

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Petition of Level 3 Communications, )  
LLC for arbitration of certain terms and )  
conditions of proposed agreement with )  
BellSouth Telecommunications, Inc. )  
pursuant to the Telecommunications Act )  
of 1934, as amended by the Telecommuni- )  
cations Act of 1996. )

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Docket No. 000907-TP

Filed: October 5, 2000

**DIRECT PREFILED TESTIMONY  
OF  
TIMOTHY J. GATES  
ON BEHALF OF  
LEVEL 3 COMMUNICATIONS, LLC**

Michael R. Romano  
Attorney  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, Colorado 80021  
(720) 888-7015 (Tel.)  
(720) 888-5134 (Fax)  
e-mail: [mike.romano@level3.com](mailto:mike.romano@level3.com)

Kenneth A. Hoffman  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
215 South Monroe Street  
Suite 420  
Tallahassee, FL 32301-1841  
(850) 681-6788 (Tel.)  
(850) 681-6515 (Fax)

Russell M. Blau  
Tamar E. Finn  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
(202) 424-6917 (Tel.)  
(202) 424-7645 (Fax)  
e-mail: [tefinn@swidlaw.com](mailto:tefinn@swidlaw.com)

Its Attorneys

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FPSC-RECORDS/REPORTING

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

3 A: My name is Timothy J Gates. My business address is  
4 as follows: 15712 W. 72<sup>nd</sup> Circle, Arvada, Colorado  
5 80007.

6 Q: WHO EMPLOYS YOU?

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

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

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

14 Q: ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?

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

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

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

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

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

21 **A:** Yes, I did. I filed testimony in the Commission's  
22 Investigation into IntraLATA Presubscription  
23 (Docket No. 92-47). That testimony was filed on  
24 behalf of MCI Telecommunications Corporation in  
25 1994.

1       **Q:   WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

2       **A:**   The purpose of my testimony is to address certain  
3           issues identified in the Level 3 Petition for  
4           Arbitration ("Petition") that was filed on July 20,  
5           2000, and identified in the Order Establishing  
6           Procedure that was filed on September 15, 2000.  
7           Specifically, I will address issues 2 (Conditions  
8           under which Level 3 is entitled to symmetrical  
9           Compensation), 3 (Compensation for Interconnection  
10          Trunks), 6 (Reciprocal Compensation for ISP-Bound  
11          Traffic), and 7 (Reciprocal Compensation Based on  
12          Location of Customers and the Application of  
13          Switched Access Charges to ISP-Bound Traffic).

14       **Q:   HOW IS YOUR TESTIMONY ORGANIZED?**

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

18          Summary of Conclusions	Page 4
19          Issue 2	Page 6
20          Issue 3	Page 14
21          Issue 6	Page 22
22          Issue 7	Page 46

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

25       **A:**   I will provide the summaries by Issue:

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

13           **Issue 3** - Level 3 opposes BellSouth's attempt to  
14 charge for interconnection trunks and facilities on its  
15 network. It is each carrier's responsibility to provide  
16 facilities on its side of the IP to deliver traffic to  
17 the terminating carrier. A recent FCC order confirms  
18 that, under the rules of the road for local  
19 interconnection, a LEC may not assess charges for local  
20 traffic (or facilities) that originates on the LEC's  
21 network. To charge for these trunks and facilities would  
22 result in double recovery of the LEC's costs. If Level  
23 3 is required to pay for interconnection trunks and  
24 facilities, the rates must be based on forward looking  
25 long-run economic costs, not upon BellSouth's access

1 tariff or other prices that have not been scrutinized for  
2 compliance with the requirements of the  
3 Telecommunications Act.

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

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

1 switched access charges to ISP-bound and other kinds of  
2 virtual NXX calls.

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

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

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

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

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

11       **Q:   PLEASE DEFINE A SERVING WIRE CENTER.**

12       A:   Generally speaking, a serving wire center is  
13           synonymous with a central office.   By central  
14           office, I am referring to a "class 5"<sup>1</sup> central office  
15           where the local exchange company terminates the  
16           subscriber outside plant.   Nevertheless, a carrier  
17           could designate a tandem switch location as its  
18           serving wire center.   Essentially, a serving wire  
19           center is the central office with entrance  
20           facilities for the ALEC.

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

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



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

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

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

9           In this scenario, however, according to  
10 BellSouth's definitions and proposed language,  
11 BellSouth would purchase DIT between its serving  
12 wire center (the Level 3 central office) and Level  
13 3's first point of switching (the same Level 3  
14 central office). In other words, BellSouth would  
15 not purchase DIT from Level 3, or it would purchase  
16 it at dramatically less than what Level 3 would  
17 have to pay. The fact that Level 3 is a new  
18 entrant with a single switch in the LATA results in  
19 dramatically different costs under BellSouth's  
20 proposed language.

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

23       **A:** The LCF is a flat-rated, non-mileage sensitive  
24 switch transport facility between the IP and the  
25 originating party's serving wire center. Although

1 the LCF appears longer for BellSouth when it  
2 originates local traffic, that rate element is  
3 flat-rated. As such, unlike the DIT, the mileage  
4 or distance of the LCF does not impact the cost.

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

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

17 Because an incumbent LEC currently  
18 serves virtually all subscribers in  
19 its local serving area, an incumbent  
20 LEC has little economic incentive to  
21 assist new entrants in their efforts  
22 to secure a greater share of that  
23 market. An incumbent LEC also has  
24 the ability to act on its incentive  
25 to discourage entry and robust  
26 competition by not interconnecting  
27 its network with the new entrant's  
28 network or by insisting on  
29 supracompetitive prices or other  
30 unreasonable conditions for  
31 terminating calls from the entrant's

1 customers to the incumbent LEC's  
2 subscribers.<sup>2</sup> (footnote omitted)

3 Q: IT IS LEVEL 3'S CHOICE TO PLACE ONE IP PER LATA.

4 SHOULDND'T BELLSOUTH BE ALLOWED TO PLACE ITS IP AT  
5 ITS DESIRED LOCATION?

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

12 If Congress had wanted ILECs to have the  
13 ability to designate IPs and ALECs to bear the same  
14 duty in establishing IPs as incumbent LECs bear, it  
15 would have specifically stated that outcome, rather  
16 than separating out the interconnection obligations  
17 to apply only to incumbent LECs under Section  
18 251(c)(2).

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

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

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

4 Section 251(c)(2) does not impose on  
5 non-incumbent LECs the duty to provide  
6 interconnection. The obligations of LECs  
7 that are not incumbent LECs are generally  
8 governed by sections 251(a) and (b), not  
9 section 251(c). Also, the statute itself  
10 imposes different obligations on  
11 incumbent LECs and other LECs (i.e.,  
12 section 251(b) imposes obligations on all  
13 LECs while section 251(c) obligations are  
14 imposed only on incumbent LECs).<sup>3</sup>

15  
16 As such, BellSouth does not have the same right as  
17 ALECs to identify a technically feasible IP.

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

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

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<sup>3</sup> Id. at ¶220.

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

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

25 Q: WHAT IS THE SOLUTION TO THIS PROBLEM?

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

5               Notwithstanding the foregoing  
6               definitions, to ensure that  
7               symmetrical compensation is  
8               achieved, Level 3 may charge  
9               BellSouth for Local Channel and  
10              Dedicated Interoffice Transport  
11              facilities in an amount equivalent  
12              to that which may be charged by  
13              BellSouth to Level 3 for traffic on  
14              the same route.

15  
16              This language ensures that Level 3 and other ALECs  
17              are not disadvantaged by BellSouth's unilateral placement  
18              of IPs and the different network architectures.

