

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 000907-TP
:
PETITION BY LEVEL 3 COMMUNICATIONS, :
LLC FOR ARBITRATION OF CERTAIN :
TERMS AND CONDITIONS OF A PROPOSED :
AGREEMENT WITH BELLSOUTH :
TELECOMMUNICATIONS, INC. :

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VOLUME 1
Pages 1 through 147

PROCEEDINGS: HEARING

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

DATE: Wednesday, December 6, 2000

TIME: Commenced at 9:30 a.m.

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

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

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9 And MICHAEL R. ROMANO, Level 3 Communications, LLC,
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16 BellSouth Telecommunications, Inc.

17 FELICIA R. BANKS, Florida Public Service
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20 appearing on behalf of the Commission Staff.

21 ALSO PRESENT: CAYCE HINTON, KEVIN BLOOM,
22 and DAVID DOWDS, Division of Competitive Services.

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1 P R O C E E D I N G S

2 COMMISSIONER JABER: Ms. Banks, let's begin the
3 hearing, and if you'll read the Notice for us.

4 MS. BANKS: This hearing for docket number
5 000907-TP, petition by Level 3 Communications, LLC, for
6 arbitration of certain terms and conditions of the
7 proposed agreement with BellSouth Telecommunications, Inc.
8 is being held at this time and place for the purposes set
9 forth in the Notice.

10 COMMISSIONER JABER: Let's take appearances.
11 Mr. Hoffman.

12 MR. HOFFMAN: Good morning, Madam Chairman,
13 thank you. My name is Kenneth A. Hoffman. I'll also
14 enter an appearance for John Ellis. We're with the firm
15 of Rutledge, Ecenia, Purnell & Hoffman.

16 Also with me to my left is Michael Romano, who
17 is an in-house counsel with Level 3 Communications. And
18 I'd also like to enter an appearance for Tamar E. Finn
19 with the Swidler Berlin law firm in Washington. And all
20 of us appear on behalf of Level 3 Communications, LLC.

21 MR. LACKEY: Good morning, Madam Chairman. My
22 name is Doug Lackey. I'm appearing on behalf of BellSouth
23 Telecommunications, Inc. With me is Patrick Turner; 675
24 West Peachtree Street, Atlanta, Georgia. We're appearing
25 on behalf of BellSouth in this proceeding.

1 COMMISSIONER JABER: Staff?

2 MS. BANKS: Felicia Banks on behalf of
3 Commission Staff. And I'll also enter an appearance for
4 Lee Fordham on behalf of the Commission Staff. And I have
5 with me also Cayce Hinton and Kevin Bloom, Commission
6 Staff and David Dowds, Commission Staff.

7 COMMISSIONER JABER: Okay. Ms. Banks, are there
8 any preliminary matters that we need to discuss before we
9 proceed with the hearing?

10 MS. BANKS: Yes, Commissioner Jaber. The first
11 preliminary matter is a motion to compel that's pending.
12 This motion to compel was filed by Level 3 requesting that
13 BellSouth respond to request for interrogatories of
14 production of documents. I believe at this point there
15 were two pending document requests that were outstanding,
16 and I'm going to allow the parties to go on the record to
17 state their position.

18 COMMISSIONER JABER: Motion to compel was filed
19 by Level 3, Mr. Hoffman?

20 MR. HOFFMAN: Madam Chairman, Level 3 filed a
21 motion to compel in connection with a motion of pending
22 discovery requests. BellSouth filed a response. We
23 entered into discussions, and we were able to work out
24 satisfactory responses in connection with all but two.
25 Those two were document request numbers 24 and 25.

1 We have now reached a stipulation with BellSouth
2 that Level 3's document requests numbers 24 and 25 have
3 been sufficiently answered by BellSouth pursuant to
4 BellSouth's responses to Level 3 interrogatory numbers 54
5 and 57, as well as Level 3's supplemental response to
6 Level 3 document request number 23. And, I believe, that
7 that accurately reflects our stipulation.

8 MR. TURNER: It does. Just one minor
9 correction. It was BellSouth's response to Level 3's
10 interrogatories. I think, you slipped up and said Level
11 3's response.

12 MR. HOFFMAN: Thank you.

13 COMMISSIONER JABER: All right. So, do you need
14 to withdraw your motion to compel as it relates to all
15 other interrogatories and production of document requests
16 and have the record reflect that the parties have entered
17 into a stipulation with regard to production of document
18 requests number 24 and number 25, as you stated and as
19 BellSouth has agreed with?

20 MR. HOFFMAN: Yes, ma'am.

21 COMMISSIONER JABER: Okay. I think, it's
22 adequate to just let the record reflect that. I can
23 acknowledge the stipulation and the withdrawal of the
24 motion to compel.

25 Staff, anything else?

1 MS. BANKS: Okay. By letter dated November the
2 14th, 2000, Level 3 has filed a notice of withdrawal of
3 Issues 4, 5, and 8, concerning the language as set forth
4 in the order establishing procedure and that order number
5 is PSC-00-1646-PCL-TP.

6 COMMISSIONER JABER: Okay. The Commission
7 acknowledges the notice of withdrawal of Issues 4, 5, and
8 8.

9 Next preliminary matter, Staff?

10 MS. BANKS: Level 3 has also withdrawn its
11 objection of motion for protective order to Staff's
12 Interrogatory Number 1.

13 COMMISSIONER JABER: Okay. We acknowledge the
14 withdrawal by Level 3 of its motion for protective order
15 that was filed November 17th, 2000.

16 Next preliminary matter.

17 MS. BANKS: The last preliminary matter that
18 Staff is aware of is a point of clarification. Gregory
19 Rogers has adopted the direct testimony of William P.
20 Hunt, III. This information was inadvertently left out of
21 the prehearing order. Parties have been advised of the
22 omission.

23 COMMISSIONER JACOBS: Okay. It's a good time to
24 go over the witness list and who's adopting whose
25 testimony.

1 I have that Gregory Rogers is adopting the
2 direct testimony of William Hunt. And I have that Anthony
3 Sachetti is adopting the direct testimony of Kevin Paul.
4 Do parties agree to that?

5 MR. HOFFMAN: Yes, ma'am.

6 COMMISSIONER JABER: Okay. Next, Staff?

7 MS. BANKS: Staff is unaware of any other
8 preliminary matters at this point. Staff would like to
9 note that parties have agreed to take up direct and
10 rebuttal together.

11 COMMISSIONER JABER: Thank you. Mr. Hoffman,
12 are there any preliminary matters you need to bring to our
13 attention?

14 MR. HOFFMAN: Madam Chairman, there is one.
15 Level 3 would like to have its Official Recognition List
16 marked for identification and admitted into the record,
17 and a copy of that list has been provided to the parties.
18 I will provide copies to you now.

19 COMMISSIONER JABER: Okay. We'll do that in a
20 minute.

21 MR. HOFFMAN: Okay.

22 COMMISSIONER JABER: Mr. Lackey, is there
23 anything that we need to take up before we start with the
24 exhibits?

25 MR. LACKEY: No, ma'am.

1 COMMISSIONER JABER: All right. Mr. Hoffman,
2 what exhibit was that?

3 MR. HOFFMAN: This would be a letter dated
4 December 5, 2000, reflecting Level 3's Official
5 Recognition List.

6 COMMISSIONER JABER: Letter dated December 1st?
7 Mr. Lackey, is there any objection to this
8 exhibit?

9 MR. LACKEY: No objection, ma'am.

10 COMMISSIONER JABER: Staff?

11 MS. BANKS: No objection, Commissioner.

12 COMMISSIONER JABER: We'll identify this as
13 Exhibit 1, December 5th letter. Well, actually, it is
14 your Official Recognition List, isn't it, Mr. Hoffman?

15 MR. HOFFMAN: Yes, ma'am.

16 COMMISSIONER JABER: Okay. Well, Exhibit 1 will
17 be Level 3's Official Recognition List.

18 Anything else, Mr. Hoffman?

19 MR. HOFFMAN: No, ma'am.

20 COMMISSIONER JABER: All right. With no
21 objection, we'll go ahead and move that into the record.

22 (Exhibit 1 marked for identification and
23 admitted into the record.)

24 COMMISSIONER JABER: Mr. Lackey?

25 MR. LACKEY: We don't have anything, ma'am. Our

1 Official Recognition List was given to the Staff. It was
2 included in their list.

3 COMMISSIONER JABER: Okay. Staff?

4 MS. BANKS: Commissioner Jaber, Staff would like
5 to enter into the record its Official Recognition List.
6 Parties have been given a copy of this in advance, and
7 there appears to be no objections.

8 What we would like to do, we did receive the
9 Official Recognition List by BellSouth late yesterday, so
10 it is not actually included in our packet, but if we could
11 include it as an attachment or supplement of the Staff's
12 Official Recognition List.

13 COMMISSIONER JABER: Mr. Lackey, is that
14 sufficient?

15 MR. LACKEY: Yes, ma'am. Between the two lists,
16 we've cited every case in the western world, so I think
17 it'll be fine.

18 COMMISSIONER JABER: And some, right? All
19 right. Staff, that would be what you've labeled Stip-1?

20 MS. BANKS: Stip-1.

21 COMMISSIONER JABER: We'll identify it as
22 Exhibit 2. And it's Staff's Official Recognition List
23 with the addition of the BellSouth list. And we'll go
24 ahead and move that into the record.

25

1 (Exhibit 2 marked for identification and
2 admitted into the record.)

3 MR. HOFFMAN: Madam Chairman, if I may, does the
4 list currently include the additions that were provided by
5 BellSouth or will those be provided?

6 COMMISSIONER JABER: It doesn't currently
7 include it.

8 MS. BANKS: Commissioner Jaber, no, they do not.
9 They are separate. We may have some duplication, but they
10 are separate.

11 MR. HOFFMAN: So, the BellSouth list will be
12 added and made a part of Exhibit 2?

13 COMMISSIONER JABER: That's what I was
14 proposing.

15 MS. BANKS: Yes.

16 MR. HOFFMAN: Thank you.

17 COMMISSIONER JABER: Staff, I have two exhibits
18 labeled Stip-2 and Stip-3.

19 MS. BANKS: That is correct, Commissioner.
20 Stip-2 is Level 3's response to Staff's first set of
21 interrogatories. And Stip-3 is BellSouth's response to
22 Staff's first set of interrogatories.

23 COMMISSIONER JABER: Okay. We'll have Stip-2
24 identified as Exhibit 3. We'll identify Staff's Stip-3 as
25 Exhibit 4. And without objection, we'll move both of

1 those exhibits into the record.

2 (Exhibits 3 and 4 marked for identification and
3 admitted into the record.)

4 COMMISSIONER JABER: Anything else, Ms. Banks?

5 MS. BANKS: Commissioner Jaber, that's all for
6 Staff.

7 COMMISSIONER JABER: Well, it's my understanding
8 that the parties want to make brief opening statements. I
9 think, in the prehearing order we specified that opening
10 statements would be limited to 10 minutes per side.
11 Mr. Hoffman, this was your petition, so I would imagine
12 you'd want to go first.

13 MR. HOFFMAN: Thank you, Madam Chairman.
14 Mr. Romano will be making the opening statement for Level
15 3. And I have some hand-outs which, hopefully, will
16 assist your understanding in his presentation, which I'd
17 like to hand out at this time.

18 COMMISSIONER JABER: Okay.

19 MR. ROMANO: I guess, I'll begin while
20 Mr. Hoffman is handing those out.

21 Good morning. My name is Mike Romano. I'm an
22 attorney with Level 3 Communications. I appreciate the
23 opportunity to make some brief overview remarks this
24 morning.

25 I've been involved with the Level 3 negotiations

1 with BellSouth since they commenced in February of this
2 year. We've worked from a 150 to 200-page contract and
3 whittled down the issues through good faith negotiations
4 to eight as of the date of filing the arbitration petition
5 and now five as of the date of this hearing.

6 What I'd like to do is give a summary overview
7 of those five and while Level 3 believes its positions on
8 those issues are both supported by federal and state law,
9 as well as in line with the objective of opening Florida's
10 local exchange telecommunications markets to competition.

11 The first issue that's under consideration in
12 this arbitration relates to how and where the parties will
13 define and establish interconnection points. Before
14 getting into the substance of that, it may be best to
15 begin by looking at what an interconnection point is.

16 An interconnection point is a physical linking
17 of the point at which the two parties physically attach
18 their networks and connect facilities for the exchange of
19 traffic. Per Section 1.1.1 of Attachment 3 of the
20 contract, undisputed language, the parties have also
21 agreed that the interconnection point would serve as a
22 financial demarcation, a point at which each party's
23 financial responsibility would be defined to begin and
24 end.

25 Level 3 today operates in Florida in BellSouth

1 territory in two markets, Orlando and Miami. In both
2 those markets today, Level 3 has a single interconnection
3 point with BellSouth. In both of those markets, the
4 single interconnection point generally works well.

5 Level 3 seeks to maintain that arrangement under
6 the new agreement for the exchange of traffic going in
7 both directions, both BellSouth and Level 3-originated
8 traffic. That network arrangement is, we believe,
9 consistent with FCC rules regarding where points of
10 interconnection should be established by requesting
11 carriers. We also believe it just makes technical sense.

12 BellSouth, on the other hand, wants the ability
13 to designate multiple interconnection points for its own
14 originating traffic. That could put carriers in quite a
15 bind as they are forced to go two points designated by
16 BellSouth without any reference to traffic volumes,
17 existing network architectures, what have you.

18 It would put us in the position of having to
19 build or buy facilities to reach multiple points in the
20 BellSouth network without reference to engineering
21 standards. Level 3, in an attempt to broker or compromise
22 on this issue, has proposed two alternatives to the single
23 IP approach, although that's its preferred option.

24 The first would be to contractually define when
25 additional interconnection points would be required, to

1 set up traffic volume such that the interconnection points
2 would be tied to an engineering standard. And when the
3 traffic volumes reach a point certain, establish an
4 additional interconnection point with respect to the area
5 from which those traffic volumes are originating.

6 The second alternative that Level 3 has proposed
7 is to give BellSouth the reciprocal right to designate
8 interconnection points at Level 3 points of presence.
9 This would be a Level 3 switch, a Level 3 collocation
10 site. BellSouth could hand off its traffic there and have
11 Level 3 take that back to the switch, and then take it to
12 its ultimate destination.

13 With respect to the second point, symmetrical
14 compensation for leased facility interconnection, that's a
15 wordy way of saying, essentially, we're arguing over what
16 a pipe is. We're trying to define how the parties, when
17 they lease interconnection facilities from one another,
18 should be able to charge for that.

19 BellSouth has defined its rate elements in a
20 convoluted way by looking at where the pipe falls in the
21 network, where the serving wire center may or may not be
22 to structure in such a way that, quite frankly, a CLEC or
23 an ALEC could never charge BellSouth the same kind of
24 transport charges as BellSouth would charge the ALEC. And
25 that's, you know, because the ALEC often has fewer

1 switches in its network.

2 The switches don't have anything to do with the
3 transport involved, though. If BellSouth is leasing a
4 10-mile stretch of transport from Level 3, Level 3 is
5 saying that it should be able to charge BellSouth for that
6 10 miles the same amount that BellSouth would charge Level
7 3 for leasing 10 miles from BellSouth. The location of a
8 serving wire center within that 10-mile stretch shouldn't
9 make a difference.

10 I have provided some diagrams here in the next
11 slide of symmetrical compensation that show how this works
12 out. The gist of this, though, is the location of serving
13 wire center doesn't affect the function of the pipe
14 provided and the parties should be charging one another
15 the same for that pipe.

16 The third issue under consideration here is
17 compensation for use of interconnection trunks.
18 Interconnection trunks are often called in the industry,
19 co-carrier trunks, and that's with good reason. Those are
20 trunks that are put up for the mutual benefit of the
21 parties to send traffic to one another and deliver traffic
22 coming from the other party to customers.

23 Both parties have to deploy matching capacity on
24 their networks in order to make this work. If BellSouth
25 throws up 400 trunks and Level 3 throws up 40, we're going

1 to have a bottleneck, and it won't work. So, therefore,
2 we have to have matching capacity.

3 Making parties pay to throw up this matching
4 capacity doesn't make a lot of sense. It's not
5 appropriate to impose charges for these co-carrier trunks,
6 particularly in light of the language that I've referenced
7 earlier in Section 1.1.1 that says that each party bears
8 financial responsibility on its own side of the IP.

9 However, if the Commission should deem that
10 charges are appropriate and required for these trunks,
11 Level 3 thinks there are a couple of considerations to
12 take into account. The first is that those charges must
13 be based on forward-looking costs. They must be examined,
14 scrutinized for the compliance with the Act.

15 The second consideration is to look at whether
16 -- who is making use of those trunks? In other words, who
17 is originating traffic? BellSouth has proposed that each
18 party, in a two-way trunking situation, pay 50%, I guess,
19 presuming that there's going to be equal use of those
20 two-way trunks.

21 The fact may be, though, that one party is
22 sending more traffic to the other. And we can tell that
23 and you can look to see who is originating more traffic at
24 any given moment and pay a percentage to actual use,
25 rather than just an assumed 50% split.

1 The fourth point at issue in the arbitration is
2 reciprocal compensation. This is one the Commission's
3 heard about again, and I don't know that we want to spend
4 a lot of time on it here. Level 3's position and
5 BellSouth's positions are clear with respect to whether
6 recip comp should or should not be paid for traffic to and
7 from ESPs, including ISPs.

8 Level 3 thinks this traffic is local. It's
9 rated as local in the retail environment, it's sent over
10 local, co-carrier trunks. It is sent to customers who are
11 purchasing local service. BellSouth has raised the
12 thought that while these calls are longer duration so,
13 therefore, they should be at least set at a lower rate if
14 recip comp's going to be paid at all.

15 If that were true, if all duration were the
16 criterion to be looked at here, calls by teenagers also
17 should not be treated as local. If we're going to look at
18 call duration, the important thing is to look at that in
19 the context of a study as a whole, make a detailed
20 examination.

21 The Commission already has a generic proceeding
22 open to do just such a thing, rather than tweaking a
23 single element to a single cost study and coming up with a
24 haphazard rate, Level 3 thinks the more important approach
25 to this would be to look at this carefully in a generic

1 proceeding and apply it across the industry as a whole,
2 rather than have a discriminatory application and a single
3 arbitration.

4 The final issue is -- relates to intercarrier
5 compensation and carrier location -- or customer location.
6 This is really two issues in one. The first is should
7 BellSouth be permitted to collect originating access
8 charges on all costs to a Level 3 NXX code where any one
9 customer in that NXX code is served through what's called
10 a virtual NXX arrangement where that customer is not
11 physically located where his telephone number may be
12 assigned?

13 The second question is should BellSouth be able
14 to avoid paying compensation for all calls, terminating
15 compensation for all calls, that are sent to Level 3 with
16 respect to an NXX code when only one customer with that
17 NXX code, perhaps, is served through a virtual NXX
18 arrangement?

19 With respect to the first issue, the switch
20 access charges, the important thing to look at is cost.
21 Again, these calls go over BellSouth's local network;
22 they're treated as local by BellSouth, and looking at its
23 retail customers BellSouth does not use its access
24 functions at all in the network. BellSouth's costs are
25 those incurred and processing calls through the local

1 network.

2 The costs BellSouth incurs in originating calls
3 have no relationship to the switched access charges it
4 would seek to impose here. BellSouth is responsible for
5 bringing traffic to the interconnection point, regardless
6 of the customer location behind that interconnection
7 point.

8 BellSouth has actually admitted in discovery
9 that the customer location does not matter. It's the
10 interconnection point location that matters in terms of
11 defining BellSouth's costs. Therefore, Level 3 would
12 submit that BellSouth should not be allowed to impose
13 access charges in this manner.

14 The second half of this intercarrier
15 compensation question is what compensation should be paid
16 for terminating these calls? BellSouth says it doesn't
17 want to pay recip comp for these calls, but it doesn't say
18 that it's going to pay anything for these calls. This
19 would, essentially, give BellSouth a free ride. It could
20 hand these calls off and allow -- and require the
21 terminating carrier to deliver these calls without any
22 compensation whatsoever for doing so.

23 Again, looking at how BellSouth handles these
24 calls itself would indicate that these calls should be
25 treated as local. BellSouth rates these calls as local

1 for retail purposes. It looks at the NXX codes in rating
2 the call and says, "You're calling a local number. I'm
3 going to treat this as local on the retail level."
4 BellSouth treats these calls as local for routing
5 purposes.

6 Again, it doesn't segregate these calls and send
7 them over the access network, it sends them over the local
8 network. Therefore, for retail rating and for general
9 routing purposes, these are local calls, and we would
10 submit they should be as well for terminating compensation
11 for intercarrier compensation.

12 Finally, on a related note, the Commission
13 should consider the impact of this on the kinds of
14 customers who use these so called virtual NXX
15 arrangements. ISPs are an example of a customer who would
16 do this. If an ISP cannot purchase this kind of virtual
17 NXX service without putting its carrier in the position of
18 paying BellSouth switched access charges and not
19 collecting recip comp on these calls, ISPs are only going
20 to face an increased cost, and their provider or providers
21 are going to be afraid to serve ISPs.

22 ISPs cannot go out and put facilities in modem
23 banks and what have you in every local calling area of
24 BellSouth territory. Most providers don't have that kind
25 of network out there to provide ISPs such support. The

1 only one who does is probably BellSouth itself.

2 So, among other things, the Commission should
3 also consider the impact this could have on the Internet
4 access market, both in terms of costs and the ability of
5 consumers to dial into the Internet through a local call.

6 To summarize, Level 3 seeks the following:

7 First, a single IP per LATA for the exchange of both
8 parties' originating traffic. Second, Level 3 believes
9 that a pipe is a pipe and however long the pipe is, the
10 parties should pay each other the same amount for that
11 pipe in leasing interconnection facilities. Third, Level
12 3 seeks a determination that it's inappropriate to impose
13 charges upon one another for co-carrier trunks. Financial
14 responsibility should end at the IP.

15 Fourth, Level 3 would ask the Commission to
16 reaffirm that recip comp should apply for all traffic
17 originating from and terminating to ESPs, including ISPs.
18 And, then, fifth, finally, Level 3 ask that the Commission
19 determine that BellSouth may not impose originating
20 switched access charges on calls going to certain kinds of
21 customers in the local market and that BellSouth not be
22 allowed to escape paying terminating compensation for
23 calls going to those customers.

