloquently by all of the activities Brooks is not doing.

Contrary to what Brooks, AT&T and some others have implied, this Commission has been extremely receptive to, and supportive of competition for all facets of telephone service. On the interexchange side, the Commission has acted vigorously to reduce access rates everywhere in Maine, all to the advantage of vigorous interexchange competition. With respect to local competition, we have recently allowed, over the ILECs' objection, a trial of facilities-based local competition using Internet Protocol (IP) to go forward with virtually no regulatory intervention.¹⁰

The comments and exceptions filed by Brooks, as well as those by AT&T, also suggest that the Commission is constraining competition by placing restrictions on Brooks and other competitors in the way they define their local calling areas. Specifically, Brooks suggests the Commission is requiring it to be bound by the definitions used by incumbent local exchanged carriers (ILECs), and that such restrictions on competitive LECs are not appropriate in a competitive marketplace. On the contrary, we have not restricted Brooks or any other CLECs from how they define their own retail local calling areas or from the retail rates they want to charge. Brooks is free to offer calling areas of its own design so long as, when it uses the facilities of others to accomplish that end, it pays for those facilities on the basis of how their owners define them for wholesale purposes (interexchange or local). Wireless carriers already offer calling areas vastly different from those offered by wireline carriers, but have built (or leased) facilities that enable them to provide such calling areas.

With its "FX-like" service, however, Brooks is not attempting to define its own calling area. In the areas to which the 54 non-Portland Brooks NXX codes are assigned, Brooks is not offering a different calling area from those offered by the LECs. Its "FX-like" service is not a "local calling area" for Brooks's customers (who are all in Portland) or for anyone else. What Brooks is doing in the non-Portland locations is offering free interexchange calling to customers of *other* LECs that allows them to call a selected number of Brooks customers (ISPs) located in Portland. Brooks is in effect attempting to redefine the local calling areas of *other* LECs. If Brooks had any of its *own* customers served by its own facilities (either by building them itself or by purchasing UNEs), in one of the locations outside of Portland, e.g., Augusta, and offered those customers the ability to call *all* customers in Portland without toll charges, then it could be said that Brooks offered a local calling area in Augusta and, in particular, that its local calling area differed from the ILEC's local calling area. With its own customers in any area, Brooks would be free to delineate whatever "calling area" it wants for those customers, subject to the condition that if such a call is carried over the facilities of another carrier, it must compensate that carrier for the use of its facilities. However, Brooks has no authority to provide local exchange service and no facilities or

¹⁰ See *Time Warner Cable of Maine, Request for Advisory Ruling Regarding Pilot Program*, Docket No. 2000-285, Advisory Ruling (Apr. 7, 2000).

customers in locations outside of Portland, and therefore cannot and does not have "local calling areas" in those places.

As discussed above, what Brooks is attempting to do is offer free incoming long distance *interexchange* service to customers of ILECs who are outside Portland and who want to call Brooks's customers in Portland. Although that goal should not be confused with the offering of a local calling area, we have no objection to the goal itself. Our objections are to the use of 54 NXX codes to accomplish that end, when reasonable alternatives exist; and to the notion that Brooks is somehow entitled to use the facilities of someone else, for free, to accomplish that goal. When a carrier uses facilities of others, it cannot unilaterally redefine wholesale arrangements between itself and the carriers that actually carry its traffic simply by declaring that its calls are "local" if that recharacterization is to its financial advantage. A carrier's retail definitions of local and interexchange do not govern whether it pays local or interexchange wholesale rates to other carriers that carry its traffic.

Brooks also suggests that we are deterring it from deploying a more efficient means of providing foreign exchange service, stating that its service is "an efficient functional equivalent to the *local service* provided by the incumbent BA-ME" (emphasis added). The claim is extravagant: Brooks is not offering an equivalent to local service, i.e., an ability to call all customers within a local calling area. At best, it is offering an "efficient functional equivalent" to Bell Atlantic's foreign exchange service. If the need to conserve NXX codes were not a concern, Brooks's claim that a trunking-based FX system is more economical than a system that uses private lines might have merit.¹¹ However, 800 service also uses trunking rather than dedicated lines between exchanges and provides the same level of efficiency as the Brooks "FX-like" configuration, but does not require any NXX codes.¹² Brooks's approach may be "innovative," but its claim that our orders "discourage the use of new technologies," and

¹¹The use of trunking facilities, which are shared by all users, is typically more cost-efficient than the use of facilities that are dedicated solely to the use of a single customer. On the other hand, at least for some customers, foreign exchange service that uses private lines that are dedicated solely to the use of that customer are likely to be more reliable because blocking either of trunking circuits or switching, caused by high traffic volumes, is less likely to occur. Emergency 911 and alarm services typically use dedicated circuits to reach remote exchanges.