19       **ISSUE 3 - SHOULD EACH CARRIER BE REQUIRED TO PAY FOR THE**  
20       **USE OF INTERCONNECTION TRUNKS ON THE OTHER CARRIER'S**  
21       **NETWORK? EVEN IF SO, SHOULD LEVEL 3 BE REQUIRED TO PAY**  
22       **RECURRING AND NONRECURRING RATES BASED UPON BELL SOUTH'S**  
23       **ACCESS TARIFF FOR THE USE OF INTERCONNECTION TRUNKS?**

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

26       **A:** No. It is inappropriate to impose any charges for  
27       local interconnection trunks (and the facilities  
28       upon which those trunks ride), as these are  
29       co-carrier facilities and trunks provided for the  
30       mutual benefit of the parties in exchanging  
31       customer traffic, and both parties must deploy

1 matching capacity on their side of the IP.  
2 Further, as both parties have already agreed in  
3 Section 1.1.1 of Attachment 3, it is each carrier's  
4 financial and operational responsibility to supply  
5 and maintain the network on its side of the IP to  
6 deliver traffic to the terminating carrier, so a  
7 requirement that each party then pay the other for  
8 trunks and facilities on its network is  
9 inconsistent with other resolved sections of the  
10 contract.

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

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



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

4 A: The interconnection trunks and facilities are as  
5 valuable to BellSouth as they are to Level 3 or any  
6 ALEC. They are used by BellSouth to ensure that  
7 calls between its customers and Level 3 customers  
8 are completed. Without such trunks, BellSouth  
9 would not be able to provide the level of services  
10 demanded by its own customers.<sup>4</sup>

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

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

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<sup>4</sup> By "level" of service, I am referring to the amount of blocking experienced by consumers.

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

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

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

20 Defendants argue that section  
21 51.703(b) governs only the charges  
22 for "traffic" between carriers and  
23 does not prevent LECs from charging  
24 for the "facilities" used to  
25 transport that traffic. We find  
26 that argument unpersuasive given the  
27 clear mandate of the *Local*  
28 *Competition Order*. The Metzger  
29 Letter correctly stated that the  
30 Commission's rules prohibit LECs  
31 from charging for facilities used to

1 deliver LEC-originated traffic, in  
2 addition to prohibiting charges for  
3 the traffic itself. Since the  
4 traffic must be delivered over  
5 facilities, charging carriers for  
6 facilities used to deliver traffic  
7 results in those carriers paying for  
8 LEC-originated traffic and would be  
9 inconsistent with the rules.  
10 Moreover, the Order requires a  
11 carrier to pay for dedicated  
12 facilities only to the extent it  
13 uses those facilities to deliver  
14 traffic that it originates. Indeed,  
15 the distinction urged by Defendants  
16 is nonsensical, because LECs could  
17 continue to charge carriers for the  
18 delivery of originating traffic by  
19 merely re-designating the "traffic"  
20 charges as "facilities" charges. Such  
21 a result would be inconsistent with  
22 the language and intent of the Order  
23 and the Commission's rules.<sup>5</sup>  
24 (footnotes omitted; emphasis in  
25 original)

26  
27 It is clear that the each LEC bears the  
28 responsibility of operating and maintaining the  
29 facilities used to transport and deliver traffic on  
30 its side of the IP. This responsibility extends to  
31 both the trunks and facilities as well as the  
32 traffic that transits those trunks and facilities.  
33 Likewise, an interconnecting terminating LEC will  
34 bear responsibility for the facilities on its side

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

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

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

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

11 According to Defendants, the *Local Competition*  
12 *Order's* regulatory regime, which requires  
13 carriers to pay for facilities used to deliver  
14 their originating traffic to their  
15 co-carriers, represents a physical occupation  
16 of Defendants property without just  
17 compensation, in violation of the Takings  
18 Clause of the Constitution. We disagree. The  
19 *Local Competition Order* requires a carrier to  
20 pay the cost of facilities used to deliver  
21 traffic originated by that carrier to the  
22 network of its co-carrier, who then terminates  
23 that traffic and bills the originating carrier  
24 for termination compensation. In essence, the  
25 originating carrier holds itself out as being  
26 capable of transmitting a telephone call to  
27 any end user, and is responsible for paying  
28 the cost of delivering the call to the network  
29 of the co-carrier who will then terminate the  
30 call. Under the Commission's regulations, the  
31 cost of the facilities used to deliver this  
32 traffic is the originating carrier's  
33 responsibility, because these facilities are  
34 part of the originating carrier's network.  
35 The originating carrier recovers the costs of  
36 these facilities through the rates it charges  
37 its own customers for making calls. This  
38 regime represents "rules of the road" under  
39 which all carriers operate, and which make it  
40 possible for one company's customer to call

1 any other customer even if that customer is  
2 served by another telephone company.<sup>6</sup>  
3 (emphasis added) (footnotes omitted)

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

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

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

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

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<sup>6</sup> Id. at ¶34.

1           there has been some confusion about BellSouth's  
2           rates for interconnection trunks.<sup>7</sup> Even though the  
3           language in Attachment 3 of the contract refers to  
4           the parties paying recurring and nonrecurring rates  
5           for interconnection trunks and facilities, the  
6           pricing schedule provided by BellSouth only sets  
7           forth a nonrecurring trunk charge, and does not  
8           contain a recurring trunk charge. The pricing  
9           schedule does state, however, that if a price is  
10          not specified in that schedule, it will be assessed  
11          pursuant to BellSouth's tariffs. Level 3 has  
12          therefore been concerned that the recurring trunk  
13          charge to be imposed by BellSouth would come from  
14          the access tariff. Recently however, despite what  
15          the pricing schedule leaves open, we have been told  
16          by BellSouth that *there is no recurring charge for*  
17          *trunks*, so it would appear that the focus from a

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

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

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

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

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<sup>8</sup> Id.

<sup>9</sup> Id. at ¶35.

1           in the traffic and facilities handled and  
2           deployed by BellSouth.

3       **Q: PLEASE EXPLAIN.**

4       **A:** The FCC has found that Section 252(d) of the Act,  
5       which addresses local interconnection pricing,  
6       requires that "prices for interconnection and  
7       unbundled elements . . . should be set at  
8       forward-looking long-run economic cost."<sup>10</sup> The FCC's  
9       rules also require rates based on forward-looking  
10      economic costs. FCC Rule 51.705(a)(1) states, "An  
11      incumbent LEC's rates for transport and termination  
12      of local telecommunications traffic shall be  
13      established, at the election of the state  
14      commission, on the basis of: (1) the  
15      forward-looking economic costs of such offerings,  
16      using a cost study pursuant to §§ 51.505 and 51.511  
17      of this part." As this Commission is well aware,  
18      FCC Rule 51.505 defines "Forward-looking economic  
19      cost" and total element long-run incremental cost  
20      study requirements. FCC Rule 51.511 develops the  
21      forward-looking economic cost per unit.

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

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<sup>10</sup> *Local Competition Order* at ¶672.



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

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

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

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

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

16           **Q: PLEASE DESCRIBE THE DISPUTE ON THIS ISSUE.**

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

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

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

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

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

24          A: Yes. FCC Rule 51.503 (c) states: "The rates that an  
25          incumbent LEC assesses for elements shall not vary

1 on the basis of the class of customers served by  
2 the requesting carrier, or on the type of services  
3 that the requesting carrier purchasing such  
4 elements uses them to provide." To do so would be  
5 to discriminate against a particular class of  
6 customers or type of service being provided, based  
7 on something other than cost. Such discrimination  
8 is not in the public interest.

