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November 1, 2000

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
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Betty Easley Conference Center, Room 110  
Tallahassee, Florida 32399-0850

**HAND DELIVERY**

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RECORDS AND REPORTING

Re: Docket No. 000907-TP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Level 3 Communications, LLC ("Level 3") are the following documents:

1. Original and fifteen copies of the Prefiled Rebuttal Testimony of Gregory L. Rogers; *14157-00*
2. Original and fifteen copies of the Prefiled Rebuttal Testimony of Anthony Sachetti; *14158-00*
3. Original and fifteen copies of the Prefiled Rebuttal Testimony and Exhibits TJG-8 through TJG-9 of Timothy J. Gates; *14159-00*
4. Original and fifteen copies of the Prehearing Statement and in disk in Word Perfect 6.0 containing a copy of the Prehearing Statement; and *14160-00*
5. Original and one copy of the Notice of Service of Attachment 1 to Level 3's First Set of Interrogatories to BellSouth Telecommunications, Inc. *14161-00*

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me. Copies of the above-referenced testimony have been provided to Staff counsel and counsel for BellSouth Telecommunications, Inc. in accordance with the attached Certificate of Service.

APP \_\_\_\_\_  
 GAE \_\_\_\_\_  
 CMP \_\_\_\_\_  
 COM \_\_\_\_\_  
 CTR \_\_\_\_\_  
 ECR \_\_\_\_\_  
 LEG \_\_\_\_\_  
 OPC \_\_\_\_\_  
 PAI \_\_\_\_\_  
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*Henry (Appearance)*


Blanca S. Bayo, Director

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Thank you for your assistance with this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth A. Hoffman", with a long horizontal flourish extending to the right.

Kenneth A. Hoffman

KAH/rl

Enclosures

cc: Parties of Record

Blanca S. Bayo, Director

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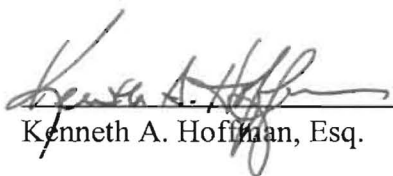
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery(\*) and United States Mail to the following this 1<sup>st</sup> day of November, 2000:

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\_\_\_\_\_  
Kenneth A. Hoffman, Esq.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

Petition of Level 3 Communications, )  
LLC for arbitration of certain terms and ) Docket No. 000907-TP  
conditions of proposed agreement with )  
BellSouth Telecommunications, Inc. ) Filed: November 1, 2000  
\_\_\_\_\_)

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

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DOCUMENT NUMBER-DATE

14159 NOV-18

FPSC-RECORDS/REPORTING

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

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

6           **Q.   ARE YOU THE SAME TIMOTHY J. GATES WHO FILED DIRECT**  
7           **TESTIMONY IN THIS PROCEEDING?**

8           A.   Yes, I am.

9           **Q.   WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

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

13          ***ISSUE 1 – How should the parties designate the***

14          ***Interconnection Points (“IPs” or “POIs”) for their networks?***

15          ***ISSUE 3 – Should each carrier be required to pay for the use of***

16          ***interconnection trunks on the other carrier’s network? Even if***

17          ***so, should Level 3 be required to pay recurring and***

18          ***nonrecurring rates based upon BellSouth’s access tariff for***

19          ***the use of interconnection trunks?***

20          **Q.   PLEASE BRIEFLY DESCRIBE THE DISPUTE ON THESE**  
21          **POINTS.**

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

12           **Q:     DID THE FCC RECOGNIZE THAT NEW ENTRANTS WOULD**  
13                    **LIKELY DEVELOP THEIR NETWORKS WITH ONLY ONE POINT**  
14                    **OF INTERCONNECTION (“POI”) PER LATA?**

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

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

1 option to interconnect at only one technically  
2 feasible point in each LATA.<sup>1</sup>

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

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

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

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<sup>1</sup> *In The Matter of Application of SBC Communications, Inc. Pursuant to Section 271 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion And Order, ¶178 (rel. June 30, 2000) (*Texas 271 Order*).