¹²The California *Rulemaking-Investigation Order* suggests that in the absence of allowing California CLCs the option of using NXX codes for the purpose of providing an "innovative" FX service, CLCs would be required to place switching in every location in which they wished to have a local presence. It does not appear that the California PUC considered 800 service as a reasonable alternative to the NXX-code-based FX service. If one of Brooks's customers in Portland subscribed to an 800 service (provided by Brooks or any other carrier), it would not be necessary for Brooks (or one of the California CLCs in a parallel situation) to place switching in remote exchanges. With 800 service, a local customer in Augusta who was served by a LEC other than Brooks

its suggestion that it should not be saddled with the configuration of the ILECs' network, is disingenuous. Brooks is quite willing to use that network to reach the Brooks switch in Portland, but does not want to pay for its use.

V. REJECTION OF BROOKS'S PROPOSED RX SERVICE

In Docket No. 99-593, Brooks filed proposed terms, conditions and rates schedules for it to provide "Regional Exchange (RX) service." We disapprove the filing because we find the proposed service is not just and reasonable and because Brooks cannot provide the service without the 54 non-Portland NXX codes, which are not available to it for this service.

Pursuant to the provisions of Chapter 110, § 1003(b) of the Commission's rules, we issued a summary Part I Order on May 26, 2000 for this docket stating our conclusions. Part V of this Order constitutes Part 2 of the Order for Docket No. 99-593.¹³

The proposed service would use 54 (or more) NXX codes solely for the purpose of rating calls, so that calls from various locations throughout the State that terminate in Portland would be rated as local (non-toll). While it is a legitimate goal for a carrier to provide toll-free interexchange calling, there are reasonable alternatives to the service proposed by Brooks that do not needlessly use scarce NXX codes. One of those is traditional 800 service; another is the 800-like service we have ordered the ILECs to provide. Neither of these uses any NXX codes within the 207 area code. Nothing prevents Brooks, as an interexchange carrier, from providing an 800-like service itself. Nothing prevents it from buying such a service from another carrier, for example, its parent WorldCom. Under the present circumstances, where we are attempting to avoid the need for an additional area code in Maine, and where other services are available that are technologically equivalent, Brooks's use of 54 codes solely for the rating of interexchange traffic is unreasonable.

No service (even if there were appropriate compensation to the carrier actually providing the interexchange transport) justifies the extravagant use of NXX codes and 7-digit numbers within those NXXs proposed by Brooks. It would take only two or three

(e.g., Bell Atlantic) would dial an 800 number. That number would be switched by a switch owned by the LEC providing service in Augusta and then routed to Brooks's customer in Portland. Brooks would need switching only in Portland.

¹³On June 2, 2000, the Examiner, pursuant to Chapter 110, §§ 103 and 1302, issued a Procedural Order that stated good cause for suspending the 5-day deadline for the issuance of the Part 2 Order.

The Part I Order in Docket No. 99-593, as well as the Procedural Order, incorrectly identify the date of deliberations as May 16, 2000. The correct date was May 9, 2000.

more Brooks-like arrangements, each with one ISP customer, to completely exhaust Maine's numbering resources. Brooks proposes to use numbers at the rate of 550,000 for ten customers (equivalent to a "fill" rate of under two one thousandths of one percent). Brooks also suggests that "in a pooling environment, Brooks's . . . use of limited NXXs cannot be said to encourage exhaustion." "Pooling" is the allocation of 1000 numbers within an NXX, which contains 10,000 numbers. Although pooling, which will occur soon, provides sufficient flexibility to allow us to delay the return of the particular codes that Brooks is not using for local exchange service for six months, its suggestion is not persuasive. A use rate of ten in 55,000 is not that much better than ten in 550,000. It is also likely that in a majority of the locations to which the Brooks codes have been assigned, there will not be any competitive LEC service in the near future. If there are no other CLECs to use some or all of the other 9000 numbers, assigning Brooks 1000 numbers out of 10,000 effectively ties up all of the 10,000 numbers in an NXX and would prevent the NXX from being used more effectively in a different location. Moreover, if in exchange where only Brooks was assigned a 1000 block of numbers, it were to use only 10 numbers, the use rate is still only ten in 550,000.

Brooks's proposed service (like the identical "FX-like" service it is presently offering without authority) also *depends* on the use of the 54 non-Portland NXX codes; it cannot offer the service without them. Those codes are not available to Brooks for the proposed service any more than they are for its present "FX-like" service. The reasons given in Part III, in support of our ruling that Brooks could not use the codes for the present service, apply with equal force here. Brooks does not meet any of the requirements of the FCC *Delegation Order* and the NANPA *Guidelines*. It does not have authority to provide local exchange service in any of the 54 non-Portland areas, and it has no facilities in those locations for the provision of local exchange service. In addition, the proposed service is an interexchange service rather than a local exchange service, and NXX codes may be used only for local exchange service.