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

11 **A:** Yes. Artificially distinguishing between these two  
12 types of calls (*i.e.*, ISP-bound calls and other  
13 local calls) skews the resource allocation  
14 decisions of the consumer, residential and business  
15 alike. Specifically, it skews the consumer's  
16 economic decision-making as to what level of each  
17 type of call to consume (*i.e.*, if prices for  
18 Internet-bound calling are higher than for other  
19 types of local calling, the consumer will  
20 undoubtedly suppress his/her demand for Internet  
21 calling in comparison to the level demanded absent  
22 such a price differentiation). For example, under  
23 BellSouth's proposal, a customer who makes a large  
24 number of local voice calls (or calls of longer  
25 than average length) will pay less than a customer

1           who uses the same level of local usage for  
2           accessing the Internet. Obviously, under a  
3           situation like that described above, even though  
4           both customers consume the same level of local  
5           calling resources and generate equal costs on the  
6           network, the Internet subscriber will be required  
7           to pay more. This is problematic in that it  
8           provides consumption incentives that do not match  
9           the economically efficient incentives that would  
10          result from pricing identical or similar services  
11          at the same rate.

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

15        **A:** My primary concern in this area is that this  
16        approach doesn't encourage efficient  
17        decision-making on the part of local callers. This  
18        results from the fact that even though both  
19        voice-grade local calling and calls to the Internet  
20        use the same network in almost exactly the same way  
21        (thereby generating largely identical costs), local  
22        callers would be faced with two different pricing  
23        structures for these two identical or similar types  
24        of calling. If the Commission were to introduce  
25        such a pricing structure, it would be arbitrarily

1 distinguishing between two types of traffic that  
2 are largely identical. For example, one hour of  
3 local calling from your computer to the Internet  
4 generates exactly the same level of cost on the  
5 network as does one hour of calling from your home  
6 to your best friend who may live across town.  
7 Efficient economic results are generated when  
8 consumers are faced with the marginal costs of  
9 their decisions. Only when consumers are faced  
10 with a situation where the more local calling  
11 resources they use the more they pay (whether those  
12 be for local voice calls or Internet calling), will  
13 they ever be encouraged to make sound economic  
14 decisions with respect to how much local calling to  
15 use.

16 Separating ISP-bound traffic from all other  
17 types of local-billed traffic and subjecting only  
18 ISP traffic to this system will serve only to  
19 depress demand for Internet usage. At the same  
20 time, allowing voice grade traffic to remain under  
21 the same pricing structure it currently enjoys will  
22 result in an incentive to "over-use" voice grade  
23 local calling. In essence, the Commission would be  
24 using its regulatory authority to favor one type of  
25 local-billed traffic (voice traffic) over another

1 type of local-billed traffic (ISP-bound traffic).  
2 This would undoubtedly cause market distortions  
3 that could have long-term effects on the growth of  
4 Internet traffic and the efficient allocation of  
5 resources to Florida's telecommunications  
6 infrastructure. One such unfortunate result could  
7 be an increase in the gap between those consumers  
8 who can afford to use the Internet at these  
9 artificially higher rates, and those that cannot  
10 (the so called "digital divide").

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

13 **A:** It would be very difficult and imprecise to  
14 break-out ISP-bound calls from other local calls.  
15 Two separate, and equally ineffective, methods of  
16 segregating ISP-bound traffic from other local  
17 calls have emerged to this point. First, ILECs  
18 such as BellSouth have asked that interconnecting  
19 carriers identify the specific NXX-XXXX telephone  
20 numbers that are assigned to ISP providers as  
21 dial-up access numbers. Then, the traffic that is  
22 terminated to these specified dial-in numbers would  
23 be measured and identified as ISP-bound traffic  
24 (and BellSouth would impose switched access charges  
25 on the traffic and refuse to make reciprocal

1 compensation payments to the ALECs for carrying  
2 this traffic). Second, ILECs have argued that by  
3 measuring the average call duration (holding time)  
4 for traffic passed between two carriers, it is  
5 possible to estimate the percentage of that traffic  
6 that is bound for an ISP (ILECs generally have  
7 argued that calls longer than 15 - 20 minutes  
8 exhibit characteristics similar to ISP-bound  
9 traffic and should therefore be removed from  
10 reciprocal compensation obligations).

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

14 **A:** No. First, there is no technical or economic  
15 distinction between ISP-bound traffic and other  
16 types of local traffic, other than the fact that  
17 ISP-bound calls generally tend to have longer  
18 holding times than do average local calls (and,  
19 dial-up ISP-bound calls typically take place in the  
20 evening whereas the majority of voice calls occur  
21 during the business day). However, as I described  
22 above, distinguishing between an Internet call and  
23 a local voice call of the same length is  
24 nonsensical. A twenty-minute voice call has  
25 exactly the same cost characteristics as does a



1           twenty-minute Internet call. Hence, distinguishing  
2           between these two types of calls is an artificial  
3           distinction that can lead to poor rate design and  
4           consumption decisions.

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

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

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

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

23 **A.** As shown above, it is not technically feasible to  
24 identify "ISP-bound" traffic. Nor is it necessary,  
25 since such calls impose absolutely no additional

1 costs on BellSouth. ISP-bound calls have been  
2 treated as local calls by this Commission and they  
3 should continue to be treated as such. Applying  
4 access charges to local calls is completely  
5 inconsistent with the reciprocal compensation  
6 requirements I described earlier in this testimony.

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

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

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

24 A: While I would never suggest to speak for BellSouth  
25 as to why it finds this issue to be of such

1 importance, I think it is safe to say that  
2 BellSouth is oftentimes a "net payor" of reciprocal  
3 compensation. This is due primarily to the fact  
4 that ALECs appear to be more successful in  
5 attracting ISP providers to their local service  
6 offerings than BellSouth has been in retaining  
7 them. Consider that although the vast majority of  
8 services and prices included in an interconnection  
9 agreement between BellSouth and a ALEC govern the  
10 rates, terms and conditions by which the ALEC will  
11 pay BellSouth for service, this is one area where  
12 BellSouth may actually, in some circumstances, be  
13 required to pay the ALEC for services the ALEC  
14 provides to BellSouth. It is likely for that  
15 reason that BellSouth is acutely interested in the  
16 rates that will be paid for reciprocal compensation  
17 and the terms and conditions under which they will  
18 be assessed.

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

21 **A:** It did, but two aspects of that decision must be  
22 noted.<sup>12</sup> First, that decision no longer stands. On

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

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

11 Even where parties to interconnection  
12 agreements do not voluntarily agree on an  
13 inter-carrier compensation mechanism for  
14 ISP-bound traffic, state commissions  
15 nonetheless may determine in their  
16 arbitration proceedings at this point  
17 that reciprocal compensation should be  
18 paid for this traffic. The passage of  
19 the 1996 Act raised the novel issue of  
20 the applicability of its local  
21 competition provisions to the issue of  
22 inter-carrier compensation for ISP-bound  
23 traffic. Section 252 imposes upon state  
24 commissions the statutory duty to approve

1 voluntarily-negotiated interconnection  
2 agreements and to arbitrate  
3 interconnection disputes. As we observed  
4 in the Local Competition Order, state  
5 commission authority over interconnection  
6 agreements pursuant to section 252  
7 "extends to both interstate and  
8 intrastate matters." Thus the mere fact  
9 that ISP-bound traffic is largely  
10 interstate does not necessarily remove it  
11 from the section 251/252 negotiation and  
12 arbitration process. However, any such  
13 arbitration must be consistent with  
14 governing federal law. While to date the  
15 Commission has not adopted a specific  
16 rule governing the matter, we do note  
17 that our policy of treating ISP-bound  
18 traffic as local for purposes of  
19 interstate access charges would, if  
20 applied in the separate context of  
21 reciprocal compensation, suggest that  
22 such compensation is due for that  
23 traffic. [emphasis added, footnotes  
24 removed]

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

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

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

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

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

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

15 (b) Despite complex legal arguments and historical  
16 definitions, the simple fact remains that calls  
17 directed to ISPs are functionally identical to  
18 local voice calls for which BellSouth agrees to pay  
19 termination charges. Applying different  
20 termination rates or, even worse, compensating a  
21 carrier for one type of call and not for the other,  
22 will generate inaccurate economic signals in the  
23 marketplace, the result of which will drive firms  
24 away from serving ISPs. This result could have a



1           dire impact on the growing electronic communication  
2           and e-commerce markets.