24 Thank you very much.

25 COMMISSIONER JABER: Mr. Lackey, Mr. Turner.

1 MR. LACKEY: Thank you, Madam Chairman. I'll
2 try to be brief.

3 I'd like to start by saying that, in fact, we
4 have been negotiating with Level 3 for a period of time.
5 And we really have, as Mr. Romano said, resolved an awful
6 lot of issues, and we're down to just four or five issues
7 left that we need your assistance with. Unfortunately,
8 these are the most complex and controversial issues.

9 I will tell you right now that there's at least
10 one of them that I don't think I understand. We are going
11 to try to use charts and drawings and diagrams to lay this
12 out in a manner that makes its understandable. Hopefully,
13 we'll be successful before the day is out. I would say,
14 though, that I can summarize our case with four brief
15 points.

16 First, we object to any requirement that makes
17 us pay when one of our customers in Jupiter, Florida calls
18 a Level 3 customer in Jupiter, Florida. We object to
19 paying to haul the call to Miami for Level 3. Our
20 customer doesn't pay us to haul the call from Jupiter to
21 Miami. Our customer pays us to haul the call around that
22 customer's local calling area. They want us to pay that.
23 We don't want to. That's one of the issues you're going
24 to have to address.

25 Second, we object to paying local reciprocal

1 compensation for calls that go to Kentucky, New York,
2 Washington, California, places outside the state of
3 Florida. Reciprocal compensation is to be paid for local
4 calls, not for long-distance calls. We object to doing
5 that.

6 Third and, I suppose, this is no secret, we
7 object to paying reciprocal compensation for calls to
8 ISPs. I know you've heard this, I know you've decided it,
9 I know that you have decided, in some cases, to simply
10 have the parties continue what they're doing.

11 I know in the recent Global NAPS case you
12 decided to have two rates, a two-tier rate for ISPs. I
13 know that you have a generic proceeding that we're going
14 to have to decide this and perhaps, quite truthfully,
15 that's where this issue ought to be sent, but we object to
16 paying for reciprocal comp for these calls and would
17 suggest that at the absolute minimum you would have to do
18 what you did in Global NAPS and that is create a
19 two-tiered approach to truly reflect the costs of these
20 local ISP calls.

21 Finally, and it sounds like I'm doing a lot of
22 objecting but then, of course, that's why we're here
23 because we disagreed on this, we object to paying Level 3
24 for services and facilities that they don't provide to us,
25 and that is this issue to the symmetrical reciprocal comp

1 issue where Level 3 wants us to pay them something, pay
2 them a rate, pay them for a service, pay them for
3 facilities that they don't provide to us.

4 We, hopefully, understandably, have taken the
5 position that, gee, we just don't want to do that. I
6 think, that when we get through the day, you will see that
7 what I've just described represents the nut of the issue
8 that we're talking here and the thing that we are going to
9 ask you to decide.

10 Hopefully, we'll be able to, through the use of
11 our charts and our cross examination and our witnesses'
12 direct testimony, to illustrate these points for you. I
13 apologize in advance, because they are confusing at best,
14 and we'll do our best to make it as clear as we can.

15 Thank you, appreciate it.

16 COMMISSIONER JABER: Thank you, Mr. Lackey.

17 At this time, let me have the witnesses that are
18 in the room stand up and take the oath. Raise your right
19 hand. Do you affirm that the evidence you are about to
20 give is the truth? Say, I do.

21 THE WITNESSES: I do.

22 COMMISSIONER JABER: Thank you.

23 Mr. Hoffman, you need to call Gregory Rogers?

24 MR. HOFFMAN: Yes, ma'am.

25

1 GREGORY L. ROGERS

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

5 DIRECT EXAMINATION

6 BY MR. HOFFMAN:

7 Q Is your microphone on?

8 A I think, it's on.

9 Q Would you please state your name and business
10 address?

11 A My name is Greg Rogers. I work at 1025 Eldorado
12 Boulevard in Broomfield, Colorado.

13 Q Mr. Rogers, by whom are you employed?

14 A By Level 3 Communications.

15 Q What is your position with Level 3?

16 A I'm an attorney for Level 3.

17 Q Mr. Rogers, have you prepared and caused to be
18 filed 17 pages of prefiled rebuttal testimony in this
19 proceeding?

20 A Yes, I have.

21 Q Are you also adopting the 25 pages of prefiled
22 direct testimony of William Hunt in this proceeding?

23 A Yes.

24 Q Do you have any changes, corrections, or
25 revisions to the prefiled direct testimony that you have

1 adopted or to your prefiled rebuttal testimony?

2 A No, I do not.

3 Q So that if I ask you the same questions this
4 morning that are contained in your prefiled direct and
5 rebuttal testimony, would your answers be the same?

6 A Yes.

7 MR. HOFFMAN: With that, Madam Chairman, I would
8 ask that prefiled direct testimony of William Hunt, which
9 has been adopted by Mr. Rogers, as well as the prefiled
10 rebuttal testimony of Mr. Rogers be inserted into the
11 record as though read.

12 COMMISSIONER JABER: The prefiled direct
13 testimony of Mr. Hunt, as adopted by Mr. Rogers, will be
14 inserted into the record as though read. And the prefiled
15 rebuttal testimony of Mr. Rogers will be inserted into the
16 record as though read.

17 MR. HOFFMAN: Thank you.

18

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

3 A: My name is William P. Hunt, III. I am Vice President and Regulatory
4 Counsel for Level 3 Communications, LLC (“Level 3”). My business
5 address is 1025 Eldorado Boulevard, Broomfield, CO, 80021.

6 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES FOR LEVEL 3.**

7 A: As Vice President and Regulatory Counsel, I am responsible for developing,
8 implementing and coordinating regulatory policy for Level 3’s North
9 American operations. I am also responsible for ensuring the company’s
10 regulatory compliance with state and federal regulations. In addition, I am
11 a member of Level 3’s Global Regulatory Committee that develops
12 worldwide regulatory policy.

13 **Q: PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND**
14 **AND PROFESSIONAL EXPERIENCE.**

15 A: I received a Bachelor of Journalism from the University of Missouri in 1984.
16 I received my Juris Doctor from Western New England College School of
17 Law in 1991. I joined Level 3 as Regulatory Counsel in February, 1999 and
18 was promoted to Vice President and Regulatory Counsel in January, 2000.
19 Prior to joining Level 3, I spent almost five years at MCI Communications
20 (“MCI”). I joined MCI’s Office of General Counsel in 1994 as a commercial
21 litigator. In March of 1996, I joined MCI’s state regulatory group in Denver,
22 Colorado, where I was responsible for securing state certifications in the
23 western United States, supporting arbitrations under the Communications Act
24 of 1934, as amended (“Act”), and prosecuting complaints against U S West
25 Communications, Inc. (“U S West”) in Washington and Minnesota.

1 **Q: HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA**
2 **PUBLIC SERVICE COMMISSION?**

3 A: No. I have testified before the South Dakota Public Utilities Commission
4 during MCI's state certification proceeding and before the California Public
5 Utilities Commission, the Illinois Commerce Commission, the Michigan
6 Public Service Commission, and the Texas Public Utilities Commission,
7 during Level 3 arbitration proceedings. At the date of filing this testimony,
8 I am scheduled to testify before the North Carolina Utility Commission
9 during an arbitration there.

10 **Q: PLEASE DESCRIBE THE OPERATIONS OF LEVEL 3.**

11 A: Level 3 Communications, Inc., through its subsidiaries, including Level 3, is
12 a global next-generation service provider with a state-of-the-art Internet
13 Protocol based network capable of delivering a full range of services,
14 including data, voice, video, fax and multi-media. Level 3's network
15 employs a "softswitch" technology. A softswitch is a software system
16 running on commercially available servers that provides Level 3 with the
17 ability to offer voice services over the same Internet Protocol network that
18 carries broadband data services. Level 3's system has non-proprietary
19 interfaces intended to encourage the development of innovative new services
20 and applications by software and hardware developers, Level 3's bandwidth
21 customers, and other service providers. Level 3's initial service offerings
22 have been focused on enhanced service providers, web-centric companies,
23 and, on a carrier's carrier basis, competitive local exchange carriers, fax
24 service providers, and long distance carriers.

25 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

1 A: The purpose of my testimony is to explain Level 3's position on Issue 8, how
2 the Agreement should define switched access traffic, and the legal basis for
3 Level 3's position on Issue 1, establishing Interconnection Points.

4 **Q: PLEASE SUMMARIZE THE DISPUTE WITH RESPECT TO ISSUE**
5 **8.**

6 A: The dispute centers on BellSouth's attempts to pull an unregulated form of
7 traffic into its access revenue stream. Level 3 has proposed that switched
8 access traffic be described as it is in the Act and in Federal Communications
9 Commission ("FCC") rules and orders. BellSouth, on the other hand, wants
10 its tariff to govern. Further, BellSouth has proposed an additional sentence
11 stating that all interexchange telecommunications are switched access traffic,
12 regardless of the protocol method used to transport the traffic.

13 **Q: HAS THE COMMISSION ADDRESSED THIS ISSUE BEFORE?**

14 A: Yes, in the Intermedia arbitration, the Commission adopted the definition of
15 switched access service proposed by BellSouth, which was similar to the
16 definition BellSouth proposes in this arbitration.

17 **Q: WHAT WAS THE COMMISSION'S BASIS FOR ADOPTING**
18 **BELLSOUTH'S DEFINITION?**

19 A: Based on my reading of the Commission's order, it determined that there was
20 no real dispute between Intermedia and BellSouth regarding the reference to
21 BellSouth's tariff. With respect to inclusion of Internet Protocol telephony
22 in the definition, the Commission appears to have relied on two factors.
23 First, it relied on BellSouth's definitions of Internet Protocol and Internet
24 Protocol telephony that were not contradicted by Intermedia. Second, it

1 accepted BellSouth's argument that the proposal was consistent with federal
2 law because Intermedia failed to rebut that argument.

3 **Q: DO YOU AGREE WITH THE COMMISSION'S DETERMINATION?**

4 A: I believe the Commission's determination was based on an inadequate record.
5 I believe it is inappropriate to rely on BellSouth's tariff to define switched
6 access traffic and inappropriate to classify Internet Protocol telephony as
7 switched access traffic. Furthermore, I will show that the Internet Protocol
8 telephony classification BellSouth proposes in this docket is inconsistent with
9 the Act, FCC rules, and federal policy. I also explain why the Commission's
10 determination in the Intermedia case was premature and could have a
11 negative impact on competition in Florida.

12 **DEFINING SWITCHED ACCESS TRAFFIC BY REFERENCE TO A**
13 **TARIFF**

14 **Q: HOW DOES FEDERAL LAW DEFINE "SWITCHED ACCESS**
15 **TRAFFIC?"**

16 A: Although section 3(16) of the Act defines "exchange access," which includes
17 both switched and special access, it does not define "switched access" or
18 "switched access traffic." That is why Level 3 used the word "described"
19 instead of "defined" in its proposed definition.

20 **Q: HOW DOES BELLSOUTH'S TARIFF DEFINE "SWITCHED**
21 **ACCESS TRAFFIC"?**

22 A: Based on my review of BellSouth's Florida Access Services Tariff, I do not
23 believe that the tariff contains either a clear definition or description of
24 "Switched Access Traffic." The tariff definitions section (E2.6) does not
25 contain a specific definition for "Switched Access Traffic." I understand that

1 Section E6 of the tariff includes terms, conditions, and rates for BellSouth's
 2 SWA service (which I presume means switched access service) and the
 3 Commission has pointed to Section E6.1 as "defining" BellSouth's SWA.¹
 4 Notably, the tariff provision cited by the Commission makes no reference to
 5 Commission or FCC rules.

6 **Q: APART FROM THE FACT THAT THE PHRASE "SWITCHED**
 7 **ACCESS TRAFFIC" DOES NOT APPEAR IN BELLSOUTH'S**
 8 **TARIFF, DO YOU OBJECT GENERALLY TO RELYING ON**
 9 **BELLSOUTH'S TARIFF TO DEFINE A SERVICE SUBJECT TO**
 10 **THE PARTIES' AGREEMENT?**

1

Section E6.1 of BST's Access Services Tariff provides the following definition of BST's switched access service (SWA). BellSouth SWA service, which is available to interexchange carriers (IXC) for their services to end users, provides a two-point electrical communications path between an IXC terminal location and an end user's premises. It provides for the use of common terminating, switching and trunking facilities, and both common subscriber plant and unshared subscriber plant of the Company. BellSouth SWA service provides for the ability to originate calls from an end-user's premises to an IXC's terminal location, and to terminate calls from an IXC's terminal location to an end-user's premises in the LATA where it is provided. BST's SWA service is provided in nine service categories, four service categories of standard and optional features called BellSouth SWA FGs, BellSouth SWA Service, BellSouth SWA 8XX Toll Free Dialing Ten digit Screening Service, BellSouth SWA 900 Service and two unbundled basic service arrangements. (Each service arrangement is describe more completely in the tariff.)

In re: Petition of BellSouth Telecommunications, Inc. for Section 252(b) arbitration of interconnection agreement with Intermedia Communications, Inc., Docket No. 991854-TP, Final Order on Arbitration, Order No. PSC-00-1519-FOF-TP, 52, n.1 (Aug. 22, 2000) ("Intermedia Order").

1 A: Yes, I do. Level 3 and BellSouth have invested time and money to negotiate,
2 and now arbitrate, our Agreement. The Agreement should contain all of the
3 rules, rates and procedures that govern the Parties' relationship as co-carriers.
4 Level 3 should be able to rely on the Agreement to address operational issues
5 that may arise as we implement the Agreement and interconnect our
6 networks. We have tried to ensure that this Agreement defines our
7 substantive rights and trumps any referenced document in the event of a
8 conflict. (For example, see Section 26 of the General Terms and Conditions
9 which provides that the Agreement controls in the event of a conflict with a
10 BellSouth "Guide.")

11 Permitting BellSouth to define a category of traffic exchanged under
12 the Agreement by reference to its tariff conflicts with making the Agreement
13 the document that controls our relationship with BellSouth. BellSouth can
14 change its tariff at any time and for any reason, thus changing our Agreement
15 if the tariff is relied upon to describe Switched Access Traffic.

16 **Q: DON'T THE COMMISSION AND LEVEL 3 HAVE THE**
17 **OPPORTUNITY TO REVIEW AND CONTEST ANY TARIFF**
18 **CHANGES BELLSOUTH SUBMITS?**

19 A: Although I am not familiar with this Commission's tariff protest rules, I
20 assume there is some opportunity for Commission staff and third Parties to
21 object to BellSouth's proposals. But Level 3 has chosen to expend time and
22 effort to negotiate an Agreement. Once we finalize the Agreement, Level 3
23 prefers to rely on the commercial certainty of contract and not current or
24 subsequent BellSouth tariff filings. By this reasoning, one might wonder
25 why parties even negotiate a contract; presumably all of the relations could

1 be governed by tariff instead, but Congress has chosen to use an
2 interconnection agreement structure to govern the parties' relationship.

3 **Q: HAVE THE PARTIES RELIED ON DEFINITIONS IN THE ACT AND**
4 **FCC RULES FOR OTHER TERMS?**

5 A: Yes we have. The definitions of "information service,"
6 "telecommunications," and "telecommunications service" are taken from the
7 Act (47 U.S.C. §153(20), (43) & (46)), and the definition of "network
8 element" is almost identical to the definition in FCC rules (47 C.F.R. § 51.5).

9 **Q: WHY IS IT APPROPRIATE TO RELY ON DEFINITIONS IN THE**
10 **ACT AND FCC RULES?**

11 A: The Act is the fundamental premise underlying the entire Agreement. It
12 defines both Parties' obligations to exchange traffic with one another and
13 BellSouth's obligations as an ILEC to provide Level 3 unbundled access to
14 its network. FCC rules provide the guidance necessary to implement these
15 concepts. It is therefore appropriate to rely on the Act and FCC rules to
16 define Switched Access Traffic that the Parties exchange pursuant to the
17 Agreement.

18 **Q: WHAT DOES BELLSOUTH PROPOSE WITH RESPECT TO USING**
19 **THE FCC DEFINITION?**

20 A: BellSouth insists that because the FCC oversees approval of the BellSouth
21 interstate access tariff, it is appropriate to refer to and depend upon
22 BellSouth's tariff. As BellSouth witness Cox testified in North Carolina:

23 As stated above, "switched access traffic" is defined
24 by the FCC. BellSouth could not unilaterally modify
25 the definition of "switched access traffic" in its tariffs.
26 Such a modification would only result from action by
27 the FCC . . . The Access Tariff is the document that

1 defines and governs such traffic, and the FCC governs
 2 that tariff.²
 3

4 **Q: DO YOU AGREE WITH BELLSOUTH?**

5 A: No. The FCC rules and orders represent the primary source of how switched
 6 access should be defined or described, and the Parties should rely on this
 7 primary source rather than face the possibility of disputes over whether
 8 BellSouth's tariff, a secondary source, reflects the FCC's rulings.

9 **Q: DO YOU HAVE REASON TO DOUBT THAT BELLSOUTH'S**
 10 **DESCRIPTION OF SWITCHED ACCESS SERVICE REFLECTS FCC**
 11 **RULES?**

12 A: Yes. As I discuss in more detail later, BellSouth makes the broad, sweeping
 13 claim that "Internet Protocol Telephony is a telecommunications service that
 14 is provided using Internet Protocol for one or more segments of the call."
 15 BellSouth Response at ¶31. BellSouth ignores the fact that the FCC, in the
 16 Report to Congress cited in part at paragraph 31 of BellSouth's Response,
 17 deferred making any determination about whether phone-to-phone Internet
 18 Protocol telephony is a telecommunications service. BellSouth's broad,
 19 sweeping claim also ignores the fact that the FCC has not acted on a U S
 20 West petition asking the FCC to make such a determination even though that
 21 petition has been pending since April 5, 1999. BellSouth Response at ¶30.
 22 I am thus skeptical that Level 3 will agree that BellSouth's tariff reflects the
 23 FCC's definition of switched access traffic. If, as BellSouth implies, the

²*Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act, BellSouth Telecommunications, Inc., Direct Testimony of Cynthia K. Cox Before the North Carolina Utilities Commission, Docket no. P-779, Sub 4, p 39:9-15 (Aug. 29,2000).*

1 FCC had resolved this issue, there would be no need for BellSouth to include
2 clarifying language in the Agreement.

3 **CLASSIFICATION OF INTERNET PROTOCOL TELEPHONY**

4 **Q: HOW HAS BELLSOUTH PROPOSED TO CLASSIFY INTERNET**
5 **PROTOCOL TELEPHONY?**

6 A: In the Intermedia arbitration, BellSouth proposed the following:
7 “Additionally, IP Telephony traffic will be considered switched access
8 traffic.”³ BellSouth has revised the sentence and now proposes:
9 “Additionally, any public Switched Telephone Network interexchange
10 telecommunications traffic, regardless of transport protocol method, where
11 the physical location of the calling Party and the physical location of the
12 called Party are in different LATAs or are in the same LATA and the Parties’
13 Switched Access services are used for the origination or termination of the
14 call, shall be considered Switched Access Traffic.” Although the sentence
15 is longer and does not include the word “Internet” (which I presume is what
16 the “I” in the “IP” stood for in the first proposal), and the definition is
17 circular, BellSouth’s intent is clear. BellSouth wants to impose access
18 charges on all communications, both voice and data, that are transported via
19 Internet Protocol regardless of whether such communications are classified
20 as telecommunications or information services.

21 **Q: WHAT DO YOU THINK IS WRONG WITH BELLSOUTH’S NEW**
22 **SENTENCE?**

23 A: The fundamental problem is that BellSouth is mixing telecommunications
24 and information services, both of which are defined in the Act and in our

³ *Intermedia Order* at 52.

1 Agreement. The FCC has determined that the categories of
2 “telecommunications service” and “information service” are *mutually*
3 *exclusive*.⁴ In other words, a particular service can be an information service
4 or a telecommunication service, but it cannot be both. Although providers
5 of information services may offer their service by using telecommunications
6 services, they provide a separate and distinct information service that is not
7 regulated by the FCC. For instance, ISPs buy local telephone lines from
8 carriers, and may also purchase private line transport services from carriers,
9 and combine these carrier-provided telecommunications services with the
10 ISP’s equipment to provide Internet access service to the ISP’s end users. In
11 short, although the ISP uses telecommunications services as an input, the
12 services it offers to others are information services because they include, for
13 instance, the capability for generating, acquiring, storing, transforming,
14 processing, and/or retrieving information.

15 The Act defines “telecommunications service” as the “offering of
16 telecommunications for a fee directly to the public or to such classes of users
17 as to be effectively available directly to the public regardless of the facilities
18 used.” 47 U.S.C. §153(46). The term “telecommunications” is defined as
19 “transmission, between or among points specified by the user, of information
20 of the user’s choosing, without change in the form or content of the
21 information as sent and received.” 47 U.S.C. §153(43). The definitions of
22 “telecommunications” and “telecommunications service” can be contrasted
23 with “information service,” which is defined as the “offering of a capability

⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, FCC 98-67, ¶39 (rel. April 10, 1998) (“*Report to Congress*”).

1 for generating, acquiring, storing, transforming, processing, retrieving,
 2 utilizing or making available information via telecommunications, and
 3 includes electronic publishing, but does not include any use of any such
 4 capability for the management, control, or operation of a telecommunications
 5 system or the management of a telecommunications service.” 47 U.S.C.
 6 §153(20). By referring to telecommunications services “regardless of
 7 transport protocol method,” BellSouth is trying to redefine a term defined by
 8 the Act and incorporated in our Agreement. It is also ignoring the FCC’s
 9 enhanced service framework.