Brooks argues that we should follow the reasoning of the California PUC *Rulemaking-Investigation Order* in order to allow it to use the codes for the purpose of providing the FX-like/RX service. We decline to do so for three reasons. First, the California PUC did not even consider the important questions of whether a carrier using an NXX must provide local exchange service to the place where the code is assigned, whether it must have local exchange facilities, or whether NXX codes may be used for interexchange services. It did not discuss the NANPA Guidelines or the contents of the delegation order that the FCC has issued to the California PUC granting it certain authority over the use and assignment of NXX codes.¹⁴

¹⁴As discussed above in Part III, the California PUC did not even clearly rule that the service being offered by its CLCs – virtually identical to the service offered by Brooks in Maine – was a local exchange service.

Second, even if the California PUC could lawfully allow CLCs in California to use NXX codes for a service like Brooks's service in Maine, it is apparent, as a policy choice, that the California PUC has placed a higher value on the ability of its CLCs to offer the FX-like service based on the use of NXX codes than on the conservation of those codes. It stated:

We disagree with Pacific's claim that the Pac-West service arrangement should be prohibited because it contributes to the inefficient use of NXX number resources. While we are acutely aware of the statewide numbering crisis and are actively taking steps to address it, we do not believe that imposing restrictions or prohibitions on CLC service options is a proper solution to promote more efficient number utilization.

We disagree. While the California PUC sees no reason to "impos[e] restrictions or prohibitions on CLC service offerings," we see no reason why a carrier should be permitted to use scarce NXX codes for gathering interexchange traffic when there are technologically efficient methods (e.g., 800 service) to accomplish the same end, without using NXX codes.¹⁵ The California PUC did not address whether an 800 service configuration would be a reasonable alternative for using codes for a non-dedicated FX-like arrangement.¹⁶

Third, and perhaps most significant, it appears that the California CLCs may actually have been offering true local exchange service (in addition to the NXX-code-based "FX-like" service) in the locations to which the NXX codes had been assigned. The California Commission stated:

Moreover, there is no reason to conclude necessarily that a carrier will use any NXX code only to provide service to ISPs which are located outside of the assigned NXX rate center. For example, both Pac-West and WorldCom report they are actively pursuing numerous opportunities to provide profitable telecommunications services throughout their service areas. Their current subscribers include paging companies that have a significant demand for local DID

¹⁵The NANPA reports that California presently has 25 area codes. 12 of which codes are in "jeopardy" and 11 of those 12 are subject to "extraordinary measures," i.e., rationing. Number Assignments; NPAs in Jeopardy (visited June 20, 2000) <http://www.nanpa.com>

¹⁶Given the California PUC's statements that the CLCs should pay ILECs that transport the call more than nothing for that transport, but should also not pay switched access rates, it should make little difference to the California CLCs whether they offer an NXX-code-based FX service based on the use of NXX codes or an 800 service.

numbers, which they, in turn, assign to local end users who typically *are* physically located in the assigned rate centers. (emphasis in original) Customers also include banks, retail stores, and other businesses, both located *inside* and *outside* the assigned rate centers. (emphasis added)

California PUC *Rulemaking/Investigation Order* at 16-17.

While that reason appears to be little more than "make-weight" to the California PUC, we would consider such service to be highly significant. If Brooks actually offered local exchange service to customers located in any of the areas to which the 54 non-Portland codes have been assigned (on other than a sham basis), it would have a legitimate claim to retain the codes.

For the foregoing reasons, we disapprove the proposed terms, conditions and rates proposed by Brooks in Docket No. 99-593. Brooks is, of course, presently providing the very service it has proposed in the tariff filing, but without authority. We will require Brooks to terminate the present unauthorized service on the date that the NANPA reclaims the NXX codes assigned to Brooks that are located outside the Brooks Portland area exchange. We will, however, delay the effective date of our orders to the NANPA for a period of six months and will permit Brooks temporarily to continue to offer the present service to its currently existing customers during that period. As stated in the Part I Order in Docket No. 99-593, Brooks must file a tariff for this grandfathered service, or special contracts with the existing customers.

VI. ILEC SNS/PRI ("500") SERVICE FOR ISPs AND IXCs THAT SERVE ISPs

A. Service Description and Requirement; Rates

In the June 22 Order, we proposed that Bell Atlantic and all other ILECs (the independent telephone companies or ITCs), in their roles as providers of interexchange service in Maine, offer a special service and retail rate for ISPs that would represent a substantial discount from existing retail toll rates. The service would also provide Bell Atlantic and the other ILECs with a more appropriate level of revenue than the amounts BA-ME has "received" as "local" reciprocal compensation (which actually are payments by BA to Brooks) under Brooks's interpretation of the interconnection agreement between Brooks and Bell Atlantic. We also proposed that the service be available on a wholesale basis to other IXCs.