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

17          (d) Because BellSouth is required to pay, as  
18          well as receive, symmetrical compensation for local  
19          exchange traffic based upon its own reported costs,  
20          its payments to other carriers in this regard are  
21          an important check on BellSouth's cost studies used  
22          to establish rates for the termination of traffic.  
23          Unless BellSouth is required to pay the costs that  
24          it itself has established via its own cost studies,  
25          it has every incentive to over-estimate those costs

1 for purposes of raising barriers to competitive  
2 entry. By removing large traffic volume categories  
3 such as ISP-bound traffic from BellSouth's  
4 obligation to pay terminating costs, the Commission  
5 would be removing an important disciplining factor  
6 associated with ensuring that BellSouth's reported  
7 termination costs are reasonable.

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

13 **A:** Transitionally competitive markets, like the local  
14 exchange market, have shown that new entrants are  
15 usually most successful in attracting customers  
16 that (1) are unsatisfied with the services or  
17 quality offered by the incumbent, (2) have  
18 technological, capacity or other specific  
19 requirements that are not easily met by the  
20 incumbent's oftentimes inflexible service  
21 offerings, and/or (3) don't have a long history of  
22 taking service from the incumbent. ISP providers  
23 fall directly into all three of these categories as  
24 many of them have been unable to reach agreement  
25 with ILECs in areas such as pricing for high

1 capacity lines, provisioning intervals, collocation  
2 of their equipment in ILEC central offices or even  
3 in some circumstances, the ability to purchase  
4 service in sufficient quantity to meet their own  
5 end-user customer demands. Likewise, most ISP  
6 organizations are fairly new and have begun their  
7 enterprise at a time when competitive alternatives  
8 for local exchange services are available. Hence,  
9 it is reasonable to expect that these types of  
10 businesses are less restricted by long term or  
11 volume agreements, a long business relationship or  
12 other circumstances that often breed loyalty to the  
13 incumbent. The fact that these customers are far  
14 more likely to explore competitive opportunities  
15 than more traditional residential and/or business  
16 customers has made them an extremely important  
17 customer base for ALECs.

18 Likewise, ALECs, like Level 3, because of  
19 their new track record and non-existent customer  
20 base in new markets, are naturally more likely to  
21 serve customers that require services specifically  
22 tailored to their strengths (*i.e.* customer service,  
23 new technology deployment and substantial spare  
24 capacity). Given these characteristics, ISP  
25 providers and ALECs are effectively "made for one

1 another" and ISPs have flocked to new entrant ALECs  
2 in increasing numbers. Likewise, ALECs have worked  
3 with ISPs to design new and innovative services and  
4 have provided ISPs the capacity they need to meet  
5 their customers' increasing demands.

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

9 A: Not at all. The relationships between ALECs and  
10 ISPs, as described above, are the direct result of  
11 how a competitive market is meant to work.  
12 Carriers who are unwilling to meet the demands of  
13 their customers, lose those customers to carriers  
14 who are more accommodating. Carriers who are  
15 attempting to build market share tend to be more  
16 accommodating than carriers who are attempting to  
17 merely keep market share. Likewise, carriers who  
18 provide customer focused services and supply the  
19 capacity required to meet their customers' demands  
20 are rewarded. The fact that relatively new  
21 customers who require specific technological  
22 support have embraced new ALECs is one of the most  
23 promising outcomes of the local exchange market's  
24 transition to competition. Indeed, ISPs and other  
25 technologically reliant customer groups are, in

1 many cases, providing the revenue and growth  
2 potential that will fund further ALEC expansion  
3 into other more traditional residential and  
4 business markets.

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

9 A: Within the interconnection agreement at issue in  
10 this proceeding, BellSouth is refusing to pay going  
11 forward, under the new contract, for traffic that  
12 originates on its network and is directed to a  
13 local ISP customer served by Level 3. Simply put,  
14 BellSouth is asking through its proposed contract  
15 language that Level 3 provide its facilities for  
16 the use of BellSouth's customers without  
17 compensation. Traffic originated on the BellSouth  
18 network and directed to Level 3's local ISP  
19 customers is no different than other types of  
20 traffic for which BellSouth has agreed to provide  
21 reciprocal compensation. Given this, and the fact  
22 that Level 3 has agreed to pay BellSouth for  
23 traffic originating on the Level 3 network and  
24 directed to a BellSouth local ISP, the Commission

1           should require BellSouth to compensate Level 3 for  
2           transporting and terminating such calls.

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

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

20                 It is no coincidence that BellSouth wishes to  
21          avoid paying reciprocal compensation going forward  
22          for calls directed to this particular customer  
23          group. If BellSouth can successfully remove itself  
24          from an obligation to compensate ALECs for calls  
25          directed to their ISP customers, BellSouth will

1           have accomplished two tasks inimical to the  
2           competitive marketplace.

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

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

1 more attractive to individual end users, further  
2 stifling competition in the ISP market.

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

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

16 **A:** Of course. Given the option of receiving an amount  
17 greater than zero for carrying a non-ISP call and  
18 nothing for carrying an ISP call, any reasonable  
19 carrier would fill its switch with non-ISP calls to  
20 the extent possible. Likewise, any carrier that  
21 currently served a larger proportion of ISP  
22 customers would be a less profitable network than a  
23 network that served a smaller proportion of ISP  
24 customers. In effect, allowing BellSouth to skirt  
25 its obligation to pay for the use of an



1 interconnecting carrier's network to terminate its  
2 local customers' calls to ISP providers will skew  
3 the supply substitutability of ISP services versus  
4 other local services, thereby making other local  
5 exchange services relatively more attractive  
6 production alternatives. This may in turn raise  
7 ISP prices in relation to other local exchange  
8 services thereby impairing an ISP's ability to  
9 receive services at rates comparable to other local  
10 end users. Not only is this in direct conflict  
11 with the FCC's intentions with respect to offering  
12 ISPs an access charge exemption so as to place them  
13 on a level playing field with other local  
14 customers, it also is likely, all else being equal,  
15 to suppress ISP communication demand versus other  
16 types of non-ISP communication.<sup>13</sup> This price  
17 discrimination effect will mean electronic  
18 communication and e-commerce demand will  
19 undoubtedly grow at a slower pace than if there  
20 were no discrimination. Any difference between the  
21 unrestricted growth of electronic communication and  
22 the suppressed growth caused by the uneconomic  
23 price discrimination described above would result

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<sup>13</sup> See, *ISP Order* at ¶20.

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

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

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

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

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

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

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

22 The arbitration issue before the Commission  
23 differs from our hypothetical above in that instead  
24 of only BellSouth investing in its network to meet  
25 the capacity requirements of the traffic volume

1 increases that have occurred over the past few  
2 years, new entrants have also invested capital and  
3 have deployed their own switching capacity to  
4 accommodate this growth. Likewise, as BellSouth  
5 would have undoubtedly argued in our hypothetical  
6 above that it should be compensated for its  
7 additional investment to meet this growth, ALECs  
8 should also be compensated for terminating that  
9 traffic such that their investments can be  
10 recovered.