10 **Q: PLEASE EXPLAIN THE FCC’S ENHANCED SERVICE**
 11 **FRAMEWORK.**

12 **A:** The FCC established the distinction between “basic services” and “enhanced
 13 services” in the *Second Computer Inquiry*, 77 F.C.C.2d 384 (1980)
 14 (“*Computer II*”). There, the FCC defined “basic services” as “the common
 15 carrier offering of transmission capacity for the movement of information.”⁵
 16 In general, a basic service transmits information generated by a customer
 17 from one point to another, without changing the content of the transmission.
 18 Thus, the “basic” service category is intended to define the transparent
 19 transmission capacity that makes up conventional communications service.
 20 Because the FCC considers “basic” services to be “wholly traditional
 21 common carrier activities,” they are regulated under Title II of the Act.⁶
 22 Among other things, Title II requires that basic interstate and international
 23 services be offered by tariff at fully disclosed rates.

⁵ *Computer II* at ¶420.

⁶ *Id.* at ¶435.

1 By contrast, the FCC defined unregulated “enhanced services” as:
2
3

4 services, offered over common carrier transmission facilities
5 used in interstate communications, which [1] employ
6 computer processing applications that act on the format,
7 content, code, protocol or similar aspects of the subscriber’s
8 transmitted information; [2] provide the subscriber additional,
9 different or restructured information; or [3] involve subscriber
10 interaction with stored information.⁷
11

12 Clause one of this definition is often referred to as the protocol
13 processing test. To determine whether a service meets the enhanced services
14 definition, the FCC has traditionally acted on a *case-by-case basis*, applying
15 each clause of the definition against the specific functionalities of the service
16 in question. The service is generally deemed “enhanced” if it meets the
17 language of one of the three clauses, as interpreted by the FCC. After the
18 1996 Act was passed, the FCC determined that protocol processing services
19 that qualified as enhanced should be treated as information services under the
20 Act.⁸

21 In *Computer II*, the FCC concluded that regulation of enhanced
22 services is unwarranted because the market for those services is competitive
23 and consumers benefit from that competition.⁹ The FCC reached this
24 conclusion notwithstanding the close relationship between communications
25 and some services it classified as enhanced:

⁷ 47 C.F.R. §64.702(a).

⁸ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, CC Docket 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21955-58, &&104-107 (1996) (“*Non-Accounting Safeguards Order*”).

⁹ *Computer II* at ¶433.

1 We acknowledge, of course, the existence of a communications component.
 2

3 And we recognize that *some enhanced services may*
 4 *do some of the same things that regulated*
 5 *communications services did in the past.* On the
 6 other side, however, is the substantial data
 7 processing component in all these services.¹⁰
 8

9 **Q: PLEASE EXPLAIN HOW BELL SOUTH'S PROPOSAL VIOLATES**
 10 **THIS FRAMEWORK.**

11 A: By adding the phrase "regardless of transport protocol method," BellSouth
 12 violates the protocol processing prong of the FCC's enhanced services test.
 13 Although a service may qualify as an information service under the Act
 14 because the provider transforms a communication from circuit-switched
 15 transport to Internet Protocol transport (or vice versa), it will not qualify as
 16 an information service under proposed Section 5.8 of BellSouth's
 17 interconnection agreement.

18 It is crucial to consider the wider industry environment in which the
 19 Parties operate and which the Act administers. The inter-networked,
 20 multi-carrier environment that characterizes the telecommunications industry
 21 requires that all Parties operate according to certain basic, common legal,
 22 technical and operational precepts. The distinct concepts of
 23 "telecommunications services" and "information services," and the regulatory
 24 and commercial consequences flowing therefrom, are two such precepts.
 25 BellSouth's proposal contradicts definitions in the Act, negotiated language
 26 in the Agreement, and the FCC's enhanced services test. The Commission
 27 should reject it.

¹⁰ *Id.* at ¶435 (emphasis added).

1 **Q: HAS THE FCC REVIEWED LANGUAGE SIMILAR TO THAT**
 2 **PROPOSED BY BELLSOUTH?**

3 **A:** Yes, and they rejected it. In an attempt to reduce the reporting requirements
 4 placed on interstate common carriers, the FCC consolidated a number of
 5 worksheets carriers complete to support various federal programs. When the
 6 FCC proposed the consolidated worksheet, it included language that would
 7 have required carriers to report revenue from “calls handled using internet
 8 technology as well as calls handled using more traditional switched circuit
 9 techniques.”¹¹ The FCC removed this language when it adopted the final
 10 consolidated worksheet:

11 As noted by certain commenters, this Commission in its *April*
 12 *10, 1998 Report to Congress* considered the question of
 13 contributions to universal service support mechanisms based
 14 on revenues from Internet and Internet Protocol (IP)
 15 telephony services. We note that the Commission, in the
 16 Report to Congress, specifically decided to defer making
 17 pronouncements about the regulatory status of various forms
 18 of IP telephony until the Commission develops a more
 19 complete record on individual service offerings. We,
 20 accordingly, delete language from the instructions that might
 21 appear to affect the Commission’s existing treatment of
 22 Internet and IP telephony.¹²

23

¹¹ *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Notice of Proposed Rulemaking and Notice of Inquiry, 13 FCC Rcd 19295 (1998).

¹² *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, ¶22 (rel. July 14, 1999) (footnotes omitted).

1 BellSouth's proposed definition ignores the cautious approach
2 adopted by the FCC, and instead takes a simplistic and overly broad
3 one-size-fits-all approach to this complicated question.

4 **Q: HOW DID THE FCC DEFINE INTERNET PROTOCOL**
5 **TELEPHONY IN THE APRIL 1998 REPORT TO CONGRESS?**

6 A: The April 1998 Report to Congress did not include a definition of Internet
7 Protocol telephony. The FCC briefly reviewed one service, described as
8 "phone-to-phone" Internet Protocol telephony, but it deferred making any
9 definitive classification of this service until a better record could be
10 established.¹³

11 **Q: IN THE INTERMEDIA ARBITRATION, BELLSOUTH DEFINED**
12 **PHONE-TO-PHONE INTERNET PROTOCOL TELEPHONY AS A**
13 **TELECOMMUNICATIONS SERVICE THAT IS PROVIDED USING**
14 **INTERNET PROTOCOL FOR ONE OR MORE SEGMENTS OF THE**
15 **CALL.¹⁴ DO YOU AGREE WITH THIS DEFINITION?**

16 A: No. As an initial matter, I note that BellSouth's proposed contract language
17 is not limited to applying switched access charges to phone-to-phone Internet
18 Protocol telephony. As I explained earlier, BellSouth's contract language is
19 much broader and contradicts the FCC's enhanced services rules.

20 But even if BellSouth revised its proposed contract language, defining
21 switched access traffic to include Internet Protocol telephony, or even
22 phone-to-phone Internet Protocol telephony, would not solve the problem.

¹³ *Report to Congress* ¶¶88-89.

¹⁴ *Intermedia Order* at 53.

1 The phrase “Internet Protocol telephony” can mean different things to
2 different people and could encompass a wide variety of services. For
3 instance, it could be phone-to-phone, computer-to-phone, phone-to-computer,
4 or computer-to-computer. In some cases it could be delivered to a World
5 Wide Web address, in others, to a North American Numbering Plan number,
6 in others to an Internet Protocol address not on the World Wide Web.
7 Internet Protocol telephony could include other bells and whistles such as
8 storage and retrieval of data or conversion of English to French. As I stated
9 earlier, the FCC evaluates whether services are information or
10 telecommunications on a case-by-case basis and applies a three-part test. If
11 the service meets any one of the three prongs, it qualifies as enhanced. In the
12 *Report to Congress*, the FCC crafted a loose definition of phone-to-phone
13 Internet Protocol telephony, but refused to classify that service as
14 telecommunications absent further information about how such services are
15 provided. The Colorado Commission, after evaluating Qwest’s and ICG’s
16 arguments about phone-to-phone Internet Protocol telephony, refused to
17 classify the service as information or telecommunications, but prohibited
18 Qwest from assessing access charges on the service because it found that the
19 service did not use Qwest’s routing, switching, and transmission path
20 services that make up switched access.¹⁵

¹⁵ *In the Matter of Petition by ICG Telecom Group, Inc., for Arbitration of an Interconnection Agreement with U S West Communications, Inc., Pursuant to § 252(B) of the Telecommunications Act of 1996*, Docket No. 00B-103T, Initial Commission Decision, Decision No. C00-858, 8 (Col. PUC, Aug. 7, 2000). (“We reject Qwest’s proposal to subject phone voice interexchange traffic transmitted over a carrier’s packet switched network to switched access charges.”)

1 **Q: DO YOU AGREE WITH BELL SOUTH'S DISTINCTION BETWEEN**
2 **THE WORLD WIDE WEB AND NETWORKS THAT CARRY**
3 **INTERNET PROTOCOL TELEPHONY?¹⁶**

4 A: No. Although BellSouth tries to draw a black and white distinction between
5 private networks that carry Internet Protocol telephony and the World Wide
6 Web, I do not believe it is possible to make such a distinction. There is a
7 reason that people often draw a cloud to represent the Internet. The Internet
8 is a loosely organized group of private networks that connect and exchange
9 information at public access points. Because Level 3 is connected to these
10 public access points, it is possible that providers of Internet Protocol
11 telephony will handle communications that begin, traverse, or end on the
12 “public” Internet. Even if it were possible to make a black and white
13 distinction between the public internet and private networks, as the Colorado
14 Commission found, imposition of switched access charges will not be
15 justified where Internet Protocol telephony does not use BellSouth’s network
16 in the same manner as other long distance carriers.

17 **Q: IS THIS ARBITRATION AN APPROPRIATE FORUM TO ADDRESS**
18 **THE QUESTION OF WHETHER INTERNET PROTOCOL**
19 **TELEPHONY SHOULD BE SUBJECT TO ACCESS CHARGES OR**
20 **OTHER FORMS OF TRADITIONAL TELECOMMUNICATIONS**
21 **REGULATION?**

22 A: No. As an initial matter, the questions of how (if at all) Internet Protocol
23 telephony should be regulated, and whether it should be subject to access

¹⁶See *Intermedia Order* at ¶53.

1 charges, are before the FCC.¹⁷ Level 3 recommends that this Commission
2 defer consideration of this issue until the FCC takes action. It would be an
3 administrative nightmare for all Parties involved if the two regulatory bodies
4 were to adopt inconsistent rulings. For instance, this Commission's
5 Intermedia arbitration ruling conflicts with a ruling in the
6 Intermedia/BellSouth North Carolina arbitration, where the arbitrator
7 declined to adopt BellSouth's proposed definition of switched access traffic,
8 including the reference to Internet Protocol telephony.¹⁸ The Commission's
9 Intermedia ruling also conflicts with a Colorado Public Utilities Commission
10 order. Thus, all other things being equal, Level 3 and other providers of
11 Internet Protocol Telephony would be more likely to deploy these services
12 in states such as Colorado and North Carolina rather than Florida.

13 Second, this arbitration is not the appropriate place to determine
14 whether Internet Protocol telephony is subject to access charges because any
15 ruling will bind only BellSouth and Level 3. This could put Level 3 at a
16 competitive disadvantage *vis-a-vis* other LECs operating in Florida that do
17 not have such a classification included in their interconnection agreements.
18

¹⁷ On April 5, 1999, U S West submitted a petition for declaratory ruling asking the FCC to determine that certain types of phone-to-phone Internet Protocol telephony are subject to access charges. The FCC has taken no action on U S West's petition.

¹⁸ *Petition of BellSouth Telecommunications, Inc. for Arbitration of Interconnection Agreement with Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. P-55, Sub 1178, Recommended Arbitration Order, 23-25 (N.C. Util. Com'n, June 13, 2000).

1 Third, if the Commission were to subject Internet Protocol telephony
2 to switched access charges, it would do so without the benefit of a record that
3 could be established in a generic proceeding open to all LECs, interexchange
4 carriers, and Internet Protocol telephony providers. The Commission should
5 not permit BellSouth to establish such precedent in an arbitration against a
6 single carrier on an issue this far-reaching.

7 Finally, it is dangerous to address only one piece of the puzzle. If the
8 Commission were to rule in BellSouth's favor, it would have to find that
9 Internet Protocol telephony is a telecommunications service for purposes of
10 access charges. The classification of Internet-based services raises many
11 complicated and overlapping issues, with implications far beyond access
12 charges. As noted above, what might be considered subject to access charges
13 under BellSouth's definition could in fact come in many different flavors.
14 Yet this proceeding does not permit the Commission to consider the host of
15 other regulatory requirements that would be imposed on Internet Protocol
16 telephony service providers based on a telecommunications classification.
17 If the Commission, contrary to our recommendation, decides to address this
18 issue prior to an FCC determination, the Commission must at least examine
19 all relevant issues in a proceeding open to all affected Parties before
20 determining that Internet Protocol telephony is a telecommunications service
21 subject to access charges.

22 **Q. HAS THE FCC ISSUED ANY POLICY STATEMENTS ABOUT THE**
23 **TREATMENT OF INTERNET PROTOCOL TELEPHONY?**

1 A. Yes. In a speech delivered on September 12, 2000 regarding Internet
2 Telephony, FCC Chairman Kennard urged regulators to decline to impose
3 existing regulatory schemes on new technologies:

4 [D]uring this transition, the answer is not to saddle
5 nascent technology with the increasingly obsolete
6 legacy regulations of the past. . . . Their
7 architectures fundamentally differ, and so should
8 their rules. In short, one-size regulation does not fit
9 all. . . . It just doesn't make sense to apply
10 hundred-year old regulations meant for copper wires
11 and giant switching stations to their IP networks of
12 today. . . . And I oppose any plan to levy any new
13 fees or taxes on IP telephony.¹⁹
14

15 Chairman Kennard's statements not only support the conclusion that
16 the FCC has *not* found Internet Telephony to be the same as switched access,
17 but they also indicate that the FCC sees good reason to *reject* labeling this
18 technological development by reference to older categories of service. As the
19 FCC stated, information services may do some of the things regular
20 communications services did in the past. However, a "duck is a duck"
21 comparison doesn't automatically classify new services as
22 telecommunications subject to regulation.

23 **Q: WHY IS THIS APPROACH GOOD POLICY?**

24 **A: Contrary to BellSouth's claim that Internet Protocol telephony is an**
25 **established long distance service, Internet Protocol telephony is in its**
26 **infancy, and regulators may stunt its growth and stifle innovation by**
27 **imposing burdensome regulatory obligations on such services at this**
28 **time. As Chairman Kennard indicated, regulations designed for**

¹⁹ See www.fcc.gov/Speeches/Kennard/2000/spwek019.html.

1 **circuit-switched networks make little sense in an environment where**
2 **packet switching, Internet Protocol transmission protocols, optical**
3 **switching, and decreasing transport costs permit more efficient**
4 **networks.**

5 The nature of Internet Protocol could make enforcement of traditional
6 regulatory classifications next to impossible. While BellSouth narrowly
7 argues that there is no service distinction involved between Internet Protocol
8 and circuit-switched networks, as Commissioner Kennard's comments make
9 clear, Internet Protocol technology blurs traditional distinctions between local
10 and long distance service and between voice, fax, data, and video services,
11 thereby making "one-size regulation" a difficult proposition. The
12 fundamental design of Internet Protocol networks converts all forms of
13 information into indistinguishable packets of digital bits. Packets are routed
14 through networks based on a non-geographical, non-hierarchical addressing
15 scheme that allows packets to follow several possible routes between network
16 nodes. At any given node, it is impossible to determine the geographic origin
17 of an incoming packet, or its destination. Additionally, Internet Protocol
18 technology allows users to designate multiple "ports" on their terminals so
19 that multiple applications may simultaneously send and receive information.
20 This means that in the streams of packets flowing to a particular terminal,
21 some may be carrying digitized voice messages, others may be carrying a
22 computer program being downloaded from a remote server, and others may
23 be carrying video entertainment. To impose access charges on one Internet
24 Protocol application and not another would raise privacy concerns, since a

1 provider would have to determine the nature of the packet. Moreover, such
2 monitoring would be expensive if it could be done at all.

3 Applying regulations designed for circuit-switched communications
4 could also distort pricing incentives for Internet Protocol-based services.
5 Today's access charges are assessed on a per-minute basis. Assessment of
6 a per-minute charge on a provider of Internet-based service will inevitably
7 lead to that provider passing on its costs in the form of per-minute charges to
8 end users. The relative higher usage of the Internet in the United States has
9 been attributed to the prevalence of flat-rate local telephone service pricing.
10 Flat-rate pricing for Internet access is a by-product of the exemption from
11 per-minute access charges for providers of enhanced services. Assessment
12 of per-minute access charges on Internet Protocol telephony providers would
13 result in a per-minute pricing structure and a hampering of demand for this
14 information service.

15 BellSouth's description of switched access traffic by reference to its
16 tariff, and its broad statement that such traffic includes interexchange
17 telecommunications regardless of transport protocol, provides BellSouth
18 unfettered discretion to determine when its access charges will apply. The
19 Commission should not grant BellSouth such dominion over Level 3 as well
20 as the emerging marketplace for Voice over Internet Protocol services.
21 BellSouth's proposal is vague and contradicts FCC policy and precedent.
22 The Commission should reject BellSouth's proposal and adopt Level 3's.

23 **Q: WHAT ACTION DO YOU RECOMMEND?**

24 **A:** The Commission should adopt Level 3's proposed contract language. In
25 addition, the Commission should direct the Parties to include an affirmative

1 statement in the contract that Internet Protocol telephony is not included in
2 the definition of switched access. Level 3 recommends that the Commission
3 adopt the following contract language for Section 5.8.1 of Attachment 3:

4 **Switched Access Traffic.** Exchange Access and Switched
5 Access traffic are described as in the Act and/or relevant and
6 applicable FCC and Commission rules and orders. In this
7 arbitration, the Commission declines to require a definition of
8 Switched Access Traffic that includes Internet Protocol
9 Telephony.
10

11 **POINTS OF INTERCONNECTION**

12 **Q: WHAT IS THE LEGAL BASIS FOR LEVEL 3'S POSITION ON**
13 **ISSUE 1?**

14 **A:** The Act and the FCC recognize that new entrants, such as Level 3, must be
15 able to determine the most efficient location for their switches. The Act
16 grants ALECs, not BellSouth, the right to select the Interconnection Point
17 ("IP"). Under 47 U.S.C. § 251(c)(2)(B), BellSouth must provide
18 interconnection at *any* technically feasible point within its network selected
19 by Level 3. BellSouth's ability to mandate interconnection at any point
20 unilaterally selected by BellSouth may require Level 3 to mirror BellSouth's
21 legacy network architecture, which may not be the most efficient
22 forward-looking architecture for an entrant deploying a new network, and
23 therefore constitutes a barrier to entry. Since Level 3 shares the cost of
24 interconnecting facilities -- by providing facilities up to the IP that both
25 deliver Level 3 traffic to BellSouth and deliver traffic to Level 3 customers
26 -- Level 3 will avoid burdening either itself or BellSouth with undue expense
27 by choosing an economically sound IP. However, economic considerations
28 do not limit Level 3's ability to select its IP. As the FCC argued in an amicus

1 brief submitted to the U.S. District Court for the District of Colorado, a state
 2 commission may not consider the cost to the ILEC in determining the
 3 technical feasibility of points of interconnection. (We included a copy of the
 4 FCC's amicus brief as Attachment C to Level 3's Petition.) More recently,
 5 the FCC stated in reviewing whether SWBT was eligible for interLATA
 6 authority in Texas: "Section 251, and our implementing rules, require an
 7 incumbent LEC to allow a competitive LEC to interconnect at any technically
 8 feasible point. *This means that a competitive LEC has the option to*
 9 *interconnect at only one technically feasible point in each LATA.*"²⁰ Thus the
 10 FCC has confirmed yet again that the choice of how and where to
 11 interconnect lies with the ALEC under the Act.

12 **Q: WHAT PROVISIONS OF THE ACT GOVERN SELECTION OF IPS?**

13 A: Congress placed the requirement to provide technically feasible IPs in
 14 Section 251(c)(2), which applies only to incumbent LECs. If Congress had
 15 wanted to have ALECs bear the same duty in establishing IPs as incumbent
 16 LECs bear, it would have specifically stated that outcome, rather than
 17 separating out the interconnection obligations to apply only to incumbent
 18 LECs under Section 251(c)(2). Although Level 3 has an obligation under
 19 Section 251(a) to interconnect directly or indirectly with BellSouth, the Act
 20 places no obligation on Level 3 to provide BellSouth interconnection at all
 21 technically feasible points.

²⁰ *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Service, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, ¶ 78 (rel. June 30, 2000) (emphasis added).

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

4 A: Yes. If BellSouth were allowed to identify IPs for originating traffic it would
5 be able to disadvantage ALECs and impose additional and unwarranted costs
6 on new entrants. Such a result is not in the public interest and would severely
7 impede the development of competition. Indeed, if BellSouth were allowed
8 such discretion, it may force ALECs to essentially duplicate the incumbent's
9 network. Such a result has been rejected by regulators as not in the public
10 interest. The reasons for rejecting BellSouth's proposed interconnection
11 structure are addressed in more detail in Kevin Paul's testimony concerning
12 Issue 1 and Tim Gates' testimony concerning Issue 2.

13 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

14 A: Yes, it does.

15

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

3 A: My name is Gregory L. Rogers. I am an Attorney for Level 3
4 Communications, LLC ("Level 3"). My address is 1025 Eldorado
5 Boulevard, Broomfield, Colorado, 80021.

6 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES AT LEVEL 3**
7 **AND YOUR PROFESSIONAL BACKGROUND.**

8 A: I am an attorney licensed in the State of Colorado since May, 1994. I have
9 been employed by Level 3 since June, 1998. I have worked in a number
10 of capacities at Level 3 including as Network Cost Analyst and Tariff
11 Specialist. In these capacities I became familiar with Level 3's network,
12 its product and service offerings, and the various regulatory requirements
13 of state Public Utility Commissions ("PUCs") as they affect Level 3. In
14 September, 1999, I joined the Legal Department at Level 3 where I work
15 primarily on regulatory matters before federal and state regulatory
16 agencies. Included in my current duties is serving as liaison to state and
17 federal regulatory agencies. I analyze orders and regulations of state
18 PUCs, help to explain Level 3's operations to local governmental bodies
19 and PUCs, and testify in proceedings before those agencies when
20 appropriate.

1 **Q: DID YOU SUBMIT TESTIMONY IN THIS DOCKET ON**
2 **OCTOBER 5, 2000?**

3 A: No, I did not. However, for purposes of the hearing in this matter, I am
4 adopting the Direct Prefiled Testimony of William P. Hunt, III.