There are two purposes to this service: to provide affordable statewide access to the Internet and to provide an appropriate level of compensation to interexchange carriers that actually carry the traffic and to LECs that originate and terminate the traffic. Those carriers include Bell Atlantic, other ILECs that provide interexchange service or interexchange access service, and any other IXCs that might offer similar special ISP service on their own. At present, Brooks is providing affordable access, but it is needlessly wasting 54 NXX codes to provide the service and is not

properly compensating Bell Atlantic and other ILECs for the use of their interexchange facilities. We have found Brooks's service to be unreasonable and unlawful. Brooks's service also has not been available statewide on a toll-free basis. Most ITCs have rated the traffic to the Brooks NXXs that are nominally assigned to areas outside Portland as toll, because the traffic actually terminates in Portland rather than in the nominally assigned locations, and at least two have blocked the traffic.

We note that some of the discussion below refers only to Bell Atlantic. Some refers to ILECs generally or to Bell Atlantic and other ILECs. For example, where we discuss present impacts of Brooks's service, we usually refer only to Bell Atlantic. Bell Atlantic has been the primary carrier of the traffic generated by the Brooks service. Bell Atlantic also has an interconnection agreement with Brooks, and, at least until we found that the traffic was interexchange, Bell Atlantic paid Brooks reciprocal compensation for the "local" traffic that Bell Atlantic carried over its toll network. By contrast, the other ILECs (ITCs) do not have interconnection agreements with Brooks. Most ITCs have rated the traffic to the Brooks 54 NXXs assigned to areas outside Portland as toll, with the result that there is relatively little traffic originating in ITC exchanges that terminates at Brooks's ISP customers in Portland. In addition, as explained below, Bell Atlantic will be providing the retail service and the other ILECs will be providing access service. We fully intend, however, that all ILECs will participate in providing the service, that the service will be available statewide on a toll-free basis to end-users who are customers of ISPs, and that there be reasonable compensation arrangements among Bell Atlantic, other ILECs and any other participants.

We proposed a special rate for two reasons. Both of these are related to our findings that the ISP traffic carried by Brooks (only from its switch to its ISP customers) is interexchange rather than local in nature; and that Bell Atlantic and other ILECs actually carried the traffic over their transport facilities from locations outside the Portland calling area to Brooks's Portland switch. First, we want to ensure that Internet subscribers are able to continue to subscribe to the Internet at reasonable rates, consistent with the Legislature's mandate of "affordable" Internet access in 35-A M.R.S.A. § 7101(4), even though the traffic at issue in this case is interexchange rather than local. Second, we intend that the rate will fairly compensate Bell Atlantic and other ILECs that will be carrying or providing access for this interexchange traffic. We proposed that the service would be toll-free to end-users, much like an 800 service, and that it would avoid the need to use NXX codes within the 207 area code, again much like an 800 service, which uses no 207 NXX codes.

In its comments of July 14, 1999, Bell Atlantic proposed a service (labeled Single Number Service/Hubbed Primary Rate ISDN, or SNS/PRI) essentially identical to that proposed by the Commission, except for price.¹⁷ As under the Commission's proposal, the SNS/PRI service would use numbers that would be toll-free to end-user

¹⁷The SNS/PRI service configuration uses advanced intelligent network (AIN) database capability and is therefore technically superior to circuit-switched 800 service.

customers. Each ISP could be assigned one (or more) 7-digit number within the "500" prefix.¹⁸ There would be no need to use any NXX codes within the 207 area code.¹⁹

The SNS/PRI service is an interexchange service, and the rate is an interexchange rate, for traffic that the Commission has found is interexchange. It is also a *retail* service offered to ISPs. The rate to ISPs will be flat. There will be no usage component (per-minute or otherwise). The subscribers to the rate will be ISPs, not individual customers of ISPs. The service is an *inward* (called party pays) service; ISP customers would be able to call the "500" numbers without paying toll charges.

Under recent changes to the interexchange relationship between Bell Atlantic and the other ILECs (ITC), Bell Atlantic provides retail interexchange toll services to ITC customers in the local service territories of all of the ITCs, except one.²⁰ The ITCs provide access service to Bell Atlantic and other IXCs. The IXCs pay access charges according to rate schedules on file with the Commission. Pursuant to contract, the ITCs also bill their local exchange customers for Bell Atlantic's retail toll service, and turn over that retail revenue to Bell Atlantic. Unlike the other ITCs, Saco River Telegraph and Telephone Company provides its own interexchange service to its local exchange customers and pays Bell Atlantic and other ITCs to terminate its traffic.