11 The second reason is of paramount importance  
12 because it is at the heart of the dispute between  
13 the parties in this case. As I have shown above,  
14 BellSouth should be indifferent as to whether it  
15 terminates the traffic or it avoids the costs of  
16 termination and pays someone else, namely an ALEC,  
17 to do so. Yet we know that BellSouth is not  
18 indifferent because it has refused to agree to such  
19 a compensation framework as part of the new  
20 interconnection agreement. The question is: Why?  
21 The answer lies in one of two reasons. Either (1)  
22 BellSouth's current rate for call termination is  
23 not representative of its actual underlying costs  
24 and it realizes that paying an ALEC for terminating  
25 traffic actually makes it economically "worse off"

1 than terminating the traffic itself, or (2) it has  
2 a competitive interest in not providing a cost  
3 recovery mechanism for its competitors regardless  
4 of the extent to which it is economically  
5 indifferent on any given call.

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

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

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

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

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

13 Second, however, there seems to be some  
14 indication in this argument that ALECs are to blame  
15 for the increased costs the ILECs contend they are  
16 facing in meeting calling volume requirements  
17 associated with electronic communication and  
18 e-commerce. This simply isn't accurate. It is the  
19 public's seemingly unquenchable thirst for Internet  
20 access and other electronic communications media  
21 that have caused the increased calling volumes that  
22 generate costs associated with carrying local  
23 traffic to the Internet. And, it is important to  
24 note that companies like BellSouth are on the front

1 lines marketing these services to feed the public's  
2 demand.

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

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

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

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



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

10  
11 **Q: HAS THIS COMMISSION RULED ON THE JURISDICTIONALITY**  
12 **OF ISP-BOUND TRAFFIC?**

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

19 **Q: WERE THE RULINGS IN THOSE PROCEEDINGS SIMILAR?**

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

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

1 determine that reciprocal compensation is  
2 due for ISP-bound traffic.<sup>14</sup>

3  
4 Consistent with that ruling, the Commission  
5 has ordered the continuation of inter-carrier  
6 agreements pending the FCC's final rule on the  
7 treatment of ISP-bound traffic. In the order cited  
8 above, the Commission stated:

9 Upon consideration, we find it reasonable  
10 that the parties shall continue to  
11 operate under the terms of their current  
12 interconnection agreement regarding  
13 reciprocal compensation until the FCC  
14 issues its final ruling on whether  
15 ISP-bound traffic should be defined as  
16 local or whether reciprocal compensation  
17 is otherwise due for this traffic.<sup>15</sup>

18  
19 **Q: PLEASE SUMMARIZE YOUR POSITION ON ISSUE 6.**

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

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

<sup>15</sup> Id. at 34.

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

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

15          **Q:   PLEASE BRIEFLY DESCRIBE THE DISPUTE ON THIS POINT.**

16          A:   BellSouth argues that it should not be required to  
17               pay reciprocal compensation for any call  
18               terminating to a customer who is physically located  
19               outside of the local calling area where the call  
20               originates.  Further, BellSouth argues that it  
21               should be able to charge originating access charges  
22               for all calls to customers physically located  
23               outside the local calling area.  BellSouth provides  
24               no evidence that such calls increase its costs as

1 compared to other local calls in any way such that  
2 additional cost recovery is justified.

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

13 **Q: WHAT ARE NXX CODES?**

14 **A:** NXX codes are the fourth through sixth digits of a  
15 ten-digit telephone number. These codes are used  
16 as rate center identifiers, but it is not uncommon  
17 for NXX codes to be assigned to customers who are  
18 not physically located in that rate center. This  
19 type of arrangement has at times been referred to  
20 as "Virtual NXX" because the customer assigned to  
21 the telephone number has a "virtual" presence in the  
22 associated local calling area. This flexible use  
23 of NXX codes allows carriers to offer valuable  
24 services to their customers. For instance,  
25 so-called virtual NXX arrangements enable ISPs to

1 offer low cost dial-up numbers throughout Florida,  
2 including the more isolated areas of the State.  
3 Access to the Internet is affordable and readily  
4 available in all areas of the state because virtual  
5 NXX arrangements allow ISPs to establish a small  
6 number of points of presence (POP) that can be  
7 reached by dialing a local number regardless of the  
8 physical location of the Internet subscriber  
9 (within the LATA).

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

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

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

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

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

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

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

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

16 **A:** Placing limitations on reciprocal compensation by  
17 referring to a customer's physical location would  
18 give BellSouth the ability to re-classify local  
19 calls as toll calls. This is because according to  
20 BellSouth's proposed language, it would be nearly  
21 impossible and much more economically burdensome  
22 for Level 3 (or any other ALEC in a similar  
23 situation) to utilize virtual NXXs in the provision  
24 of service to its customers. Virtual NXXs are  
25 often used by carriers to provide a local number to

1 customers in local calling areas in which the  
2 customer is not physically located. Customers who  
3 are physically located (both ILEC and ALEC  
4 customers) in that area are then able to place  
5 calls to the virtual NXX customer without incurring  
6 toll charges. If BellSouth precludes Level 3 or  
7 any other ALEC from using virtual NXXs for local  
8 calls to ISPs, not only would BellSouth customers  
9 no longer be able to reach many of their ISPs by  
10 dialing a local number, but because calls to the  
11 ISP have been re-classified as toll calls,  
12 BellSouth would no longer be obligated to pay the  
13 reciprocal compensation associated with local  
14 calls. One must consider the implications in both  
15 the competitive telecommunications market and the  
16 Internet access market - if a carrier cannot use  
17 virtual NXXs to serve ISPs without paying BellSouth  
18 a high per-minute charge for originating each call  
19 and then also loses the ability to collect any  
20 compensation from BellSouth in terminating the  
21 call, what incentive will any carrier have to serve  
22 ISPs? And who then will the ISPs turn to in order  
23 to ensure that their own customers in Florida don't  
24 have to dial a toll call to reach the Internet? I  
25 will discuss later in this testimony how these

1           considerations    could    affect    the    Florida  
2           telecommunications and Internet access markets.

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

9           A: No.    There is no additional cost incurred by  
10          BellSouth when a virtual NXX is provided to an ALEC  
11          customer, because BellSouth carries the call the  
12          same distance and incurs the same costs regardless  
13          of whether the call is terminated to an ALEC  
14          customer with a physical location in the NXX rate  
15          center, or an ALEC customer with a virtual  
16          presence.   BellSouth's obligations and costs are  
17          therefore exactly the same in delivering a call  
18          originated by one of its customers, regardless of  
19          whether the call terminates at a so-called "virtual"  
20          or "physical" NXX behind the ALEC switch.   At a time  
21          when regulators and the industry are looking to  
22          move to more competitive market models by  
23          eliminating    implicit    subsidies    in  
24          telecommunications rates and intercarrier payments,  
25          it would seem contrary to reason to suddenly now



1 foist switched originating access charges on a  
2 certain type of customer traffic when the costs of  
3 originating that traffic do not differ from any  
4 other local call.

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

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

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

21 **A:** Let's begin with a quick review of the technical  
22 requirements of reciprocal compensation. This  
23 drawing attached hereto as Exhibit \_\_ (TJG-  
24 3)(Diagram 3) depicts one way that BellSouth may

1 route and terminate local calls on its own network,  
2 to and from its own customers.

3 The customer on the left calls the customer on  
4 the right. The call is switched at the central  
5 office to the tandem where is it routed to the  
6 terminating central office and finally to the  
7 called party.<sup>16</sup> In this scenario, Ameritech is  
8 financially and operationally responsible for both  
9 originating and terminating the call.

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

13 **A:** In an environment with multiple providers, the  
14 parties share the responsibility for carrying this  
15 call. Interconnection and reciprocal compensation  
16 agreements define carrier responsibilities in a  
17 multiple provider environment. See Diagram 4  
18 attached as Exhibit \_\_ (TJG-4).