5 **Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

6 A: The purpose of my testimony is to respond to the legal and competitive
7 policy arguments Ms. Cox makes in support of BellSouth's position on
8 Interconnection Points (Issue 1). Although Ms. Cox calls it a Point of
9 Interconnection ("POI") in her testimony, I will continue to use the phrase
10 Interconnection Points ("IPs") because the parties agreed to use IPs in
11 defining Issue 1.

12 **Q: MR. HUNT PREVIOUSLY TESTIFIED CONCERNING ISSUE 8,**
13 **HOW THE AGREEMENT SHOULD DEFINE SWITCHED**
14 **ACCESS TRAFFIC. WILL YOU ADDRESS THAT ISSUE ALSO?**

15 A: No. Level 3 and BellSouth have reached a compromise on Issue 8 and no
16 longer require the Commission's assistance.

17 **Q: BELLSOUTH WITNESS COX STATES THAT "ALL OF THE**
18 **DISCUSSION CONCERNING WHO GETS TO ESTABLISH**
19 **POINTS OF INTERCONNECTION, HOW MANY POINTS THERE**
20 **WILL BE, WHAT COMPENSATION APPLIES TO THE**
21 **FACILITIES, ETC. IS SIMPLY A MEANS TO AN END. AND**
22 **THAT END IS WHETHER CUSTOMERS THAT LEVEL 3 DOES**

1 **NOT SERVE SHOULD BEAR THE ADDITIONAL COSTS THAT**
2 **RESULT FROM LEVEL 3'S NETWORK DESIGN..." (COX AT**
3 **3:13-17). DO YOU AGREE WITH MS. COX?**

4 A: No, I do not. Although Ms. Cox later admits that the processes required to
5 implement network interconnection are complicated, she ignores not only
6 the factual complexity of interconnecting competing networks, but also the
7 policy decisions made by both the U.S. Congress and the FCC. Both
8 Congress and the FCC recognized that ILECs would have to make
9 modifications to their networks to open the local exchange market to
10 competition. Both Congress and the FCC also anticipated the introduction
11 of new technologies and network architectures and crafted rules so as not
12 to penalize competitive carriers that seek to provide innovative networks
13 and/or technologies. Imposing the cost of interconnecting different
14 network designs solely on ALECs defeats the policy of encouraging
15 network innovation and ignores the fact that BellSouth's own customers
16 cause BellSouth to incur the cost of delivering traffic to Level 3.

17 **Q: HOW DID CONGRESS RECOGNIZE THAT ILECS WOULD**
18 **HAVE TO MODIFY THEIR NETWORKS IN OPENING UP**
19 **LOCAL EXCHANGE MARKETS TO COMPETITION?**

20 A: In crafting ILECs' interconnection obligations, Congress chose to require
21 ILECs to provide interconnection at any technically "feasible" point. As
22 the FCC found:

1 use of the term “feasible” implies that
2 interconnecting or providing access to a LEC
3 network element may be feasible at a particular
4 point even if such interconnection or access requires
5 a novel use of, or some modification to, incumbent
6 LEC equipment. This interpretation is consistent
7 with the fact that incumbent LEC networks were not
8 designed to accommodate third-party
9 interconnection or use of network elements at all or
10 even most points within the network. If incumbent
11 LECs were not required, at least to some extent, to
12 adapt their facilities to interconnection or use by
13 other carriers, the purposes of sections 251(c)(2)
14 and 251(c)(3) would often be frustrated. For
15 example, Congress intended to obligate the
16 incumbent to accommodate the new entrant’s
17 network architecture by requiring the incumbent to
18 provide interconnection “for the facilities and
19 equipment” of the new entrant. Consistent with that
20 intent, the incumbent must accept the novel use of,
21 and modification to, its network facilities to
22 accommodate the interconnector or to provide
23 access to unbundled elements.¹

24 By choosing the word “feasible,” Congress indicated that ILECs would
25 have to consider new uses of, and modifications to, their networks in order
26 to provide interconnection to ALECs. It should also be noted that the FCC
27 barred a consideration of cost in determining technical feasibility.

¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, para. 202 (1996) (“*Local Competition Order*”), *aff’d in part and vacated in part sub nom. Competitive Telecommunications Ass’n v. FCC*, 117 F.3d 1069 (9th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff’d in part and remanded, AT&T Corp. et al. v. Iowa Utils. Bd. et al.*, 119 S.Ct. 721 (1999), *vacated in part on remand, Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *motion for partial stay granted, Iowa Utils. Bd. v. FCC*, Case no. 96-3321 et al., Order Granting Motion for Partial Stay of the Mandate (8th Cir. Sept. 22, 2000).

1 Specifically, the FCC found that “the 1996 Act bars consideration of costs
 2 in determining ‘technically feasible’ points of interconnection or access.
 3 In the 1996 Act, Congress distinguished ‘technical’ considerations from
 4 economic concerns.” The FCC pointed out that the legislative history
 5 showed a conscious decision to remove cost from consideration under
 6 Sections 251(c)(2) and (c)(3), whereas other sections of the Act retained
 7 references to “economically burdensome” or “economically reasonable”
 8 obligations on carriers.²

9 **Q: HOW DID THE FCC RECOGNIZE THAT ILECS WOULD HAVE**
 10 **TO MODIFY THEIR NETWORKS IN OPENING UP LOCAL**
 11 **EXCHANGE MARKETS TO COMPETITION?**

12 A: In the FCC’s Local Competition proceeding, the United States Telephone
 13 Association (“USTA”) argued that the Act only requires ILECs to provide
 14 interconnection to their networks as they are “configured presently.”³ The
 15 FCC rejected USTA’s interpretation of the Act, finding that:

16 the obligations imposed by sections 251(c)(2) and
 17 251(c)(3) include modifications to incumbent LEC
 18 facilities to the extent necessary to accommodate
 19 interconnection or access to network elements.⁴

² *Local Competition Order* at para. 199.

³ *Id.* at para. 195.

⁴ *Id.* at para. 198.

1 In many instances, the Act and the FCC’s rules show that neither Congress
2 nor the FCC want to constrain the ability of an ALEC to innovate and
3 deploy services, technologies, and network architectures that differ from
4 the historical services, technologies, and network architectures deployed
5 by ILECs. For example, Congress provided two alternative definitions of
6 “telephone exchange service:”

7 The term “telephone exchange service” means (A)
8 service within a telephone exchange, or within a
9 connected system of telephone exchanges within the
10 same exchange area operated to furnish to
11 subscribers intercommunicating service of the
12 character ordinarily furnished by a single exchange,
13 and which is covered by the exchange service
14 charge, or (B) comparable service provided through
15 a system of switches, transmission equipment, or
16 other facilities (or combination thereof) by which a
17 subscriber can originate and terminate a
18 telecommunications service.⁵

19 The FCC has also recognized differences in incumbent and competitive
20 technologies in its reciprocal compensation rules, which, for example,
21 define transport as:

22 the transmission and any necessary tandem
23 switching of local telecommunications traffic
24 subject to section 251(b)(5) of the Act from the
25 interconnection point between the two carriers to
26 the terminating carrier’s end office switch that
27 directly serves the called party, or equivalent

⁵ 47 U.S.C. § 153(47) (emphasis added).

1 facility provided by a carrier other than an
2 incumbent LEC.⁶

3 Examples such as these show that Congress and the FCC anticipated
4 differences between incumbent and competitive networks and crafted rules
5 to ensure that ALECs would not be required to mimic ILECs. If the
6 Commission were to require Level 3 to establish an IP in each local calling
7 area, the Commission would be undermining Congressional and FCC
8 intent to promote competition and innovation in network design.

9 **Q: BELLSOUTH WITNESS COX CLAIMS THAT BELLSOUTH**
10 **SHOULD NOT BE RESPONSIBLE FOR “COLLECTING”**
11 **TRAFFIC ORIGINATED BY BELLSOUTH’S CUSTOMERS IN**
12 **EACH BELLSOUTH LOCAL CALLING AREA AND**
13 **DELIVERING THAT TRAFFIC TO LEVEL 3 AT A SINGLE IP**
14 **PER LATA (COX AT 5:8-18). IS BELLSOUTH’S POSITION**
15 **SUPPORTED BY THE FCC?**

16 **A:** No. In fact, the opposite is true. The FCC has established “rules of the
17 road” that address BellSouth’s obligation to interconnect with Level 3.
18 The first rule is that Level 3 is entitled to select a single IP in a LATA for
19 the exchange of traffic with BellSouth.

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

⁶ 47 C.F.R. § 51.701(c) (emphasis added).

1 means that a competitive LEC has the option to
 2 interconnect at only one technically feasible point in
 3 each LATA.⁷

4
 5 Consistent with the FCC's approach, and recognizing that many LATAs in
 6 BellSouth's network are served by more than one access tandem, this
 7 Commission has, where requested by an ALEC (Sprint), found that it is
 8 technically feasible to require a single IP within a LATA.⁸

9 The second FCC rule is that BellSouth bears the burden of
 10 delivering traffic originated by BellSouth customers to Level 3's network
 11 and recovers such costs in the rates charged to its end users.

12 In essence, the originating carrier holds itself out as
 13 being capable of transmitting a telephone call to any
 14 end user, and is responsible for paying the cost of
 15 delivering the call to the network of the co-carrier
 16 who will then terminate the call. Under the
 17 Commission's regulations, the cost of the facilities
 18 used to deliver this traffic is the originating carrier's
 19 responsibility, because these facilities are part of the
 20 originating carrier's network. The originating
 21 carrier recovers the costs of these facilities through
 22 the rates it charges its own customers for making
 23 calls. This regime represents "rules of the road"
 24 under which all carriers operate, and which make it

⁷ *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, para. 78 (rel. June 30, 2000) ("*Texas 271 Order*").

⁸ *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 possible for one company's customer to call any
2 other customer even if that customer is served by
3 another telephone company.⁹
4

5 BellSouth's obligation to deliver its originating traffic to Level 3 is not
6 conditioned on Level 3 accepting such traffic within the local calling area
7 in which it originated.

8 Although BellSouth attempts to paint a picture of Level 3 as the
9 sole cost causer, that is not accurate. The "costs" BellSouth incurs to
10 exchange traffic with Level 3 are the result of BellSouth's historic network
11 design, BellSouth's continued monopoly share of local service customers
12 in Florida, the need to interconnect numerous competitive networks to
13 introduce competition in BellSouth's territory, the demands of its own
14 customers, and the specific network interconnection architecture mandated
15 by the FCC or agreed to by BellSouth and Level 3. Although I imagine
16 BellSouth would prefer to retain its monopoly and not interconnect with
17 Level 3, it no longer has that luxury. Under the FCC's "rules of the road,"
18 BellSouth has the obligation to exchange traffic with Level 3 at a single IP
19 within a LATA and the obligation to deliver its originating traffic to that
20 IP at no cost to Level 3. As Timothy Gates testifies (Gates Direct at 22:4-
21 23:2), BellSouth recovers the costs of originating its own customers'

⁹ *TSR Wireless, LLC et al. v. US West Communications, Inc., et al.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order, FCC 00-194, para. 34 (rel. June 21, 2000) ("*TSR Wireless*").

1 traffic through the rates it charges those customers. BellSouth is not
2 entitled to recover the costs of its originating traffic from Level 3.

3 **Q: WHAT ABOUT MS. COX'S CLAIM (COX AT 13:12-24) THAT IF**
4 **BELLSOUTH MUST INTERCONNECT WITH LEVEL 3 AT A**
5 **SINGLE IP, LEVEL 3 MUST PAY FOR THE COSTS OF THIS**
6 **"NOVEL" FORM OF INTERCONNECTION?**

7 A: Interconnection at a single IP per LATA is not "novel," it is required by
8 the FCC and Section 251(c)(2). If BellSouth ever hopes to receive Section
9 271 authority, it will have to show that it meets its Section 251(c)(2)
10 obligation by offering interconnection at a single IP per LATA.¹⁰ Indeed,
11 as Level 3 explained through the previous testimony of Kevin Paul (Paul
12 Direct at 5:24-6:3), the Parties today use one IP per LATA for local traffic
13 in Florida. Given that we are operating in this manner today and given
14 that the option to establish the single IP per LATA came from a 1997
15 contract between MCI and BellSouth that Level 3 adopted, our request
16 here is not "novel." Furthermore, the cite upon which Ms. Cox relies does
17 not support BellSouth's position.

18 **Q: PLEASE EXPLAIN.**

19 A: Ms. Cox cites the FCC's Local Competition Order at paragraph 199 as
20 support for BellSouth's position that ALECs must pay for costs associated

¹⁰ See, *Texas 271 Order* at para. 78.

1 with the ALEC's chosen form of interconnection. Ms. Cox relies upon the
2 last sentence which reads:

3 Of course, a requesting carrier that wishes a
4 "technically feasible" but expensive interconnection
5 would, pursuant to section 252(d)(1), be required to
6 bear the cost of that interconnection, including a
7 reasonable profit.¹¹

8 Ms. Cox claims that this sentence requires Level 3 to pay for
9 dedicated facilities to haul both BellSouth-originated and Level 3-
10 originated traffic from the single IP to each BellSouth local calling area.
11 However, as Anthony Sachetti explains in his testimony, if BellSouth
12 requires Level 3 to pay for dedicated facilities to each local calling area, it
13 is requiring Level 3 to establish multiple IPs in each LATA, a result
14 prohibited by FCC rules. BellSouth cannot use economic considerations
15 to undermine the FCC's and Commission's determination that
16 interconnection at a single IP per LATA is technically feasible and avoid
17 providing Level 3 interconnection at a single IP.

18 If, as BellSouth claims, interconnection at a single IP per LATA
19 causes BellSouth to incur additional costs, BellSouth must prove what
20 those costs are under Section 252(d)(1) and must show that it does not
21 recover such costs from its own customers. BellSouth has provided no
22 evidence in this proceeding that it has incurred additional costs to

¹¹ *Local Competition Order* at para. 199.

1 accommodate Level 3's current single IP per LATA interconnection
2 architecture. It has not shown that traffic exchanged today, or traffic it
3 predicts it will exchange tomorrow, with Level 3 originates from or
4 terminates to BellSouth customers at some distance from the single IP. It
5 has not shown that it had to build or will have to build additional facilities
6 solely to exchange traffic with Level 3. Nor has BellSouth provided any
7 evidence that if such costs exist, it is not already compensated by the
8 charges it receives from its end users. In short, BellSouth cannot rely on
9 paragraph 199 of the Local Competition Order because BellSouth has not
10 shown, through submission of concrete cost evidence, that interconnection
11 at a single IP per LATA is expensive.

12 **Q: HAS LEVEL 3 MADE ANY PROPOSALS THAT ADDRESS**
13 **BELLSOUTH'S CONCERN THAT A SINGLE IP PER LATA**
14 **COULD BECOME UNREASONABLY EXPENSIVE FOR**
15 **BELLSOUTH?**

16 **A:** Yes. As explained in more detail in Anthony Sachetti's testimony
17 (including the Direct Testimony of Kevin Paul which Mr. Sachetti
18 adopted), Level 3 has proposed language that would require the parties to
19 establish additional IPs when a certain traffic threshold is reached.

20 **Q: MS. COX CLAIMS THAT BELLSOUTH'S RECIPROCAL**
21 **COMPENSATION RATES DO NOT COVER THE COST OF**
22 **DELIVERING LEVEL 3 ORIGINATED TRAFFIC FROM A**

1 **SINGLE IP IN THE LATA TO THE BELLSOUTH END USER**
2 **(COX AT 24-25). DO YOU AGREE?**

3 A: No. The BellSouth reciprocal compensation rate structure and agreed-to
4 terms in the proposed contract flatly contradict her claim. These terms
5 also show that BellSouth does recover any cost incurred in picking up
6 Level 3-originated traffic at a single IP in the LATA and delivering it to
7 one of BellSouth's "specialized local networks." BellSouth proposed, and
8 this Commission accepted, elemental reciprocal compensation rates. That
9 is, BellSouth is compensated for tandem switching, transmission, and end
10 office termination. Furthermore, in instances where BellSouth must switch
11 Level 3-originated traffic through more than one tandem, BellSouth has
12 proposed, and Level 3 has agreed to, additional rates to reflect such
13 additional tandem switching and transmission (BellSouth calls this
14 "Multiple Tandem Access"). Together, the elemental rate structure and
15 the agreement to charge additional tandem switching and transmission
16 charges when BellSouth switches Level 3-originated traffic through
17 multiple tandems permit BellSouth to charge Level 3 for each element of
18 the BellSouth network used to deliver the call from the IP to the called
19 party. In Ms. Cox's example, therefore, BellSouth has established a
20 mechanism to recover its costs of hauling Level 3-originated traffic from
21 Jacksonville to Lake City.

1 **Q: DO YOU AGREE WITH MS. COX THAT THE ACT AND FCC**
2 **ORDERS SUPPORT BELLSOUTH'S ABILITY TO DESIGNATE**
3 **THE IP FOR ITS ORIGINATED TRAFFIC (COX AT 15:16-20,**
4 **16:20-21)?**

5 A: No. Ms. Cox is incorrect when she claims that "nothing in the Act limits
6 BellSouth's ability to designate a POI for traffic it originates to Level 3."
7 (Cox at 15:19-20) BellSouth is wrong to suggest that because the Act may
8 not explicitly address this issue, BellSouth somehow has the ability and
9 right to designate IPs. By placing the obligation to provide
10 interconnection at any technically feasible point in Section 251(c)(2),
11 which applies only to incumbent LECs, Congress did address this issue. If
12 Congress had wanted ALECs to bear the same obligation to provide
13 interconnection at any technically feasible point, it would have specifically
14 stated that outcome by placing this duty under Section 251(b), which
15 applies to all LECs.

16 **Q: MS. COX CLAIMS THE FCC'S CONSIDERATION OF MCI'S IP**
17 **PROPOSAL SUPPORTS BELLSOUTH'S POSITION (COX AT**
18 **16:1-16:21). DO YOU AGREE WITH HER ANALYSIS?**

19 A: No. Ms. Cox quotes selectively from the FCC's order and ignores the
20 FCC's consideration of Bell Atlantic's IP proposal. Although Ms. Cox
21 relies on a quote from paragraph 220 of the FCC's order, she omits the

1 footnote from that quote and the context created by contrasting the MCI
2 and Bell Atlantic proposals.

3 **Q: COULD YOU PLEASE RESTATE THE QUOTE FROM MS.**
4 **COX'S TESTIMONY?**

5 A: Yes. Ms. Cox relies on the following quote for the proposition that the
6 FCC's order permits BellSouth to designate IPs for its originated traffic:

7 We also conclude that MCI's POI proposal,
8 permitting interconnecting carriers, both
9 competitors and incumbent LECs, to designate
10 points of interconnection on each other's networks,
11 is at this time best addressed in negotiations and
12 arbitrations between parties.¹²

13 The footnote that Ms. Cox failed to quote provides that:

14 Of course, requesting carriers have the right to
15 select points of interconnection at which to
16 exchange traffic with an incumbent LEC under
17 section 251(c)(2).
18

19 The footnote reaffirms the ALEC's right to select IPs for the exchange of
20 traffic with BellSouth, including receipt of BellSouth-originated traffic. In
21 the Intermedia arbitration, this Commission rejected BellSouth's one-sided
22 definition of the IP, recognizing that at the IP "traffic is mutually
23 exchanged between carriers."¹³

¹² *Local Competition Order* at para. 220.

¹³ *Petition of BellSouth Telecommunications, Inc. for Section 252(b) arbitration of interconnection agreement with Intermedia Communications, Inc.*, Docket No. 991854-TP, Final Order on Arbitration, Order No. PSC-00-1519-FOF-TP, 48 (Aug. 22, 2000).

1 Ms. Cox also ignores the beginning of paragraph 220, and rejection
2 of Bell Atlantic's IP proposal, which supports Level 3's position that
3 Congress has addressed this issue:

4 Finally, as discussed below, we reject Bell
5 Atlantic's suggestion that we impose reciprocal
6 terms and conditions on incumbent LECs and
7 requesting carriers pursuant to section 251(c)(2).
8 Section 251(c)(2) does not impose on non-
9 incumbent LECs the duty to provide
10 interconnection. The obligations of LECs that are
11 not incumbent LECs are generally governed by
12 sections 251(a) and (b), not section 251(c). Also,
13 the statute itself imposes different obligations on
14 incumbent LECs and other LECs (*i.e.*, section
15 251(b) imposes obligations on all LECs while
16 section 251(c) obligations are imposed only on
17 incumbent LECs). We do note however, that
18 251(c)(1) imposes upon a requesting
19 telecommunications carrier a duty to negotiate the
20 terms and conditions of interconnection agreements
21 in good faith.¹⁴

22 Taken in context, the FCC's rejection of MCI's IP proposal
23 establishes that while the default rule permits ALECs to designate the IP
24 for the exchange of both parties' originated traffic, ALECs nevertheless
25 have a duty to negotiate in good faith when ILECs request additional IPs.
26 As addressed in more detail in Anthony Sachetti's testimony, Level 3 has
27 met that duty and has offered at least two compromise proposals to govern
28 the establishment of additional IPs.

¹⁴ *Local Competition Order* at para. 220 (footnotes omitted).

1 **Q: WHAT ACTION DO YOU RECOMMEND THE COMMISSION**
2 **TAKE?**

3 A: The Commission should find that Level 3 has the right to interconnect
4 with BellSouth at a single IP in each LATA. Since BellSouth has
5 presented no evidence supporting its claim that it incurs costs to deliver
6 BellSouth-originated traffic to the single IP, and has presented no evidence
7 that any alleged costs are not recovered from its end users, the
8 Commission should adopt one of Level 3's proposed alternatives as a
9 proxy for measuring when interconnection at a single IP per LATA
10 becomes "expensive" for BellSouth such that additional IPs are warranted.

11 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

12 A: Yes, it does.

1 BY MR. HOFFMAN:

2 Q Mr. Rogers, have you prepared a summary of your
3 direct and rebuttal testimony?

4 A Yes, I have.

5 COMMISSIONER JABER: Let me just say -- thanks,
6 Mr. Hoffman, for reminding me. I'll ask the witnesses to
7 keep their summaries to five minutes.