Some questions have been raised about the participation of the independent ILECs, specifically about "concurrence" by those companies in Bell Atlantic's interexchange rate schedules. Historically, the independent telephone companies (ITCs) have concurred in those schedules. Under that concurrence (and the now abandoned settlements process), Bell Atlantic and the ITCs provided interexchange services jointly. Although some ITCs may still "concur," we view concurrence, or the lack thereof, as irrelevant under the present arrangement between Bell Atlantic and the ITCs, where Bell Atlantic provides interexchange service to retail customers located in ITC local service territories and the ITCs provide interexchange access services to Bell Atlantic.

¹⁸Brooks's exceptions claim that Bell Atlantic cannot use "500" numbers for the proposed service. If Brooks is correct, we expect Bell Atlantic to obtain another prefix that it may use for the service.

¹⁹Great Works Internet (GWI), a customer of Brooks, states, somewhat misleadingly, that the proposed SNS/PRI service would require "20,000 internet users to change their numbers." The service would not require any of these users to change their home or business telephone numbers. They would only have to change the number that they dial to access internet service. The vast majority of these users would have to make a one-time change to the number in their computer software that provides access to the Internet. That software automatically dials the number.

²⁰Other IXCs, such as AT&T, Spring and WorldCom, also provide interexchange service to local service customers of ITCs.

In response to a set of questions filed by the ITCs, Bell Atlantic stated that the ITCs will offer the SNS/PRI services only if they specifically concur or independently establish their own rate schedules for these services and agree upon compensation with Bell Atlantic. Bell Atlantic also stated that the tariff it is preparing will not include provisions "for the exchange of traffic for this service between BA-ME and the ITCs, in either the originating (i.e., ITC originated to BA-ME's ISP terminating subscriber) or terminating (i.e., BA-ME originated to ITC's terminating ISP subscriber) direction."

Consistent with the description above concerning toll services generally, we will require Bell Atlantic to offer the retail SNS/PRI service to ISP customers located in ITC local exchange service areas, and to allow customers of ITCs to call ISPs located in Bell Atlantic local exchange territory.²¹ We also will require the ITCs to provide access service to Bell Atlantic and other IXCs. Rate schedule concurrence is not necessary. ITCs will also provide (sometimes jointly with Bell Atlantic) any necessary dedicated facilities (local distribution channels) to ISPs located in their territory. In response to the question asked by the Telephone Association of Maine (TAM) in its exceptions, concerning whether we are requiring BA to offer "toll plans statewide," including areas served by ITCs, the answer for the SNS/PRI service is yes.

B. Retail Pricing

BA proposed rates that would be "non-usage sensitive and non-distance sensitive and will probably fall in the range of \$500-\$600 per month, per SNS/PRI facility." In its March 24, 2000 filing, it stated that the rate for such a facility would be "approximately \$500." A retail ISP subscriber must obtain a minimum of two SNS/PRI facilities, one in each of the two "sector hubs" for the service, located in Portland and one in Bangor. In addition, an ISP would need "appropriately sized Local Distribution Channels to connect the ISP's location to a single interconnection point on BA-ME's network," at flat-rated prices equal to special access prices, which are distance sensitive.

Bell Atlantic characterized these rates as "affordable" (the statutory standard) rather than based on a possible pricing standard mentioned in the Commission's Order, long run marginal cost.

No party objected to BA's proposed pricing for the retail service, either in earlier comments or in exceptions. The earlier comments filed by Brooks claimed that the proposed Bell Atlantic retail rate would not allow Brooks to "compete." Brooks did not state the reason for this claim, beyond the further conclusory statement that the proposed rate includes a "discriminatory rate structure that will make this service

²¹In the case of 800 service, 800 service customers located in BA-ME territory are able to receive calls from *all* locations in Maine including calls originated by ITC end-users. A BA-ME 800 service customer does not have to subscribe to an ITC service to receive those calls from end-users whose exchange service is provided by an ITC. We expect the same to be true with this SNS/PRI (500) service.

uneconomical for CLECs [sic] to provide."²² Nothing precludes Brooks from offering a similar retail service using its own facilities and ILEC access services or through resale of the Bell Atlantic service. As proposed in the Commission's June 22, 1999 Order and in Bell Atlantic's proposal, the retail rate would be available at a wholesale discount so that other IXCs would be able to resell it. Bell Atlantic states that the discount in Maine is presently 18-20%.