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

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

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

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

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

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

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

13      **Q: PLEASE PROVIDE SOME EXAMPLES THAT SHOW THE FLAWS IN**  
14      **BELLSOUTH'S POSITION.**

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

24                    In the diagram attached hereto as Exhibit \_\_  
25      (TJG-5) (Diagram 5) I show a call that both

1 originates and terminates within the same local  
2 calling area.

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

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

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

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

22 Level 3's customer has an NXX associated with  
23 Calling Area 1 - a service option I have described  
24 above as a virtual NXX. In short, this service

1 allows the customer to have a local telephone  
2 number in calling area 1.

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

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

15 **A:** Again, referring to Diagram 6 above, if the  
16 BellSouth Customer calls the Level 3 customer in  
17 the same local calling area, the routing and  
18 handling of the call is no different than if the  
19 call was made to the Level 3 customer in local  
20 calling area 2 with a virtual NXX. BellSouth is  
21 responsible for getting the call to the POI and  
22 Level 3 terminates the call. So, as you can see,  
23 the location of the called party has no impact on  
24 BellSouth's responsibilities or costs. Further,  
25 whether the BellSouth customer dials a physical NXX

1 (to the Level 3 customer in local calling area 1)  
2 or a virtual NXX (to the Level 3 customer in local  
3 calling area 2) the responsibilities and costs for  
4 BellSouth do not change.

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

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

17 **Q: PLEASE SUMMARIZE YOUR POSITION ON THIS POINT.**

18 **A:** A call originated on the BellSouth network using a  
19 physical or virtual NXX and directed to any ALEC's  
20 network travels exactly the same path and requires  
21 the use of exactly the same facilities as any other  
22 local call would. Calls to physical or virtual  
23 NXX numbers use the same path and the same  
24 equipment to reach the Interconnection Point and  
25 the terminating carrier's switch. To single out the

1 virtual NXX calls to ISPs and suggest that no  
2 compensation should be paid for purposes of  
3 carrying that particular call ignores the simple  
4 economic reality that both kinds of calls are  
5 functionally identical and should be subject to  
6 reciprocal compensation.

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

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



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

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

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

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

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

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

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

22  
23 Increasing the cost of Internet access through  
24 the introduction of access charges and the denial  
25 of reciprocal compensation would be inconsistent  
26 with the Act's mandate for Internet services .  
27 More specifically, Section 230(b)(2) (47 U.S.C.

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

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

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

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

20                A key competitive advantage - indeed, a  
21        practical business necessity - for any ISP is having  
22        a local dial-up for a prospective customer.  
23        Because Internet-bound calls are often longer in  
24        duration than other calls, avoiding toll charges  
25        associated with accessing an ISP's POP that is not

1 located in the user's rate center dramatically  
2 reduces the user's Internet costs. Therefore, ISPs  
3 will often choose their carrier based on the  
4 carrier's ability to provide local dial-up  
5 capability via the virtual NXX.

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

9 A: By contractually inhibiting the use of NXXs in such  
10 a manner that Level 3 and other ALECs cannot offer  
11 virtual NXXs without facing additional charges, the  
12 costs associated with accessing the Internet would  
13 increase. By using virtual NXX assignments, Level  
14 3 and other ALECs have been able to provide  
15 services that allow ISPs to provide low cost  
16 Internet services throughout Florida, by allowing  
17 ISP customers to access the Internet by dialing a  
18 local number. Eliminating the ability to provide  
19 virtual NXX codes - or refusing to pay reciprocal  
20 compensation for these local calls -- would be a  
21 step in the wrong direction in the deployment of  
22 affordable Internet services in Florida, as the end  
23 result would be a decrease in usage of Internet  
24 services by Florida citizens facing the prospect of

1 toll charges or other increased costs to access  
2 their ISPs.

3 This would be in direct conflict with the 1996  
4 Act, which calls for consumers in all regions of  
5 the Nation, including those in rural, insular, and  
6 high cost areas, to have access to  
7 telecommunications and information services at  
8 just, reasonable, and comparable rates. (Sec.  
9 254(b)) 47 U.S.C. § 254(b).

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

12 **A:** Yes. BellSouth markets certain products to ISPs.  
13 These service offerings appear to be no different  
14 from what ALECs such as Level 3 offer their own ISP  
15 customers using a virtual NXX arrangement. If  
16 ALECs are prohibited from receiving reciprocal  
17 compensation for virtual NXX calls to prospective  
18 and current ISP customers through BellSouth's  
19 proposed contract restrictions, ISPs would either  
20 have to establish multiple POPs in order to allow  
21 their subscribers to access the Internet via a  
22 local number or to contract with BellSouth and  
23 subscribe to BellSouth's ISP products. Because  
24 each POP requires a significant investment in  
25 hardware and leased line connections, and because

1 provisioning services in new areas may cause delays  
2 in ISP service offerings, the ability to offer ISP  
3 customers local dial-up and single POP capability  
4 is a critical competitive consideration. More  
5 importantly, forcing ISPs and CLECs to deploy these  
6 facilities - when, as described above, such  
7 deployment is not at all necessary - would encourage  
8 inefficiency and a wasteful allocation of limited  
9 ALEC resources. Only BellSouth, with its  
10 ubiquitous network developed with the support of  
11 decades of subsidies, could likely offer ISPs the  
12 kind of presence required in each local calling  
13 area to avoid a virtual NXX situation. Moreover,  
14 by precluding Level 3 from receiving reciprocal  
15 compensation for these services, and then  
16 threatening to impose higher access charges on each  
17 call, BellSouth is creating an economic barrier to  
18 any other carriers providing service to ISPs, and  
19 is giving itself a significant competitive  
20 advantage. This clear advantage for BellSouth  
21 would not only stifle the ability of ALECs such as  
22 Level 3 to provide service to ISPs in Florida, but  
23 would essentially eliminate the prospect for  
24 competition in this market.