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

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

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

15 **Q. MS. COX CLAIMS THAT “BELLSOUTH HAS A LOCAL NETWORK**  
16 **IN EACH OF THE LOCAL CALLING AREAS IT SERVES IN**  
17 **FLORIDA.” (TESTIMONY OF COX AT 4) PLEASE COMMENT.**

18 A. This is the fiction I referred to earlier. BellSouth is using this play on  
19 words in an attempt to justify its proposal that Level 3 be financially  
20 responsible for delivering BellSouth's originating traffic from each of  
21 these purportedly separate networks to the POI. As noted above in



1 the *Texas 271 Order*, the ALECs are allowed one technically feasible  
2 point per LATA, not per local calling area.

3 BellSouth uses the definition of “interconnection” – the physical  
4 linking of two networks – in an attempt to justify its proposal.

5 **Q. PLEASE EXPLAIN.**

6 A. Ms. Cox cites the definition of interconnection as being a connection  
7 between two networks, and then proceeds to suggest that each local  
8 calling area is a separate and distinct network. For instance, at page  
9 18 of her testimony she states, “When Level 3 interconnects with  
10 BellSouth’s local network in Jacksonville, it is not interconnecting with  
11 BellSouth’s local network in Lake City.” This is simply not true.

12 The local networks Ms. Cox is referring to are not stand-alone  
13 networks – they are an integral part of the larger BellSouth network.  
14 To use Ms. Cox’s approach, BellSouth would have anywhere from  
15 100 to 200 or more local networks in Florida alone. Ms. Cox says that  
16 BellSouth has “...as many as 10, 20, or more such local networks in  
17 a given LATA.” (Testimony of Cox at 4) Thus, under BellSouth’s  
18 theory, an ALEC could have to interconnect with BellSouth up to 200  
19 times in its Florida serving area – and thereby duplicate the historical  
20 development of the BellSouth network – just so it could exchange  
21 traffic with BellSouth.

1           **Q.    IS MS. COX’S POSITION ON LOCAL NETWORKS CONSISTENT**  
2           **WITH OTHER STATEMENTS BY BELLSOUTH?**

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

6                         At a recent speaking engagement, BellSouth Chairman and  
7           CEO, Mr. Duane Ackerman boasted about the integrated nature of  
8           BellSouth’s wireline network, especially as it relates to data, saying  
9           that BellSouth’s network is “the most robust local network in the U. S.,  
10          if not the world”, and that the network is “not about a series of stand-  
11          alone internet data centers”, but “about an integrated e>business  
12          network platform, available to all of our customers wherever they are.”  
13          Mr. Ackerman attributes BellSouth’s ability to provide advanced  
14          services to its customers to the integration of its existing network  
15          facilities consisting of “Internet points-of-presence, central offices,  
16          SONET rings and Fast Packet switches”.<sup>3</sup>

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

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<sup>3</sup> Remarks of Duane Ackerman at the Goldman Sachs 2000 Communicopia IX Conference, October 4, 2000.

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

3 **Q. MS. COX CLAIMS THAT “LEVEL 3 IS INAPPROPRIATELY**  
4 **ATTEMPTING TO SHIFT COSTS TO BELLSOUTH.” (TESTIMONY**  
5 **OF COX AT 8) PLEASE RESPOND.**

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

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

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

1                   The fact that a BellSouth customer in Lake City calls a Level  
2                   3 customer in Lake City does not change the responsibilities of the  
3                   carriers. BellSouth delivers the call from Lake City to Jacksonville and  
4                   Level 3 then terminates the call from Jacksonville to Lake City. There  
5                   is nothing one-sided about this arrangement. As noted in my Direct  
6                   Testimony, it is inappropriate to impose any charges for local  
7                   interconnection trunks (and the facilities upon which those trunks  
8                   ride), as these are co-carrier facilities and trunks provided for the  
9                   mutual benefit of the parties in exchanging customer traffic, and both  
10                  parties must deploy matching capacity on their side of the POI.  
11                  Further, as both parties have already agreed in Section 1.1.1 of  
12                  Attachment 3, it is each carrier's financial and operational  
13                  responsibility to supply and maintain the network on its side of the  
14                  POI to deliver traffic to the terminating carrier, so a requirement that  
15                  each party then pay the other for trunks and facilities on the other's  
16                  network is inconsistent with other resolved sections of the contract.