The rate proposed for this service by Bell Atlantic is acceptable. It represents a substantial discount from the toll rates for the calling volumes directed to ISPs. It satisfies the criterion of 35-A M.R.S.A. § 7101(4), which requires "affordable access" to computer-based information services. Although not required to do so, competitive IXCs may also offer a similar service. In order to facilitate such offerings by IXCs, Bell Atlantic shall also offer a discounted wholesale rate as required by 47 U.S.C. § 251(c)(4). That requirement applies to "any telecommunications service that the carrier [any ILEC] provides at retail to subscribers who are not telecommunications carriers." The requirement does not make any distinction between local exchange and interexchange service. The amount of the discount represents billing and other costs that the ILECs avoid by providing the service on a wholesale basis to IXCs rather than on a retail basis to ISPs.

The Examiner's Report proposed to require Bell Atlantic to provide an additional rate for wholesale customers (IXCs) that would equal the wholesale rate described above, but that would be broken down into separate components of switching, transport and a remaining "common line" amount, similar to the current structure for access rates. The Examiner and advisors apparently believed that a carrier providing service to an ISP could use its own switching, for example, and purchase only transport and the common line component from Bell Atlantic or other ILECs, thereby avoiding the ILEC switching charge. According to Bell Atlantic's exceptions, that assumption is not correct:

²²Because the service is interexchange, Brooks's statement quoted above should be read as applying to the ability of IXCs to provide the service.

Brooks's exceptions provide a little more specificity to its objection. We discuss that objection below.

SNS/PRI uses select network facilities to extend a wide-area calling area to an ISP's end users from the PRI hub locations. This investment includes hub switching, direct interoffice transport (where available), Advanced Intelligent Network (AIN) database capability and dedicated terminating facilities to the ISP end user. All of these network components must be in place to efficiently route calls under the SNS/PRI service.

As a consequence, a competing carrier wishing to provide a service comparable to SNS/PRI on a facilities basis cannot own only a terminating switch, as the Examiner apparently envisions. Instead, a competing facilities-based provider must obtain all of the foregoing network facilities which enable BA-ME to provide SNS/PRI. There is no way for BA-ME to "break down" its retail service architecture into a wholesale access rate structure, as the switched access rate categories of common line, switching, and transport do not correspond to the investment in SNS/PRI-related facilities.

Brooks made a similar argument, claiming in effect that the "bundled" service "excludes" competition for what it refers to as the "local service component," i.e., the local distribution channel. Brooks apparently views the "local distribution channel" as a "local component" in part because of its name and its location in Bell Atlantic's tariff. A "local distribution channel" is a facility that runs between a switching facility and a customer. Such a facility is dedicated to that customer's exclusive use and, depending on purpose, may also be called a "local loop" or "special access." The facility, whatever it is called, is capable of carrying both interexchange and local traffic. The service that Bell Atlantic's and the ITCs will offer is an integrated interexchange service that carries interexchange traffic. Brooks apparently agrees with Bell Atlantic's claim that the service is an integrated one and cannot feasibly be broken down into components. Accordingly, we will not require Bell Atlantic and the ILECs to offer services consisting of the three components individually as suggested by the Examiner's Report.

Brooks, in its earlier comments, also complained that if the Commission ordered the proposed service, it would not be permitted to collect anything for traffic that originates on another carrier's network and that terminates at Brooks's facilities. The problem for Brooks is not whether it may collect compensation for terminating traffic, but whether there will be any terminating traffic, once its present unauthorized "FX-like" service ceases. The Bell Atlantic-ILEC SNS-PRI service will be provided directly to ISPs that subscribe to the service. That traffic will be carried directly to a subscribing ISP by Bell Atlantic (and, if the ISP is located in ITC territory, locally by the ITC). Unless Brooks (as an IXC) establishes a competing similar interexchange service, which it is

obviously free to do, none of the present "FX-like" traffic will terminate on Brooks's facilities. The question of compensation for nonexistent traffic is therefore academic.²³

C. Compensation Among ILECs

Many, and perhaps most, ISPs are located in Bell Atlantic territory.²⁴ Under the SNS/PRI service, if an end user who is located in independent telephone company (ITC) territory places a 500-NXX-XXXX call to one of the ISPs located in BA territory, the ITC is entitled a "terminating" access payment from Bell Atlantic.²⁵ Conversely, when an ISP is located in ITC territory, and a Bell Atlantic customer dials a 500 number assigned to that ISP, the ITC is entitled to an "originating" access payments. In its Response, Bell Atlantic stated that because the SNS/PRI service was heavily discounted, it would not pay the ITCs their standard access rates. Bell Atlantic stated:

[T]he proposed tariff does not cover the terms and conditions for the exchange of traffic for this service between BA-ME and the ITCs, in either the originating (i.e., ITC originated to BA-ME's ISP terminating subscriber) or terminating (i.e., BA-ME originated to ITC's terminating ISP subscriber) direction. The specific terms and conditions for the exchange of this traffic would have to be negotiated in arrangements between BA-ME and the ITCs because existing agreements for the exchange of toll and local traffic between BA-ME and the ITCs do not cover the special class of traffic created by the Commission in this docket and served by this new SNS/PRI offering.