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

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

22 Q: DOES THIS CONCLUDE YOUR TESTIMONY?

23 A: Yes, it does.

24

DIAGRAM 1

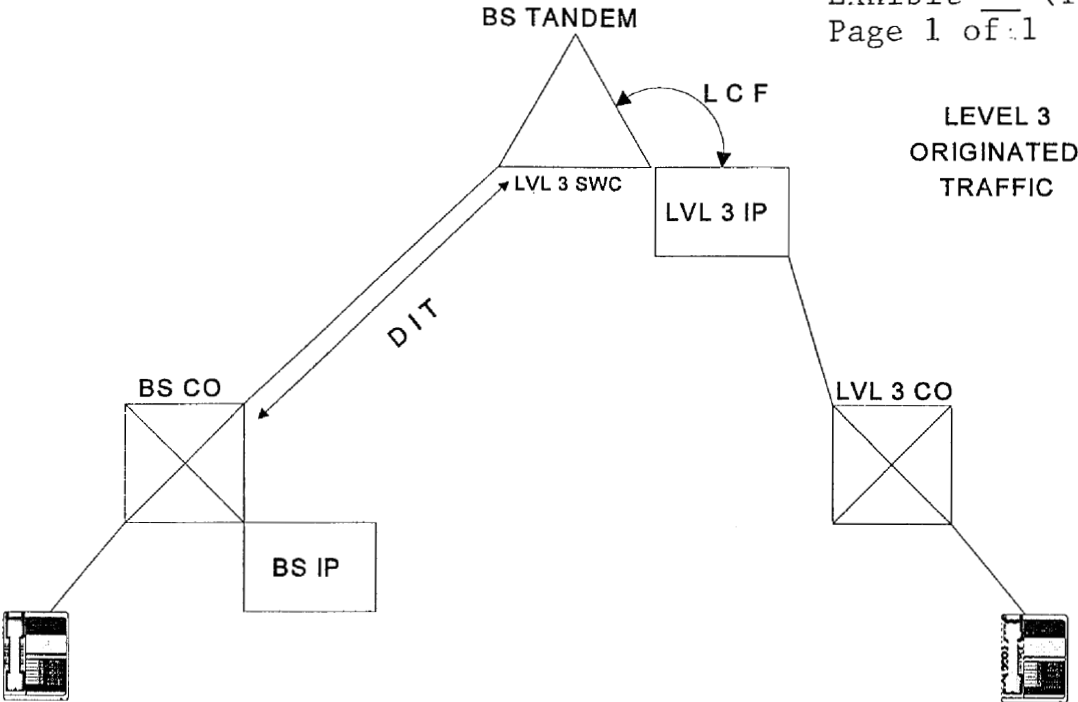




DIAGRAM 2

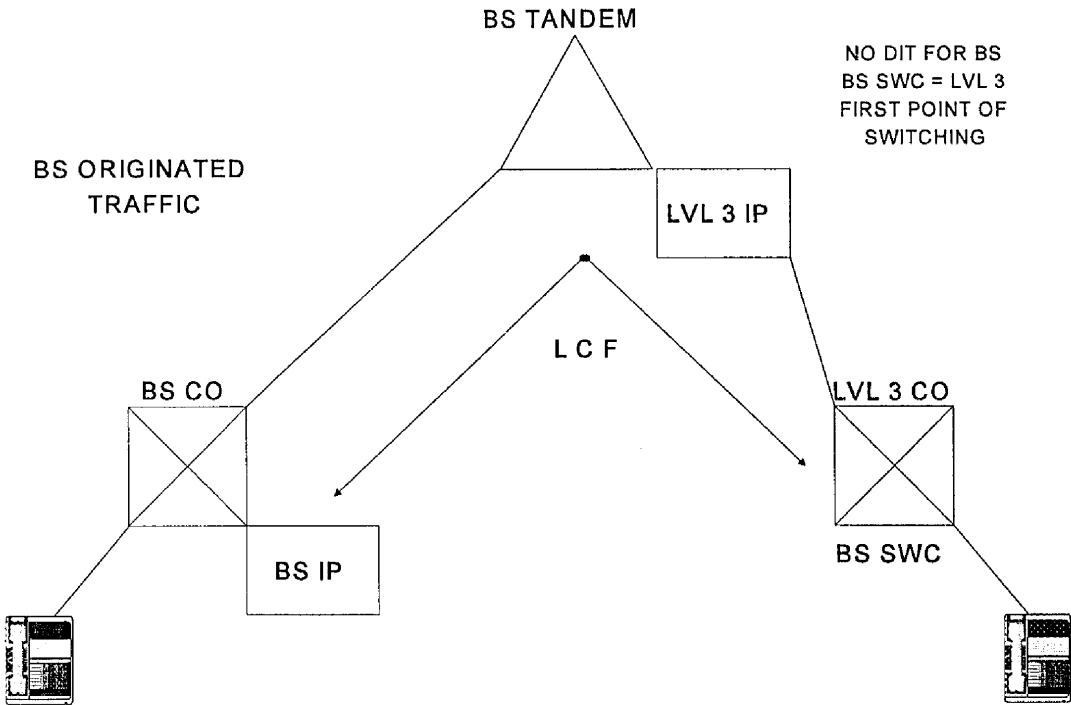
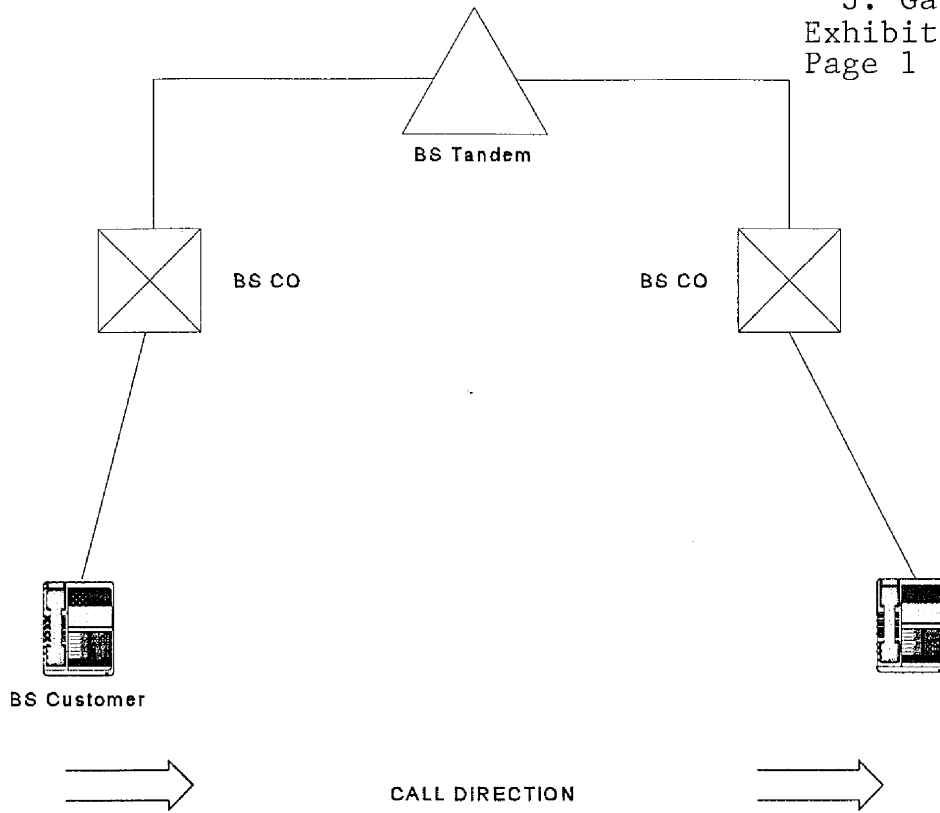
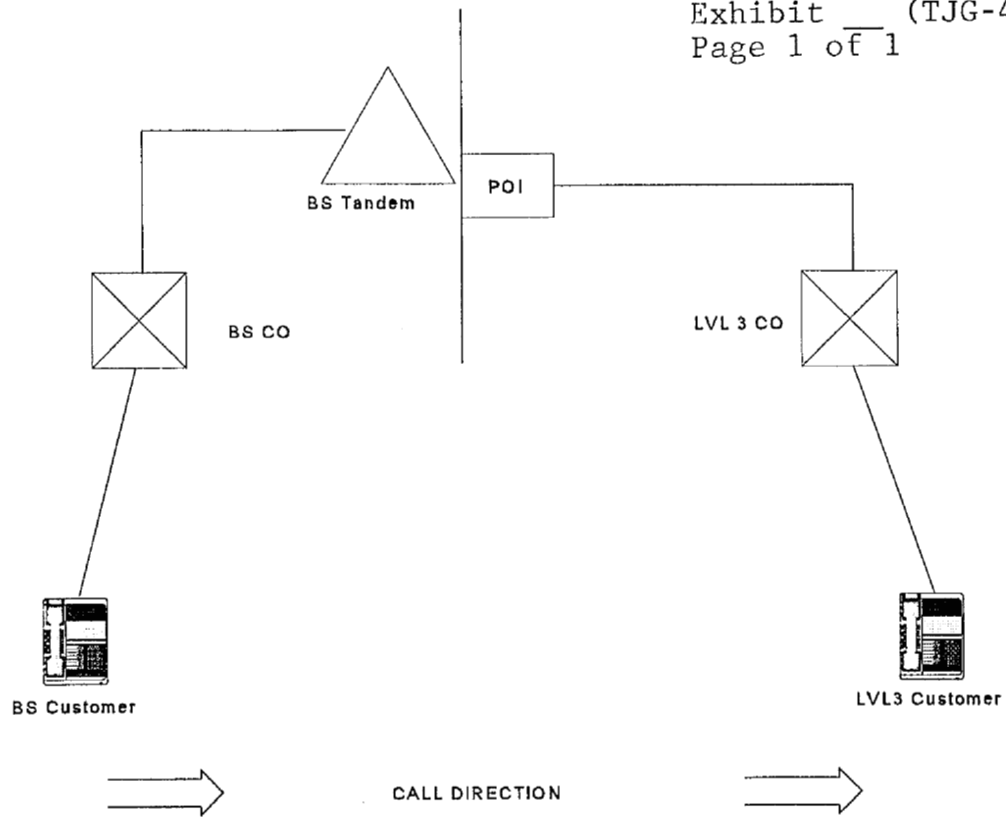