8 MR. HOFFMAN: Thank you.

9 BY MR. HOFFMAN:

10 Q Will you please provide your summary at this
11 time.

12 A Good morning. I will be addressing Level 3's
13 position on Issue Number 1 in this arbitration, which is
14 how should the parties designate the interconnection
15 points or IPs for their networks?

16 As a matter of law, ALECs have the authority to
17 designate a single, technically-feasible IP per LATA for
18 the exchange of both originating and terminating traffic
19 with BellSouth.

20 Under Section 251(c)2(b) of the Federal
21 Telecommunications Act, the only permissible consideration
22 for BellSouth and the Commission, in determining whether
23 the IP location is acceptable, is whether the requested IP
24 location is technically feasible; otherwise, BellSouth has
25 no legal grounds, whatsoever for objecting to where the

1 ALEC chooses to interconnect to both pick up traffic from
2 and deliver traffic to BellSouth.

3 Moreover, the FCC has found that economic issues
4 are not to be considered in the determination of an IP
5 location of whether an IP location is technically feasible
6 or not. Nevertheless, BellSouth has argued it must be
7 given the right to pick its own IPs for
8 BellSouth-originated traffic because of the costs it would
9 incur in bringing the calls to a single IP.

10 The logical end to BellSouth's argument is that
11 Level 3 would defectively be required to mirror
12 BellSouth's legacy network, by either leasing facilities
13 by BellSouth or building facilities itself.

14 As a matter of policy, forcing an ALEC such as
15 Level 3 to mirror BellSouth's legacy network flies in the
16 face of the very purpose of the '96 Act. If BellSouth
17 were allowed to identify IPs for originating traffic, it
18 would be able to impose additional and unwarranted costs
19 on new entrants, which would severely impede their ability
20 to compete.

21 For these reasons, Level 3 requests that the
22 Commission reject BellSouth's arguments as legally
23 deficient and inconsistent with the opening of Florida's
24 telecommunications markets to competition.

25 Q Does that conclude your summary?

1 A Yes, it does.

2 MR. HOFFMAN: Madam Chairman, the witness is
3 available for cross examination.

4 COMMISSIONER JABER: Mr. Lackey?

5 MR. TURNER: Thank you, Madam Chairman.

6 CROSS EXAMINATION

7 BY MR. TURNER:

8 Q Mr. Rogers, my name is Patrick Turner, and I
9 represent BellSouth.

10 I want you to assume with me that I'm a
11 BellSouth customer. That should be easy enough, right?

12 A Okay.

13 Q Okay. Let's assume that as a BellSouth customer
14 I do not have extended area service or LATA-wide calling
15 or any of those bells and whistles. Let's assume that I
16 just have plain-vanilla local service, okay?

17 A Okay.

18 Q And let's assume that my local service area that
19 has been established by this Commission, let's just call
20 it Local Calling Area Number 1, okay?

21 A Okay.

22 Q Now, I pay BellSouth a rate every month and, in
23 return, BellSouth will deliver my calls anywhere within
24 Local Calling Area Number 1, right?

25 A Right.

1 Q Let's say that this table is a LATA, okay? It's
2 a long and narrow LATA, but it's a LATA. Are you with me?

3 A I believe, so.

4 Q Okay. And let's just cut it up into 20
5 equally-sized pieces, 20 local calling areas in this one
6 LATA, okay?

7 A Okay.

8 Q My local calling area is up here at this corner,
9 LATA number one, okay?

10 A In Local Calling Area Number 1.

11 Q Local Calling Area Number 1, thank you. Now,
12 let's say that my brother is down there at the other
13 corner of the table next to you in Local Calling Area
14 Number 20, okay?

15 A Okay.

16 Q When I pick up my phone with my vanilla local
17 calling area, for my local rate I cannot call to the other
18 end of this table and talk to my brother in Local Calling
19 Area Number 20, can I?

20 A I don't believe so under your vanilla BellSouth
21 local service.

22 Q Okay. Now, you're here today to explain the
23 legal basis for Level 3's position on Issue Number 1,
24 right?

25 A Correct.

1 Q Now, before I talk with you about the legal
2 basis, let me make sure I understand what that position
3 is. Now, it's your position, as I understand it, and
4 let's assume for simplicity, do you see the briefcase that
5 I've placed up here in Local Calling Area Number 1?

6 A I do.

7 Q I want you to assume with me that that is an
8 interconnection point that Level 3 has designated in this
9 LATA, okay?

10 A Okay.

11 Q Now, Level 3's position is that if I am in a
12 Local Calling Area Number 1, and I call a Level 3 customer
13 who is also in Local Calling Area Number 1; you with me so
14 far?

15 A I believe, so.

16 Q Okay. Your position is that BellSouth should
17 deliver my local call to the interconnection point in
18 Local Calling Area Number 1 without charging Level 3 for
19 delivery, right?

20 A Correct. You should deliver it to the
21 interconnection point within the LATA.

22 Q Okay.

23 A And that just happens to be in Local Calling
24 Area Number 1 in this example.

25 Q And then, Level 3 will take it, deliver it to

1 its customer in Local Calling Area 1, right?

2 A Correct.

3 Q Now, let's say that instead of Local Calling
4 Area Number 1, there's a BellSouth customer down here in
5 Local Calling Area Number 20, opposite corner of the
6 table, okay? And that BellSouth customer in Local Calling
7 Area Number 20 wants to call a Level 3 customer in Local
8 Calling Area Number 20; you with me?

9 A I am.

10 Q Okay. Now, it's Level 3's position that
11 BellSouth should haul that call from Local Calling Area
12 Number 20, down here at the edge of the table, across all
13 these other local calling areas and up here to the
14 interconnection point that you've put in Local Calling
15 Area Number 1, right?

16 A Correct. Is that the end of your question?

17 Q One follow-up. Isn't it also your position that
18 Level 3 should not pay BellSouth to deliver that call from
19 Local Calling Area Number 20 all the way up here to the
20 interconnection point of Local Calling Area Number 1?

21 A That's true, okay, but the point, I think, that
22 I'm here to make is that we have to assume, first of all,
23 that the interconnection point in Local Calling Area
24 Number 1 has been or is a technically-feasible point.

25 And, legally, that is the only consideration

1 that BellSouth or the Commission needs to make in
2 determining whether or determining location of an
3 interconnection point determined or chosen by the ALEC,
4 Level 3, in the LATA.

5 Q We're going to get to your reasoning for that
6 position in a minute, but I've accurately stated your
7 position. According to Level 3, BellSouth is supposed to
8 haul that call from Local Calling Area Number 20 all the
9 way up here to the interconnection point in Local Calling
10 Area Number 1 without Level 3 paying for that haul,
11 correct?

12 A Correct. It would take it to the
13 interconnection point and Level 3 would then take it from
14 that point and deliver it to the terminating customer.

15 MR. TURNER: Madam Chairman, if I may, may we
16 hand out some copies of some Code of Federal Regulation
17 provisions?

18 COMMISSIONER JABER: Yes.

19 MR. TURNER: Thank you.

20 BY MR. TURNER:

21 Q Mr. Rogers, you're an attorney with Level 3,
22 right?

23 A Yes.

24 Q So, you're familiar with the provisions of CFR
25 Sections 51.701, right? You cite this section in your

1 testimony, I believe.

2 A Can you point me to where I cite it in my
3 testimony?

4 Q Mr. Lackey is going to help me find it, and I'll
5 point it to you in a second, but let me ask you this, you
6 are familiar with those Code of Federal Regulations,
7 right?

8 A I think, familiar is a good term. I don't know
9 that I can tell you every in and out of them, but...

10 Q Well, if you'll go with me to your prefiled
11 rebuttal testimony at Page 7, I believe, you cite at
12 footnote 6, Section 51.701 subsection C, don't you?

13 A I do.

14 Q Okay. Now, I want you to go with me down to
15 51.703, subsection B. It's down here at the bottom right
16 of the page we just handed out. Do you see that?

17 A Excuse me, Section 51.703(b), is that what
18 you're pointing to?

19 Q Subsection b, yes, sir.

20 A Okay.

21 Q Now, that subsection says, "The Local Exchange
22 Company may not assess charges on any other
23 telecommunications carrier for local telecommunications
24 traffic that originates on the LEC's network." That's
25 right. That's what it says, isn't it?

1 A It does.

2 Q And that sounds like your position, doesn't it?

3 A It sounds like it.

4 Q Okay. And you'll agree with me, won't you, that
5 that provision applies only to local telecommunications
6 traffic?

7 A Correct.

8 Q Okay. In fact, if you'll go with me up to
9 Section 51.701, subsection A. Now, that's down here at
10 the bottom left of the page; do you see me?

11 A I do.

12 Q Now, that says that the provisions of this
13 subpart apply to reciprocal compensation for transport and
14 termination of local telecommunications traffic between
15 LECs and other telecommunications service providers -- I'm
16 sorry, other telecommunications carriers, right?

17 A Right.

18 Q And fortunately, for all of us, subsection B of
19 that rule defines the term local telecommunications
20 traffic, doesn't it?

21 A Yes.

22 Q Okay. And really there are two definitions
23 there, aren't there?

24 A Yes, there are two subsections under that.

25 Q Okay. In the first of those two, subsection

1 (b) (1), that's up there at the top right of the page.
2 That applies to traffic between a local exchange carrier
3 and a telecommunications carrier that is not a CMRS
4 provider, right?

5 A Correct.

6 Q So, that definition is going to apply to calls
7 between BellSouth and Level 3, right?

8 A Correct.

9 Q Now, the definition in subsection (b) (2), that
10 applies to traffic between a local exchange carrier and a
11 telecommunications carrier that is not a CMRS provider,
12 right?

13 A That is a CMRS provider.

14 Q I'm sorry, that is a CMRS provider.

15 So, in other words, subsection (b) (2) is going
16 to apply when we had a call, say, from BellSouth to a
17 paging company, right?

18 A Right, I think, they would constitute a CMRS
19 provider.

20 Q And according to this definition, a call from a
21 BellSouth customer to a paging company's customer is going
22 to be local if it originates and terminates within the
23 same major trading area, right?

24 A Yes.

25 Q Now, the FCC recently applied that definition of

1 a local calling area; that is, traffic that originates and
2 terminates within the same major trading area. It applied
3 that definition in the TRS wireless case, didn't it?

4 A Yes. I believe, it's the TSR wireless case.

5 Q TSR wireless case. And you're familiar with
6 that case, aren't you?

7 A I am somewhat familiar with that case.

8 Q Well, you were familiar enough to have quoted it
9 and cited it on Pages 8 and 9 of your rebuttal testimony,
10 right?

11 A Correct. Well, let me be sure before I answer
12 that.

13 Q Okay.

14 A I have cited it in my rebuttal testimony and I
15 have cited it on -- the cite is on Page 9. The quote
16 begins on Page 8, that's correct.

17 Q Okay. Now, in that case, we had a LEC called
18 U S West, right?

19 A Yes.

20 Q And its customers were placing calls to a paging
21 company, right?

22 A I don't want to -- I don't feel real comfortable
23 getting into all the facts of the case but yes, I think,
24 that's fair to say that U S West customers were calling a
25 pager company.

1 Q Okay. Now, in its order in which the FCC
2 addressed those calls that were going from a U S West
3 customer to a paging company's customer, it looked at
4 Section 57.703(b), didn't it? That's the one that states
5 that a LEC may not assess charges on any other
6 telecommunications carrier for local telecommunications
7 traffic that originates on the LEC's network?

8 A Presumably, that would be the section that they
9 would look at for the definition when you're contemplating
10 a CMRS provider.

11 Q Okay. And in its order that addressed that
12 traffic from U S West to a paging company, the FCC also
13 looked at the section that we just discussed, Section
14 701(b)(2), that defines a local traffic as being that that
15 originates and terminates within the same major trading
16 area. That was the definition it was looking at, right?

17 A Again, presumably.

18 Q Okay.

19 A If you want to point me to where that is, in
20 fact, stated, that's fine, but otherwise, I'm just going
21 on your reading of the case.

22 MR. TURNER: Madam Chairman, we are going to
23 hand out copies of the TSR Wireless case. And this case
24 does appear on the Official Recognition List that Level 3
25 submitted.

1 COMMISSIONER JABER: That's fine.

2 BY MR. TURNER:

3 Q Mr. Rogers, take your time, but when you're
4 ready I'm going ask you some questions about paragraph 31
5 of that order which is on Page 19. The page number is on
6 the bottom center of the page, the paragraph number is up
7 here near the top right of the page. Just let me know
8 when you're ready.

9 A Okay. I'm at paragraph 31.

10 Q Okay. Let's look at the second sentence in
11 paragraph number 31. I'll read the sentence first, and
12 you tell me if I've read it correctly. It says, "Section
13 51.703(b), when read in conjunction with Section
14 51.701(b)(2), requires the LEC to deliver without charge
15 traffic to CMRS providers anywhere within the MTA in which
16 the call originated." That's what it says, right?

17 A It goes on to say, "with the exception of RBOCs,
18 which are generally prohibited from delivering traffic
19 across LATA boundaries."

20 Q Now, that's an interesting point.

21 A It does say that. And I would also point out
22 that that appears to be the third sentence of that
23 paragraph, rather than the second.

24 Q I'm sorry, you are right. Now, let's look at
25 that last portion you just said, the exception of the

1 RBOCs. Now, a metropolitan -- I'm sorry, a major trading
2 area can be larger than a LATA, can't it?

3 A Yes; in fact, that's what the next sentence, the
4 fourth sentence, of the paragraph says.

5 Q So, in other words, even when we're talking
6 about local calls in this major trading area environment,
7 RBOCs are not required to carry it outside a LATA, right?

8 A Right, because they're not allowed to,
9 generally.

10 Q Okay. So, here we have the FCC looking at the
11 definition of a local telecommunications traffic in a CMRS
12 environment, right?

13 A Correct.

14 Q And the FCC is saying that the LEC does, in
15 fact, have to deliver without charge traffic to that CMRS
16 provider, right?

17 A Correct.

18 Q As long as it delivers it anywhere within the
19 major trading area which is, basically, the local calling
20 area, right?

21 A That would be similar to the local calling area
22 in a wire line environment, correct.

23 Q I think, you're exactly right. Now, let's go
24 back to the page I've given you that has copies of Section
25 51.701 on it. Are you with me?

1 A I am.

2 Q Okay. Let's look at (b)(1). Now, here in
3 (b)(1), we're defining local telecommunications traffic
4 between a LEC like BellSouth and a non-CMRS provider like
5 Level 3, right?

6 A Correct.

7 Q And it says, telecommunications traffic between
8 a LEC and Level 3, if you will, is local if it originates
9 and terminates within a local service area established by
10 the state commission, right?

11 A Correct.

12 Q And as we said before, analogist 2, the
13 definition of a major trading area, being the local
14 calling area, right?

15 A Right. An MTA is what determines a local
16 calling area in the CMRS environment. A local service
17 area is what determines a local calling area in the wire
18 line carrier or non-CMRS environment.

19 MR. TURNER: Thank you. Can I have one moment,
20 please?

21 COMMISSIONER JABER: Sure.

22 MR. TURNER: Madam Chairman, I have nothing
23 further. Thank you.

24 COMMISSIONER JABER: Commissioner Baez?

25 MS. BANKS: Staff has nothing.

1 COMMISSIONER JABER: Redirect.

2 MR. HOFFMAN: Thank you, Madam Chairman. I just
3 have a few questions.

4 REDIRECT EXAMINATION

5 BY MR. HOFFMAN:

6 Q Mr. Rogers, if you would, go back to your
7 original discussion with Mr. Turner where we had Local
8 Calling Area 1 on one side of the table and Local Calling
9 Area 20 on the other side of the table, all within one
10 LATA. Do you recall that exchange with Mr. Turner?

11 A Yes, I do.

12 Q Okay. And, I think, what he presented to you
13 was, essentially, what BellSouth would posit to be the
14 worst-case scenario. So, let me address the converse of
15 that.

16 If you were to assume that we have a BellSouth
17 customer down to my right in Local Calling Area 1 and the
18 Level 3 interconnection point in Local Calling Area 1, and
19 the BellSouth customer originates a call to a Level 3
20 customer who is situated in Local Calling Area 20, what
21 does Level 3 have to do to take that call from Local
22 Calling Area 1 to Local Calling Area 20?

23 A Level 3 has to transport that call from the
24 interconnection point to its terminating point in Local
25 Calling Area 20. If it receives the BellSouth originated

1 traffic in Local Calling Area 1, because that's where the
2 IP is located and the terminating point is in Local
3 Calling Area 20, it would be Level 3's responsibility to
4 transport that traffic to Local Calling Area 20.

5 Q And in my example, the hauling of a call across
6 one side of the LATA to the other would be done by Level 3
7 for the benefit of the BellSouth retail customer who had
8 originated that call.

9 A Correct.

10 Q Let me move to the discussion that you had with
11 Mr. Turner on the issue of major trading areas that are
12 outlined in the rule that he gave you, 51.701. Let me ask
13 you this. How large are major trading areas?

14 A Well, as we discussed briefly, the TSR Wireless
15 order says that MTAs are typically large areas that may
16 encompass multiple LATAs and often cross state boundaries.
17 So, I would say, they are typically larger than a LATA,
18 according to the FCC.

19 Q How many major trading areas are there in the
20 state of Florida?

21 A I don't know if I can answer that question.

22 Q Well, let me ask you this, then. Do you recall
23 that Mr. Turner asked you how local traffic is defined by
24 origination and termination in a local calling area?

25 A He referred me to the definition of Section

1 51.701(b) (1) is how that was defined.

2 Q Is there anything in that definition that you
3 just cited that states that local traffic must be handed
4 off in the local calling area?

5 A No.

6 MR. HOFFMAN: That concludes my redirect.

7 COMMISSIONER JABER: Thank you. Thank you,
8 Mr. Rogers.

9 THE WITNESS: Thank you.

10 MR. HOFFMAN: Madam Chairman, may the witness be
11 excused?

12 COMMISSIONER JABER: Yes.

13 MR. HOFFMAN: Thank you.

14 (Witness excused.)

15 COMMISSIONER JABER: Mr. Hoffman, you have -- is
16 it Mr. Sachetti?

17 MR. HOFFMAN: Mr. Sachetti.

18 ANTHONY SACHETTI

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

22 DIRECT EXAMINATION

23 BY MR. HOFFMAN:

24 Q Good morning, Mr. Sachetti.

25 A Good morning.

1 Q Have you been sworn?

2 A Yes, I have.

3 Q Would you please state your name and business
4 address?

5 A Anthony Sachetti, 1025 Eldorado Boulevard,
6 Broomfield, Colorado.

7 Q By whom are you employed?

8 A Level 3 Communications.

9 Q What is your position with Level 3?

10 A I'm a Senior Director for their Network Planning
11 Interconnection Services Organization.

12 Q Could you speak up just a little bit,
13 Mr. Sachetti.

14 Have you prepared and caused to be filed 11
15 pages of prefiled rebuttal testimony in this proceeding?

16 A Yes, I have.

17 Q Are you also adopting the 17 pages of prefiled
18 direct testimony that was filed by Kevin Paul in this
19 proceeding?

20 A Yes.

21 Q Do you have any changes, corrections, or
22 revisions to your prefiled direct or rebuttal testimony?

23 A Yes, I do.

24 Q Would you outline those at this time?

25 A Certainly. In my rebuttal, on Page 2, Line 5,

1 starting with, "December, 1998 to work within the
2 translations and switch operations organizations with
3 Level 3."

4 Q Could you repeat that, please?

5 A Certainly. Page 2 of my rebuttal, Line 5,
6 starting with "December, 1998 to work within the
7 translations and switch operations organizations."

8 Q Thank you. Any other revisions?

9 A Yes. In my direct, Page 11, Line 25, the tandem
10 name is the Miami Grande tandem, that's G-R-A-N-D-E.

11 Q Okay, that was in your rebuttal?

12 A Yes.

13 Q I'm sorry, that was in your direct.

14 A Direct, correct.

15 Q I'm sorry, my fault. With those two revisions,
16 Mr. Sachetti, if I ask you the same questions this morning
17 that are contained in your prefiled direct and rebuttal
18 testimony, would your answers be the same?

19 A Yes, they would.

20 Q Madam Chairman, I would ask that the prefiled
21 direct testimony of Mr. Paul, which has been adopted by
22 Mr. Sachetti, as well as the prefiled rebuttal testimony
23 of Mr. Sachetti be inserted into the record as though
24 read.

25 COMMISSIONER JABER: Yes. The prefiled direct

1 testimony of Kevin Paul, as adopted by Mr. Sachetti will
2 be inserted into the record as though read. The prefiled
3 rebuttal testimony filed by Mr. Sachetti will be inserted
4 into the record as though read.

5 MR. HOFFMAN: Thank you.

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

3 A: My name is Kevin Paul. I am Vice President of Softswitch Deployment for
4 Level 3 Communications, LLC ("Level 3"). My address is 1025 Eldorado
5 Boulevard, Broomfield, Colorado, 80021.

6 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES AT LEVEL 3.**

7 A: As Vice President of Softswitch Deployment, I am responsible for
8 engineering, network planning, network provisioning, network activation and
9 capacity management in support of Level 3's softswitch services. I am also
10 responsible for managing Level 3's interconnection agreements with other
11 local exchange carriers ("LECs").

12 **Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
13 **EXPERIENCE.**

14 A: I have worked in the telecommunications industry since 1980. I received my
15 college education from Rutgers University in New Jersey graduating in 1990
16 with a bachelor's degree in Computer Science. I joined Level 3 on May 1,
17 2000 as Vice President of Softswitch Deployment. Prior to joining Level 3,
18 I was with MCI WorldCom and held the position of Director, Call Processing
19 Infrastructure. I came to MCI through the acquisition of RCA Global
20 Communications in 1988. While at MCI, I held a number of engineering
21 management positions over the years including Director of Intelligent Call
22 Center Applications, Senior Manager of Data Network Application
23 Development, Senior Manager of Network Information Systems Business
24 Analysis, and Manager of MCI International Product Development.

25 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

1 A: The purpose of my testimony is to address the factual basis in support of
2 Level 3's position on the following issues set forth in Level 3's Petition for
3 Arbitration: Interconnection Points (Issue 1), Access Service Requests (Issue
4 4), and Trunk Provisioning (Issue 5).