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

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

14           **Q.     IF THE COMMISSION ACCEPTED BELLSOUTH’S PROPOSAL**  
15                     **WHAT WOULD BE THE RESULT?**

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

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

1                   **RECIPROCAL COMPENSATION. (TESTIMONY OF COX AT 11)**

2                   **PLEASE COMMENT.**

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

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

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

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

1 that it originates. Indeed, the distinction urged by  
2 Defendants is nonsensical, because LECs could  
3 continue to charge carriers for the delivery of originating  
4 traffic by merely re-designating the “traffic” charges as  
5 “facilities” charges. Such a result would be inconsistent  
6 with the language and intent of the Order and the  
7 Commission’s rules.<sup>4</sup> (footnotes omitted; emphasis in  
8 original)

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

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

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

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<sup>4</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, ¶25 (rel. June 21, 2000) (*TSR Order*).

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

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

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

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<sup>5</sup> *Id.* at ¶34.



1 enhanced service provider, including an internet service  
2 provider (“ISP”)?

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

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

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

17 A: No. Ms. Cox’s position that BellSouth agrees to apply the  
18 Commission’s Orders in the ITC^DeltaCom, Intermedia and ICG  
19 cases, as a “conciliatory offer” that avoids requiring the  
20 Commission to rehear this issue is a red herring. Although Ms. Cox  
21 does not state BellSouth’s interpretation of the Commission’s  
22 “status quo” rulings, BellSouth has made clear in its response

1 (paragraphs 26 and 27) to Level 3's Petition for Arbitration that it  
2 believes the status quo is that BellSouth will not pay Level 3  
3 reciprocal compensation for ISP-bound traffic. Accordingly, Level 3  
4 asks that the Commission affirmatively address BellSouth's  
5 obligation to pay reciprocal compensation for ISP-bound traffic.  
6 The Commission should rule, once again, that reciprocal  
7 compensation is owed for traffic to Internet Service Providers.

8 Furthermore, Level 3 does not agree that a "track and true  
9 up" arrangement is appropriate. The retrospective effect of a final  
10 resolution of this issue on a national level is not an issue in this  
11 arbitration. If there is to be any retrospective adjustment for Level  
12 3, to avoid a discriminatory impact on Level 3, it should not be  
13 determined until a final resolution of this issue has been rendered.

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

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

1           A.     The ILECs frequently cite this order as support for their positions.  
2  
3           Many commissions, however, have not agreed with the ILECs on  
4           this issue. For instance, in a recent decision on this dispute, the  
5           Michigan Commission stated:

6                     Commission precedent on the issue of the  
7                     appropriate rating of a call to a customer  
8                     located outside the geographic area  
9                     associated with the NXX assigned to that  
10                    customer has consistently found that intra NXX  
11                    calls are to be considered local for rating  
12                    purposes, despite their actual routing. ...

13                    The arbitration panel adopted the reasoning of  
14                    the ICC in its May 8, 2000 decision involving  
15                    an arbitration agreement between Focal and  
16                    Ameritech Illinois. In that case, Ameritech  
17                    Illinois requested language that would have  
18                    required Focal to establish a point of  
19                    interconnection within 15 miles of the rate  
20                    center for any NXX code that Focal used to  
21                    provide FX service. The ICC determined that  
22                    nothing in state or federal law required  
23                    adoption of the proposal and it rejected  
24                    Ameritech Illinois' arguments concerning the  
25                    alleged "free ride" that Focal would obtain  
26                    without the requirement. That free ride  
27                    argument appears to be the same as one of  
28                    the arguments that Ameritech Michigan poses  
29                    in this case. In the ICC's view, the manner in  
30                    which the parties currently handle traffic belied  
31                    Ameritech Illinois' argument, because  
32                    Ameritech Illinois would not be required to  
33                    carry traffic any further or incur any extra  
34                    expense based on the nature of the call being  
35                    FX service. Rather, Ameritech Illinois delivers  
36                    the call to the point of interconnection  
37                    associated with the NXX, after which, Focal

1 delivers the call to the FX customer, wherever  
2 that customer might be located.<sup>6</sup>  
3

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

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

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

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

<sup>7</sup> *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1 (D.C. Cir. 2000) (“*Bell Atlantic*”).