It also stated:

An ITC would need to determine for itself whether it desired to offer this service to its subscribers by concurring

²³Even if Brooks were somehow able to retain the ISP customers (other than in a resale capacity), so that it still had terminating traffic, the traffic would be interexchange, not local. The BA-Brooks interconnection agreement requires that regular access charges apply to interexchange traffic. BA would not pay reciprocal compensation to Brooks.

²⁴At the time the Commission made its factual findings in the Order issued on June 22, 1999, all of the ISPs that are customers of Brooks were located in Portland. Bell Atlantic is the ILEC that serves Portland.

²⁵As in the case of 800 service, because it is an inward service (the called party pays), "originating" and "terminating" access designations are reversed.

in BA-ME's filed tariff terms and conditions.²⁶ The terms and conditions (including cost recovery) for the exchange of traffic originating or terminating on an ITC's network would need to be negotiated between BA-ME and the ITCs, most likely on the basis of an equitable division of the retail rate permitted by the Commission to be charged to the ISP subscriber.

The origination of a call by an ITC subscriber to a BA-ME "500" or "555" ISP subscriber is not traditional access service by the ITC because the Commission has determined that BA-ME's provision of the interoffice transport and delivery of this traffic is not to be considered or rated as traditional toll service. The Commission, in this docket, has created an entirely separate class of service for Internet-bound traffic only.

The Telephone Association of Maine (TAM) strongly urges us in its exceptions to address the matter of inter-company compensation. The Examiner's Report had suggested that under 35-A M.R.S.A. § 7901 jurisdiction over inter-company compensation issues may be limited to occasions where the companies cannot agree. Subsection 2 of section 7901 does indeed address dispute resolution. Subsection 1, however, makes clear that the Commission has direct jurisdiction over "rates, tolls or charges" for the "transfer of messages or conversations" over lines that are connected between carriers without regard to the existence of a dispute. In addition, we have ample authority under 35-A M.R.S.A. § 1303 to investigate a matter such as inter-company compensation, and that issue surely is reasonably now within the scope of this case, which is an investigation under section 1303.

At least initially, BA, the ITCs and the Commission staff shall address the question of inter-company compensation in a collaborative manner pursuant to a schedule to be established by the Examiner. For that reason, as noted in Part V, we will allow BA and the ITCs a period of up to six months to address compensation issues, as well as any administrative matters that may arise.²⁷

In addressing the compensation issues, BA, the ITCs and the Advisory Staff should be aware of the following considerations:

²⁶We have addressed the "need" for ITCs to "concur" at Part VI.A above.

²⁷As noted in Part V, Brooks may continue to offer the unauthorized NXX-based "FX-like" service to existing customers only for the full 6 months.

1. It is not entirely clear (contrary to Bell Atlantic's assertions) that "existing agreements for the exchange of toll and local traffic between BA-ME and the ITCs do not cover the special class of traffic" It is not clear that existing access tariffs or contractual arrangements between the Bell Atlantic and the ITCs exclude any specific class or type of interexchange traffic from existing access tariffs or compensation arrangements.
2. As claimed by Bell Atlantic, the Commission has established a special category of interexchange toll service for Internet traffic, to be priced substantially below existing toll rates. Bell Atlantic asserts that "BA-ME's provision of the interoffice transport and delivery of this traffic is not to be considered or rated as traditional toll service." The Commission, however, has not made any finding at this time concerning whether special compensation arrangements are necessary for the SNS/PRI service.
3. If the ITCs charged their existing access rates for the origination of this traffic, Bell Atlantic most likely would be paying more to the ITCs than it would be collecting from its retail customers, the ISPs. We also note, however, that in the recent past, there has been no direct relationship between access revenue billed as a result of calling by a particular customer and the amount of retail revenue obtained from that same customer. Access rates are the same for all minutes and no longer vary according to calling volumes (as they did under versions of Chapter 280 of the Commission's rules prior to the enactment of 35-A M.R.S.A. § 7101-B) Retail rates vary considerably, however.
4. A substantial amount of the Internet traffic originating in ITC territory that will terminate in Bell Atlantic territory will be incremental. At least two ILECs block the traffic that would otherwise be directed to ISP customers of Brooks. Most ITCs charge regular toll rates for that traffic. Accordingly, the ITCs presently are not receiving a significant amount of access revenue for that traffic because blocking prevents, and per-minute toll rates deter, end users from subscribing to ISPs that are located in Bell Atlantic territory.