5 **Q: HAVE YOU PARTICIPATED IN LEVEL 3'S INTERCONNECTION**
6 **NEGOTIATIONS WITH BELLSOUTH?**

7 A: Yes, I have participated in some of the negotiating sessions. In addition,
8 members of my staff have been involved in each of the negotiating sessions,
9 and I have reviewed the points of contention raised during the negotiations
10 to ensure their consistency with Level 3's network planning and design
11 priorities.

12

13

14

INTERCONNECTION POINTS

15 **Q: PLEASE SUMMARIZE THE DISPUTE BETWEEN LEVEL 3 AND**
16 **BELLSOUTH CONCERNING INTERCONNECTION POINTS.**

17 A: The interconnection points ("IPs") dispute between Level 3 and BellSouth
18 (Issue 1 in our Petition) relates to the physical interconnection of the trunk
19 groups provided by each Party for the transport and termination of local
20 telephone calls between their respective networks. At least initially, Level
21 3 would like to establish a single IP in each local access and transport area
22 ("LATA") in which Level 3 provides local exchange service. Each carrier
23 should be responsible for providing facilities and trunking to the IP for the
24 hand off of local and toll traffic, and each carrier should be responsible for

1 completing calls to all end users on its network. BellSouth would like to
2 retain a unilateral right to designate multiple IPs.

3 **Q: WHY DOES LEVEL 3 REQUIRE A SINGLE IP?**

4 A: The location and number of IPs is a financial and operational issue, because
5 each carrier needs to install transmission facilities and equipment to deliver
6 its originating traffic to each IP, and to receive terminating traffic there. Of
7 course, BellSouth already has a ubiquitous network throughout many areas
8 of Florida and can use its existing facilities for these purposes. On the other
9 hand, Level 3 as a new entrant must construct (or lease or acquire) new
10 facilities for access to each IP. Therefore, this issue has competitive
11 implications as well.

12 The incumbent LEC ("ILEC") should not be permitted to impose
13 interconnection requirements on alternative LECs ("ALECs") that require
14 ALECs to duplicate the ILEC's legacy network architecture. Rather, new
15 entrants should be free to deploy least cost, forward-looking technology, such
16 as the combination of a single switching entity with a SONET ring to serve
17 an area that the ILEC may serve through a hub-and-spoke, switch-intensive
18 architecture. Initial interconnection at the tandem level and at a single IP per
19 LATA is crucial to providing new entrants this flexibility. For a new entrant
20 to begin service, it requires a single connection capable of handling all of its
21 calls, including local, toll, and access traffic. Level 3 agrees that sound
22 engineering principles may eventually dictate that Level 3 add new IPs at
23 other BellSouth switches. However, there is no reason for BellSouth to
24 demand, or the Commission to compel, interconnection at any point
25 unilaterally selected by BellSouth for its originated traffic. Taken to its

1 extreme, this could require Level 3 to interconnect at every end office or
2 every local tandem even if the amount of traffic originating from customers
3 served out of those offices is relatively small.

4 **Q: IS LEVEL 3 TRYING TO FOIST ONTO BELLSOUTH THE COSTS**
5 **OF LEVEL 3'S NETWORK DESIGN?**

6 A: No. In fact, the opposite is true. BellSouth is the Party that has created,
7 whether by choice or regulatory requirement, numerous local calling areas
8 within each LATA. In the contract, BellSouth is the Party asking Level 3 to
9 incur costs to mirror BellSouth's legacy network architecture by trunking to
10 each tandem, paying additional charges when BellSouth must switch Level
11 3-originated traffic through more than one tandem, and establishing dedicated
12 facilities to each BellSouth local calling area. While Level 3 has agreed to
13 trunk to each tandem where its NXXs are homed, and to pay additional
14 charges when BellSouth switches Level 3-originated traffic through more
15 than one tandem, it would be anticompetitive, inefficient, and a waste of
16 public switched telephone network ("PSTN") resources to require Level 3 to
17 mirror BellSouth's legacy network by establishing dedicated connections to
18 each BellSouth tandem or local calling area regardless of traffic volume.

19 **Q: DOES BELLSOUTH'S CONTRACT LANGUAGE REQUIRE LEVEL**
20 **3 TO ESTABLISH CONNECTIONS AT EACH BELLSOUTH**
21 **TANDEM OR IN EACH LOCAL CALLING AREA?**

22 A: No. However, the contract, as proposed by BellSouth, would permit
23 BellSouth to designate multiple IPs for delivery to Level 3 of
24 BellSouth-originated traffic. The contract places no limits on BellSouth's
25 designation of IPs. Although our experience with BellSouth to date has not

1 shown that they designate unreasonable IPs, their ability to do so has been
2 restricted by contract language.

3 Although the contract language does not require Level 3 to mirror
4 BellSouth's network by establishing IPs at each tandem or in each local
5 calling area, the contract gives BellSouth the unilateral right to require Level
6 3 to do so. In its response to our Petition, BellSouth admits that the contract
7 language it has proposed would permit BellSouth to designate an end office
8 as the IP to which Level 3 would have to build or purchase facilities. (*See*
9 *BellSouth Response* at ¶14). BellSouth offers to add a restriction by
10 committing to no more than a single IP in each local calling area. However,
11 this restriction, which is not currently in the proposed contract, still does not
12 address Level 3's concerns.

13 **Q: IS LEVEL 3 INTERCONNECTED WITH BELL SOUTH IN**
14 **FLORIDA?**

15 A: Yes. Level 3 is interconnected with BellSouth in the Miami LATA and the
16 Orlando LATA. In order to obtain speed to market, Level 3 initially
17 exercised its Section 252(i) right to adopt a previously approved
18 interconnection agreement between BellSouth and MCI.

19 **Q: HOW DOES THE MCI AGREEMENT PROVIDE FOR THE**
20 **SELECTION OF INTERCONNECTION POINTS?**

21 A: Section 1.2 of Attachment IV to the agreement permits Level 3 to establish
22 one IP per LATA. Although it includes an option of establishing additional
23 IPs, Level 3 is the Party that decides whether to establish additional IPs, not
24 BellSouth. Under this framework, Level 3 and BellSouth established one IP
25 in the Miami LATA at the BellSouth Central Office at 45 NW 5th Street

1 (which also houses the Miami Grande tandem). In the Orlando LATA, we
2 established one IP at the BellSouth Central Office located at 2315 E. Central
3 Boulevard (which also houses the Colonial tandem). Local network planners
4 for Level 3 and BellSouth confer on a weekly basis and review the Florida
5 network architecture as necessary during these weekly discussions. Once,
6 during the meetings, BellSouth raised concerns about the IP in the Miami
7 LATA. To address BellSouth's concerns, Level 3 agreed to permit BellSouth
8 to establish DS3 facilities directly from a few high volume end offices to our
9 POP.

10 **Q: DOES LEVEL 3 MAINTAIN A SINGLE IP IN EACH LATA OR**
11 **MULTIPLE IPS IN OTHER BELLSOUTH MARKETS?**

12 A: We have established interconnection with BellSouth under the MCI
13 agreement in Georgia and have selected the IPs in North Carolina under the
14 Interprise America agreement. In both states, Level 3 and BellSouth initially
15 agreed to a single IP per LATA. Level 3 later established a second IP in the
16 Atlanta LATA. The single IP per LATA upon initial market entry is similar
17 to the network architecture we have established with other ILECs. For
18 instance, when Level 3 initially deployed its network in Texas, Level 3 and
19 Southwestern Bell Telephone Company ("SWBT") negotiated a single IP per
20 LATA where Level 3 offered service. When Level 3 sought to provide
21 service in new areas in Texas, we worked with SWBT to establish additional
22 IPs where dictated by sound engineering principles. For instance, Level 3
23 established additional IPs, for a total of two IPs each, in the Dallas and
24 Houston LATAs. The same is true in California with Pacific Bell, where we

1 established a single IP initially in the San Francisco LATA, but then added
2 an additional IP in San Jose once traffic volumes warranted it.

3 **Q: IF THE NEW INTERCONNECTION AGREEMENT WERE TO**
4 **REQUIRE LEVEL 3 TO ESTABLISH IPS BASED ON**
5 **BELLSOUTH'S UNILATERAL DESIGNATION OF ADDITIONAL**
6 **IPS, HOW WOULD THAT AFFECT THE NUMBER OF IPS PER**
7 **LATA?**

8 A. Level 3 could be required to establish numerous IPs in both the Miami and
9 Orlando LATAs. In fact, there is no set limit on the number of IPs that
10 BellSouth could require.

11 **Q: DOESN'T THE CONTRACT LANGUAGE PROPOSED BY**
12 **BELLSOUTH PERMIT ESTABLISHMENT OF A SINGLE IP PER**
13 **LATA?**

14 A: Even if BellSouth were to agree to establish a single IP when Level 3 enters
15 a LATA, the broad contract language proposed by BellSouth would permit
16 them to alter that decision at any time, without Level 3's consent. If Level 3
17 initially established a single IP, and was later forced to meet with BellSouth
18 at multiple IPs at BellSouth's unfettered discretion, it would seriously retard
19 Level 3's growth and impose additional unnecessary costs on Level 3 without
20 any offsetting benefit.

21 As an initial matter, transitioning from one to multiple IPs would take
22 months and would seriously interfere with Level 3's operations during the
23 transition. Because of the ordering limitations imposed by BellSouth, I
24 understand that Level 3 would only be permitted to order and turn up five (5)
25 T-1s worth of trunks per day, per market. Assuming Level 3 were to attempt

1 to continue to grow its network during the transition to additional IPs, that
2 growth could be restricted because both our growth and transition orders
3 would have to fit under the BellSouth cap. (And again, there is no specified
4 limit as to how many IPs BellSouth could designate for its originating
5 traffic.) This would adversely affect Level 3's ability not only to turn up
6 services to new customers, but also to grow services for existing customers
7 as those customers request additional services from Level 3. In effect, by
8 demanding an additional IP, BellSouth would severely impair (or even stop,
9 depending upon how many IPs were required by BellSouth) Level 3's ability
10 to win new customers during the transition period and jeopardize the growth
11 of Level 3's existing customers' business. Requiring Level 3 to transition
12 from a single IP per LATA to multiple IPs thus gives BellSouth a
13 competitive advantage in either retaining its existing customers or winning
14 customers new to the market during the transition period.

15 Moving from one to multiple IPs per LATA would also impose
16 unnecessary economic costs on Level 3 if the Commission, contrary to Level
17 3's recommendation, adopts BellSouth's proposed trunking charges. Under
18 BellSouth's proposal, Level 3 will be required to pay substantial nonrecurring
19 ordering charges to establish each of its existing trunks to the single IP.¹ If
20 Level 3 were forced to add additional IPs in a LATA, it would incur
21 nonrecurring ordering charges for trunks to the new IP and nonrecurring
22 disconnect charges as each trunk was moved from the single IP to the new IP.

¹ Timothy Gates' testimony addresses the Parties' dispute regarding charges for trunks.

1 **Q: HOW DOES LEVEL 3 PROPOSE TO DETERMINE IF AND WHEN**
2 **ADDITIONAL IPS SHOULD BE ESTABLISHED?**

3 A: We believe that the question of whether multiple IPs need to be established
4 should be determined through consideration of specific network concerns by
5 the planners responsible for running the networks. Because the network
6 planners are most familiar with the network architecture, traffic volumes, and
7 forecasts, Level 3 prefers that the establishment of additional IPs be left to the
8 discretion of the network planners from both companies, consistent with
9 sound engineering principles. In considering new IPs, sound engineering
10 principles dictate a case-by-case analysis under which carriers should
11 consider factors such as the current network architecture, the current and
12 forecasted level of traffic flowing through the existing IP, the location(s)
13 from which traffic is flowing, the remaining capacity at the existing IP, and
14 the demand placed upon that IP. For example, a certain threshold of traffic
15 ("X") coming from and going to a given tandem serving area may dictate that
16 a new IP be established at that tandem based upon the number of customers
17 behind that tandem, while a higher threshold of traffic ("X+1") coming from
18 and going to another tandem serving area might justify the establishment of
19 a new IP at that second tandem if there are more customers (and more
20 potential simultaneous call paths) in that tandem serving area. After all of
21 these and other relevant factors are taken into account, an appropriate,
22 mutually agreeable determination can be made as to when and where an
23 additional IP may be needed.

1 **Q: HAS LEVEL 3 PROPOSED CONTRACT LANGUAGE TO APPLY**
2 **SUCH SOUND ENGINEERING PRINCIPLES TO THE**
3 **ESTABLISHMENT OF ADDITIONAL IPS?**

4 A: Yes. Level 3 presented two alternatives to BellSouth. The first alternative
5 focuses on traffic originating from and/or terminating to a BellSouth tandem
6 serving area and the second focuses on technically feasible IPs available on
7 Level 3's network.

8 **Q: CAN YOU PLEASE EXPLAIN THE FIRST PROPOSAL?**

9 A: Under the first proposal, the Parties would measure traffic originating from
10 and/or terminating to BellSouth customers served by a BellSouth access
11 tandem. Once the traffic reached the level of an OC-12, the Parties would
12 establish an additional IP at that tandem.

13 Level 3 proposed an OC-12 threshold for two reasons. First, if the
14 volume of traffic originating from and/or terminating to an additional
15 BellSouth tandem is low, BellSouth's transport and switching costs are also
16 relatively low. BellSouth has been in this business for over 100 years and has
17 built ubiquitous facilities to transport traffic throughout its serving area.
18 Since BellSouth already has facilities in place to carry this traffic, and
19 therefore benefits from certain economies of scale, its costs to switch and
20 transport traffic it exchanges with Level 3 are relatively low.

21 Second, Level 3 as a new entrant has not deployed transport facilities
22 throughout BellSouth's serving area. Thus, in order for Level 3 to reach
23 additional BellSouth-designated IPs, Level 3 must either construct facilities,
24 which requires local permits, digging up streets, etc., or lease existing
25 transport from BellSouth or another carrier. In short, where traffic volumes

1 to/from additional wire centers are low, if BellSouth requires Level 3 to
 2 establish an IP at the additional wire center, BellSouth's avoided costs are
 3 negligible but Level 3's costs are high. Furthermore, if Level 3 purchases the
 4 transport from BellSouth, then BellSouth has succeeded, through its multiple
 5 IP requirement, in generating a significant amount of revenue from selling
 6 transport to Level 3.

7 In sum, the number of IPs is a financial issue for both Parties.
 8 BellSouth's insistence on a unilateral right to designate additional IPs places
 9 an undue financial burden on Level 3 to build out (or purchase or lease)
 10 facilities to each of BellSouth's designated IPs. While Level 3 in the first
 11 instance continues to advocate a case-by-case analysis based upon factors
 12 unique to certain aspects of the Level 3 and BellSouth networks and certain
 13 areas of each market, the OC-12 threshold is one means of prohibiting
 14 BellSouth from imposing expensive and unnecessary IPs on Level 3.

15 **Q: WHY IS TRAFFIC VOLUME IMPORTANT?**

16 **A:** As I've already stated, traffic volume is one of several factors that should be
 17 taken into account when establishing an IP. Let me give you an example that
 18 shows the importance of traffic volume. In the Miami LATA, BellSouth has
 19 five tandems. Since BellSouth provides service to customers behind all
 20 tandems, BellSouth must maintain facilities to connect the tandems to permit
 21 customers behind one tandem to reach customers behind the other tandems.
 22 Under the proposed contract, Level 3 has agreed that for Level 3-originated
 23 traffic, BellSouth may charge Level 3 for "Multiple Tandem Access," which
 24 permits BellSouth to recover the additional transport and switching costs it
 25 incurs for switching the call through two tandems (e.g., Miami ^{Grande}~~Grande~~ and

1 Palm Beach) before delivering it to the BellSouth customer. If, however,
2 BellSouth exercised its unilateral right to require Level 3 to establish an IP
3 at the Miami Grande tandem (and several other tandems or even end offices,
4 for that matter), whether for BellSouth- or Level 3-originated traffic, Level
5 3 could be forced to build facilities to those switches (and incur the time,
6 cost, and expense associated with such a build) or purchase facilities from
7 BellSouth. Even if Level 3 purchased the smallest facility available from
8 BellSouth, a DS1, to get to the Miami Grande tandem for example, BellSouth
9 would apparently assess Level 3 a nonrecurring charge ("NRC") of \$347.71
10 and a monthly recurring charge ("MRC") of \$186.82 for the DS1 (assuming
11 it is approximately one mile to this tandem) and a NRC of \$1,656.17 for the
12 trunks that ride on that DS1.² BellSouth could thus impose unnecessary costs
13 on Level 3 and strand valuable PSTN resources without regard for whether
14 traffic volumes justify such an investment in dedicated facilities. To prevent
15 this possibility, Level 3 has proposed that additional IPs be established at
16 tandems when traffic to and from a specific BellSouth tandem serving area
17 reaches the level of an OC-12.

18 **Q: WHAT IS LEVEL 3'S ALTERNATIVE PROPOSAL?**

19 A: Under our second proposal, BellSouth would have the right to designate
20 additional technically feasible IPs that exist on Level 3's network. These

²The MRC-DS-1 charge is two times the facility termination rate of \$93.31 plus one times \$0.2034 per mile. The NRC DS-1 charge is the total of the first (\$179.99) and additional (\$164.95) facility termination charges plus the electronic service order charge (\$2.77). The NRC trunk charge is the total of \$336.43 for the first trunk plus 23 times \$57.38 for each additional trunk.

1 points could include Level 3's switches or points of presence in the LATA
2 or collocation arrangements Level 3 has established in BellSouth premises.
3 Just as Level 3 has the right to designate any technically feasible point of
4 interconnection on BellSouth's network, this proposal would give BellSouth
5 the reciprocal right to choose a technically feasible point on Level 3's
6 network.

7 **ACCESS SERVICE REQUESTS**

8 **Q: PLEASE EXPLAIN THE PARTIES' DISPUTE ON ACCESS**
9 **SERVICE REQUESTS.**

10 **A:** The dispute regarding Access Service Requests ("ASRs") is set forth in Issue
11 4 of Level 3's Petition and concerns how quickly each Party notifies the other
12 of errors in the ASR that prevent processing the order.

13 In order to ensure that there are sufficient facilities in place to
14 exchange traffic with BellSouth, Level 3 must estimate the amount of traffic
15 the Parties will exchange over the following year. Based on anticipated
16 traffic flows, Level 3 then forecasts the number of trunks that will be
17 necessary to ensure the Parties can exchange traffic without calls being
18 blocked. Level 3 submits the forecasts to BellSouth so that BellSouth will
19 consider Level 3's trunking needs in its network planning process. It is
20 important to note, however, that BellSouth does not automatically turn up
21 trunks forecasted by Level 3. Rather, Level 3 and BellSouth must submit
22 orders (ASRs) to turn up trunks. Furthermore, the turn up of trunks is limited
23 by the ordering and provisioning process imposed by BellSouth (*e.g.*, the
24 limitations in terms of the number of T1s per day).

1 When one Party orders trunks from the other, it is because those
2 trunks are needed as soon as possible to respond to customer demand. It is
3 therefore critical that any errors in the ordering process are caught and
4 addressed as soon as possible. Level 3 recognizes that BellSouth cannot
5 begin to provision the trunks if Level 3's ASR contains clerical or
6 typographical errors. To ensure that the ordering process is quick and
7 efficient, Level 3 has proposed that each Party provide notice of all errors on
8 an ASR within two (2) business days of receiving the ASR. This will allow
9 both Parties to make any necessary corrections as promptly as possible so
10 that the Parties minimize delay in the trunk ordering process.

11 **Q: BELLSOUTH HAS OFFERED TO USE ITS "BEST EFFORTS" TO**
12 **IDENTIFY ALL ERRORS ON AN ASR FOR LOCAL**
13 **INTERCONNECTION TRUNKS (BELLSOUTH RESPONSE AT ¶ 23).**
14 **DOES THIS COMMITMENT ADDRESS LEVEL 3'S CONCERNS?**

15 **A:** No. Many of the network planning and provisioning aspects of the
16 agreement and the Parties' operations are so interrelated that adjusting one
17 aspect of the process can have an adverse effect on Level 3's ability to
18 exchange traffic with BellSouth and provide service to Level 3's customers.
19 The trunk forecasting, ordering, provisioning, and utilization requirements in
20 the agreement all impact the Parties' exchange of traffic. Level 3 has agreed
21 to trunk utilization levels that represent more than "best efforts" and we
22 believe that BellSouth should make similar, quantifiable commitments with
23 respect to processing and provisioning our trunk orders.

24 **TRUNK PROVISIONING**

1 **Q: PLEASE EXPLAIN THE DISPUTE REGARDING TRUNK**
2 **PROVISIONING.**

3 A: Level 3 has requested that the contract contain intervals for the provisioning
4 of new trunks and orders to augment existing trunk groups. However, the
5 Parties dispute what those intervals should be, and whether there should be
6 a separate interval in cases where blocking is occurring. For large trunk
7 groups involving 96 trunks or more, both new and augments, Level 3 seeks
8 an interval of 22 business days, or approximately one calendar month. For
9 trunk groups of less than 96 trunks, Level 3 seeks an interval of 15 business
10 days. For blocking situations, Level 3 seeks an interval of five business days.
11 In paragraph 24 of its response to our Petition, BellSouth offered an interval
12 of 45 days for orders of less than 96 trunks (approximately two calendar
13 months if counted in business days) and did not propose a separate interval
14 for large trunk groups or blocking situations. I understand BellSouth later
15 clarified that it only meant to offer the 45-day interval for augmentations of
16 less than 96 trunks. Level 3 believes that BellSouth's position is
17 unreasonable.

18 **Q: WERE YOU SURPRISED TO LEARN THAT BELLSOUTH WOULD**
19 **ONLY COMMIT TO PROVISIONING AUGMENTATION ORDERS**
20 **OF LESS THAN 96 TRUNKS IN 45 BUSINESS DAYS?**

21 A: Yes. Based on our negotiations, we were under the impression that
22 BellSouth had agreed to provision less than 96 trunks, whether new trunk
23 groups or augmentations, within 22 business days and 96 or more trunks,
24 whether new trunk groups or augmentations, within 45 business days.