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

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

3 The D.C. Circuit held that the FCC applied the wrong  
4 analysis in the *ISP Order*. In determining that ISP-bound traffic  
5 was not subject to reciprocal compensation under Section  
6 251(b)(5), the FCC engaged in the end-to-end analysis that it has  
7 traditionally used to determine the jurisdictional nature of traffic.  
8 The court rejected this approach, saying that “[h]owever sound the  
9 end-to-end analysis may be for jurisdictional purposes, the  
10 Commission has not explained why viewing [ISP-bound calls] as  
11 continuous works for purposes of reciprocal compensation.” *Id.* at  
12 7. In other words, the fact that a call to an ISP may be  
13 jurisdictionally interstate under an “end-to-end” analysis does mean  
14 that reciprocal compensation is not paid on the call.

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

20 A. No. The regulatory treatment of a particular call should be the  
21 same for retail end user billing and for intercarrier compensation. A  
22 call that is rated as local for retail purposes by comparing the NXX

1 codes of the calling party and the called party should also be a  
2 local call for compensation purposes.

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

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

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

15 A: Yes. In a competitive environment, the ILEC already incurs costs  
16 in addition to those it would typically incur in a monopoly  
17 environment. These additional costs are the costs of transporting  
18 all traffic bound to a Level 3 customer to the Level 3 POI. In a  
19 monopoly environment, BellSouth probably would not route all  
20 traffic through a single hub. In a competitive environment,  
21 however, the minor inefficiencies related to routing to a central  
22 exchange point are offset by increased benefits related to improved

1 service quality, lower prices, and additional service options  
2 provided by competitors.

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

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

1 Exhibit \_\_ TJJG-9). The transport provided by Level 3 back to local  
2 calling area 2 is indicated by a dotted line because it is not  
3 necessary for it to be provided. Level 3's customer has a virtual  
4 presence in local calling area 2 rather than a physical presence. In  
5 other words, to the BellSouth customer in local calling area two, it  
6 appears that the Level 3 customer is physically located in local  
7 calling area 2. It would be physically possible to establish such a  
8 presence in each local calling area, but as I've stated before, that  
9 would unnecessarily increase the cost of Internet access for  
10 consumers and ISPs alike. If the ISP or Level 3 did establish a  
11 local presence, the diagram would be the same as in Diagram 5.1.  
12 Level 3 could provide the transport back to local calling area 2, and  
13 its customer could establish a physical presence there, in which  
14 case the scenario would be the same as in Diagram 5.1, and the  
15 call would be unmistakably local. In both scenarios, Diagram 5.1  
16 and Diagram 5.2, the transport obligations of BellSouth, and the  
17 accompanying costs, are identical. The physical location of the  
18 customer makes no difference in terms of BellSouth's network  
19 costs in the scenarios illustrated by Diagram 5.1 and Diagram 5.2.  
20 When I say that the physical location of the called party should not  
21 matter for purposes of reciprocal compensation, I am referring to  
22 the arrangement illustrated in Diagrams 5.1 and 5.2. These



1 diagrams show, contrary to Ms. Cox's contentions, that there is  
2 good reason from a network cost and operational perspective to  
3 treat calls rated as local for retail purposes as local for intercarrier  
4 compensation purposes as well.

5 **Q: HAS ANY STATE COMMISSION ADOPTED THIS APPROACH?**

6 A: Yes. The Michigan and California Commissions have ruled that the  
7 rating of a call based upon a comparison of the NXX codes of the  
8 calling and the called parties determines the intercarrier  
9 compensation for the call.<sup>9</sup>

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

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

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

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

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

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

5 Further, adopting BellSouth’s resolution of this issue may  
6 lead to unusual and confusing results. Assume, for example, that  
7 the facilities of a customer using Level 3’s virtual NXX product are  
8 located in downtown Jacksonville. Under BellSouth’s position, a  
9 call from a BellSouth subscriber in Jacksonville to the Jacksonville  
10 NXX of the customer served by Level 3 would be rated as local and  
11 reciprocal compensation would be owed. Furthermore, under  
12 BellSouth’s position, a call from a BellSouth subscriber in Lake City  
13 to the same Level 3 customer’s Lake City NXX code would not be  
14 rated as local and reciprocal compensation would not be owed  
15 because the Level 3 customer has no presence in Lake City.  
16 However, under BellSouth’s reasoning, a call from the same  
17 Jacksonville BellSouth subscriber to the Lake City NXX code of the  
18 Level 3 customer should be considered local because the call  
19 originates and physically terminates in Jacksonville, even though  
20 the number dialed is associated with Lake City and the switches  
21 processing the call would recognize the call as a toll call. In that

1 case, reciprocal compensation would be owed for a call that has  
2 the appearances of a toll call to the switches connecting the call.