DIAGRAM 3



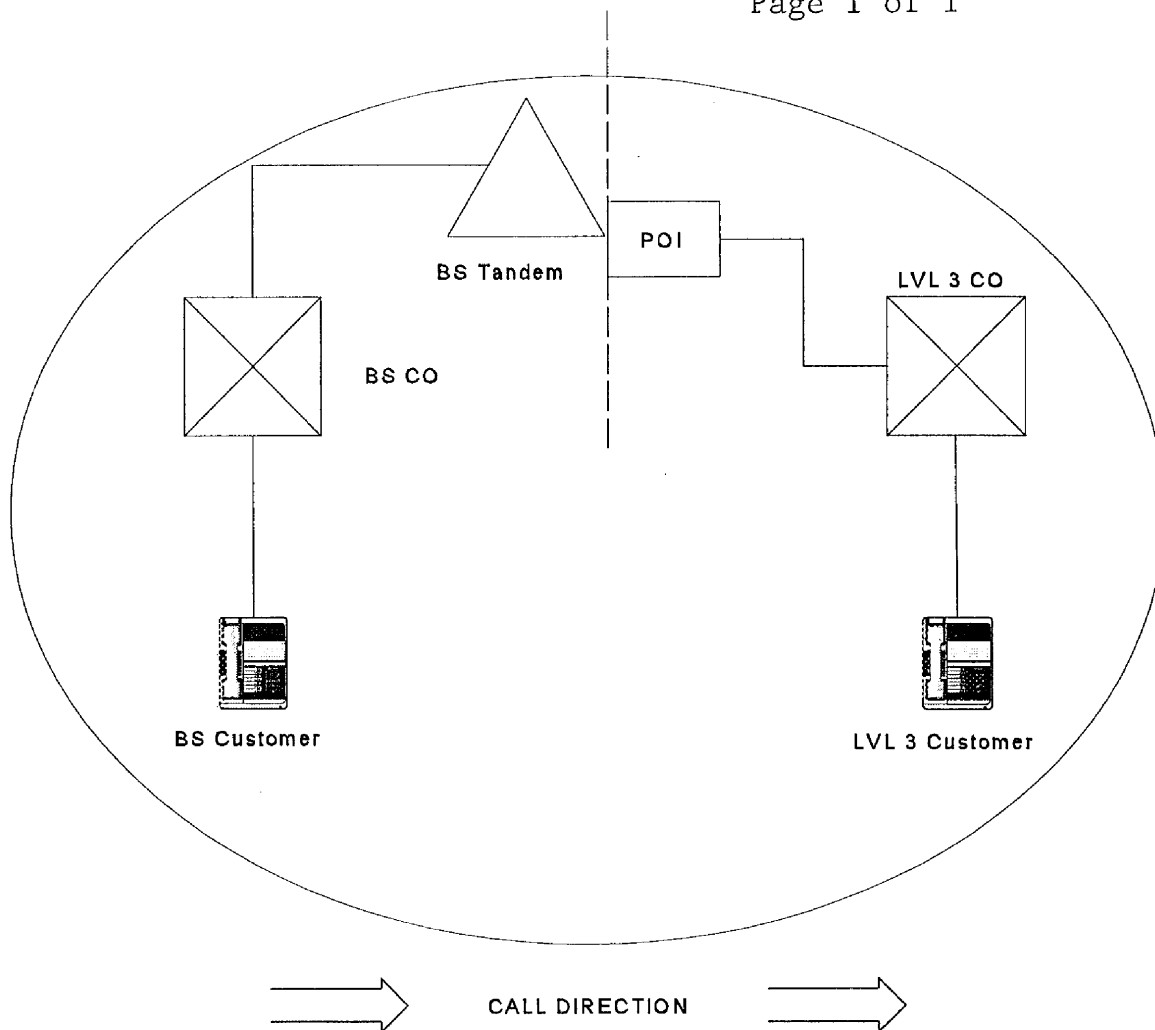
**DIAGRAM 4**

Docket No. 000907-TP  
Direct Testimony of Timothy  
J. Gates  
Exhibit      (TJG-4)  
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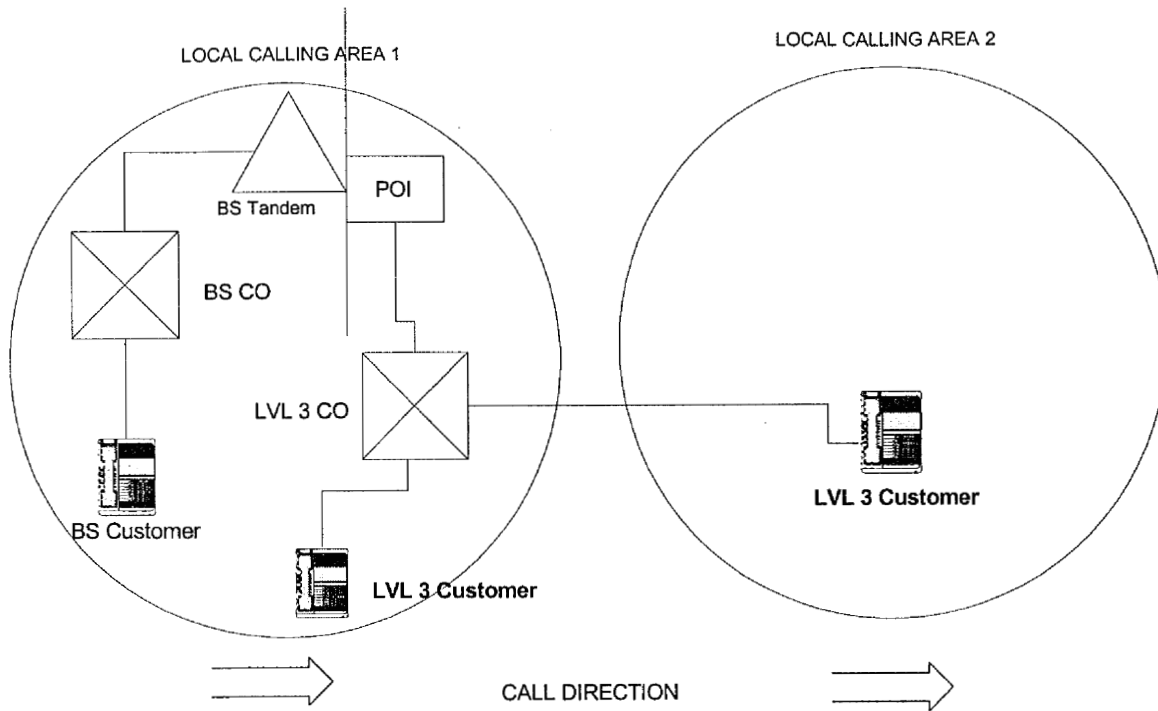


**DIAGRAM 5**

Docket No. 000907-TP  
Direct Testimony of Timothy  
J. Gates  
Exhibit (TJG-5)  
Page 1 of 1



**DIAGRAM 6**



**DIAGRAM 7**