25 **Q: WHY ARE INTERVALS NECESSARY?**

1 A: As I stated earlier, Level 3 and BellSouth place trunk orders in order to meet
2 customer demand. In addition, Level 3 has agreed to meet certain utilization
3 requirements for its trunk groups. For both of these reasons, Level 3 needs
4 to know how quickly BellSouth will provision trunks. Having set intervals
5 helps Level 3 meet customer demand and maintain trunk groups utilization
6 at levels required by the Agreement. Without intervals, Level 3 must guess
7 how much lead time is necessary to ensure orders will be filled in time to
8 meet customer demand. If Level 3 underestimates BellSouth's provisioning
9 time, Level 3's customers may experience blocking because new capacity
10 won't be added before new customers are added, or old customers' business
11 grows. If Level 3 overestimates BellSouth's provisioning time, its trunk
12 groups may have excess capacity and could be taken down under the
13 utilization provisions of the contract.

14 **Q: WHY ARE LEVEL 3'S INTERVALS REASONABLE?**

15 A: There are at least two reasons why our intervals are appropriate and
16 reasonable. First, it is important to note that in most cases we will be placing
17 orders for demand that have been included in forecasts provided to BellSouth.
18 BellSouth should not be overly surprised by Level 3 orders such that action
19 on the orders will take two months, or possibly longer under BellSouth's
20 proposed individual case basis. Rather, the purpose of giving forecasts is to
21 give BellSouth time to prepare for the orders it can reasonably expect from
22 Level 3 each quarter. Second, although BellSouth points to factors that may
23 delay trunk provisioning (such as a need for new construction), these factors
24 should be exceptions to the general rule. BellSouth has given Level 3 no
25 reason to believe that, under normal circumstances, it cannot complete

1 smaller orders within 15 business days and larger orders within 22 business
2 days.

3 **Q: LEVEL 3 HAS ALSO SOUGHT INTERVALS FOR BLOCKING**
4 **RELIEF. DOES BLOCKING ONLY AFFECT LEVEL 3'S**
5 **CUSTOMERS?**

6 A: No. Blocking creates problems not only for Level 3 customers who are
7 unable to complete calls, but also for those BellSouth customers who are
8 attempting to reach our customers. However, if the blocking occurs only
9 when the BellSouth customers call Level 3 customers, and not when they call
10 other BellSouth customers, the problem is perceived as being caused by
11 Level 3. Blocking therefore puts Level 3 at a competitive disadvantage
12 *vis-a-vis* BellSouth.

13 **Q: HAS LEVEL 3 EXPERIENCED BLOCKING PROBLEMS WITH**
14 **BELLSOUTH?**

15 A: Yes. We have experienced blocking with BellSouth in Miami and Atlanta.
16 Because BellSouth did not have facilities available in these markets, it took
17 four and three months in Miami and Atlanta, respectively, to relieve the
18 blocking problem. In other instances, where BellSouth had facilities
19 available, they have generally relieved the blocking within five to ten
20 business days. We therefore feel that a five business day interval is
21 reasonable and desirable from the perspective of both of our customer bases.

22 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

23 A: Yes, it does.

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

3 A: My name is Anthony Sachetti. I am Senior Director, Network Planning
4 and Interconnection Services, for Level 3 Communications, LLC (“Level
5 3”). My address is 1025 Eldorado Boulevard, Broomfield, Colorado,
6 80021.

7 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES AT LEVEL 3.**

8 A: I am responsible for Network Planning and Interconnection Services for
9 Level 3 - North America. In my Network Planning role, I have
10 supervisory responsibility for planning, forecasting and monitoring the
11 Level 3 network to support our local network deployment. In the
12 Interconnection Services area, I am responsible for negotiating and
13 managing Level 3's interconnection agreements and other arrangements
14 with local exchange carriers.

15 **Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND**
16 **AND EXPERIENCE.**

17 A: I have a Bachelor’s degree in Communications from Central Connecticut
18 State University. I have worked in the telecommunications field for
19 approximately 10 years. I started with TCI, helping that company to build
20 the first broadband cable telephone and cable modem networks in
21 Connecticut, Illinois and California. While with TCI, I became involved
22 in the construction and management of the company’s Denver-based

1 Network Operation Center. In this position, I was responsible for
2 managing and troubleshooting network issues arising in the daily
3 performance of the Center, as well as supervising operations in TCI's
4 provisioning and report management organizations. I joined Level 3 in
5 December, 1998 to work within the ^{Transactions and Switch operations} ~~Network Planning~~ organizations with Level 3

6 **Q: DID YOU FILE TESTIMONY IN THIS PROCEEDING ON**
7 **OCTOBER 5, 2000?**

8 A: No, I did not. However, for purposes of the hearing in this matter, I am
9 adopting the Direct Prefiled Testimony of Kevin Paul.

10 **Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

11 A: The purpose of my rebuttal testimony is to respond to the testimony of
12 BellSouth witness Cox on the following issues set forth in Level 3's
13 Petition for Arbitration: Interconnection Points (Issue 1).

14 **Q: KEVIN PAUL PREVIOUSLY TESTIFIED CONCERNING THE**
15 **FACTUAL BASIS IN SUPPORT OF LEVEL 3'S POSITION ON**
16 **ISSUES 4 (ACCESS SERVICE REQUESTS) AND 5 (TRUNK**
17 **PROVISIONING). WILL YOU ADDRESS THOSE ISSUES ALSO?**

18 A: No. Level 3 and BellSouth have reached a compromise on Issues 4 and 5
19 and no longer require the Commission's assistance in resolving those
20 issues.

21 **Q: HAVE YOU PARTICIPATED IN LEVEL 3'S**
22 **INTERCONNECTION NEGOTIATIONS WITH BELL SOUTH?**

1 A: Yes, I have participated in some of the negotiating sessions to settle the
2 arbitration issues. In addition, members of my staff have been involved in
3 each of the negotiating sessions, and I have reviewed the points of
4 contention raised during the negotiations to ensure their consistency with
5 Level 3's network planning and design priorities.

6 **Q: BELLSOUTH WITNESS COX TESTIFIES THAT ISSUE ONE IS**
7 **REALLY JUST A FINANCIAL ISSUE. (COX AT 3:9) DO YOU**
8 **AGREE?**

9 A: Although the interconnection of competing networks does have financial
10 consequences, that should not be the parties', or the Commission's, only
11 concern. The establishment of interconnection points ("IPs") has
12 financial, competitive, and operational/service implications, and is
13 governed by the legal framework established in the Telecommunications
14 Act of 1996 ("1996 Act"). My rebuttal testimony will address the
15 operational and service implications of BellSouth's position. Gregory
16 Rogers will testify concerning the legal and competitive policy framework
17 that makes BellSouth's position untenable and Timothy J. Gates will
18 testify about the economic impacts of BellSouth's proposal. The
19 Commission must balance all of these factors in making its determination
20 on this issue, and should not be misled by BellSouth's attempt to frame the
21 question as a black and white issue of who bears the cost of
22 interconnection facilities.

1 Q: MS. COX CLAIMS LEVEL 3 MUST CONNECT TO EACH OF
2 BELLSOUTH'S "SPECIALIZED NETWORKS" IF IT WANTS
3 THE CAPABILITY TO DELIVER TRAFFIC TO AND RECEIVE
4 TRAFFIC FROM EACH SPECIALIZED NETWORK (COX AT 7:2-
5 8). DO YOU AGREE THAT BELLSOUTH MAINTAINS THESE
6 DISTINCT "SPECIALIZED NETWORKS?"

7 A: No. Ms. Cox's claim of separate and distinct networks that require
8 multiple connections to each one is contradicted by her company's own
9 press statements.

10 BellSouth's e-Platform provides unique "bunker-
11 like" security and reliability against potential
12 natural and man-made disasters because BellSouth
13 utilizes "battle-tested," existing facilities that have
14 weathered hurricanes like Hugo, Andrew and Floyd.
15 BellSouth is also building upon some three million
16 miles of fiber optic cable, 1,650 central offices, 50
17 BellSouth Managed Facilities, 15,000 Sonet rings
18 and over 500 fast-packet switches with its e-
19 Platform initiative.¹

20 In another press release, BellSouth touts itself as an "integrated
21 communications services company" that provides customers with
22 "integrated voice, video and data services to meet their communications

¹ *BellSouth Launches 'E-Platform' for Business; New E-Biz Centers to Unleash Power of Extensive, Fiber-based Network*, BellSouth News Release (Sept. 26, 2000), <http://www.bellsouthcorp.com/proactive/documents/render/34042.vtml>.

1 needs.”² BellSouth cannot have it both ways. It cannot claim Balkanized,
2 specialized networks for its competitors while touting integrated networks
3 for its end user customers.

4 **Q: HOW IS LEVEL 3'S NETWORK STRUCTURED?**

5 A: Level 3 has a state-of-the-art Internet Protocol based network capable of
6 delivering a full range of services, including data, voice, video, fax and
7 multi-media. Level 3's network employs a “softswitch” technology. A
8 softswitch is a software system running on commercially available servers
9 that can provide Level 3 with the ability to offer voice services over the
10 same Internet Protocol network that carries broadband data services. Thus
11 Level 3's softswitches are designed to be capable of handling the full range
12 of communications services (voice, video, data), both local and long
13 distance.

14 **Q: DO YOU AGREE WITH MS. COX THAT MOST**
15 **TELECOMMUNICATIONS COMPANIES HAVE SEPARATE AND**
16 **DISTINCT NETWORKS FOR VARIOUS SERVICES?**

17 A: No. Although monopolists such as BellSouth may have divided their
18 network into local and access tandem serving areas, there is no
19 technological reason to do so. Most new entrant carriers use a single
20 switch for both local and long distance traffic. Furthermore, as

² *BellSouth Third Quarter EPS Increases 10%*, BellSouth News Release (Oct. 19, 2000), <http://www.bellsouthcorp.com/proactive/documents/render/34282.vtml>.

1 BellSouth's own press releases acknowledge, the same local loops, central
2 offices, and fiber transport networks used for local services are also
3 essential inputs in the provision of other communications services --
4 including some of the most advanced services BellSouth is seeking to
5 offer today. BellSouth clearly maintains the facilities necessary to connect
6 its "distinct local" networks and blurs the line between "local" and "other"
7 facilities for its own end user customers. It is therefore disingenuous, and
8 anti-competitive, for Ms. Cox to claim that Level 3 is not entitled to access
9 the same integrated network BellSouth touts and provides to its end user
10 customers.

11 **Q: APART FROM FINANCIAL INCENTIVES, DOES LEVEL 3 HAVE**
12 **OTHER INCENTIVES TO OPTIMIZE ITS NETWORK**
13 **INTERCONNECTION WITH BELLSOUTH?**

14 **A:** Yes, we do. Our other incentives include issues of control and network
15 reliability. Because we must rely in part upon BellSouth to provide
16 service to our customers, we have an interest in ensuring that the weakest
17 link in the chain -- the BellSouth facilities, over which Level 3 has little if
18 any control -- does not undermine Level 3's ability to provide high quality
19 service to its customers. If we establish a single IP in a LATA and traffic
20 volumes increase to the point that the single IP becomes a bottleneck,
21 Level 3 will need to establish additional IPs to relieve the bottleneck, or
22 face the prospect of having customer services delayed or even blocked.

1 Similarly, if BellSouth does not have adequate facilities available at the
2 single IP to accommodate Level 3's forecasted growth, Level 3 will
3 establish additional IPs to avoid facility restrictions on our continued
4 growth. Issues such as these are addressed by the local network planners
5 for each company on a regular basis.

6 **Q: IS BELL SOUTH CORRECT IN ASSERTING THAT NETWORK**
7 **INTERCONNECTION ONLY BENEFITS LEVEL 3?**

8 A: No. As I explained in my initial testimony, customers of both BellSouth
9 and Level 3 benefit from efficient network interconnection that permits all
10 end users on the public switched telephone network ("PSTN") to reach all
11 other end users on the PSTN. Because BellSouth maintains a monopoly
12 share of the local exchange market in Florida, it is common sense that
13 many BellSouth customers will want to place calls to Level 3 customers.
14 Thus, contrary to Ms. Cox's claim (Cox at 3:9-13), Level 3 is not the sole
15 cost causer, and certainly not the sole beneficiary, for facilities necessary
16 to interconnect the companies' networks. In short, BellSouth is attempting
17 to shift the costs caused by its own customers' communications demands
18 to its market competitors.

19 **Q: ARE THERE NETWORK RESOURCE AND RELIABILITY**
20 **ISSUES THE COMMISSION SHOULD CONSIDER WITH**
21 **RESPECT TO THIS ISSUE?**

22

1 Yes. BellSouth is calling upon ALECs to duplicate its own historical
2 architecture without any sound engineering basis for doing so. Because
3 BellSouth has been in this business for over 100 years, it has developed a
4 ubiquitous network, paid for in large part by captive ratepayers. As part of
5 this ubiquitous network, BellSouth has built dedicated facilities to connect
6 its historical hierarchy of end office, local tandem, and access tandem
7 switches. If BellSouth gets its wish to have each ALEC interconnect
8 wherever BellSouth mandates, it could require every ALEC to build, or
9 purchase from BellSouth, dedicated facilities to the 20 or more local
10 calling areas BellSouth has established in each LATA (Cox at 4:19-20).
11 The ALEC would have to bear the cost of these dedicated facilities
12 regardless of traffic volumes and regardless of whether BellSouth has the
13 additional capacity already in place to provide such facilities to ALECs. If
14 BellSouth has additional capacity in place, ALECs will generally choose
15 the path of least resistance and lease these facilities from BellSouth. This
16 would create a huge financial windfall for BellSouth. It will also be
17 inefficient, as ALECs will be required to build or lease dedicated facilities
18 on a flat-rated, non-traffic-sensitive basis even when little, if any, traffic
19 actually flows over such facilities. It could also lead to facilities exhaust
20 that would not otherwise occur if BellSouth would carry its own
21 customers' traffic on the network it has built for just that purpose.

1 The problem with multiple IPs only grows if BellSouth does not
2 have additional capacity in place to lease to ALECS. If BellSouth does
3 not have such additional capacity in place, BellSouth's multiple IP
4 requirement will force ALECs to build facilities or forego entering the
5 market in the local calling area where facilities are exhausted. As the
6 Commission knows, the business of laying fiber is a tedious process that
7 requires permitting, tears up streets, and delays the provisioning of service
8 for months. BellSouth has failed to address the costs its proposal would
9 impose on the PSTN and the manner in which its proposal may delay the
10 introduction of competition in Florida local exchange markets. The
11 Commission should weigh such issues carefully in considering this dispute
12 between Level 3 and BellSouth.

13 **Q: HAS LEVEL 3 ATTEMPTED TO REACH A COMPROMISE**
14 **WITH RESPECT TO THIS ISSUE?**

15 A: Yes, we have. As I explained in my initial testimony, notwithstanding our
16 legal position (as outlined by Gregory Rogers) that Level 3 is only
17 required by the Act and FCC rules to establish a single IP in each LATA,
18 Level 3 offered two compromise approaches to establishing multiple IPs
19 in a LATA. These alternatives were set forth in our petition, proposed
20 contract language, and my initial testimony. The first alternative was to
21 establish an additional IP when traffic originating from and/or terminating
22 to a BellSouth tandem serving area reached an OC-12 level. The second

1 alternative was to permit BellSouth to establish additional technically
2 feasible IPs on Level 3's network.

3 Since we filed the petition and my testimony, we have continued to
4 negotiate with BellSouth to no avail. BellSouth still clings to the premise
5 that it should be allowed to establish its own IPs for its originating traffic,
6 regardless of how much traffic is involved, irrespective of the Act, and
7 notwithstanding the fact that the Parties have operated in Florida with a
8 single IP in each LATA for some time now.

9 **Q: WHAT ACTION DO YOU RECOMMEND TO THE**
10 **COMMISSION?**

11 **A:** While we would prefer to leave the decision to establish additional IPs to
12 the discretion of the network planners against the backdrop of a contract
13 requirement of one IP per LATA, we have proposed alternative contract
14 language to provide general guidance on the establishment of additional
15 IPs. If the Commission determines to depart from the single IP per LATA
16 rule established by the FCC, it should adopt Level 3's position that will
17 define by contract when and how BellSouth may require Level 3 to
18 establish additional IPs beyond the single IP per LATA mandated by the
19 Act and FCC rules. To do otherwise would permit BellSouth to strand
20 valuable PSTN resources, require Level 3 to mirror BellSouth's claimed
21 separate and distinct networks, and delay the benefits competition will
22 bring to Florida consumers.

1 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

2 **A. Yes, it does.**

3

1 BY MR. HOFFMAN:

2 Q Mr. Sachetti, have you prepared a summary of
3 your direct and rebuttal testimony?

4 A Yes, I have.

5 Q And would you provide your summary at this time?

6 A Yes.

7 Good morning. The purpose of my testimony
8 supports Level 3's position on Issue 1 in this arbitration
9 relating to the establishment of interconnection points.
10 The interconnection points dispute between Level 3 and
11 BellSouth relates primarily to where the parties want to
12 define operational and financial responsibility for
13 network functions.

14 Level 3 would like to maintain the single
15 interconnection point architecture that BellSouth has
16 previously agreed to in each LATA where Level 3 provides
17 local exchange service. As Section 1.1.1 of Attachment 3
18 already says, each carrier should be financially and
19 operationally responsible for facilities and trunking up
20 to the interconnection point for the handoff of
21 originating traffic.

22 The language is not in dispute. Also, each
23 carrier should be responsible for completing calls to all
24 end users on its network with the terminating carrier
25 receiving reciprocal compensation for helping deliver that

1 call.

2 BellSouth, on the other hand, would like to
3 retain a unilateral right to designate multiple
4 interconnection points for traffic originating by
5 BellSouth's customers. Level 3 and BellSouth have
6 established one interconnection point in each Florida LATA
7 in which Level 3 operates today.

8 Level 3 orders facilities from those
9 interconnection points to other BellSouth switch offices
10 in Orlando and Miami area as traffic dictates. This
11 process has largely worked well from a technical traffic
12 routing perspective.

13 BellSouth should not be permitted to impose
14 interconnection requirements that require competitive LECs
15 to duplicate the ILEC's network architecture. The current
16 BellSouth contract language would give them the right to
17 arbitrarily select interconnection points without sound,
18 engineering principles demanding Level 3 to establish or
19 purchase facilities to at least every BellSouth local
20 calling area.

21 BellSouth will do so regardless of existing
22 network architectures, current or projected traffic
23 volumes, or the fact of our existing single
24 interconnection points generally work well today. Rather
25 than require that kind of arbitrary facilities deployment

1 suggested by BellSouth, new entrants should be free to
2 deploy least cost forward-looking technology, additional
3 interconnection at the tandem level and at a single
4 interconnection point per LATA is crucial to providing new
5 entrants this flexibility.

6 Level 3 agrees that sound engineering principles
7 should dictate when Level 3 adds new interconnection
8 points at other BellSouth switches, but not in the manner
9 suggested by BellSouth. We believe it is appropriate to
10 leave the decision to establish additional interconnection
11 points to the discretion of the network planners against
12 the backdrop of contract requirement of one
13 interconnection point per LATA.

14 BellSouth has rejected this proposal. It has
15 instead proposed that where the parties cannot agree on an
16 interconnection point, each party will be able to
17 designate its own interconnection points. This is
18 problematic, because Level 3 then has no control
19 whatsoever where we might be forced to build or lease
20 facilities to match to BellSouth's network.

21 To reach a compromise, Level 3 has proposed
22 contract language to provide engineering standards for the
23 establishment of additional interconnection points. This
24 would also avoid giving BellSouth unfettered discretion to
25 compel Level 3 to establish interconnection points

1 wherever BellSouth wants.

2 Thank you.

3 Q Does that conclude your summary, Mr. Sachetti?

4 A Yes, it does.

5 MR. HOFFMAN: Madam Chairman, the witness is
6 available for cross examination.

7 COMMISSIONER JABER: Mr. Turner.

8 MR. TURNER: Thank you, Madam Chairman.

9 CROSS EXAMINATION

10 BY MR. TURNER:

11 Q I want to make sure I'm pronouncing your name
12 right. It's Sachetti?

13 A That is correct, Sachetti.

14 Q I apologize if I slip up. If I do, tell me. I
15 don't do it intentionally.

16 Mr. Sachetti, the first thing I would like to do
17 is hand you a diagram, and let's see if we can agree to a
18 few things up front. And, Madam Chairman, I would like to
19 mark this for identification purposes as BellSouth's cross
20 exhibit 1.

21 COMMISSIONER JABER: That's Exhibit 5 --

22 MR. TURNER: I'm sorry, 5.

23 COMMISSIONER JABER: Just give me a short title.
24 What is the diagram of?

25 MR. TURNER: This is a -- the title of the

1 diagram is Local Call within the Same Local Calling Area
2 between BellSouth and Level 3.

3 COMMISSIONER JABER: Okay. We'll call it Local
4 Call Diagram, and it's Exhibit 5.

5 (Exhibit 5 marked for identification.)

6 BY MR. TURNER:

7 Q Mr. Sachetti, take a look at it, and we're going
8 to walk through it fairly slowly, but I want you to get
9 comfortable before I start asking you questions. When
10 you're ready, just let me know.

11 A Okay.

12 Q Okay. Mr. Sachetti, do you see the large box
13 that is around the entire diagram?

14 A Yes, I do.

15 Q Can we agree to say that that is the boundary of
16 BellSouth Local Calling Area Number 1?

17 A Yes.

18 Q Okay. And I want you to assume with us that
19 BellSouth and Level 3 have mutually agreed to an
20 interconnection point within Local Calling Area Number 1,
21 okay?

22 A Yes.

23 Q Okay. And in the diagram on Exhibit 5, the box
24 entitled "IP," in the center of the page offset to the
25 right, we're going to call that the interconnection point,

1 okay?

2 A Yes.

3 Q Now, will you also agree with me that BellSouth
4 has agreed to deliver its originating traffic to one
5 interconnection point within each local calling area?

6 A That is correct.

7 Q Okay. So, in the context of Exhibit 5,
8 BellSouth has agreed that wherever a call originates
9 within this Local Calling Area Number 1, BellSouth will
10 deliver it to the interconnection point, right?