D. Other Issues

The exceptions of the Telephone Association of Maine (TAM)²⁸ state that some ITCs have switches that are not currently capable of providing PRIs. We will request the ILECs to address this matter in the collaborative process that we require in Part VI.C above.

²⁸The ITCs and Bell Atlantic are all members of TAM, but at least on the issues addressed in this Part VI, it is clear that TAM represents the interests of the ITCs.

TAM's exceptions also note that the June 22, 1999 Order stated that "the rate would not be available to ISPs that offer voice services over the Internet." TAM states that it:

believes this to mean that no customer subscribing to the service may do so for the purpose of carrying voice traffic. TAM is not aware of anything in the proposal that would prevent a company other than an ISP from subscribing to this service.

TAM then asks whether the Commission intends that the service should only be used by ISPs.

We do intend that the service be available only to ISPs. That limitation should appear in Bell Atlantic's terms and conditions. 35-A M.R.S.A. § 7101(4) justifies a special rate for connecting to the Internet. It does not justify a similar special rate for ordinary toll traffic.

TAM then raises questions about the enforceability of the limitation. We agree that enforceability may be a difficult problem, and we expect the parties to address this in the collaborative process that also will address compensation. We believe that a reasonable policy as a starting point is that ISPs that offer Voice over Internet Protocol (VoIP) should not be permitted to subscribe to the SNS/PRI service and rate. By "offering," we mean marketing and/or providing software for VoIP. If it is feasible to segregate VoIP traffic, we could alter that policy. We doubt if it is possible to enforce such a policy against end users who, on their own, obtain and use VoIP software.

VII. CONCLUSION

We reaffirm our findings in prior orders that Brooks's use of the 54 NXX Codes outside its Portland area exchange is for interexchange purposes, not local, and that Brooks is not providing facilities-based local exchange service or any other facilities-based service in those exchanges. The "FX-like" service that Brooks is currently offering without authority is unreasonable and will not be approved. Accordingly, Brooks has no legitimate need for the 54 codes, and, as authorized by the FCC Delegation Order, we order the NANPA to reclaim them six months after the date of this Order.

Within 30 days following this Order, Bell Atlantic shall file rates, terms and conditions for the retail, wholesale combined, and wholesale components services described in Part IV above.

Ordering Paragraphs

Accordingly, we

1. FIND, in Docket No. 99-593, pursuant to 35-A M.R.S.A. § 310, that the proposed changes to the rate schedules and terms and conditions of the New England Fiber Communications L.L.C. contained in Maine PUC Tariff No. 1:

5th Revised Page 1.1 (cancels 4th Revised Page 1.1)
2nd Revised Page 12.1 (cancels 1st Revised Page 12.1)
1st Revised Page 12.4 (cancels Original 12.4)
1st Revised Page 12.5 (cancels Original 12.5)
1st Revised Page 12.6 (cancels Original Page 12.6)
Original Page 12.7

are UNJUST AND UNREASONABLE and we ORDER that they will not become effective;

2. ORDER New England Fiber Communications L.L.C. to file special contracts, for approval under 35-A M.R.S.A. § 703(3-A), or rate schedules and terms and conditions, for a limited continuation of its existing service that is similar to the disapproved service, as described in the body of this Order;

3. ORDER New England Fiber Communications L.L.C. to make the filing or filings described in paragraph 2 on or before July 18, 2000;

4. ORDER the North American Numbering Plan Administrator (NANPA), effective six months from the date of this Order, to reclaim the 45 central office (NXX) codes in the State of Maine that are assigned to New England Fiber Communications d/b/a Brooks Fiber, and that are outside New England Fiber Communications' Portland area exchange (consisting of the municipalities of Portland, South Portland and Westbrook, Maine);

5. ORDER New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine to file a schedule of rates, and terms and conditions for the Single Number Service/Hubbed Primary Rate ISDN (SNS/PRI) service described in Part VI of this Order. Bell Atlantic shall make that filing within 30 days of the date of this Order; and

6. ORDER New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine, the independent incumbent local exchange carriers of Maine IXCs that are parties to the case that intend to offer SNS/PRI or similar service, and the Commission Advisory Staff assigned to this case to engage in a collaborative process for resolution of questions having to do with compensation between Bell Atlantic and the independent ILECs, the question of whether there are technical problems in offering the service at some independent ILEC switches, and the question of restricting such service

to uses other than Voice over Internet Protocol. For the latter purpose, the Advisors may request information from other parties in this case and from outside persons. The Hearing Examiner shall establish a schedule for the collaborative process, which shall not exceed six months.

Dated at Augusta, Maine, this 30th day of June, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

THIS DOCUMENT HAS BEEN DESIGNATED FOR PUBLICATION

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.