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

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

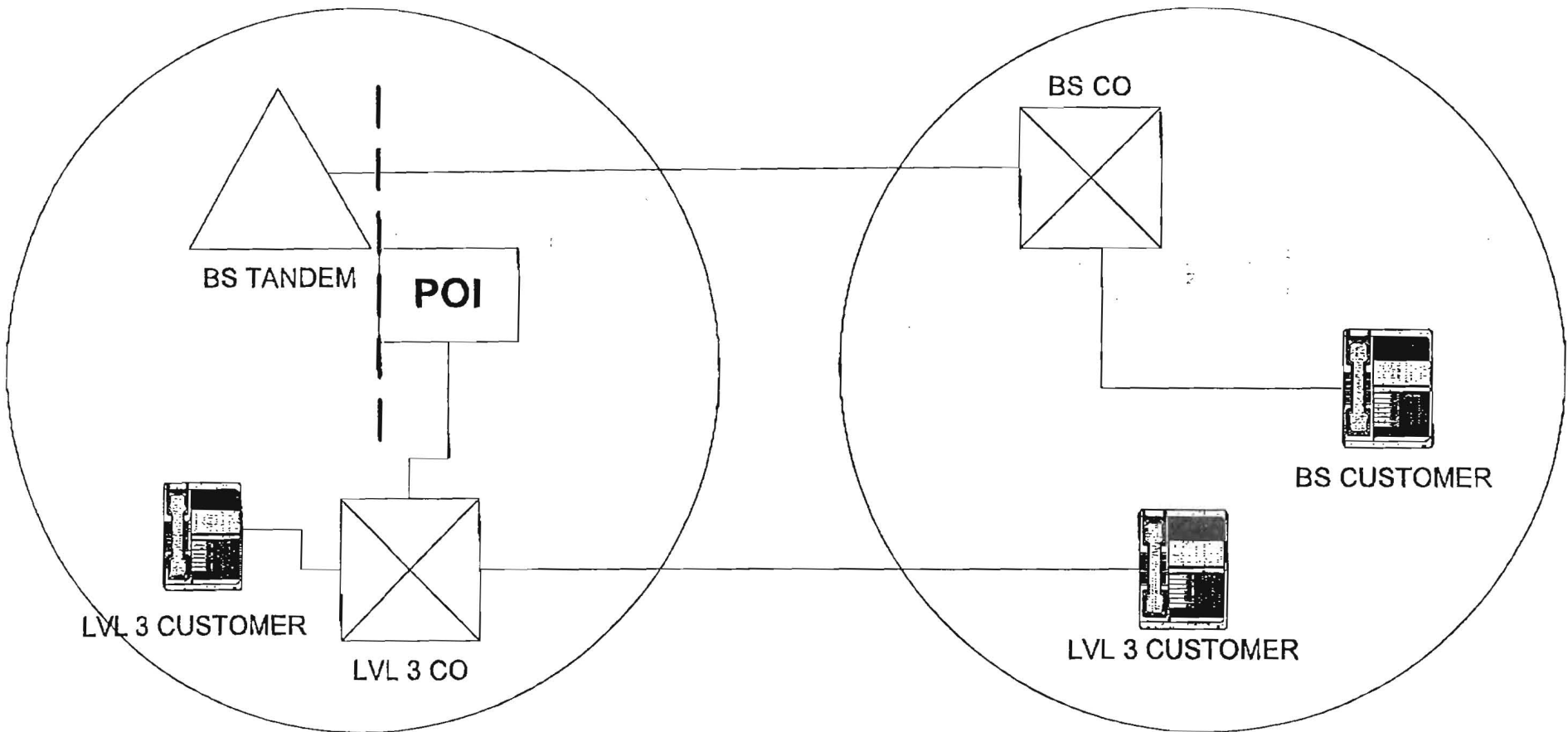
12 A. ALECs would receive no compensation for terminating calls  
13 originated by BellSouth's customers and would instead pay  
14 BellSouth for originating such calls even though BellSouth incurs  
15 no more cost in doing so than for any other locally-dialed call.  
16 Such a result is anticompetitive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

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 A. Yes, it does.

LOCAL CALLING AREA ONE

LOCAL CALLING AREA TWO



LOCAL CALLING AREA ONE

LOCAL CALLING AREA TWO