11 A That is correct.

12 Q Okay. So, BellSouth is going to agree to build
13 its facilities to the interconnection point, and Level 3
14 is going to build its facilities to the interconnection
15 point, right?

16 A As you have it on this diagram, yes.

17 Q Okay. So, on the right side of the
18 interconnection point, what we have is a Level 3 end user.
19 You see in the triangle down at the bottom right of the
20 page?

21 A Yes.

22 Q Okay. So, you're going to give him a loop,
23 right?

24 A Correct.

25 Q And that line from the end user up to your Level

1 3 switch, that's the end user's loop?

2 A Yes.

3 Q And as I understand it, that loop is part of
4 your network, right?

5 A That is correct.

6 Q Okay. Then, you're going to go up to your
7 switch, and you're going to build a local channel facility
8 between your Level 3 switch and the interconnection point,
9 right?

10 A Correct.

11 Q BellSouth is going to do a similar thing, it's
12 going to drop a loop down to its end user over here on the
13 left side of the page, right?

14 A Correct.

15 Q And then, it's going to build facilities out to
16 this same interconnection point. Are you with me so far?

17 A Yes, I am.

18 Q Okay. Now, for simplicity sake, let's say that
19 all of the BellSouth end users within this diagram have
20 subscribed to the plain-vanilla local calling area plan,
21 okay?

22 A Yes.

23 Q They pay BellSouth somewhere in the area of \$10
24 a month, and they get to have their calls delivered to
25 anywhere in the Local Calling Area Number 1, okay?

1 A Correct.

2 Q Now, let's look at what happens when a Level 3
3 end user calls this BellSouth end user over here on the
4 left side of the page, okay?

5 MR. TURNER: Madam Chairman, may I have one
6 moment, please?

7 COMMISSIONER JABER: Yes.

8 BY MR. TURNER:

9 Q To make this a little easier, let's go over to
10 the BellSouth end user on the far left of the page. Let's
11 label him end user number one, okay? And then, the
12 BellSouth end user in the center of the page, let's label
13 that end user number two, okay? Are you with me so far?

14 A Yes, I am.

15 Q Okay. So, what we have here is the Level 3 end
16 user is going to call the BellSouth end user number one,
17 right?

18 A Okay.

19 Q Okay. So, the call is going to travel up the
20 loop, it's going to hit your Level 3 switch, and it's
21 going to ride on this local channel facility to the
22 interconnection point, correct?

23 A Correct.

24 Q From there, we really have two choices of how we
25 can proceed. Let's say that there is a sufficient amount

1 of traffic between the Level 3 switch and this BellSouth
2 end office on the far left of the page that you decide to
3 go with dedicated facilities, okay? In that case, once it
4 hits the interconnection point, that call is going to go
5 over that lower red line local channel, right?

6 A Correct.

7 Q It's going to hit the BellSouth end office that
8 we've drawn in this BellSouth wire center, right?

9 A That's correct.

10 Q It's going to go straight through that over a
11 dedicated interoffice transport facility to the BellSouth
12 end office switch that serves end user one, right?

13 A For the dedicated facility, yes.

14 Q Okay. Now, the other option we have is let's
15 say that the traffic between the Level 3 switch and the
16 BellSouth end office switch is not sufficient to justify
17 that dedicated facility. Now, in that case, once it hits
18 the interconnection point, it's probably going to go over
19 a local channel to the BellSouth end office in the serving
20 wire center, right?

21 A Correct.

22 Q Then, it's going ride this short dedicated end
23 office transport facility and hit the BellSouth tandem
24 switch, right?

25 A Correct.

1 Q And from there it's going to go over common
2 transport interoffice facility to the BellSouth end office
3 switch, right?

4 A Correct.

5 Q Now, when the BellSouth end user number one
6 calls Level 3's end user, in this diagram, BellSouth is
7 going to deliver the traffic at no charge to this
8 interconnection point, correct?

9 A That is correct.

10 Q You're going to take it from the interconnection
11 point, terminate it to your customer, right?

12 A Correct.

13 Q So, within the context of this diagram where we
14 have an end user in Local Calling Area Number 1 calling a
15 Level 3 end user in Local Calling Area 1 through the
16 interconnection point, which also is a Local Calling Area
17 Number 1, we really don't have Issue 1, do we? BellSouth
18 is delivering its originating traffic to the
19 interconnection point without charge to Level 3, right?

20 A That's correct.

21 Q Now, based on the scenario that we've set up, do
22 you see anything that I've mislabeled in this diagram?

23 A Not in this diagram.

24 Q Okay. Now, before I show you my next diagram, I
25 want you to assume another scenario with me. Let's say

1 that BellSouth end user number one wants to call BellSouth
2 end user number two, okay? BellSouth is going to deliver
3 that traffic from end user number one, and it's going to
4 terminate it down here to BellSouth end user number two,
5 right?

6 A Correct.

7 Q Now, recall with me, BellSouth end user number
8 one has the plain-vanilla local calling service, right?

9 A Correct.

10 Q Let's say that we've got a BellSouth end user
11 that's located up here in Calling Area Number 2. Just see
12 where I've got Local Calling Area on the title, let's say
13 that the word, area, is another BellSouth end user, okay?

14 If BellSouth end user number one tries to call
15 that BellSouth end user up there in Local Calling Area
16 Number 2, not going to get him, is he, unless he pays a
17 toll charge?

18 A Under that plain-vanilla customer, that is
19 correct.

20 Q Because he's paid us to deliver that traffic
21 within Local Calling Area Number 1, right?

22 A Right.

23 Q Hasn't paid us to deliver up here to Local
24 Calling Area Number 2, right?

25 A That is correct.

1 MR. TURNER: Okay. Madam Chairman, may I hand
2 out another chart and, I believe, we're up to cross
3 examination number 6?

4 COMMISSIONER JABER: Exhibit 6. Is this another
5 diagram?

6 MR. TURNER: Yes, ma'am.

7 COMMISSIONER JABER: Can you distinguish the
8 diagram for me, please, for purposes of the record?

9 MR. TURNER: Yes, ma'am. Let me get the
10 diagram, and then I'll read the title to it.

11 Madam Chairman, the title of this is "Local Call
12 from a BellSouth End User."

13 COMMISSIONER JABER: Okay. It'll be diagram
14 illustrating local call from a BellSouth end user.

15 MR. TURNER: And let's say with the
16 interconnection point in a different local calling area,
17 that's the descriptive.

18 COMMISSIONER JABER: It's Exhibit 6.

19 (Exhibit 6 marked for identification.)

20 BY MR. TURNER:

21 Q Mr. Sachetti, when you're ready, just let me
22 know, I'll walk you through this one.

23 A I'm ready.

24 Q Let's make one change to this diagram, just
25 labelwise. See down here at the bottom where it says

1 Local Calling Area Number 2 with an arrow to this oval?

2 A Yes.

3 Q Let's change that to 1.

4 COMMISSIONER JABER: Where?

5 MR. TURNER: We're going to reverse the calling
6 areas. So, the one that is currently at the bottom, Madam
7 Chairman, that's labeled Local Calling Area Number 2,
8 we'll call that one Number 1. And the one that's at the
9 top that's currently labeled Local Calling Area Number 1,
10 we're going to do 2.

11 BY MR. TURNER:

12 Q So, Mr. Sachetti, you see now the oval that's at
13 the bottom of the page represents BellSouth Local Calling
14 Area Number 1, right?

15 A Yes.

16 Q And the oval at the top of the page represents
17 BellSouth Local Calling Area Number 2, right?

18 A Yes.

19 Q Now, in this scenario, let's assume that the
20 interconnection point that Level 3 would like to designate
21 is up here in Local Calling Area Number 2, okay?

22 A Yes.

23 Q Now, in this case, when the BellSouth end user
24 wants to call -- and you see the BellSouth end user's in
25 the Local Calling Area Number 1, he's that triangle sort

1 of in the center; do you see him?

2 A Yes, I do.

3 Q He wants to call his neighbor across the street
4 who is a Level 3 end user. And his neighbor is sort of up
5 and to the right of him, that triangle labeled number
6 three end user; do you see him?

7 A Yes, I do.

8 Q So, we've got the BellSouth caller who wants to
9 call his neighbor. Now, we've already agreed that in this
10 scenario, Level 3 has put its interconnection point up
11 here in Local Calling Area Number 2, right?

12 A Yes.

13 Q So, what Level 3 would like to have happen here
14 is Level 3 would like BellSouth to take that call to
15 BellSouth's end office in Local Calling Area Number 1,
16 right?

17 A Correct.

18 Q And deliver it past Local Calling Area Number 2
19 up to either the interconnection point or, as I've got it
20 drawn here, directly to your switch in Local Calling Area
21 Number 2, right?

22 A Yes, that's how the call routing is done.

23 Q Okay. Now, we've already agreed, haven't we,
24 that BellSouth has agreed to take calls that originate in
25 Local Calling Area Number 1 and deliver them to an

1 interconnection point anywhere in Local Calling Area
2 Number 1, right?

3 A That is correct.

4 Q So, you see the leg that goes from the BellSouth
5 end office switch in Local Calling Area Number 1 up to the
6 edge of Local Calling Area Number 1? There's an X called
7 POI?

8 A Yes, I do.

9 Q And the arrow goes up to another X that says the
10 edge of Local Calling Area Number 1. Do you see the piece
11 of the diagram I'm talking about?

12 A Yes.

13 Q Assume with me that BellSouth is willing to pay
14 to deliver that call up to that point, okay?

15 A Up to the X?

16 Q Up to the X that's on the edge of Local Calling
17 Area Number 1, okay?

18 A Okay.

19 Q Our dispute in Issue Number 1 is this leg that
20 goes from that X at the edge of Local Calling Area Number
21 1 up to your Level 3 switch in Local Calling Area Number
22 2. That's our dispute, right?

23 A Correct.

24 Q You say BellSouth should pay to deliver that
25 call from the X at Local Calling Area Number 1 up to your

1 switch at Local Calling Area Number 2, right?

2 A Yes.

3 Q And BellSouth says we should only pay to carry
4 that call to the edge of Local Calling Area Number 1,
5 right?

6 A Correct.

7 Q Do you remember the customer back in our Diagram
8 Number 5, do you remember the BellSouth customer up here
9 where the word "area" appears?

10 A Correct.

11 Q Now, we've already said that BellSouth's end
12 user in Local Calling Area Number 1, we're not going to
13 carry his call up to that end user in Number 2, right?

14 A Can you repeat that again, please?

15 Q Sure.

16 COMMISSIONER JABER: Hang on a second. I think,
17 the point that we're supposed to get, and at least
18 certainly the question that I have in my mind, is that if
19 BellSouth doesn't deliver that kind of call to its own
20 customers, why should it deliver the call at no charge to
21 your customers? That's what I need to understand.

22 THE WITNESS: How BellSouth has set up their
23 local calling areas is determined by BellSouth in how they
24 set up the local calling areas. Level 3, under the Act,
25 was to establish an interconnection point, which we had to

1 the LATA, and responsible to the interconnection point
2 those facilities and BellSouth responsible to bring that
3 traffic to that interconnection point.

4 How the traffic is routed in each local calling
5 area is up to BellSouth. And the responsibility for their
6 customer dialing a Level 3 phone number, which may be one
7 of those local calling areas that may come into that --
8 all fall within the same LATA.

9 So, I think, it's a question of how BellSouth
10 sets up their routing for local call area, for each
11 individual local call area. And that network is already
12 in place for BellSouth, that local transport and common
13 group transport is already in place and has been in place.

14 BY MR. TURNER:

15 Q Mr. Sachetti, let's do it this way. Let's look
16 at Exhibit Number 6. Let's say that there's another
17 BellSouth end user that's right in the middle of this line
18 in Local Calling Area Number 2. This is the line that
19 goes from the edge of 1 up to the switch. Let's put a
20 BellSouth end user right in the middle there, okay?

21 A Okay.

22 Q Now, we've already agreed that local -- that the
23 BellSouth end user down here in Local Calling Area Number
24 1 hasn't paid BellSouth to carry that call up to the end
25 user in Number 2, right?

1 A Yes, under your definition, that's correct.

2 Q Okay. Let me ask you this. Under your theory,
3 who's paying BellSouth to carry that call from the edge of
4 Local Calling Area Number 1 all the way up to your switch
5 deep in that Local Calling Area Number 2?

6 MR. HOFFMAN: Madam Chairman, I'm going to
7 object at this point. At this point we've developed a
8 discussion which deals with both intercarrier facilities
9 and costs, as well as BellSouth's retail rates.

10 The BellSouth retail rate part of the equation
11 is not within the testimony that Mr. Sachetti is
12 sponsoring. It is well within, and the diagrams that
13 Mr. Turner is getting into, are akin to the types of
14 diagrams and exhibits that Mr. Gates has sponsored.

15 I think, that we're getting outside the scope of
16 the testimony of Mr. Sachetti, but these are questions
17 that will be answered, if posed, to Mr. Gates.

18 COMMISSIONER JABER: Okay. Mr. Turner, the
19 objection is this is outside of the scope of this witness'
20 testimony. What's your response?

21 MR. TURNER: This is what he has been talking
22 about in cross, it's what he's talking about in direct,
23 it's what he's talking about in rebuttal. He's talking
24 about who bears the cost of carrying these calls and, I
25 think, I'm entitled to explore that.

1 COMMISSIONER JABER: I think that the diagrams
2 and having him walk through the network is one thing.
3 When you're asking about who's willing to pay the cost or
4 who Level 3 is proposing pays the cost, there is another
5 witness.

6 MR. TURNER: Okay.

7 COMMISSIONER JABER: So, I'll sustain the
8 objection.

9 MR. TURNER: Yes, ma'am.

10 COMMISSIONER JABER: If you have other questions
11 about the network, however, I think, that's within the
12 scope of testimony, Mr. Hoffman.

13 BY MR. TURNER:

14 Q Mr. Sachetti, did you -- let me ask you this.
15 We have agreed, haven't we, that the loop from your switch
16 down to your Level 3 end user is part of the Level 3
17 network, right?

18 A That's correct.

19 Q Were you in the room when your counsel gave his
20 opening statement regarding Level 3's Issue 1 position?

21 A Yes, I was.

22 Q As I understood him to say, Level 3 has offered,
23 as an alternative to resolve this dispute, to permit
24 BellSouth to establish interconnection points at Level 3
25 points of presence. Did you hear him say that?

1 A Yes, I did.

2 Q That's not what you said in your direct and
3 rebuttal testimony, is it?

4 A I believe, there were -- well, this is in
5 regards to the two offers that Level 3 had made BellSouth
6 in regards to this particular issue.

7 Q And more specifically, in regard to the second
8 alternative, that's discussed in your testimony. Go with
9 me to Page 12 of your prefiled testimony, and let's start
10 with the direct of Kevin Paul which, as I understand, you
11 have adopted that testimony, right?

12 A That's correct.

13 Q Okay. Go with me to Page 12. And at Lines 19
14 and 20, tell me when you get there.

15 A I'm there.

16 Q Okay. Now, your testimony doesn't say that
17 under the second proposal BellSouth would have the right
18 to designate additional technically feasible inter-- or
19 let me say it this way. That doesn't say that the
20 proposal is that BellSouth will establish interconnection
21 points at Level 3 points of presence, does it?

22 A In my rebuttal?

23 Q I'm in your direct at 19 and 20.

24 A Correct.

25 Q I believe, what you're saying is BellSouth would

1 have the right to designate additional
2 technically-feasible interconnection points that exist on
3 Level 3's network, right?

4 A That is correct.

5 Q You didn't put this qualification in here. You
6 didn't limit it to points of presence, did you?

7 A Qualification? In my opening statement? I'm
8 sorry.

9 Q No, sir, in your testimony.

10 COMMISSIONER JABER: Let me make sure he's at
11 the right place.

12 Mr. Sachetti, what he's referring you to is
13 Kevin Paul's prefiled testimony that you have agreed to
14 adopt.

15 THE WITNESS: Yes.

16 COMMISSIONER JABER: And it's Page 12, Lines 19
17 through 20. And if you need a minute to read that, you
18 can take a few moments.

19 THE WITNESS: I have read it, thank you.

20 BY MR. TURNER:

21 Q Okay. In your testimony you say that the
22 proposal of Level 3, the second proposal, is that
23 BellSouth would have the right to designate additional
24 technically-feasible interconnection points that exist on
25 Level 3's network, right?

1 A That's correct.

2 Q I assume that meant anywhere on Level 3's
3 network, right?

4 A Within the collo space or at our switch.

5 Q Now, you don't say anything about within your
6 collo space or in your switch in your proposal, do you, in
7 your testimony?

8 A No, I do not.

9 Q Okay. Now, you filed your own rebuttal
10 testimony, right?

11 A That is correct.

12 Q Go with me to Pages 9 and 10. We're going to
13 start on Line 22 of Page 9. Tell me when you're there.

14 A I'm there.

15 Q The last two words on Page 9 carrying forward to
16 Page 10 reads, "The second alternative was to permit
17 BellSouth to establish additional technically-feasible
18 interconnection points on Level 3's network, right?"

19 A Yes.

20 Q Your loop is part of your network, right?

21 A That's correct.

22 Q I want you to assume with me that BellSouth can
23 find a technically-feasible point on your loop within
24 Local Calling Area Number 1.

25 A Which diagram are you looking at now?

1 Q Let's look at 6. On 6, as I understand it, your
2 loop is this facility that starts at your Level 3 switch
3 up here in Local Calling Area Number 2. The arrow goes to
4 the right, and then it drops down into Local Calling Area
5 Number 1 where it connects with your Level 3 end user,
6 right?

7 A Yes.

8 Q Let's assume that BellSouth finds a point on
9 that loop down here in Local Calling Area Number 1 where
10 it's technically feasible to interconnect.

11 A On Level 3's network?

12 Q On Level 3's network. Are you going to let us
13 establish an interconnection point down here?

14 A Yes.

15 MR. TURNER: I have nothing further.

16 COMMISSIONER JABER: Commissioner Baez, you
17 don't have any questions, right? Staff?

18 MS. BANKS: Staff has nothing.

19 COMMISSIONER JABER: Redirect?

20 MR. HOFFMAN: Thank you, Madam Chairman.

21 REDIRECT EXAMINATION

22 BY MR. HOFFMAN:

23 Q Just a few questions, Mr. Sachetti. First, if
24 you go back to Exhibit 5, and you see there within the
25 assumed BellSouth Local Calling Area 1 a Level 3 switch to

1 the right and then a little bit over to the left an IP
2 interconnection point, do you see that?

3 A That is correct.

4 Q Does this picture reflect how Level 3 normally
5 interconnects with BellSouth?

6 A No.

7 Q Okay. Could you explain how Level 3 typically
8 would interconnect with BellSouth in terms of its switches
9 and interconnection points?

10 MR. TURNER: I'm sorry, Madam Chairman, I didn't
11 hear his answer to the question.

12 THE WITNESS: No.

13 COMMISSIONER JABER: Repeat your answer.

14 MR. HOFFMAN: He said no.

15 A Level 3 has established a single interconnection
16 point in each of the LATAs in the Florida markets for
17 Miami and Orlando. We have agreed upon an interconnection
18 point at one of the tandems in those locations. And
19 Orlando is the Colonial tandem, and in Miami is the Miami
20 Grande tandem.

21 We have our facilities which match the
22 facilities in traffic volumes that we need to handle for
23 the end users, which are the BellSouth customers dialing
24 the Level 3 numbers on their side of the interconnection
25 point.

1 And BellSouth brings that traffic to the
2 interconnection point in accordance to the agreement that
3 we have signed with them, which may or may not be within
4 that same local calling area as the interconnection point
5 to that particular tandem.

6 BY MR. HOFFMAN:

7 Q Mr. Sachetti, let me read to you from a document
8 which has been exchanged with BellSouth concerning -- in
9 attempts to negotiate a settlement at some of the network
10 interconnection provisions.

11 MR. TURNER: Madam Chairman, may I see a copy of
12 the document that he's going to be asking about?

13 COMMISSIONER JABER: I'm sure he was about to
14 share that with you. I think, he was just setting up the
15 question.

16 MR. HOFFMAN: I can give it to you right now,
17 but I'm going to need to read from it, Mr. Turner.

18 MR. TURNER: Thank you, Madam Chairman.

19 COMMISSIONER JABER: Mr. Hoffman, repeat your
20 question.

21 BY MR. HOFFMAN:

22 Q Let me first go back to the direct testimony of
23 Mr. Paul that has been adopted by Mr. Sachetti and ask him
24 to turn to Page 12 and look toward the bottom of that
25 page, beginning with Line 19.

1 A Yes.

2 Q Okay. Do you recall Mr. Turner referred to that
3 sentence in his cross examination of you, the sentence
4 that states, "Under our second proposal, BellSouth would
5 have the right to designate additional
6 technically-feasible IPs that exist on Level 3's network"?

7 A Yes.

8 Q Okay. Would you please read into the record,
9 then, the sentence that follows?

10 A "These points could include Level 3's switches
11 or points of presence in the LATA or collocation
12 arrangement Level 3 has established in BellSouth
13 premises."

14 MR. HOFFMAN: Thank you. That's all I have.

15 COMMISSIONER JABER: Thank you, Mr. Sachetti.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 COMMISSIONER JABER: We're going to take a
19 15-minute break to allow the court reporter to rest a bit,
20 and then we'll start back up with Mr. Gates.

21 (Brief recess.)

22 COMMISSIONER JABER: Mr. Turner, you brought to
23 my attention that we didn't move Exhibits 5 and 6 into the
24 record. Does the court reporter have copies of both of
25 those exhibits? Is there an objection to Exhibits 5 and

1 6?

2 MR. HOFFMAN: None.

3 COMMISSIONER JABER: Let's go ahead and move
4 those into the record.

5 (Exhibits 5 and 6 admitted into the record.).

6 (Transcript continues in Volume 2.)

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1 STATE OF FLORIDA

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

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

7

8 It is further certified that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript, consisting of 146 pages, Volume 1 constitutes
12 a true transcription of my notes of said proceedings and
13 the insertion of the prescribed prefiled testimony of the
14 witnesses.

11

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

14

DATED THIS 13TH DAY OF DECEMBER, 2000.

15

16

Koretta E. Stanford

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FPSC Official Commissioner Reporter
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